



Constitutionality of Abrogation of Article 370 and its Impact on economic aspect between India and Pakistan

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Abstract

The world works in an anarchic system and due to the lack of supreme authority, there is numerous conflicts for the control over land or territory. The conflict discussed in this article is the conflict between India and Pakistan over the Kashmir territory. The issue is about the sovereignty of the Kashmir region that lies between India and Pakistan. The abrogation of article 370 on the 5th of August 2019, by the Indian government unilaterally has increased the tensions evident by the increase firing from both sides which can potentially result in war and pose a global security threat. Another reason to investigate this issue is that it has been continued for about 70 years. Now the 70-year-old article's abrogation has raised the heightened tensions between the neighbours. The article shall lay down the reason behind the constitutionality of the abrogation of Article 370, and its impact on the economic aspect between India and Pakistan.

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

1. Introduction

The issue regarding the sovereignty of the Kashmir region situated between India and Pakistan is a seven decade long violent dispute. Historically, Kashmir being a princely state was majorly populated by Muslims and ruled by a Hindu king Maharaja Hari Singh. Soon Pakistan's tribesmen Pashtun attack Kashmir and the king came to India for help. India in exchange of providing security to Kashmir asked the king to associate Kashmir with India and to preserve Kashmiri culture article 370 was introduced in Kashmir by the Indian government. Article 370 gave an autonomous position to Kashmir allowing the Indian government to have control only over the foreign affairs, defence, and communication. The abrogation of Article 370 on the 5th

of August 2019, by the Indian government unilaterally increased the tensions evident by the increase firing from both sides which can potentially result in war and pose a global security threat. Both the countries have already fought two wars over Kashmir. Recently, the Supreme Court of India has upheld the constitutional validity of the unilateral abrogation of Article 370 in 2019. This has reiterated the tensions between India and Pakistan. The article shall provide a background of constitutionality of Abrogation of article 370 and then its impact on the economic aspects between India and Pakistan.

2. Constitutionality of Abrogation of Article 370

Over 20 petitions were filed demanding a judicial review of the Union government's decision regarding the Unilateral abrogation of Article 370 revoking the autonomous status of Kashmir.¹ A Constitutional Bench, in its judgement on 11th December upholding the constitutionality of the abrogation of Article 370 by the Union Government. The bench stated that Jammu & Kashmir was not an internal sovereign after it was accessioned to India. The bench additionally highlighted that Article 370 is codified in Part XXI of the Constitution dealing with "temporary, transitional and special provisions". The Bench also directed the Union to move for a more permanent solution of restoring Jammu and Kashmir's statehood and to also ensure the conduction of Legislative Assembly elections by next year. Article 370. The court also stated the sovereignty transferred to India by the states who acceded during or after independence, including Jammu & Kashmir, 'was not conditional but absolute,' which is further presented in Article 1 of the Constitution of India.

The Pakistani Government on the other hand, states that the judgment of Supreme Court on constitutionally valid revocation of Article 370 is of 'no legal value' as the International Law would never recognise such 'unilateral and illegal action.'² And also asserted that the people of Kashmir have a 'right to self-determination provided under UNSC resolutions.' This divide of opinions has been raised due to Kashmir being a rich source of economic prosperity. And both the Countries for 7 decades has been trying to get a hold over it.

3. Abrogation of Article 370 and its impact on Minerals found in Kashmir

The abrogation allows the Indian government utilize minerals found in Kashmir, a disadvantage to the Pakistan economy. In retaliation, Pakistan is using trade spats. It impacts the economic conditions of both

¹ Vishwanath, A., & Singh, R. (2023, December 11). *SC verdict on abrogation of Article 370 Explained Highlights: Everything you need to know about the landmark judgment*. The Indian Express. <https://indianexpress.com/article/explained/explained-law/article-370-verdict-supreme-court-explained-live-updates-9061383/>

² *How Pakistan reacted to Supreme Court verdict on Article 370 abrogation*. (2023, December 12). Hindustan Times. <https://www.hindustantimes.com/world-news/how-pakistan-reacted-to-supreme-court-verdict-on-article-370-abrogation-101702346014647.html>

the respective countries. The minerals in Kashmir can be used to export and be traded internationally.³ The revoking has reduced the chances of Pakistan having control over Kashmir which escalates the security threat as the countries have already fought wars and could be a potential reason to start another. The revocation does not only give power of Kashmir to India but also to the Kashmir under Pakistan's rule. Earlier, India did not have the control as the article 370 only allowed that foreign, communication and defence departments to be under the control of Indian Government. In this world of competition, countries need money to provide welfare to their citizens. India having full control can easily give the power to use the minerals and sell the Kashmiri mineral under the name of Indian government adding to the Indian economy.⁴ It will not be good for Pakistan as the region containing mineral in Kashmir under Pakistan's control can also be a subject to it. The minerals also bring greater job employments and additional money in the forms of tax revenues for the government. The money can be used for development purposes which will make the citizens happy to get votes and the government to be in power. It is perceived by many people from both India and Pakistan as well as other country's citizens as an aggressive step taken by the Indian government as Kashmir being a disputed territory⁵. The resources are very scarce in nature which makes this issue very complex to solve as to which country can utilize them. Citizens of both countries have evidently given threats to each other after the abrogation of article 370. Thus, impacting the economic conditions in both the respective countries.

4. Abrogation of Article 370 and its impact on Trade Agreement between India and Pakistan.

There have been trading spats between India and Pakistan in response to the abrogation of article 370 in Kashmir. Abrogation was soon followed by Pakistan's suspension of the bilateral trade agreement.⁶ This was an attempt to impact the Indian economy in retaliation for their decision of revoking article 370 in Kashmir. India is one of the largest democracies and imports a lot of minerals and vegetable products from Pakistan. Indian can use the soft power to adversely affect Pakistan's exporting revenue. This trade spat is going to impact the Indian economy and can lead to inflation in India due to the high prices of vegetable products. Pakistan imports chemical products like medicines. This also impacts the Pakistan economy as the suspension has halted the trade from both countries. It impacts the economic relations between India and Pakistan. Due to this response, the social relations between India and Pakistan have been compromised. A more nationalist feeling has arisen in both the countries towards Kashmir as their integral part and evident

³ Bhavan, Indira. *Indian Minerals Yearbook 2013 (Part-I) 52 Nd Edition STATE REVIEWS (Jammu & Kashmir) (FINAL RELEASE) GOVERNMENT OF INDIA MINISTRY OF MINES INDIAN BUREAU OF MINES E-MAIL : Cme@ibm.Gov.In*. Vol. 2560544, 2015, p. 2560648,

⁴ *Geology & Mining | Department Of Industry & Commerce, J & K.* (n.d.). Www.jkindustriescommerce.nic.in. Retrieved December 15, 2023, from <http://www.jkindustriescommerce.nic.in/gm.html>

⁵ The Indians celebrating Kashmir's loss of autonomy. (2019, August 9). *BBC News*. <https://www.bbc.com/news/world-asia-india-49250594>

⁶ Beniwal, V. (2019, August 8). Trade spat with Pakistan no big deal for India. *The Economic Times*. <https://economictimes.indiatimes.com/markets/stocks/news/trade-spat-with-pakistan-no-big-deal-for-india/articleshow/70585839.cms>

through the trade spats that they will do whatever it takes to get the sovereignty over Kashmir, the disputed territory.⁷ The use of soft power is clearly visible to achieve the sovereignty of Kashmir. It negatively impacts the economic and social relations between India and Pakistan due to Kashmir conflict. The tensions are increased because of the revocation of article 370. The trading spats can force the countries to use hard power, use of hard force or violence to influence others' behaviour. It can lead to a threat to global security and peace. Both countries are nuclear-armed neighbours and can use nuclear weapon as a solution to the tensions of social and economic. India has signed the No First Use policy but the country may abandon the policy suggested by the defence minister of India Mr. Rajnath Singh as India might feel the need to attack first in war situation.⁸ Posing a security threat which can worsen not only the social tensions but also economic tensions between India and Pakistan. If India abandons the no first policy as suggested by its defence minister, more money is going to be spent on creating nuclear arms. The budget in India might be reduced for other public government spendings. Pakistan might increase their nuclear weapon production due to the security dilemma. It will increase military spendings and worsen the social and economic tensions between the countries. It will have a negative impact on the social and economic relations between India and Pakistan in Kashmir.

5. Abrogation of Article 370 and its impact on Indus Water Treaty

The abrogation of article 370 in Kashmir resulted in India stopping the flow of water under the Indus water treaty, negatively affecting the economic relations. Pakistan has been upset about the decision taken by the Indian government to stop the flow of water in retaliation to the Pulwama attack orchestrated by Pakistan over the long-lasting dispute in Kashmir.⁹ The Indus water treaty is crucial to both countries. Farmers near the border of India and Pakistan are dependent on the water flow as both Pakistan and India are more of an agriculturally based countries and the poor farmers will be the one who is going to suffer.¹⁰ Most of the portion of both the countries' GDP comes from agriculture. India having a geographic advantage in the situation as the waters originate in India.¹¹ The social ties being low between the countries give a reason to India to stop or to make a harsh decision like this that will extremely strike Pakistan's economy. Pakistan is an agriculture-based country it requires water for irrigation and for the domestic uses required by citizens. The abrogation of article 370 has given the power to the Indian government to fully control the matters that involved Kashmir's consent.

⁷ Id. 6

⁸ Lakshman, N. (2019, August 24). Will India change its "No First Use" policy?. *The Hindu*. <https://www.thehindu.com/news/national/will-india-change-its-no-first-use-policy/article29247139.ece>

⁹ Government taking steps to stop river waters flowing into Pakistan. (2019, August 21). *The Economic Times*. <https://economictimes.indiatimes.com/news/politics-and-nation/government-taking-steps-to-stop-river-waters-flowing-into-pakistan/articleshow/70772314.cms>

¹⁰ Tariq, Muhammad Atiq Ur Rehman, et al. "An Engineering Perspective of Water Sharing Issues in Pakistan." *Water*, vol. 12, no. 2, 11 Feb. 2020, p. 477, 10.3390/w12020477.

¹¹ Nabeel, Fazilda. "How India and Pakistan Are Competing over the Mighty Indus River." *The Conversation*, theconversation.com/how-india-and-pakistan-are-competing-over-the-mighty-indus-river-77737

6. Suggestion and Conclusion

The current tensions can be sought out with conferences held between the both the countries so that in the long term the economic relations might improve. If a war were to happen it will have long lasting effect and will also decrease the development level of both the countries. And no country will like to be on a low level of development spectrum. Thus, war might not be a good solution. The Supreme Court of India has upheld the constitutionality the abrogation of Article 370. It is valid throughout the Indian territory as mentioned under the Article 141 of the Constitution. Thus, it will be considered as final and binding. India is a sovereign territory and it has the power to take decision and create laws with the due power conferred on the Parliament by the Constitution of India. This decision of Union government was a sovereign decision upheld by the Supreme Court of India.

