

## Commentary:

# Kashmir is a Question of Respecting Peoples' Aspirations

The petitions filed before the Supreme Court of India challenging the Article 35A of the Constitution (Application to Jammu and Kashmir) Presidential Order of 1954 have triggered off a wide debate in the country and massive protest in Kashmir.

The opinions among the 'mainstream' political forces seem to be broadly divided into 'for or against' the Article 35A. However, this difference makes a little difference because both view the special status of Kashmir within the jurisdiction of Supreme Court of India.

The question is much larger than this. The question is : What is the fate of national aspirations and rights of Kashmir people for which the Kashmir people had been waging a life and death struggle for decades.. A look into the changes brought in the status of Jammu and Kashmir in the last seven decades will give an idea on how the situation had reached to the present state.

Jammu and Kashmir was an independent sovereign Princely State ruled by Maharaja Hari Singh. A few days before the transfer of power to the Indian ruling classes, the Maharaja had signed a "Standstill Agreement" with India and Pakistan. It was an attempt to retain the independent status of Jammu and Kashmir. But, in the third week of October 1947, the Pakistani rulers had begun to encroach upon some territories of Jammu and Kashmir using tribal skirmishes on the borders as a cover. It was also the time when a powerful peasant movement led by Sheikh Abdulla was sweeping Jammu and Kashmir. The radical land reforms also came on the agenda. Maharaja needed India's help to repulse the external threat and retain his power. This situation had compelled him to sign an "Instrument of Accession" with the Indian Govt. on Oct 26<sup>th</sup>, 1947. The schedule annexed to it specified the defense, foreign affairs, communications of Jammu and Kashmir as the domain of Indian Govt. and other matters remained as the affairs of Jammu and Kashmir alone.

As provided in the "Instrument of Accession", Jammu and Kashmir had a Constituent Assembly; prime minister. There were custom checks between India and Kashmir; Supreme Court of India had no jurisdiction on all key issues concerning Jammu and Kashmir; a militia was constituted as a separate force; Jammu and Kashmir was sending Trade Commissioners to other Countries. In one word, the Jammu and Kashmir came to enjoy a limited sovereignty under the protection of India.

India's war with Pakistan and UN's intervention had resulted in the cease-fire and a temporary division of Jammu and Kashmir. This situation has brought two questions to the fore: One: What will be the political future of Jammu and Kashmir as a whole; Two: How to ascertain the aspirations of Kashmir people and involve them in the resolution of problem. In this context, Jawaharlal Nehru, the then PM of India, made an international commitment to hold a plebiscite to finally determine the political future of Jammu and Kashmir in accordance with the wishes of the Kashmir people.

But, in practice, the Indian Govt. has moved in the direction of integrating the Jammu and Kashmir with India. The Article 370 of the Indian Constitution came only in this wake on Oct 17, 1949.

The Article 370 (1) (d) reads like this: "Such of the other provisions of this Constitution shall apply in relation to that state subject to such exceptions and modifications as the President may by order specify; provided that no such order which relates to the matters specified in the "Instrument of Accession".....Provided further that no such order which relates to matters other than those referred to in the last proceeding proviso shall be issued except with the concurrence of that Government".

This Article came as part of attempts of Indian rulers to integrate Jammu and Kashmir with India. At the same time, it kept the appearance of respecting the commitments made in the "Instrument of Accession" and adhering to the special status of Jammu and Kashmir.

However, the national chauvinist and Hindu communalist forces were not happy with the situation. They intensified the campaign for an immediate and greater integration of Kashmir with India. Succumbing to this, the Nehru Govt. chose to set aside its commitment of plebiscite and initiated talks with Sheikh Abdulla, the then PM of Kashmir, on how to more closely integrate Kashmir with India. The result was signing of 1952 Delhi Agreement. But it fell short of what the Indian ruling classes wanted as the Agreement still retained the special status of Kashmir to a large extent. Sheikh Abdulla was not prepared to bend beyond this.

In 1953, the Nehru Govt. had resorted to the extreme step of arresting Sheikh Abdulla, the then PM of Kashmir. It replaced him by Bakshi Ghulam Mohammed who was more amenable to Indian Govt. The

Indian Govt. negotiated a new agreement with him. The Constitution (Application to Jammu and Kashmir) Order promulgated by the President of India in May 1954 came only in this wake.

Article 35A, which is now a point of court case and debate, is a part of 1954 Presidential Order. For the first time, this Order made India's fundamental rights and Directive Principles applicable to Jammu and Kashmir. It integrated Jammu and Kashmir's finances with India. It extended Supreme Court of India's jurisdiction over certain aspects of Jammu and Kashmir. Perhaps, those who are challenging the Article 35A are happy with all this. But, the Article 35A retains some autonomy for Jammu and Kashmir. Under it, all "residuary powers" rested with the legislature of Jammu and Kashmir. Jammu and Kashmir Govt. can detain persons and it cannot be challenged before the Supreme Court of India. It retains the land reform measures and also State's final authority over any alteration of boundaries. It empowers the State legislature to define permanent residents. Problem lies here for the challengers of Article 35A. This Article is the last vestige of a broken promise that India had made to Jammu and Kashmir decades ago. The challengers want even this be thrown out lock, stock and barrel.

The people of Jammu and Kashmir feel betrayed. All these years, they had been seeing how the Indian rulers were dismantling one pillar after other of the commitments made by them to the Kashmir people and how they were trampling the national and democratic rights and aspirations of people in an unilateral, arbitrary and manipulative manner. They saw how the peace and peaceful life were seriously disturbed by dumping massive military and Para-military forces of the Centre in Kashmir and with heavy military vehicles moving with deafening sounds and roar of unending gun shots at one place or other. The people were left with no alternative but to come out countless times in hundreds and thousands into the streets to ventilate their grievances and protest against the unjust, illegal and brutal acts of suppression. The people suffered harassments, threats, arrests, imprisonments, lathi beatings, bullets and pellets, etc. in this course. Several people lost their lives; disappeared, orphaned and buried in unidentified graves. All these had only caused much agony and inflicted deep wounds in the hearts of Kashmir people. With each move of arbitrary and forcible imposition of their rule, the Indian rulers were losing the confidence and getting alienated from the people of Kashmir.

Congress Party, which was in power at the Centre for several decades, had done everything to integrate Jammu and Kashmir with India while, at the same time, shedding tears for the people. BJP, which is at the helm of power now at the Centre, is known for its dogged opposition to the national and democratic rights of Kashmir people. It had done much to divide the people along communal lines. In the last more than four years, the people of Kashmir had experienced worst kind of repression.

The Indian ruling classes and all those who think that they have the right to take away the right of Kashmir people to decide their own political future are mistaken. They must know that Kashmir problem is basically a political question and it must be dealt as such. Any attempt to deal with the genuine rights and aspirations of the people as a legal and constitutional question and on the basis of might will only further accentuate and complicate the problem. The rulers who are resorting to this method are only, evading their political responsibility. The Indian ruling classes must know that they are answerable to the people for all their actions in Jammu and Kashmir in the last seven decades. Here they are dealing with the people who feel seriously hurt, humiliated, betrayed and suppressed. The people can be won only politically and by addressing and resolving their real problems. It is the responsibility of Indian rulers to ensure peaceful and democratic atmosphere to the people of Jammu and Kashmir to freely express and exercise the right to decide their political future. This alone will help to find a just and lasting solution to the Kashmir problem.

So, the present case challenging the Article 35A as well as its consideration by the Supreme Court will solve no problem whatsoever of Kashmir people.

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