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Jammu & Kashmir Territorial Dispute: China-Pakistan Axis to Deter India's Sovereignty

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Abstract

Jammu and Kashmir have been a territorial dispute between India and Pakistan since decades ago and yet until today, there are still unresolved conflicts between the states. Not only that, as China also shares the same border, it has been 'sucked' into the dispute as well. As China and Pakistan have a strong bilateral relation especially in terms of economy, the relation has been threatening India's sovereignty over Jammu and Kashmir. There are many recent news which further exacerbate the situations like the India's revoke of Article 370 and Article 35A which grant various special status of Jammu and Kashmir to India's rejections of the recent joint statement between China-Pakistan which India considers as meddling with their internal affairs and also the rejection of China-Pakistan Economic Corridor (CPEC) which India is against of. This paper will further explore on Article 370 and Article 35A, Jammu and Kashmir Reorganisation Bill, 2019, CPEC and the June 2020 border standoff between China and India in Galwan Valley which still continues to this date.

Keywords: Jammu and Kashmir, China-Pakistan Axis, India, Sovereignty, Territorial Dispute

Introduction

Jammu and Kashmir (J&K) is a state located within the borders of three nuclear countries which are India, China and Pakistan. It has been acceded to India in 1947, however, there have been conflicts going on between India and Pakistan since decades ago that sees Pakistan has been refusing to accept the accession of J&K to India. Dutta (2019) mentioned how both countries have their own thoughts on J&K. For Pakistan government, they have used J&K as "a tool to justify the creation of Pakistan on the basis of the two-nation theory," while for India, "the accession of Jammu and Kashmir was a statement of rejection of the two-nation theory." However, that is not just it. China has also emphasized that a part of J&K called Aksai Chin is theirs and it is being administered under Xinjiang Autonomous Region.

There has been the Simla Accord of 1914 which explained that Ladakh is a part of J&K and it was signed between the representatives from China, Tibet and British India (Dutta, 2019). Nevertheless, the current China has rejected the accord, claiming that it was signed by a government which did not represent the people of China at that time. This then further justifies China's action to continue occupying Aksai Chin, ignoring the history before the communist party took over the government in 1949. Furthermore, Pakistan has gifted a part

of J&K's land which is Trans-Karakoram Tract as "calls for re-settlement of boundary limits in the region once the Kashmir issue between India and Pakistan is resolved," which is also included in the Pakistan-China boundary agreement of 1963 (Dutta, 2019). However, India still claims Aksai Chin as theirs and it does not belong to China.

In retrospect, the dispute is not contemporary. One should not overlook imperialism mark towards regional vengeance as appropriately quoted by Arundhati Roy (2008), 'How carelessly imperial power vivisected ancient civilizations. Palestine and Kashmir are imperial Britain's festering, blood-drenched gifts to the modern world. Both are fault lines in the raging international conflicts of today.' Li Peng, the fourth Premier of the People's Republic of China, rightfully identified: "As a historical legacy, the Kashmir conflict has been an outstanding issue for more than half a century."

The princely state of Jammu and Kashmir was partitioned between India (which held Jammu, Kashmir Valley, and Ladakh) and Pakistan after the 1947–1948 Indo-Pakistani War (which controlled Gilgit–Baltistan and Azad Kashmir). Maharaja Hari Singh signed the Instrument of Accession after an invasion by Pakistani tribes in 1947. In March 1948, Sheikh Abdullah was named prime minister of Jammu and Kashmir by Maharaja Hari Singh for a provisional administration. Article 370 of the Constitution of India, which came into effect on January 26, 1950, included Jammu and Kashmir's autonomy (Sardar, 2021). Consequently, Abdullah's Jammu & Kashmir National Conference won all the seats and a constituent assembly was formed to draught a new constitution for the state (Vipul, 2022). In 1952, Abdullah and India's Prime Minister, Jawaharlal Nehru, negotiated an accord known as the "Delhi Agreement." In addition to expanding the Supreme Court of India's jurisdiction, it extended to the state provisions of the Indian Constitution pertaining to citizenship and basic rights. In addition, agreements were reached about the abolition of the monarchy and the state's right to have its own flag and official language. The Delhi Agreement outlined the relationship between the central government and the state by recognizing Jammu and Kashmir's autonomy, recognizing it as an integral part of India, and granting the central government control over a number of issues that were not included in the instrument of accession (Waseem, 2021). The administration of Jammu and Kashmir adopted the terms of the deal swiftly.

On August 21, 1952, the Constituent Assembly adopted the proposals of the Jammu and Kashmir Constitution Drafting Committee respecting the monarchy (Jyoti, 2012). The monarchy was formally dissolved on November 12, 1952, when the Jammu and Kashmir Constitution Act of 1939 was revised to implement the resolutions in November 1952. The Constituent Assembly legally chose the regent, Karan Singh, as head of state, and the President of India subsequently accepted his election. On November 17, the changes inserted the clauses into the Jammu and Kashmir Constitution went into effect (Daya, 2020). In 1954, the Constituent Assembly approved a resolution extending some articles of the Constitution of India and formally ratifying the state's accession to India in accordance with the Instrument of Accession. On May 14, 1954, a Presidential Order was issued to execute the Delhi Agreement, using the Constituent Assembly's decision as its authority. The new Jammu and Kashmir Constitution was enacted on November 17, 1956, and came into effect on January 26, 1957 (Fozia, 2018). In 1956–1957, China built a route across the contested Aksai Chin region of Ladakh. China has governed Aksai Chin since the Sino-Indian War of 1962, which was precipitated by India's tardy discovery of this route. After the Indo-Pakistani War of 1971, India and Pakistan signed the Simla Agreement. They agreed to a Line of Control in Kashmir and to talk to each other about how to solve their problem.

After India repealed Jammu and Kashmir's special status under Article 370 of the Indian constitution in 2019, the Indian Parliament passed the Jammu and Kashmir Reorganisation Act, which dissolved the state and reorganized it into two union territories – Jammu and Kashmir in the west and Ladakh in the east – effective October 31, 2019 (Times of India, 2015). Jammu and Kashmir was India's only Muslim-majority state before it was dissolved.

This paper will further discover on the special status of Jammu and Kashmir (Article 370 and Article 35A) under India's Constitution, Jammu and Kashmir Reorganisation Bill, 2019, the significance China-Pakistan Economic Corridor (CPEC) to China-Pakistan-India's relations and the border standoff that happened in Galwan Valley since June 2020 which may be triggered by the revocation of Article 370 and the controversial CPEC.

The Special Status of Jammu and Kashmir Under Article 370 and Article 35a of the Constitution of India

J&K is a princely state which the ruler, Maharaja Hari Singh had to sign the Instrument of Accession to either join India and Pakistan at that time. On 26th October 1947, Maharaja signed the instrument of accession to join India and was ratified by the Governor General of India, Lord Mountbatten on the next day to officially declare that J&K had become a part of India. However, Pakistan was against the signing and began to occupy certain territories of the state.

As J&K is the only state in India that was negotiated through accession, the Constitution of India had inserted Article 306A on October 1949 which provided a special status to J&K and from 17 November 1952 onwards, it had been operated under Article 370 (Naitthani, 2019) and this article had provided a greater autonomy to J&K "to have a separate constitution, its own penal code, a separate flag and a special clause of permanent residents with a range of benefits," (Dutta, 2019). This article had also caused J&K to be exempted from the main Indian constitution and allowed J&K "to make its own laws in all matters except for finance, defence, foreign affairs and communications," (Aljazeera, 2019).

There have been two articles in India's Constitution that mention on the special status of J&K in India which are Article 370 and Article 35A. In August 2019, India had revoked both articles which granted a special status or autonomy of J&K and a special law for the permanent residents of J&K and it has caused anger to both Pakistan and China. On 16th to 17th March 2020, the President of Pakistan, Dr Arif Alvi visited Beijing on President Xi Jin Ping's invitation. In the joint statement by Ministry of Foreign Affairs of the People's Republic of China (2020), there was an exchange views on J&K issues where "the Chinese side underscored that it was paying close attention to the current situation and reiterated that the Kashmir issue was a dispute left from history and should be properly and peacefully resolved based on the UN Security Council resolutions and bilateral agreements. China opposes any unilateral actions that complicate the situation."

However, this has angered India when the Ministry of External Affairs spokesperson, Raveesh Kumar rejected the reference of J&K in the joint statement by saying "the Union Territory of Jammu and Kashmir is an integral part of India. Issues related to J&K are [an] internal matter of India. We expect other countries, including China, not to comment on matters that are internal affairs of India and also to respect India's sovereignty and territorial integrity just as India refrains from commenting on internal issues of other countries," (Patranobis & Laskar, 2020). As China-Pakistan's relationship is getting stronger, India does not want to lose its sovereignty either especially when China has been provoking

India in Aksai Chin (including Ladakh) and also in one of the areas in the north easternmost of India, Arunachal Pradesh which China has been claiming it as a part of South Tibet. Arunachal Pradesh is called “Zangnan” by the Chinese authorities and China's Ministry of Civil Affairs have standardized and announced the renames of a total of 21 places in the region to Chinese characters (seven in 2017 and 15 in 2021) and will continue to do so in the future (Global Times, 2021).

As the government of India had scraped all clauses under Article 370, only one clause remains (Rai, 2019) which is Article 370 (3) “Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.” Other than Article 370, the latter which is Article 35A had also been revoked by the government of India. Article 35A granted permanent residents of J&K to have special privileges of citizenship in the state which could not be enjoyed by non-state residents. According to Singh (2016), the article defined a permanent resident of the state as “as a person who was a state subject on May 14, 1954, or who has been a resident of the state for 10 years, and has “lawfully acquired immovable property in the state.” Furthermore, Article 35A is written as per below (The Economic Times, 2019):

“35A. Saving of laws with respect to permanent residents and their rights, — Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State,

- a) Defining the classes of persons who are, or shall be, permanent residents of the State of Jammu & Kashmir; or*
- b) Conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects*
 - 1) Employment under the State Government*
 - 2) Acquisition of immovable property in the State*
 - 3) Settlement in the State; or*
 - 4) Right to scholarships and such other forms of aid as the State Government may provide, shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part.”*

Under Article 35A, only permanent residents have the special rights and privileges to be employed, own a land, settle down and get scholarships or other aids within the region. Outsiders are not allowed to enjoy these special rights. However, “the J&K legislature could alter the definition of PR through a law passed by two-thirds majority,” Singh (2016). As the India government has completely revoked these Article 370 and Article 35A, none of the special rights and privileges can be enjoyed by residents in J&K anymore.

Jammu and Kashmir Reorganisation Bill, 2019

After Article 370 and Article 35A have been revoked, Jammu and Kashmir Reorganisation Bill, 2019 was introduced by Minister of Home Affairs, Mr Amit Shah on 5th August 2019. This bill can see how the special rights and privileges are now taken from the citizens in J&K.

The state of J&K are now divided into two which are (i) the Union Territory of Jammu and Kashmir with a legislature, and (ii) the Union Territory of Ladakh without a legislature. Kargil and Leh districts will fall under the Union Territory of Ladakh and the remaining territories will remain under the Union Territory of Jammu and Kashmir (PRS Legislative Research, n.d.).

Besides, the status of permanent resident in J&K has been abolished and land ownership and employment which were only for permanent residents are now open to all Indian citizens (The Economic Times, 2019). In addition to that, “now, central laws on any issue will automatically be applicable in Jammu & Kashmir without any ‘consultation’,” whereby previously, “Parliament’s say applied only to defence, external affairs & communications,” (The Economic Times, 2019) and the J&K will no longer have its own flag like it used to.

The Significance of China-Pakistan Economic Corridor (CPEC) to China-Pakistan-India’s Relations

China and Pakistan have been having a great alliance since decades ago and with the ongoing conflicts in J&K region, it definitely strengthens their relationship further. China-Pakistan Economic Corridor (CPEC) is a part of Belt & Road Initiative (BRI) which was launched in April 2015 between Pakistan Prime Minister at that time, Nawaz Sharif and President Xi in order to improve trade, connectivity, cooperation, communication and infrastructure. For Pakistan, CPEC is important “to leverage Chinese capital, production capacity, and know-how in order to upgrade Pakistan’s infrastructure and build a ‘mechanism for sustainable economic growth,’” meanwhile for China, they want to gain “a connection to the Arabian sea, providing a contingency trade route to the risk-prone Malacca Strait in Southeast Asia,” (Mardell, 2020).

Mardell also believes that China has a wisdom whereby “state-driven investment in infrastructure creates economic growth, social stability, and an improved security environment. As a counterweight to India in South Asia and a potential training ground for Uyghur militants from Xinjiang, the stability of its “all-weather” ally is a major concern for Beijing, and so CPEC was deemed a necessary strategic commitment.”

However, the problem does not lie between China and Pakistan only. In order to reach Pakistan, CPEC’s project needs to go through J&K which angers India because J&K is officially under India and every project that needs to be conducted in J&K state must go through the government of India. India claims “violation of its sovereignty over Gilgit Baltistan in Pakistan-held Kashmir, which comes under CPEC,” (Balachandran, 2020). Moreover, while India has been boycotting goods from China, China has been counterattacking India by “blocking India’s entry into the UN Security Council as a permanent member, and to curry favor with Pakistan, which is hosting CPEC, China has been consistently opposing a UN ban on Pakistan-based Jaish-e-Mohammad terrorists,” (Balachandran, 2020).

June 2020 Border Standoff Between China and India

On 15 June 2020, there was a border standoff between China and India in the disputed Galwan Valley, a Himalayan area along the Line of Actual Control (LAC) and it has caused the death of at least 20 Indian soldiers and more than 76 Indian soldiers injured. India’s External Affairs Ministry on 17 June 2020 has accused “the Chinese side of attempting “to unilaterally change the status quo” in Galwan Valley - a key geostrategic junction in the Himalayan region where India is building a road to connect to an airstrip close to China,”

and “since early May thousands of Chinese troops have crossed to the Indian side of the LAC, the 3,488km (2,167mile) de facto border between the two neighbours, at several places - Pangong Tso Lake, Galwan Valley and Demchok in Ladakh, and Nathu La in Sikkim - and built bunkers and brought armoured trucks and artillery,” (Aljazeera, 2020).

Therefore, the June 15 clash was triggered when Chinese troops had built “two Chinese tents and observation towers that Indian officials said had been built on its side of the LAC,” (Aljazeera, 2020) and as Indian troops demolished the structures, confrontations happened which led to the death of Indian soldiers and wounding others. While for China, the incident was caused by Indian troops and the troops have violated a military agreement, provoked and attacked Chinese troops in the region (Reuters, 2020). There is no casualties reported by China but India assumed that around 40 Chinese soldiers might have been killed.

Aljazeera reported that there may be two major reasons behind the border standoff between China and India in Galwan Valley. Analysts found out that the standoff is from the result of “China's pushback against India's construction of military infrastructure in border areas in recent years,” (Aljazeera, 2020). China has always had special interests in the region and when India was building a 255km (158-mile) Darbuk-Shyok-Daulat Beg Oldie (DSDBO) road along LAC that connects Leh to Karakoram Pass, China objected the road construction because Karakoram Pass is their interest region for CPEC with Pakistan.

Furthermore, China also objected when India revoked Article 370 and demanded India to reverse its decision. “India repealed Article 370 of its constitution that guaranteed a measure of autonomy to Kashmir and subsequently carved out Ladakh from Kashmir and made it into a federally-administered territory,” (Aljazeera, 2020) and China and Pakistan have condemned India's move while at the same time, raised the issue at the UN Security Council (UNSC). Michael Kugelman, deputy director of the Asia Program at The Wilson Center told Aljazeera that “I think it's clear, Beijing responded strongly and quickly after India made that move last year. I think China looks at [the] Article 370 repeal similarly to Pakistan that India made a unilateral move that affected territory China claims [as] its own. I do think the Article 370 is very much a part of China's broader thinking.” Whereas for Happymon Jacob, professor of international relations at Jawaharlal Nehru University based in New Delhi, he told Aljazeera that “Chinese control of Galwan Valley could in the future threaten India in Siachen glacier,” and in fact, both Indian and Pakistan troops are deployed in Siachen region. If Pakistan troops are threatened by Indian troops in that region, China will not hesitate to come to the rescue.

On the other hand, Singh (2022) argued that the border standoff is likely because of the conflicts with Chinese strategies towards India (namely Major Power Diplomacy and Neighbour Strategy) and China's policy dilemma on India as China wants to assert its strength and advantage to China-India bilateral relations, but at the same time, China also needs India's cooperation to gain geopolitical and economic consequences and if the cooperation does not work, it can jeopardize China's strategies in the region. Therefore, Singh believes that India should take the opportunity to gain leverage against China as India has now become an important role in China's foreign policy between the two countries.

Conclusion

Even though the revocation of Article 370 and Article 35A under India's constitution should only affect the citizens in J&K region in India, both articles have also affected China and Pakistan especially when they also have their national interests in the disputed region. China

and India have not been on bloodshed for decades and with the border standoff in Galwan Valley, it has further jeopardized the relationship between the two countries. Pakistan will not be able to fight India alone and therefore a good cooperation with China through CPEC for instance can help to deter India's sovereignty. CPEC is now expanding to Afghanistan, leaving India to be wary of the success of the corridor. But there has been news that Pakistanis now do not fully support of CPEC as they used too. CPEC might have helped Pakistan developed its infrastructure in particular, however, Pakistan's debt has now increased and the CPEC itself is seen to benefit towards China more. Furthermore, China can use its debt with Pakistan as an economic leverage to get Pakistan to take more aggressive position in J&K, to weaken India.

Despite so, China has begun to realize the importance of India if they were to make their strategies in South Asia work particularly in weakening the US's Indo-Pacific strategy and accomplishing China's Western Development Strategy. If China is being too aggressive over India with its military power and provocations, particularly at the LAC, India might turn to the US for help. Moreover, it is important for India to not fall for China's propaganda strategies. India should be able to calibrate its position with China, Pakistan and even with the US. China will continue to strengthen its military operations at the border and they will continue to claim some of the regions at the border, hence it all lies to how India is going to strategize its steps with these regions or will India fall to China's traps.

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