

ISSN : 2395-4132

THE EXPRESSION

An International Multi-Disciplinary e-Journal

Bi-Monthly Refereed & Indexed Open Access e-Journal



Impact Factor 3.9

Vol. 3 Issue 4 August 2017

Editor-in-Chief : Dr. Bijender Singh

Email : editor@expressionjournal.com

www.expressionjournal.com

The Expression: An International Multi-Disciplinary e-Journal

(A Peer Reviewed and Indexed Journal with Impact Factor 3.9)

www.expressionjournal.com

ISSN: 2395-4132



PAST UNDERSTANDING OF ARTICLE 35A: ITS POLITICAL SIGNIFICANCE AND MAGNITUDES

Dr. Pravat Ranjan Sethi, Ph.D.
Jawaharlal Nehru University
New Delhi-110067

.....

Abstract

The mounting crevices amongst the PDP and BJP, alliance partners in Jammu and Kashmir, have broadened with the former joining ranks with the opposition parties like National Conference and Congress to compete against the latter's passage to annul Article 35A of the Constitution, which may permit people from outside the state to own properties and work in government jobs. The National Conference called for a meeting to struggle any such moves, while Congress termed it a reliable effort by the BJP government at the Centre to end special status accorded to the state. This new-found affability between PDP, NC and Congress comes after the central government pleaded before the Supreme Court that it was prepared to have a conversation on the scrapping of Article 35A, while the state government opposed such a move.

Key-Words

Kashmir, Politics, Constitution, Pakistan, Religion etc.

.....

Vol. 3 Issue 4 (August 2017)

Editor-in-Chief: Dr. Bijender Singh

The Expression: An International Multi-Disciplinary e-Journal

(A Peer Reviewed and Indexed Journal with Impact Factor 3.9)

www.expressionjournal.com

ISSN: 2395-4132



PAST UNDERSTANDING OF ARTICLE 35A: ITS POLITICAL SIGNIFICANCE AND MAGNITUDES

Dr. Pravat Ranjan Sethi, Ph.D.
Jawaharlal Nehru University
New Delhi-110067

.....

“I do not want that our loyalty as Indians should be in the slightest way affected by any competitive loyalty whether that loyalty arises out of our religion, out of our culture or out of our language. I want all people to be Indians first, Indian last and nothing else but Indians.”

-Dr. B.R. Ambedkar, Writing and Speeches: A Ready Reference Manual

Kashmir can be turned into India's uttermost capping accomplishment, worthy of a great people. But it will take some renewed intellectual thinking, after 70 years of disastrous policies by our earlier Congress governments in Centre or State, three war combats with Pakistan, and more than 40,000 dead in the state on the name of proxy war, *jihad*, it is non-discriminatory at a guess the conventional wisdom is not working. My assessment to proposition here a clear-eyed new blueprint, one based on converting watchwords together with the now a days celebrated “*Kashmiriyat, Jamhooriyat, Insaniyat*” to feasible ideologies. This is coined by Prime Minister Atal Bihari Vajpayee in 2013 in Kashmir. Pakistan’s concern in Kashmir is nonentity but religious desire. A self-proclaimed Islamic state is fulfilling its prime directive of bringing more people and geography into the fold. Its polity spawns on extremists tied up in this cause, by cultivating a culture of habitual homicide and self-martyrdom. And its military indorses vicious *jihad* as state dogma, obsessed not by an impulse to encourage national security but by a system. Also Pakistan is not engrossed in fashioning Kashmir as a secular model.

It is therefore imprudent to anticipate lightly beneficial support from Pakistan in making a Kashmir of the Indian vision. Any suggestion to keep it involved in Indian Kashmir only provides it a conduit to further exacerbate Muslims. It is best to preserve Pakistan on view, and protected our borders. People-to-people communication must be fortified, but only with full vetting before visas are granted. If Pakistan insists on any other rendezvous, Pakistan-occupied Kashmir must also be placed on the discussing table. If it continues with overt or covert military operations, the reaction must be influential and in thoughtful.

Vol. 3 Issue 4 (August 2017)

Editor-in-Chief: Dr. Bijender Singh

The Expression: An International Multi-Disciplinary e-Journal

(A Peer Reviewed and Indexed Journal with Impact Factor 3.9)

www.expressionjournal.com

ISSN: 2395-4132

Conundrum of Article 35 A

Article 35 A agreements extols extraordinary power to Jammu and Kashmir Assembly for framing laws to provide privileges and rights to the residents of the state. It empowers the Assembly to delineate perpetual permanent general public of Jammu and Kashmir. Article 35A of the Indian Constitution endows J&K government to outline state's permanent residents and their special and constitutional rights. It was further added to the constitution through a Presidential Order of 1954 with the then J&K government's togetherness.

From side to side 1927 and 1932 announcements, *Dogra* ruler of the princely state of Jammu & Kashmir, *Raja* Hari Singh enforced a decree that well-defined state subjects and their rights. The ruling also measured migrants to the state. Jammu & Kashmir merged India through instrument of accession sign up by its sovereign Hari Singh in October 1947. After Jammu & Kashmir compliance, popular leader Sheikh Abdullah took over reins from *Dogra* ruler. In 1949, he discussed Jammu & Kashmir political association with New Delhi, which led to the addition of Article 370 in the Constitution. Article 370 pledges special status to Jammu & Kashmir, constraining Unions legislative powers over three areas on defense, foreign affairs and communications. Nevertheless, under the 1952 Delhi Agreement stuck between Sheikh Abdullah and J.L. Nehru, a number of provisions of the Constitution were stretched to Jammu & Kashmir by way of Presidential order in 1954. Article 35A was inserted then. Jammu & Kashmir Constitution was promulgated in 1956, it reserved *Maharaja's* explanation of permanent residents; entirely persons born or settled inside the state before 1911 or after having legitimately acquired immovable property resident in the state for not less than ten years prior to that date. Wholly expatriates from Jammu and Kashmir, including those who travelled to Pakistan, are measured state subjects. The broods of emigrants are well-thought-out state subjects for two generations. Permanent residents' law prohibits non-permanent residents from permanent settlement in the state, obtaining immobile property, government professions, scholarships and aid. It was also understood as prejudiced in contrast to Jammu & Kashmir women folk. It barred them from their state subject rights if they wedded to non-permanent residents. But, in a milestone judgment in October 2002, Jammu & Kashmir High Court claimed that women married to non-permanent residents will not misplace their rights. The offspring of such females don't have succession constitutional rights.

Legal Antecedent

An NGO, We the Citizens, challenged 35A in Supreme Court in 2014 on grounds that it was not added to the Constitution through amendment under Article 368. It was ever presented before Parliament, and came into effect immediately, the group argued. In another case in Supreme Court disputed on two Kashmiri women reasoned that the state's laws, flowing from 35A had disenfranchised their children. Fear that it would lead to promote destruction of Jammu & Kashmir's self-government and generate demographic transformation in Muslim majority mainstream valley. By and large various Political parties commented upon Kashmir resolution lies in grander autonomy; separatists aficionado paranoia contrary to possibility of Hindus swamping in the valley. On the other hand, in the last 70 years, demography of Kashmir Valley has keep on

Vol. 3 Issue 4 (August 2017)

Editor-in-Chief: Dr. Bijender Singh

The Expression: An International Multi-Disciplinary e-Journal

(A Peer Reviewed and Indexed Journal with Impact Factor 3.9)

www.expressionjournal.com

ISSN: 2395-4132

unaffected even as Hindu majority in Jammu and Buddhists in Ladakh have privileges to purchase property and settle in the Valley National Conference patriarch Farooq Abdullah statement.

Realistic Reactionary exchange with Incongruity

Article 35A is a constitutional error. It was amalgamated through a Presidential Order and not over and done with the parliamentary process. The current Chief Minister asserted that Article 35A should not be tinkered with, saying there would be no one to hold the tricolor if provisions regarding special status to Jammu & Kashmir residents were altered. In spite of the political rhetoric, there is more than a grain of truth in these trepidations. Any alteration to Article 35A may leave the government at the Centre with a boiling mess in its hands, damaging the vestiges of goodwill that average common Kashmiris may still have towards the Union of India.

Article 35A was added through the Constitution (Application to Jammu and Kashmir) Order, 1954, issued under Article 370 of the Indian Constitution, which grants special autonomy to the state of J&K. The J&K Constitution (J&K is the only state allowed to have its separate Constitution) was espoused on 17th November 1956. It demarcated a permanent resident as someone who was a state subject on 14th May 1954, or has been an occupant of the state for 10 years, and has lawfully acquired immovable property in the state. This definition is seen as limiting by numerous parties and pressure groups, especially the BJP and the RSS. Over the years, workers of these political and cultural establishments, among others have petitioned for the repeal of Article 35A. The BJP electoral manifesto for the J&K assembly polls, for instance, as The Indian Express pointed out, promised 'land at cheap rates for establishment of *Sainik* colonies in major towns' for superannuated armed forces staffs.

According to the adversaries, the commencement of a permanent resident, derived from Article 35A is primarily accountable for the preponderance of Muslims in the valley. Should the executive write it down, the move would then usher in a demographic change in J&K, with new settlers going there to live?

In 2014, an NGO had filed a writ petition seeking to strike Article 35A down, but the case is pending in the Supreme Court. The J&K state government has filed a counter-affidavit questioning for the plea to be terminated, though the Centre has not obliged yet.

Seasonal pleasure seeking Politicians like Farooq Abdullah emphasise that Article 35A is an article of faith, the fissure of which could have far-reaching upshots worse than the months of turmoil unbridled by the Amarnath Temple property disturbance in 2008, whereas historians like Srinath Raghavan have a more nuanced take on the same point.

Concluding Appraisal of the Rationality

Any endeavor to emasculate, or watered down these ideologies, by now treasured in the Constitution and strained after several decades of viciousness and letting mayhem can only serve to disseminate the present-day cycle of turbulence. In any case, it won't act as a restraining to extremism in the valley. As Mufti expressively alleged to the government at the Centre, 'By challenging Article 35A, you are not directing the separatists. Their program is dissimilar and it is totally secessionist.' The current ruling party BJP in centre says also coalition with PDP in state as

Vol. 3 Issue 4 (August 2017)

Editor-in-Chief: Dr. Bijender Singh

The Expression: An International Multi-Disciplinary e-Journal

(A Peer Reviewed and Indexed Journal with Impact Factor 3.9)

www.expressionjournal.com

ISSN: 2395-4132

well declared, Article 35A is an unconstitutional provision of law and finds no place in Indian Constitution. 'If the migration of people from other states could abolish the basic culture of Jammu and Kashmir, states like Gujarat, Himachal and Punjab would have perishing by now,' the BJP leader demanded.

Kashmir has been on the simmer since last July, after *Hizbul Mujahideen* leader Burhan Wani was exterminated by the Indian Army. Since then, hundreds of average individuals have been wounded or murdered in clashes with the armed forces and regular Internet stoppage has crippled standard life cycle in the state. Taking a hurried step to deal with Article 35A under such dire circumstances, out of purely jingoistic or ideological concerns, may prove to be the last straw in the Centre's relationship with the state. In governing Kashmir by using moral principles as an alternative of military might, India would set an example of how a great people deal with diversity. And that would be an honored moment indeed. Any challenge to meddle with them is bound to result in a massive repercussion. At a time when Jammu & Kashmir stands adjacent to the swelling, New Delhi can ill-afford to overlook this status quo.

References:

1. Bhatia, K.L., *Jammu and Kashmir: Article 370 of the Constitution of India*, Deep & Deep Publication, New Delhi, 1997
2. Noorani, A.G., *Article 370: A Constitutional History of Jammu and Kashmir*, OUP, New Delhi, 2011
3. Teng, Mohan Krishen&Kaul, Santosh, *Kashmir's Special Status*, Oriental Publishers, New Delhi, 1975
4. Singh, Jaswant, *Jammu and Kashmir: Political and Constitutional Development*, Har-Anand Publications, New Delhi, 1996
5. Puri, Balraj, *Jammu and Kashmir: Triumph and Tragedy of Indian Federalisation*, Sterling Publishers, New Delhi, 1981
6. Anand, Adarsh Sein, *The Development of the Constitution of Jammu and Kashmir*, Light and Life Publishers, 1980
7. *Times of India*, 8th August 8, 2017
8. *Times of India*, 6th August, 2017.
9. *The Huffington Post*. 8th August, 2017.
10. *The Huffington Post*. 19th September, 2016.
11. *Indian Express*, 7th August, 2017.
12. *Indian Express*, 4th December, 2015.
13. *The Hindustan Times*, 3rd August, 2017.
14. Firstpost, 8th August, 2017.