



ABROGATION OF ARTICLE 370 AND ITS CONSEQUENCES:- AN ANALYTICAL STUDY

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Abstract:- *The study is an effort to analyse the recent decision of the Indian Government vis-à-vis the erstwhile state of Jammu and Kashmir. The decision striped off the special status that the erstwhile state of Jammu and Kashmir enjoyed. The said decision was made on August 5,2019. The paper also analyses the consequences that such a decision may have in this region. It is pertinent to mention here that the erstwhile state of Jammu and Kashmir enjoyed the special status under Article 370 of the Indian Constitution. This paper also analyses the consequences from the abrogation of Article 370. The Article 370 which provided an autonomy to Jammu and Kashmir with a special status in the Constitution of India. The paper tries to highlight the meaning of autonomy in the context of J&K.*

Keywords:- Constitution of India, Article 370, Secession, Autonomy.

1. Introduction

Jammu and Kashmir is famously called as a “paradise on earth” because of its charming beauty and geographical location. The State has a long history and has gone through various phases. One could argue that 1846 is an important landmark in the history of J&K. It is this year that the first Anglo-Sikh war had just concluded in which the British emerged victorious. Raja Gulab Singh who was hitherto administering Jammu under the suzerainty of Sikh Empire, was also given an additional territory of Kashmir to be governed under the suzerainty of the British Government. Hence the Dogra rule was born in Kashmir with Maharaja Gulab Singh as its first Dogra ruler. In 1927, Maharaja Hari Singh, the last Dogra ruler of Jammu and Kashmir enacts legal provisions for the people of Jammu and Kashmir, so that no ‘outsider’ can own any land in the State and also they could have right to Government offices. This is the principle on which later Article 35A formed.

India gained its independence from British rule on 15th August, 1947, but with the partition of British India, Lord Mountbatten who was the last governor-general of India announced the partition plan during the period of June, 1947 also called as “Mountbatten’s Partition Plan”, in which the princely states were given choices to join any of the two dominions, either India or Pakistan. At that time there were 565 princely states. Maharaja Hari Singh who was the last Dogra ruler of Jammu and Kashmir did not want to join any of the dominions and wanted to remain independent. At that time the process of integration of the princely states had started. The Indian Government integrated with almost all the states but faced challenges from four princely states. Those states were Junagarh, Hyderabad, Manipur and Jammu and Kashmir. When the time came for J&K to integrate with the Indian Union, Maharaja Hari Singh delayed to sign the “Instrument of Accession” because he wanted to remain independent. Shortly after the Independence, there emerged various conflicts between India and Pakistan, but the Kashmir conflict was one of the long lasting conflict between these two countries which always separated these two countries and hindered their relations from getting better. So Pakistan invaded J&K in August 1965. The codename for this operation was “ Operation Gibraltar” . Pakistan's leadership specially choosed this name to draw a parallel to the Muslim Conquest of Portugal/ Spain that was launched from the port of Gibraltar which is located at the southern tip of the “ Iberian Peninsula”. Pakistan's soldiers disguised in the form of local pashtuns and entered the Indian administered Jammu and Kashmir with the goal of fomenting an insurgency amongst the Muslim-majority population in the Kashmir valley. Maharaja Hari Singh asked help from the Indian Government for seeking protection from these tribal infiltrators. Then Maharaja Hari Singh signed the Instrument of Accession with the Government of India. The conditions on which IOA (Instrument of Accession) was signed were that only Defence, External Affairs and Communication would be controlled by the Indian Government and except from these all other matters would be controlled by the people of Jammu and Kashmir. The consensus was also made that once the situation would be normalised, the views of the people of Jammu and Kashmir will be ascertained about their future. Pandit Jawaharlal Nehru appointed Mr. Gopaldaswamy Ayyangar, an IAS Officer, who drafted the Article 370, which defined the relations between India and J&K. But Dr. B.R. Ambedkar always opposed this Article because he thought that it would create a difference between other states. While signing the Instrument of Accession (IOA), the Indian Government also promised that it would conduct a plebiscite in the state to know the views of the people of the state. And the Maharaja with the threat from the Pakistani infiltrators went to Jammu. Meanwhile, Mr Sheikh Abdullah, the founder of J&K Muslim Conference which later got renamed as All J&K National Conference in 1939, in order to represent all the people of the state, becomes the Prime Minister of Jammu and Kashmir in 1948. It is argued that Sheikh Abdullah supported accession of the Princely states to the Indian Union because he wanted to get rid of the Maharaja's rule. Around this period Pt. Nehru and Sheikh Abdullah signed an agreement known as “ Delhi Agreement” in order to improve the relations between the state and the Union.

Jawaharlal Nehru promised the citizens of India that Article 370 is just a temporary provision and it will be deleted overtime. Framers of this Article did not mention the time period, like one month, one year, or one decade. Inequality begun in India from here. Sheikh Abdullah had successfully persuaded the majority of the people of J&K to accede to India, so that the dream of New Kashmir or “Naya Kashmir” could be attained. After all, the leadership in J&K was not ready to allow any kind of interference in the internal autonomy of the State. After some period of the “Delhi Agreement” 1952, the conscience of the Sheikh Abdullah woke up and he realised that he had made a big mistake with acceding to the Indian Union because they were trying to deteriorate the special status given under Article 370, but before he could make a move against it, he was removed from the seat of the authority and was also imprisoned on 9th August, 1953 by the ‘President of J&K’ or “Sadar-i-Riyasat” and Bakshi Ghulam Mohammad was appointed as the Prime Minister of Jammu and Kashmir.

Erosion of the special position of the state reached when the Constitution of Jammu and Kashmir was amended on 10th April, 1965 and the positions of Sadr-i-Riyasat and Prime Minister were changed into the Governor and the Chief Minister respectively. In 1975, the autonomy of Jammu and Kashmir was further deteriorated under the famous “Kashmir Accord”, 1975 and was later on approved by the Parliament of India. It contained the following points:

- 1) The State of Jammu and Kashmir which is a constituent unit of the Union of India shall in its relation with the Union, continue to be governed by Article 370 of the constitution of India.
- 2) The residuary Powers of legislation shall remain within the State, however, Parliament will continue to have power to make laws relating to the prevention of activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or secession of a part of the territory of India from the Union or causing insult to the Indian National Flag, the National Anthem and the Indian Constitution.
- 3) Where any provision of the Constitution of India had been applied to the state of Jammu and Kashmir with adaptations and modifications, and such adaptations and modifications can be altered or repealed by an order of the President under Article 370, etc

Soon After the Kashmir Accord, Sheikh Abdullah was released from the prison and was inducted into the office of Chief Ministership. It was expected that this Accord would strengthen and advance the relations of the state with the Union but it failed to prove its validity. Even Sheikh Abdullah remained adamant and repeated his pre-Accord views but it couldn't prove any helpful and injured the freedom and liberty of the people thereof.

2. Abrogation of Article 370

On August 5th, 2019, the Union Home Minister, Shri Amit Shah announced the abrogation of Article 370 and Article 35A of the Indian Constitution which granted special status to the erstwhile state of Jammu and Kashmir. Article 35A of the Indian Constitution empowers Jammu and Kashmir state legislature to define state's permanent residents and their special rights and privileges. Article 35A was not part of the original Constitution of India adopted in 1949, but was later added to the Constitution of India through Presidential Order of 1954 with the concurrence of the state government of the day. Union Ministry of Home Affairs also introduced two bills and two resolutions regarding Jammu and Kashmir in Lok Sabha on the same day on 5th August 2019. These were as follows:-

1) Constitution (Application to J&K) order, 2019 (Reference of Article 370[1] of Constitution of India)- issued by President of India to supersede the 1954 order related to Article 370. In exercise of the powers conferred by clause(1) of Article 370 of the Constitution, the President of India, with the concurrence of the Government of the State of Jammu and Kashmir, has issued such order.

2) Resolution for Repeal of Article 370 of the Constitution of India. (Reference, Art.370[3])

3) Jammu and Kashmir Reorganisation Bill,2019. (Reference, Article 3 of Constitution of India)

❖ Article 370(3) provides President of India the powers to amend or repeal the article by issuing a notification based on a recommendation of Constituent Assembly of Jammu and Kashmir. The President of India signed the Constitutional (Application to J&K) Order 2019, issued on 5th August 2019 regarding Article 370(1) , under which all the provisions of Article 4 of the Constitution of India would be applicable to Jammu and Kashmir. Also J&K Constituent Assembly would be read as Jammu and Kashmir Legislative Assembly. Similar changes have been done to the Article 370 in the past. Now since President's Rule was in force in the State, implementation would cease to exist when President of India issues the Notification in this regard.

So, the President of India on the recommendation of the Parliament of India declared that from 6th August, 2019, all clauses of the Article 370 shall cease to be operative.

3. Consequences

The other part of the study deals with the consequences of the Abrogation of Article 370. One could witness that the abrogation of the special status to the erstwhile state of Jammu and Kashmir led to unprecedented developments in South-east Asia in general and in the erstwhile state of Jammu and Kashmir one could see the implications of this decision. Since the revocation of Article 370, the J&K had remained more or less peaceful due to enhanced security measures and a massive deployment of troops. Since August 2019 to December 2019, the State remained under curfew like situation and section 144 of Criminal Procedure Code was imposed, which prohibited assembly of more than four persons. This anguished the people of Jammu and Kashmir on many counts like they felt their decades long privileges were undemocratically curtailed and also they were distressed by a total communication blackout with mobile phones, landline, internet and other

facilities blocked. It put a heavy impact on their social, economic and political life. According to Kashmir Mental Health Survey, 2015, A study conducted by Medecins Sans Frontiers {MSF} reported that:

- On an Average, an adult living in the valley has witnessed or experienced more than seven traumatic events during their lifetime.
- Among the traumatised population of Kashmir with 37% of adult males and 50% of females suffering from Depression, 21% of males and 36% of females from anxiety related disorder and 18% Men and 22% Women suffering from PTSD {Post Traumatic Stress Disorder}.
- 1.8 Million (45%) adults in Kashmir Valley have Significant symptoms of Mental Distress.
- Nearly 1 in 5 Adults (19%) or 771,000 individuals in the Valley are living with Significant PTSD Symptoms, with 248,000 (6%) meeting the diagnostic criteria for PTSD.
- An estimated 1 million adults in the Valley are living with significant symptoms of an anxiety related disorder.

Moreover, the estimates of economic repercussions on Jammu and Kashmir since 5th August has been highlighted by several Congress leaders, however, the recent statement given in Rajya Sabha by Congress leader and Member of Parliament Manish Tiwari. Some of the excerpts of his speech are mentioned below:

- 1) 70% of people in the State were dependent on Agriculture and the Sector has suffered a huge loss of Rs. 10,000 Crore in the past seven months.
- 2) The State earned Rs. 6500 Crore in 2016-17 due to trade in apples but the crop had not been harvested till October last year.
- 3) The tourism sector which provided employment to 31 Lakh People has also collapsed.
- 4) The Government itself had brought down its estimates of earning from tourism to Rs.1170 Crore from Rs.1670 Crore in 2019-20.
- 5) Jammu and Kashmir Chamber of Commerce and Industry has estimated that there has been economic loss of 2.4 Billion Dollars in 4 Months.

4. Conclusion

After analysing the idea of the special status of Jammu and Kashmir and the consequences of this decision, the study made some general conclusions. The primary conclusion is that this decision was taken in a hasty manner and in such a short period that it was like a flash news for the whole Nation. The people of Jammu and Kashmir were in shock. It gave them a feeling of isolation and they felt from deprived from this decision. One needs to understand here that the reason for such an alienations was the loss of their special privileges guaranteed Under Article 370 of the Indian Constitution. The other conclusion is that the abrogation has ushered in political instability in the erstwhile state as the mainstream parties were not taken into confidence before taking such an important decision for the people of the state. The people feel worried that thus may cause demographic change in the State. Therefore, there is a need to build trust between the people of Jammu

and Kashmir and the Union of India so that the trust is regained and the centre has to restore the statehood back as a confidence building measure.

References

- [1] YourStory.com, A brief history of the Jammu and Kashmir and the speculation of its future, August 11, 2019.
- [2] NCERT textbook for Political Science, Class 12th.
- [3] “The Constitution of India” pdf. File published by the authority of Ministry of Law and Justice, New Delhi, India.
- [4] Press Information Bureau, Govt. Of India, 6th August, 2019.
- [5] Ministry of Home Affairs, Govt. Of India.
- [6] The Indian Express , August 6, 2019.
- [7] Kashmir Mental Health Survey Report, 2015.
- [8] The Hindustan Times, May 6, 2020.
- [9] Lok Sabha TV, Manish Tiwari on Kashmir Move, 6th August, 2019.

