JAMMU AND KASHMIR: THE ISSUE OF REGIONAL AUTONOMY

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Abstract:

The paper begins with the contemporary discourse on state autonomy and self-determination of nationalities in India and seeks to examine the response of the Jammu and Kashmir to these issues which have generated tensions between the Centre and the state. The state of Jammu and Kashmir under Article 370 had given special autonomous status which remains in conflict due to centre’s interference and curtailing its autonomy. This paper will analyze scope of article 370 in current scenario. Revocation of special status granted under article 370 to the state of J&K and its present and future aspect, Implication will be examined.

Keywords: Regional autonomy, Self determination, Security, Terrorism, National integrity.

Introduction:

Autonomy is defined as means of sharing power at the internal level to preserve ethnic and cultural diversity. The autonomy is maintained within the state keeping in view the unity and integrity of the state. It is the transfer of certain powers to such groups for self-government rule. The central government deals with residuary powers only in such case. Although, the territory is given regional autonomy, that does not consider it as an international state or territory following international law. Autonomy is thus, an instrument designed by the national government to accommodate certain cultural and ethnic groups who differ from majority population of the state. Territorial autonomy in India is given on the basis of sub-state level i.e. as a unit of a federated subject of Indian state. The basic population which demands autonomy is ethnic or cultural groups. In India most of the division is based on linguistic groups. Regional autonomy is also given on the geographical and historical reasons (Thomas. B, 2009)

The concept of regional autonomy focuses on the fundamental purposes of territorial power sharing to protect minority groups. The legal procedure provides legislative, executive and sometimes jurisdictional powers to a particular territorial community. The territorial community can be region, province or district. Such autonomous territory is endowed with a freely elected regional assembly. The autonomy becomes meaningless if these powers are not vested with regionally autonomous region. Thus, there are minimum standards of powers and democratic procedures of self-government of a regional polity (Ibid).
The concept of state autonomy in India is seen as a threat to its unity. India, being a culturally diverse country created a federal state with a strong centre to curb the demands of autonomy. India has designated itself as ‘Union of States’ to reflect the unity of India. India adopted a most legitimate and democratic way of creating a new state i.e. by seeking a voluntary accession of the various regional, linguistic, tribal and other communities to the Indian Union. The absence of such democratic measures, the newly created states could challenge the centre and therefore, demand for regional autonomy will prevail. To avoid such challenges, Indian leaders build a centralized administration to tackle such conflicts and sought to impose a unifying ideology of ‘national integration’ under which it could homogenize the people. Indian State remains reluctant in responding to demands for state autonomy related to regional and cultural aspirations. It has been trying to handle these demands with coercive measures (Susmita Sen. G, 2013).

The reason which creates demands for autonomy in India is uneven distribution of powers between centre and states. Being a federal state, India has a strong centre. There is a state list mentioned in the Constitution of India covering subjects to be dealt by states, but in actual practice, the centre interferes in every sphere. The states complain against the centre on issues like law and order, trade monopoly, excessive financial control of centre over states and misuse of President Rule (Article 356) and Governor’s role as a puppet of the centre. To tackle such conflicts and demands for autonomy, Sarkaria Commission was created in 1983. Some of the regional parties favored its decisions but some scholars and parties criticized its recommendations as they lead to disintegration of India (Ibid). The state of Jammu and Kashmir under Article 370 has been given special autonomous status which remains in conflict due to centre’s interference and curtailing its autonomy. The state is fighting for its lost autonomy.

JAMMU AND KASHMIR AND ITS AUTONOMOUS STATUS

The history of territorial autonomy of J&K goes back to the period of India’s independence. The princely state of J&K was granted special status of autonomy in 1947 through the process of accession of its last Maharaja and the Indian government. Being a Muslim dominated state, the status was granted to J&K. The region was to hold a self-determination referendum under the umbrella of UN which never took place. The provision of autonomy to J&K was enshrined in the Constitution of India under article 370 in 1950. The provision left the centre with powers such as defense, international affairs and communication on the territory of J&K. The Constitution of India laid down provisions in Part 21, Article 370 (Constitution of India). Some of the provisions are as following:

1. Notwithstanding anything in this Constitution,-
   
   (a) The provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir;
   
   (b) The power of Parliament to make laws for the said State shall be limited to-

   (i)those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the
accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) Such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify (Ibid).

Article 370 provides special autonomous status to J&K which is temporary in nature. The article provides temporary, transitional and special provisions to the state of Jammu and Kashmir. The provisions mentioned under article 370 are different from other states of India for e.g. J&K had sadar-e-ryasat for governor and Prime minister and there was no concept of chief Minister till 1965. Shiekh Abdullah was its first prime minister and wanted centre to provide autonomous provisions on permanent basis and eradicate its temporary nature. The centre did not accept his demand (Times of India, 2018).

According to Article 370, the state has its own Constitution and laws whereby cannot interfere. The centre cannot imply emergency in J&K without consulting state’s government. The centre is just restricted to defense, foreign affairs, finance and communication powers. In 1953, the centre started curbing or eroding these provisions and made J&K as normal federating unit of Indian state. Article 370 was not removed but its provisions were eroded gradually. The act of curbing J&K’s special autonomy created tension among the state and the centre. The continuous interference of central government in the state’s affairs created political crisis, unrest and protests which led to president rule many times. This led to civil war and armed militancy in 1990. Till date there is no concrete solution found for the state of Jammu and Kashmir to settle down the unrest. The demand for self-government is not fulfilled. The state faced traumatic experiences of repression by India's security forces over the last 18 years that Kashmir wants to separate itself from Indian Union. The curtailing of special autonomy granted to Kashmir by Indian government triggered endless political contention, military conflict that alienated the Muslim population from the rest of India (Sumantra Bose, 2003).

**DEBATE FOR REGAIN OF KASHMIR’S SPECIAL AUTONOMY STATUS**

For the past several decades, the debate for issue of special autonomy to Kashmir has been remained unsolved. Many Indian Prime Ministers came and tried to resolve the issue but with no permanent solution. Jawaharlal Nehru was one of the PM, who realized that J & K’s autonomy is an example of Indian secularism. Many others have promised, but delivered nothing. The major debate is that in the pretext of Indian Constitution and Centre-state relations and integrity of the nation, J&K’s autonomy is relevant or not. Article 370 of the Indian Constitution laid the provision for autonomy to J&K which has been eroded day by day since 1953. Various agreements have been signed for providing autonomy to the state such as Instrument of accession, Delhi Agreement and the Sheikh Abdullah-Indira Gandhi Accord included (Sandeep, Bamzai, 2016). The instrument of Accession was made
between Indian government and Maharaja Hari Singh in 1947 to handover the state of J&K to Indian Union. The instrument was based on saving Kashmir’s autonomy and cooperation with Indian Union.

Similarly, the Delhi Agreement was an agreement between Sheikh Abdullah and PM Nehru signed in July 1952. Both legislatures of India and Kashmir backed and authorized it. The agreement promised the J&K with special autonomy to deal with its residents and govern it state. But the Indian citizenship act was applicable to J&K. The jurisdiction of the Supreme Court was extended to certain matters. Jammu and Ladakh would have regional and cultural autonomy. But it was observed that Sheikh Abdullah was misusing the autonomy and creating links with Pakistan and America for Complete freedom. This led to erosion of Kashmir’s autonomy since 1953 and Abdullah was dismissed from his post of Wazir-e-azam and got arrested in 1953 (Ibid). Thus, the period of after 1953, the erosion of Kashmir’s autonomy was initiated by the central government by implementing Constitutional provisions of Indian state such as President Rule, Supreme Court’s jurisdiction extended to J&K, All India services were introduced, Functions of CAG were extended, the visa-type permit system was abolished, provisions related to direct election to Lok Sabha were laid, etc (Ibid).

The demand for revival of autonomy to Kashmir was again instigated by Farooq Abdullah in 1990s. The formation of State autonomy panel was directed by him and Dr. Karan Singh became head of the panel in 1996. A Regional Autonomy Committee was also set up to design measures for autonomy which was to be headed by Mr. Balraj Puri. There were lots of controversies within the panel and committee members, thus no proper solution was being made. Therefore, on 13 April 1999, Dr. Farooq Abdullah himself presented the reports of both the SAC and RAC in the State Legislative Assembly. The recommendations of SAC were restoration of article 370 to its original 1950 position. The autonomous status should be ‘special’ and not a ‘temporary’ one (Ashok. B, 2000). This includes that except defense, communication and external affairs, other matters should lie under the state administration for sovereign legislation and execution. On the other hand, RAC report laid the provisions such as division of the three regions i.e. Ladakh, Kashmir and Jammu into eight autonomous units on ethnic-religious lines. The recommendations of both SAC and RAC were criticized by the central government and many scholars as their provisions are considered as threat to India’s national integrity (Ibid).

Moreover, the central government claims that there has to be check and balance on the Kashmir state as it is sensitive region for India’s security. The autonomy under Article 370 was already given to such an extent that J&K enjoys special status and has separate constitution. For India, its integrity and secular character is vital to its political set up, therefore, giving complete autonomy to the state of J&K can be threat to its integrity. The Kashmir issue is also a debate between Pakistan and India and giving autonomy to Kashmir without keeping check could lead to insecurity for India.
The debate for regain of Kashmir’s autonomy has arisen again recently, as National Conference’s vice president; Omar Abdullah had said that “granting autonomy is the only pragmatic solution to the decade’s old problem of Jammu and Kashmir”. He said that the situation in Kashmir is deteriorating day by day. There is everyday news of killings, encounters, crackdowns in Kashmir. The peace of the state is so much in distress that the autonomy is the only solution that could help the region to grow. According to him, the people in Kashmir are suffering due to lack of governance, development and accountability (The Economic Times, 2018). Similarly, National Conference president, Farooq Abdullah, has also announced that if his party came to power, the autonomy to Kashmir will be restored within 30 days.

Revocation of Article 370 and 35A, its present and future prospect

The Modi government has recently repealed article 370. This move by the government has altered the status quo of Jammu and Kashmir. The government has ended the question of autonomy by revoking article 370 of the constitution, by bifurcating Jammu and Kashmir into two Union territory i.e. J&K and Ladakh. Jammu and Kashmir will have a legislature where law and order will be in the hands of Central government like Delhi and Puducherry. On the other hand, Ladakh will be left without legislature like Chandigarh. J&K governor, will now became a lieutenant governor (India Today, 2019).

The main motive of BJP government behind revoking article 370 and 35A is an emotional chain attached with their ideal Shyama Prasad Mukherjee, who died in J&K in 1953 for protesting against state's special status and demand its complete integration with the Union. Another reason for revoking article 370 is BJP claim that it promotes separatist movement in the state. The government announced that without this action, terrorism can not be wiped out from J&K (Shah Speech in parliament, 2019). Thus, article 370 and 35A need to be abolished. The government also reiterated that it has hindered development in J&K and drove corruption (Malik, 2019). Moreover, the special provision became responsible for denial of education right and reservation to minorities. With revocation of article 370 and 35A, people from other parts of India can now bye or acquire property in J&K ( Kaul, 2019).
Conclusion

Article 370 was highly integral to the state of J&K which gives special status and autonomy. The revocation of article 370 can have both positive and negative impact on the state’s political, social and economic outlook. Positive side is that security of the state and integrity and unity of India will be maintained. Development plans, policies would be easily carried out. Negative side could be that J&K is a Muslim majority region particularly Kashmir and always remained trouble for India’s security. J&K people especially Kashmiri have special emotional attachment with article 370. Revocation of this special status could pose serious security threats if the sentiments of the native will be not heard. Government has to take extra efforts to win the heart of the people by its policies and programme. Restoration of political leadership is another issue which needs to be solved.

References: