

Dismantling State of Jammu and Kashmir: Assassination of Democracy?

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Abstract

In the words of Abraham Lincoln ‘democracy is a government of the people, by the people and for the people.’ Democracy is the word which defines India as a nation on the global level and it is mentioned in the preamble of the Indian constitution. It is something that directly relates to the human rights. They both are inseparable and it is not possible to have one without the other. Taking the issue into consideration that is excision of Article 370 and Article 35(A) from the Indian constitution by the present ruling government on 5th of August, 2019 under presidential order was an assassination of democracy or not? It is an attempt of this paper to cover all the important points as how people of Kashmir who have been going through all the suppression throughout so many years were considered voiceless.

This paper covers up the constitutional validity of this abrogation of Article 370 by the government and also wraps up all the aspects that say that it was totally undemocratic for a government to do such a thing with keeping the people and the state assembly in complete darkness and its comparison with fascism. The motive of this paper is not criticize what is done by the government but to cover up all the present scenario and the facts related to the issue and to talk about whether the procedure followed to dismantle the State of Jammu and Kashmir was right or wrong? Was there any other alternative which needed to be considered by the government? This issue has become more of a constitutional debate rather than looking out the aftermath of the step taken by the government. This paper is an attempt to bring out all the positive as well as negative points related to the issue and also to show that whether the step taken by the government will prove out to be a succour for the people of Jammu and Kashmir or not?

Keywords: Democracy, Assassination, Constitutional, Abrogation, Succour

INTRODUCTION:

Article 370 of the Indian constitution that is mentioned under part XXI of the Indian constitution was just a way to keep Jammu and Kashmir connected to India. It gives special status to Jammu and Kashmir and is always a subject of dispute between India, Pakistan and China since 1947. Through this article states that the state of Jammu and Kashmir enjoys the privilege of having its own separate constitution and a separate flag. The power of the Indian central government was applicable only on external affairs, defence, communications. Article 35(A) of the Indian Constitution is also covered under Article 370 which defines permanent residents of Kashmir, that an outsider cannot buy a land, property and will not be provided government jobs, scholarships, voting.

Technically talking about the current happening, the article 370 has not been removed rather itself it is

used to declare this article as null and void as Article 370 Clause 3 says that “¹Notwithstanding 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 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.” This clause of the article simply says that in consultation with the constituent assembly of Jammu and Kashmir this Article can be declared as null and void by a presidential order.

Since there was no existence of a state government in Jammu and Kashmir as it is under president’s rule therefore all the powers came in the hands of the parliament of India and that is what took place on 5th of August, 2019.

HISTORY OF JAMMU AND KASHMIR – (UNITED NATIONS FAILURE)

In 1947, after India got independence from the British rule the Maharaja of Jammu and Kashmir, Hari Singh went into great trouble as his state was a Muslim majority state and being a Hindu, he wanted Kashmir to be part of India. Pakistani tribesman invaded Kashmir and defeated the Maharaja and his forces. The maharaja seeking help from the Indian forces signed the “Instrument of Accession” on 26th October, 1947, joining the whole of his princely states to the dominion of India. The Indian troops also in order to help Kashmir went there and these events triggered the 1st Indo-Pak war.

The Indian government asked for help from the Security Council of the United Nations (which was the then established peace keeping organisation established in 1945 after the failure of League of Nations) which in turn passed a resolution on August 13, 1948 for t both India and Pakistan to take away their troops from the State of Jammu and Kashmir. India took it forces back and followed the orders of United Nations but Pakistan ignored UN mandate and continued fighting, that lead to one of the biggest failures of United Nations. As a result, 65% of the territory was with India and the rest with Pakistan.

ARTICLE – 370 (Revocation)

Article 370 was brought when Indian Constitution was not fully exercised and certain powers were given to Kashmir. It was included in the Indian Constitution on October 17, 1949. After the revocation of Article 370 now Jammu and Kashmir will be considered like any other Indian state or Union Territory. The residents of Jammu and Kashmir will have a Single Citizenship of India and this will definitely improve and include a sense of Unity among the people residing over there. Now the tenure of the Union Territory assembly will be 5 years. Indian national flag will prevail over there and will develop a feeling of patriotism among the people. The central government will also have the power over there for administration and local regulations too.

The Kashmiris will not have to prove their citizenship over there by showing permanent resident certificate each time in their own state. Now people from outside can also come and buy property or land over there which will definitely be beneficial for the economy of that state and will lead to a lot of development in that state. Any Indian can buy property over that beautiful place and can get government jobs, scholarships etc. and this will lead to a better picture of Kashmir as will increase the education opportunity and will decrease crime and terrorism leading to the economic development of the state.

¹The Constitution of India- bare act.

Kashmir was not the only state of India where the rest of the Indians were not allowed to buy land. There are other state too with the same provisions like Himachal Pradesh, North East etc and for this there can be reasons like environment n all.

CONSTITUTIONAL VALIDITY -

Constitutional validity is something which is having great importance for the common people and the for the political decisions too. Constitution is above all the things which has to be followed in pursuing an action. Here talking about the legality of what is done by the present ruling government here some points which are needed to be considered –

- **The article 370 has itself being used to declare it null and void –**

The third provision of this article itself clearly mentions that the article can cease to operate under presidential order with the consent of the constituent assembly of the state of Jammu and Kashmir and as there is no state assembly that exist in Jammu and Kashmir so all the powers of the state assembly came in the hands of the parliament and parliament with a two -third majority passed the bill. In the absence of a state assembly in the state of Jammu and Kashmir the article 370 (3) itself becomes difunctional and the provision too. Therefore, it does not require any kind of amendment as amendment itself is a very big word and as the provision of the Article itself confers the power then there is no point to amend the Article.

- **Effect on basic structure –**

There is no harm that is caused to the basic structure of the constitution rather it has strengthened the basic structure as now the same Constitution that is followed in India is followed in Kashmir too. This will definitely lead to a sense of unity and togetherness among the people. All the fundamental rights which are provided to the rest of the citizens of India will be provided to the to the people of Jammu and Kashmir too. All this work is done by the government for the betterment of the people and to provide better living conditions in that state which gone through a lot of things maybe it is related to politics or terrorism or crime there has always internal disturbances that impacted the peace of that state every time.

- **²Quasi federal-**

India having quasi federal feature which means the power is divided between the centre and the state but with a tilt that all the political decisions has to be taken by the government that is present ruling one with the Prime Minister and the President as the supreme authority of the country. There is no article in the constitution that defines the word federal. The word “Sovereign” is clearly mentioned in the preamble of the Indian constitution and it is the duty of the government to abide by the constitution in all it’s political decisions because **these political decisions will be applicable only with a constitutional format.**

- **Availability of power-**

What is done by the government regarding removal of Article 370 is fully constitutional and valid as the government was having full power to do so and everything is done by a Constitutional format and by proper passing of the bill in the Rajya Sabha and the passing of the bill by a 2/3rd majority. Rather than discussing about the wisdom and the political correctness of the decision taken, the whole game is of the availability of power. Since there was an absence of power in Jammu and Kashmir in terms of the constituent assembly so all the powers as a result came into the hands of the parliament and under presidential order the bill got passed.

²THE CONSTITUTION OF INDIA – V.N SHUKLA 13TH EDITION

Abrogation of Article 370 – Democratic?

The word “Democracy” is directly related to the rights which the individuals or citizens of a particular country possess in a democratic setup. India is a country that follows the principle of democracy that is a government by the people, for the people and of the people. The power to choose the government lies in the hands of the people of the Country. The removal of Article 370 was democratic or not is an issue which is to be discussed just on the basis that **what people think and what they want?** Behind all these questions of the people who are just taking the sword of democracy in their hands and trying to hit the correct decision taken by the government then for those there is a **sharp divide between people who want Kashmir to be an integral part of India and the people who do not want the same.**

If the constitution of the country talks about the word “DEMOCRATIC”, then it is the **primary duty of the government too to work for the welfare of the people of the nation** because the government has certain obligations towards its citizens which are needed to be fulfilled in order to attain a healthy and a progressive nation. The condition of Kashmir since last so many years has not been hidden from the rest of the nation with the fear of terrorism and crimes increasing at an alarming rate. The people throwing stones on the Indian military which is there for their safety only. Education system over there is suffering and the people too. Every now and then the people are ready for riots. Under all these circumstances whatever is done by the government is for the enhancement of that state and there is nothing wrong if a government thinks for the improvement of its state.

Separation of States has always been a political decision which has always followed a Constitutional format. This is not the first time such a decision has been taken by the government. Himachal, Jharkhand, Chhattisgarh, Telangana are the other states which were separated then at the time no one had a problem. It is not necessary to always oppose the decision of the government and especially if it is being done for the well-being of the people. **In all this political and social chaos what suffers the most is that beautiful valley and the innocent people who are living over there since so many years and to some who were thrown out from there (the Kashmiri pandits etc).**

It all depends upon how you react to the “CHANGES” that take place in the society. One’s “ATTITUDE” towards things that are happening in the interest of the society is very important for a progressive nation. Each and every individual reacts differently to different situations and why not? It is the right that is provided to the citizens of the country through the Constitution. The manner in which the reaction should be present has to be a decent one. The “UNITY” in a Country is the foremost and so to abuse the government and to criticize its decision is not right way, the courts should be approached. Politics is not above the Country and its integrity.

CONCLUSION –

Trusting a government is very important if there is a desire of a better future for a nation. India is a country that has a global reputation and if the leaders of a country who are the face of the nation would react in a negative way and criticize the decision of their own country then it will definitely give a very bad impact on the international platform. The sense of patriotism and unity will be affected. We should never judge a book by its cover. The government’s decision should be respected and should be given a chance and for those who think that this decision was wrong maybe for them it will prove to be a “blessing in disguise.”

Humanity should be considered before questioning the government’s decision. What is done is absolutely right and constitutionally valid and is done for the betterment of that state as well as for the

people. This decision will definitely lead to a progressive and healthy environment not only for that beautiful state but for those innocent people too who lost their homes in Jammu and Kashmir. What that place and the people living over there have gone through since so many years is something that should be taken into account before questioning the decision of the government. Improvement of Jammu and Kashmir in terms of State management, economy, terrorism, citizenship, job opportunities is the priority behind the governments decision and there is nothing wrong if a government is working for the interest of its state as well as for its nation.