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### India-Pakistan relations after Constitutional Change: Retraction of Article 370 and 35-A

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#### Abstract

Since the beginning of time, India and Pakistan have been at odds over the Jammu and Kashmir Conflict. Along with the Kargil war in 1999 over Kashmir, both nuclear powers fought three wars in the 1948, 1965, and 1971. Article 370 and 35-A of the Indian Constitution are directly related to the special status of the state Jammu and Kashmir. India violated the Shimla Agreement and UN Security Council resolutions on August 5, 2019, when it overthrew these articles and annexed its seized region of Jammu and Kashmir. This unilateral move increased friction between India and Pakistan and caused substantial social, political, and economic turmoil. Analytical and descriptive methods are employed to examine the political, social, cultural, and bilateral effects of constitutional change by using secondary data in this qualitative research paper. The main objective of this paper is discussing the relationship between India and Pakistan following the repeal of Articles 370 and 35A.

**Keywords:** Pakistan, India, Jammu and Kashmir, Constitutional Change and Retraction of Article 370 & 35-A

#### Introduction

The debate on relations between Pakistan and India has been taking place at the local and international levels to promote peace in South Asia since its inception due to the multilateral global factors, tolerable conflicts, and the Kashmir dispute. (Ali, Yousaf, Zafar & Mohsin 2024) Both countries have fought the Kargil and three full-scale armed wars, and their armies have been in a stand-off position several times due to new developments on the Kashmir issue in each period. In the early years, the United Nations Security Council played a significant role in resolving the issue. The Security Council passed resolutions in favor of an impartial and free plebiscite for the people of Kashmir to join

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Pakistan or India of their own free will, but despite this, they were still denied the right to vote. As a result, tensions between the two countries continued to rise and the peaceful situation in South Asia turned into hostility. Later, this situation became a nuclear threat not only for the region but also for the entire world when both countries successfully tested their nuclear weapons. (Alam, Bhatti & Awan, 2020) Jammu and Kashmir is granted special status under Articles 370 and 35-A of the Indian Constitution. India retracted these two articles in August 2019, exposing the special status of Jammu and Kashmir, which led to a rift in the bilateral relations between the two countries (Pakistan and India). This article examines the situation arising from the withdrawal of these articles and focuses on the deterioration in Indo-Pak relations. (Ali, Yousaf, Zafar & Mohsin 2024) India unilaterally changed the special status of Jammu and Kashmir, violating UN Security Council resolutions and the Shimla Agreement, and converted its temporary borders with Pakistan and China (the Line of Control and the Line of Actual Control) into international borders. (Alam, Bhatti & Awan, 2020) This paper analyzes Pakistan's immediate response to the abrogation of Articles 370 and 35-A and its implications for peace and security in South Asia, taking into account the special status of Jammu and Kashmir, the role of the United Nations, and the Kashmir issue.

#### Origin of the Kashmir Issue

The Kashmir issue is a major source of conflict between the two newly formed countries (Pakistan and India) since the independence of the subcontinent. One limited and three full-scale wars have been fought between two countries over this issue. (Khalid, 2021) The partition of the Indian subcontinent in 1947 resulted in the creation of two separate and independent countries, Pakistan and India. (Abbas, Mustafa & Arslan, 2024) A resolution was passed to declare the Muslim-majority areas of the region as Pakistan, while the non-Muslim-majority areas would remain as India (Bhatti, 2020). The Indian Independence Act of 1947 established Pakistan and India as separate sovereign states. At that time, there were more than 560 princely states in the Indian subcontinent. (Ashraf, 2020). Lord Mountbatten, the last Viceroy of India, finalized criteria for the partition of India and while making decisions, factors such as communal interests, geographical location and other relevant (cultural and religious) considerations were generally considered (Hussain and Nawaz, 2021).

After this decision, all the non-Muslim majority adjoining states and the Muslim majority adjoining states (Hyderabad and Junagadh) were included in India, although Hyderabad and Junagadh were Muslim majority states bordering Pakistan. Maharaja Hari Singh of Jammu and Kashmir was eager for independence and therefore could not decide on the immediate accession of the state (Awan, 2020). The uprising of the Muslim population of Jammu and Kashmir and the forced entry of Indian troops into Kashmir led to a crisis. On 26 October 1947, the Maharaja of Jammu and Kashmir signed the controversial Instrument of Accession at the Indian demand. (Awan, 2020) After this controversial accession treaty, the war between Pakistan and India over Kashmir emerged as a major issue. On this issue, the two countries have fought three major wars and one minor war. (Abbas, Mustafa and Arsalan, 2024) The Indian Independence Act of 1947 allowed the states of the subcontinent to choose between Pakistan and India. The accession of the state of Jammu and Kashmir to

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India was based on Articles 370 and 35-A of the Indian Constitution. These articles granted special status to the region of Jammu and Kashmir and protected it from certain other provisions of the Indian Constitution. (Singh, 2019)

Pakistan has always supported the aspirations of the people of Jammu and Kashmir on the Kashmir issue and has been working to address the challenges faced by the Kashmiri people. (Abbas, Mustafa and Arsalan, 2024) The abrogation of Articles 370 and 35-A has significantly affected the strategic stability of the region and the long-term accession of Jammu and Kashmir to India has weakened the sovereignty and unity of the region. (Wani, 2020). This move by India has led to human rights violations, killings, economic and social instability in Jammu and Kashmir, whereas Pakistan has always protected and clearly advocated for the rights of Kashmiris at all regional and international debates at bilateral and multilateral levels for peace and security in South Asia. (Fareed, 2020).

#### **Statement of Problem**

The fundamental aspect of the abrogation of Articles 370 and 35-A is the concept of the return of special status and autonomy to the State of Jammu and Kashmir. This academic research is concerned with the legality of the concept of special status and autonomy as it relates to international law. The research challenge associated with this topic is the overall lack of studies on the concept of withdrawal of special status and autonomy. However, the main focus of this research article is on ethnic and religious segregation and Pakistan-India relations. This suggests that there are some similarities between the issues discussed in the article and the situation in which India abrogated Articles 370 and 35-A.

#### **Research Questions of the Study**

- 1. Why India decided to abrogate Articles 370 and 35-A from its Constitution?
- 2. How did the abrogation of Articles 370 and 35-A affect the political and social situation of the state of Jammu and Kashmir?
- 3. How did the abrogation of these articles affect the relations between Pakistan and India?

#### **Objectives of the Study**

- 1. To assess the status of the J&K under Articles 370 and 35-A in the Indian Constitution.
- 2. To understand the socio-political scenario of J&K after the abrogation of Articles 370 and 35-A.
- 3. To study the legal status of the Pakistani response on the abrogation of these Articles.

#### **Research Methodology**

The methodology of this study was critical and historical discourse analysis using descriptive and analytical techniques. The Indian participation in the Kashmir conflict was analyzed using qualitative research methodology and philosophy of realism. The research used secondary data sources, which included various books, research articles, reports, documents and website articles, etc.

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#### Article 370 and 35-A of the Indian Constitution

Article 370 granted special status to the state of Jammu and Kashmir, providing for a separate constitution, a state flag, and complete autonomy over the internal affairs of the state. (Ali, 2020). Furthermore, Article 370 of the Indian Constitution contains six special provisions for the state of Jammu and Kashmir:

- 1. The state of Jammu and Kashmir is exempted from the application of the Constitution of India and is allowed to frame its own constitution.
- 2. The central legislative powers over the state were limited to only three subjects: defence, foreign affairs and communications.
- 3. The central government can extend other constitutional powers to the state only with the consent of the state government.
- 4. The 'agreement' was only temporary and had to be ratified by the Constituent Assembly of the state of Jammu and Kashmir.
- 5. The power of the state government to give 'agreement' was only till the session of the State Constituent Assembly, which was finalised by the Constituent Assembly.
- 6. Article 370 can be revoked or amended only on the recommendation of the Constituent Assembly of the state of Jammu and Kashmir. (Nasir,2019)

Article 35-A provided complete protection to the demographic status of the state of Jammu and Kashmir and prohibited any person from other parts of India from purchasing property in the state of Jammu and Kashmir. (Rauf and Asif, 2021). On 05 August 2019, India unilaterally abrogated the Articles 370 and 35-A of its Constitution, thereby abolishing the special status of the state of Jammu and Kashmir, illegally annexing it contrary to United Nations Security Council resolutions and bilateral agreements of India and Pakistan. (Khalid, 2021).

#### Retraction of Article 370 and 35-A of the Indian Constitution

On 5 August 2019, the Union Home Minister of India, Amit Shah, announced that the special privileges granted to the state of Jammu and Kashmir under Articles 370 and 35-A of the Indian Constitution had been revoked. (Abbas, Mustafa, & Arslan, 2024) The State Assembly of Jammu and Kashmir has the sole authority to determine who is considered a permanent resident of the state and grants them certain rights and benefits as per Article 35-A of the Indian Constitution, although Article 35-A was not included in the 1949 Constitution of India, which was later included in the Constitution in 1954 through a Presidential Order as a result of an agreement with the state. (Alam, Bhatti, & Awan, 2020) The Union Home Ministry of India has introduced the following resolutions and bills related to Jammu and Kashmir in the Lok Sabha.

- 1. The Constitution Order, 2019: The President of India, in exercise of the powers conferred by clause 1 of Article 370 of the Constitution, has made this Order in substitution for the Constitution Order, 1954, as amended from time to time. It shall come into effect from 5 August 2019 with the approval of the Government of the State of Jammu and Kashmir. (Hussain, Mustafa, Imran & Nawaz, 2019)
- 2. A Resolution to Rescind Article 370: Article 370 (3) empowers the President of India to abrogate Article 370 on the recommendation of the Constituent Assembly of Jammu and Kashmir, which is considered to be

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the Legislative Assembly of Jammu and Kashmir. (Hussain, Mustafa, Imran & Nawaz, 2019)

3. The Jammu and Kashmir Re-organisation Bill, 2019: This bill separated the state into two Union Territories, the Union Territory of Ladakh and the Union Territory of Jammu and Kashmir, and came into effect from 31 October 2019. (Hussain, Mustafa, Imran & Nawaz, 2019)

After the imposition of Presidential Rule in Jammu and Kashmir, the Indian President of India approved the suggestions and recommendations of the Indian Parliament and announced to implement on the Presidential Order. (Abbas, Mustafa & Arslan, 2024)

#### The Reasons behind Retraction of Article 370 and 35-A

Essentially, the State of Jammu and Kashmir and the Indian government had applied Article 370 of the Indian Constitution in the state affairs by signing the Treaty of Accession of the State of India during a period of intense internal political, social and religious differences and armed hostility with Pakistan. (Nisar, 2019) The retraction of these Articles resulted from following several factors.

- 1. Inequality: The special status of Jammu and Kashmir created inequality between Kashmir and other states of India.
- 2. Temporary and Transitional Measures: The special status of Jammu and Kashmir is a temporary solution to the Kashmir issue that has been in force for the last seventy years.
- 3. Invalidity of Section 5 of the Instrument of Accession: The application of Article 370 invalidated the Section 5 of the Instrument of Accession to India.
- 4. Separatist movements: The special status of the state of Jammu and Kashmir encouraged separatist movements within the state.
- 5. Economic development: The repeal of these articles will lead to the economic development of the state of Jammu and Kashmir and will allow free trade with the rest of India.
- 6. Eradication of corruption: The special status of the state of Jammu and Kashmir promoted corruption in the region, to eliminate which these articles were repealed.
- 7. Security threat: The issue of Kashmir and the special status of the state of Jammu and Kashmir posed a threat to the security of India.
- 8. Gender Inequality: There was inequality in the rights of men and women in the state of Jammu and Kashmir. A woman resident of the state who married outside the state loses her claim to government immovable property. The Jammu and Kashmir High Court in its judgment declared this provision illegal. Omar Abdullah's party sponsored the Permanent Residency Bill in 2004, under which women would be deemed to have lost their permanent residency status if they married outside the state of Jammu and Kashmir. (Abbas, Mustafa and Arsalan, 2024)
- 9. Permanent Residence: In the presence of 35-A, no Indian/non-state citizen could take up permanent residence in the state of Jammu and Kashmir.
- 10. Purchase of land: The abolition of 35-A is essential for any Indian/non-state citizen to purchase land in the state of Jammu and Kashmir.

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11. Government Employment: With the retraction of these articles, any Indian/non-state citizen can get a government job in the state of Jammu and Kashmir easily.

# Effects of the withdrawal of Articles 370 and 35-A of the Indian Constitution

The abrogation of Articles 370 and 35-A of the Indian Constitution will have the following effects on the situation in the region of Jammu and Kashmir.

- 1. The Indian Constitution and laws have been fully applied in the state. (Nisar, 2019)
- 2. The State of Jammu and Kashmir is governed by Part IV of the Indian Constitution after this amendment, which describes the policies, responsibilities and guiding principles of the government. (Sharma, 2019)
- 3. The term of the Legislative Assembly of the state of Jammu and Kashmir has been reduced from six years to five years. (Krostadat, 2019)
- 4. The special status enjoyed by the State of Jammu and Kashmir among the Indian states will be abolished. (Rauf, 2020)
- 5. Instead of a separate flag for the State of Jammu and Kashmir, the Indian flag will be considered the state flag. (Krostadat, 2019)
- 6. Rights to education and information will be applicable in the state as per the Indian Constitution. (Nisar, 2019)
- 7. Minority reservations for Hindus and Sikhs in the state will be 16 percent. (Rauf, 2020)
- 8. In case of financial emergency, Article 360 of the Indian Constitution will now apply to the State of Jammu and Kashmir. (Sharma, 2019)
- 9. The Panchayats in the state of Jammu and Kashmir will enjoy the same rights as in other states of India. (Rauf, 2020)
- 10. With the repeal of Article 35-A, women whose spouse is not a resident of Jammu and Kashmir will legally retain their citizenship and full rights. (Nisar, 2019)
- 11. The repeal of Article 370 is seen by some as a threat to democratic principles and as an attempt to appease and inflame the Hindu population in the valley. (Rauf, 2020)
- 12. The repeal of these provisions has already weakened and strained relations between Pakistan and India, which has increased geopolitical tensions. (Alam, Bhatti, & Awan, 2020)
- 13. In Jammu and Kashmir, this move has created a sense of unease among certain sections of society that it has ended the state's autonomy. (Krostadat, 2019)
- 14. This move by India has increased political instability and sensitivity in the state of Jammu and Kashmir, especially in the valley. (Nisar, 2019)
- 15. The removal of the state's special status has made the locals feel insecure as they need to give up their dual citizenship. (Rauf, 2020)
- 16. This move also has social implications such as allowing women to marry outsiders without losing their citizenship. (Krostadat, 2019)

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# Reaction of Pakistan on retraction of Articles 370 and 35-A of the Indian Constitution

After the abrogation of Articles 370 and 35-A of the Indian Constitution, the Pakistani government wasted time in telephone diplomacy. Pakistani Prime Minister Imran Khan was told by his Iranian counterpart over the phone that the Kashmir issue would not be resolved through military means. Later, the Prime Minister of Pakistan drew the world's attention to this issue by delivering two speeches at the United Nations General Assembly. (Abbas, Mustafa and Arsalan, 2024). The Pakistani government has effectively engaged with diplomatic missions of other countries to draw global attention to the Kashmir dispute. During the September 2019 session of the United Nations General Assembly, several world leaders, including China, Malaysia, and Turkey, expressed their displeasure on the retraction of Articles 370 and 35-A. (Mustafa, Aslam, Bhatti, and Mushtaq, 2020) The entire strategy Pakistani government has been to highlight human rights violations and atrocities in Indian-occupied Jammu and Kashmir to expose illegal and immoral actions of India. Pakistan's goal was to raise global awareness about the abrogation of Articles 370 and 35-A by drawing attention to the human rights violations and the overall situation of religious and ethnic extremism in Indian-occupied Jammu and Kashmir. (Mehta, 2019).

# Pakistani Need in Response on Retraction of Articles 370 and 35A of the Indian Constitution

Pakistan needs to take real steps to restore the abrogation of Articles 370 and 35-A of the Indian Constitution, which will give legitimate rights to the Kashmiri people and enable a positive solution to the Kashmir issue in the light of UN resolutions. (Abbas, Mustafa and Arslan, 2024) Indian Foreign Minister Jai Shankar has created a narrative against Pakistan that holds Pakistan responsible for human rights violations in Indian-occupied Kashmir. To defeat this narrative, Pakistan will have to develop a strong narrative that will draw the world's attention to the real facts of Jammu and Kashmir. (Malik, 2020) The Pakistani diplomatic staff and the Foreign Office should demand a resolution on this issue from the United Nations and use its diplomatic relations with other countries to adopt a positive and strong narrative for the adoption of the resolution and convince them to support Pakistan based on their position on Kashmir and the principle of the right to self-determination. (Kamboh, Masood, Mustafa and Shabbir, 2021) Indian actions and diplomacy are much better than Pakistan in diverting the world's attention from the real issue of Jammu and Kashmir. Pakistan should make clear to the world the real face of India and Indian Prime Minister Modi, such as Modi's action of banning India and Canada for twelve years after the Gujarat massacre in 2002. (Rauf, 2020) Pakistan should expose the human rights violations, atrocities and abrogation of Articles 370 and 35-A by India and Modi in Kashmir at national and international media and other forums. It is very important for Pakistan to expose the religious and ethnic extremism of Indian Prime Minister Modi to the world. (Azam, Akram, and Mustafa, 2023) Pakistani diplomacy should take steps to mutually resolve disputes and support its position in such a way that it can improve Pakistan-India relations. (Abbas, Mustafa and Arsalan, 2024)

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# Retraction of Articles 370 and 35-A of the Indian Constitution and Regional Challenges

The retraction of Articles 370 and 35-A of the Indian Constitution will lead to tension in the relations between Pakistan and India and the region in South Asia will continue to face the following regional challenges.

**Regional Dispute Over Kashmir:** The main cause of tension in Indo-Pak relations is the regional dispute over Kashmir, and both countries claim influence over the region, which has led to several clashes and border tensions. The abrogation of Articles 370 and 35A has led to a temporary deterioration in friendly relations between the two countries (Pakistan and India).

**Human Rights Violations In Jammu And Kashmir:** The abrogation of Articles 370 and 35A has led to uncertainty over human rights violations in Jammu and Kashmir. Tensions between the two countries have further escalated as Pakistan accused India of misuse of force and atrocities against the Kashmiri people.

**Inactive Peace Initiatives:** The bilateral relations between the two countries have included limited efforts such as the Simla Agreement and the Lahore Declaration. The steps taken by both countries to strengthen efforts to resolve the Kashmir dispute and promote overall relations are vague and ambiguous. Lack of communication and trust: Years of hostility have eroded trust between India and Pakistan to the point where there are no adequate networks for effective communication, and diplomatic dialogue between the two countries is often marred by suspicions and unnecessary rhetoric.

**International Mediation:** The lack of trust between the two countries concern to mediation efforts by the United States, China, and other international institutions to resolve the Indo-Pakistan conflict. Despite calls for diplomacy and dialogue, progress towards a peaceful resolution of the issue remained elusive.

**Military Tensions:** The situation that arose after the abrogation of Articles 370 and 35A further increased the potential for military tensions between India and Pakistan. Both countries violated the Line of Control (LOC) by conducting military operations and maintained a high alert state along their borders, which left the possibility of a possible military clash.

**Nuclear Deterrence:** The relationship between the two countries (India and Pakistan) has been fraught with nuclear weapons. The potential threat of nuclear war has deterred major military confrontations and escalated any conflict that could lead to nuclear execution.

#### **Suggestions For Improving The India-Pakistan Relations**

After the retraction of Articles 370 and 35-A, the border dispute between India and Pakistan further deteriorated, which greatly affected the mutual relations between the two countries. Diplomatic aggression and increased military tension on the border seriously damaged the peaceful environment of the region. (Abbas, Mustafa and Arsalan, 2024) Both countries took strong positions on their

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respective positions, which created suspicions and suspicions and reduced mutual relations. The following are suggestions for improving the relations between the two countries.

**Initiation of Dialogue:** To establish cordial relations between the two countries on priority basis, unresolved issues such as the Kashmir issue, extremism and border clashes should be resolved through mutual talks. Continuous and unstoppable dialogue is needed to find resolutions based on constructive debate, tolerance and non-violence.

**Engaging Kashmiri Stakeholders**: Both countries should use an independent and inclusive mechanism to engage Kashmiri stakeholders, including political parties, civil society organizations, and other Kashmiri movement partners, in the dialogue on the Kashmir issue.

**Economic Cooperation:** The two countries should promote regional peace and stability and mutual relations by regularizing trade and financial cooperation for economic development. Both states should play a full role in economic engagement, upgrading connectivity, joint progress in economic development, energy, infrastructure and trade.

**Confidence-Building Measures:** Both countries should support the restoration of family ties, exchange of prisoners, cooperation in education and development, and religious harmony, and promote measures to develop and restore social relations to reinstate the confidence-building process.

**Track-II Diplomacy:** Both countries should relax Track II diplomacy initiatives such as non-governmental organizations, think tanks and civil society organizations, religious and cultural festivals, etc. The private efforts to maintain peace and dialogue between Pakistan and India should be endorsed at the official level. Long-standing disputes and complexities can be facilitated through informal networks of honest, open dialogue about sensitive issues and the search for new ways to resolve these complexities.

#### Conclusion

Pakistan cannot ignore the state of Jammu and Kashmir under any circumstances as it has been a disputed territory between Pakistan and India since their inception. By retracting Articles 370 and 35-A of the Indian Constitution relating to Kashmir, India has increased its oppression. To maintain peace and stability in South Asia, it is essential that the world adopts a realistic and timely strategy for a peaceful resolution of Kashmir. Pakistan and India should work together with the international community in the United Nations Security Council to resolve this issue and find a workable solution keeping in mind the aspirations of the Kashmiris. The retraction of these articles has created an uncertain and negative situation between the two nuclear-armed states. The two states should sit together and find a peaceful resolution to the Kashmir issue.

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