

# **Kashmir: Abolition of Article 370: Implications**

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Currently there are celebrations in sections of Indian society and there is a pall of gloom in Kashmir. On Tuesday 5<sup>th</sup> August (2019), by a Presidential order Article 370 has been revoked along with article 35 A. Interestingly the citizens of Kashmir, the traders of Kashmir scattered in different parts of the country are under immense tension about the well being of their families back home. The celebrations are running parallel among people who think Article 370 and the 35A are the one's which have prevented the progress and peace in Kashmir. The step of revocation of these articles was taken in great secrecy. On the pretext that a terrorist attack is in the offing, large number of army was sent to further boost the already present lakhs of the soldiers in the valley.

With heavy military deployment on one side, the communication in the state has been totally clamped down and people do not know what is in store for them. An undercurrent of panic prevails all over in the state.

The legal pundits are raising a question as to whether this article can be abolished, the way it has been done. The Constituent Assembly which formulated this special provision had the likes of Sheikh Abdullah, Jawaharlal Nehru and Sardar Patel among others. One of the provisions of the instruments of accession of Kashmir to India states, "nothing in this instrument shall be deemed to commit me in any way to acceptance of any future Constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future Constitution". (1) The people of Kashmir as represented in Kashmir's the then Constituent Assembly had to be taken in confidence for any major change in the terms of the Article, there by terms of relationship/accession with India. So it seems that in a hurry to actualize the RSS-BJP Hindutva agenda the present regime is recklessly pushing itself in a direction which may not be legally tenable. The legal position and the stand of Supreme Court in the matter will be extremely crucial in deciding the final fate of these articles and the status of Kashmir.

What has been done by Modi regime has no parallel in a Indian history. By the Presidential order the article 370 and article 35A have been revoked, the J&K as a state has been bifurcated into two union territories, the one of J&K and other of Laddak. First time in the history of the Nation a state has been downgraded to a Union territory. The whole idea was that Kashmir will overcome the earlier hurdles at the time of accession and will have better democratic atmosphere. What has been imposed by a dictate is that the state itself has not only been divided, it has been demoted into two union territories where the Central Government will rule the roost through Lt. Governors, with the democratic processes undermined in a serious way. All the major leaders of the state have been imprisoned or are out of contact with the people of the state. What are visible all around are the empty streets and the heavy presence of military forces all around.

## **Background:**

When India became independent the princely states were given the option of either to remain independent or to merge with India or Pakistan. Most of the princely states did merge with India. The problem came in matters of Junagadh, Hyderabad and Kashmir. Junagadh was merged into India and later plebiscite was conducted there in which the people of Junagadh did vote for merger into India.

Hyderabad, with Muslim King and Hindu majority population wanted to remain Independent or merge with Pakistan. Through police action by military; it was merged into India. Nizam opted for Pakistan as mainly Jinnah had offered him all the powers within the state.

In matters of Kashmir, the King was Hindu, Raja Harisingh and majority population was Muslim. Harisingh wanted to remain independent. At this point Pakistan army instigated tribal attack was orchestrated in Kashmir.

Faced with the attack, Harisingh approached India to help with Military help to quell the Pakistan aggression. As Kashmir was independent at that time it was not possible for India to send the army and so the compromise was struck. In this major role was played by Sheikh Abdullah, who was Chief of National Conference, who identified more with the secular, democratic values of Gandhi and Nehru. To facilitate Indian army to help fight Pakistani aggression the treaty of Accession was negotiated. This treaty involved accession, not merger of Kashmir into India. As per this Kashmir will be part of India with autonomous status. Autonomy meant that Kashmir Assembly will have all the power except in matters of defense, communication and external affairs, which will be looked after by Central Government. This also involved that Kashmir will have its own Constitution, its own flag, its own Prime Minister and Sadar-E-Riyasat.

Under these conditions Kashmir acceded to India. India sent its army and could save 2/3 of Kashmir from Pakistan Aggression. As further war involved loss of civilian lives, cease fire was declared and the matter was taken to United Nations. United Nations resolution on the matter asked for vacation of aggression by Pakistan, reduction of army by India and to conduct the referendum, plebiscite. (2) The plebiscite was to be done under UN supervision with the option to Kashmiris to either remain independent, or merge with Pakistan or merge with India. Pakistan, well backed by America, refused to vacate the aggression, violated the United Nations resolution and the matters came to a standstill as no plebiscite could take place. The term Line of Actual Control came in to being denoting the line across which two countries, India and Pakistan, had their control.

It is this treaty of accession which was the basis of Article 370. Article 35A further provided protection to the state and prohibited the sale of land to the non residents of Kashmir. (3) By the way similar provisions do prevail in much other hill state like Himachal Pradesh and Nagaland. These provisions were given to the hill states, to Adivasis areas to protect these from the influx of wealthy industrialists and others swamping these areas, to preserve their character.

### **The Modi Sarkar's Agenda**

The Modi Shah duo, as per the agenda of RSS attributes the non development, corruption and violence in Kashmir due to presence of this article, so in pursuance of that they seem to have rushed the step of revoking it.

Will this lead to the development of the state as being argued by many commentators, including those who do not belong to the BJP camp. There are states where land cannot be bought by outsiders, there land is being leased and industries set up. Will industrialists venture to invest in areas where militancy is uncontrolled and on the rise? The statistics show that with the Modi rule of last five years shows the violence is on increase. (4) Last five years of Modi rule also saw a massive rise in unemployment all over India. The policies pursued by Modi Sarkar, which are leading to an increase in unemployment, whether these can open the doors of industrialization and employment in Kashmir is a question which time alone

can tell us. The core point to consider is that development can be brought into valley by undoing those factors which are preventing the development there. What are these factors?

A bit of background needs to be recalled. After the accession of Kashmir to India the communal forces become very active. It is well known that the likes of Jawaharlal Nehru and Sardar Patel were part of the committee which gave final shape to article 370. (5) Meanwhile the communal forces, which totally kept aloof from the freedom movement of India, had no role in the process of making of India as a nation started clamoring for full integration of Kashmir into India. Their pressure was for doing away with treaty of accession and to fully merge Kashmir into India. Nation witnessed the horrible murder of father of the nation by the Hindu nationalist Nathuram Godse. Shyama Prasad Mukerjee, the leader of Hindu Mahasabha, who later became the founder of Bharatiya Jansangh, the previous avatar of BJP, started strong pressure to fully merge Kashmir into India. He violated the prevalent law to enter Kashmir, was arrested and unfortunately died in the jail in Kashmir under tragic circumstances.

Sheikh Abdullah, the lion of Kashmir had great faith in India's secularism. Due to the murder of father of the nation and due to pressure from Hindu nationalists to fully merge Kashmir into India, he was shaken to the core. Disturbed by this all he started talking to United States, China and Pakistan. This was treated as treason by Government of India and he was imprisoned on these charges. This was the major turning point for Kashmir and its people. The people who looked forward to a harmonious existence as autonomous part of India were rudely jolted by this and the process of alienation began in Kashmir. This was the germ of militancy and separatism n times to come.

This separatism initially was steeped in the values of Kashmiriyat. Kashmiriyat is a synthesis of values of Vedanata, Buddhism and Sufi values. (6) Later with support from Pakistan, and infiltration into Kashmir of Al Qaeda type elements, it took an ugly communal shape. All this was countered from Indian side by increasing the presence of military by and by. The civilian life in the valley was replaced by the life under the force of gun.

Plight of people of Kashmir can be gauged from the fact that on one side militants and on the other Military presence wrecked the social life in the state. It witnessed massive civilian casualties, the unique phenomenon of half widows, where the man is missing for years, derailing the normal life and increasing the alienation much further.

### **Kashmiri Pundits**

As far as the painful issue of exodus of Kashmiri pundits is concerned, let's recall that it took place during President's rule with Mr. Jagmohan as the Governor of the state. Same Jagmohan later joined BJP. At that time the communalized militants were targeting the Pundits. There was a goodwill mission which was requesting the pundit community to hold on and calling upon the state to bring in the measures for the security of the citizens, more so of Pundits in the state. Jagmohan actually facilitated the migration of this beleaguered community. (7) BJP constantly keeps hankering that Congress has failed to do justice with the pundits. Let's realize we had six years of rule of Atal Bihari Vajpayee (1998-2004), and from 2014 again BJP led Government is there at the center. The question arises why they could not be rehabilitated.

The answer lies in the fact that in the situation where violence is the dominating atmosphere and militancy is not abetting how pundits can go back to their homes. The roots of militancy lie in alienation, and that's not being addressed at all. We do need to think a bit more deeply as to how amiable situations are created when Pundits can go and live in their original homes and areas.

## **What happened during last few years?**

While there have been regular acts of violence, whenever the process of dialogue is given a go by such acts see worsening. The statistics show that the number of civilian casualties have gone up during last five years. (8) The dissatisfaction of the people has been manifesting in the form of stone throwing, the incidents of which went up during this time. To attribute it to mere funding by Pakistan will be shortsighted. No doubt Pakistan has played a negative role, but the major factor is the dissatisfaction among the people of Kashmir.

The BJP-RSS combine has been on spree to blame Nehru for all the failures of theirs. They have been propagating that Kashmir issue became problematic due to Nehru's mistakes and that had Sardar Patel been handling Kashmir it would have been sorted out by now. The truth is that Sardar Patel was keener on merging Hyderabad in to India. (9) About Kashmir he did state that if Pakistan lets Hyderabad merge into India, he will have no objections to Kashmir merging with Pakistan. Nehru is blamed for article 370; this is propaganda as this Article came as an outcome of discussions in which Sheikh Abdullah, Pundit Nehru and Patel were all members. The decision of cease fire was again taken in the defense committee of the Cabinet in which Sardar Patel was a member. Nehru agreeing to plebiscite was right as that was the norm and even in Junagadh, where Patel was key figure, plebiscite was conducted in which people of Junagadh opined to merge with India.

## **Path for Peace**

What has been done by Modi-Shah duo is a heavy handed muscular nationalism. The democratic ethos has been given a go by. The popular sentiments of people of Kashmir have been put under the carpet. Democratic processes have been replaced by the barrel of guns. Contrary to what Atal Bihari Vajpayee had formulated, *Insaniyat* (Humanism), *Kashmiriyat* and *Jamhooriyat* (democracy), we are witnessing the policies which are just hyper-nationalist, which are undermining the local people's sentiments and aspirations for a democratic set up.

Some are also bringing in Dr. Ambedkar to undermine Nehru. The truth of the matter is even he was far the Muslim majority to be going to Pakistan as he outlines his opinion in his collected works (writings and speeches) part 14, part 2, page 1322 (10)

How will the people of Kashmir respond, needs to be seen. At present there is a great sense of insecurity all around in the people of Kashmir. We need to keep the people at the center of our policy making. The reactions of Pakistan and China to this are not very friendly. We can live in peace only with good relations with our neighbors, we can create harmonious atmosphere by respecting the sentiments and aspirations of people of the state.

The reduction of the status of J&K to a mere Union territory is a matter of concern. The process of integration is only through mutual dialogue, accommodation and strengthening of democratic processes. While we look forward to the legal opinion on the issue, we need to assuage to anguish of people of Kashmir. The litmus test of any decision lies in the reaction of those whom it primarily affects. We look forward to the times when rectification measures are undertaken where by people of Kashmir, Kashmiri Pundits all can celebrate with joy and *Kashmiriyat* the soul of Kashmir is revived.

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