

Article 370

Article 370 of the Constitution is making a mockery of secularism, nationalism and the structure of unity. This temporary constitutional provision has, in fact, been providing encouragement for the establishment of Muslim nation.

Article 370 of the Constitution, which has grouped Jammu and Kashmir as a special and different state, ridicules this declaration that Kashmir is an inseparable part of India. This special status delinks the state from rest of the country. It won't be an exaggeration if it is called constitutionally recognised separatism. On the basis of this "special status" people of Kashmir, Pakistani rulers and diplomats and intellectuals in the world raise a volley of questions in front of the Government of India. Is accession of Jammu and Kashmir complete like other states? If the accession is complete, why then the special appeasement? Is it so because there is Muslim majority? Had there been Hindu majority in the Kashmir valley, would there have been this clause of the Constitution? Does not this clause give an opportunity to the world to doubt our honesty?

Everybody knows that Maharaja Hari Singh signed the accession papers on October 26, 1947 under which the state acceded to India. The accession of Jammu and Kashmir with India was carried out on the same pattern other states acceded to it. But as a result of the misfortune of the country, Nehru pressurised the Maharaja for handing over power to Sheikh Abdullah. The Maharaja gulped the bitter draught and exhibited his patriotism. The misfortune does not end here. On the request of Sheikh Abdullah it was decided that the State Assembly will take the final decision on the accession and it was done to appease the Muslim society in Kashmir. From here the State was given the special status. The question arose as to what should be done till the Assembly took the final decision? For this period Article 370 was incorporated in the Constitution as a temporary measure. But even when the State Assembly ratified the state's accession to India, the Article was not scrapped. There can be no other bigger instance of treachery than the interest of the vote bank and the politics of appeasement.

With the blindfold of political interest we lent permanency to the temporary character of the Article making our position not only ridiculous before the world but also provided a golden opportunity and solid base for separatist-oriented terrorism to grow in Kashmir. The most shameful part is that we are not ready even now to throw off the soiled blindfold. Instead we are keen to keep this blindfold as a permanent feature.

Our Government has deliberately concealed the dangers of Article 370 because it will expose the hollowness of its secularism. The exposure of its dangerous consequences will cut asunder the web of pro-Muslim policies.

It is because of this Article that the Government of India cannot enforce any law connected with Jammu and Kashmir without the approval or concurrence of the State Government. Only defence, external affairs and communications fall in the central list. Against this the Parliament has the powers to frame laws for rest of the states in the country. But Article 370 of the Constitution restricts the hands of the Union Government and the Parliament in doing this in case of Jammu and Kashmir. Its dangerous consequences have been witnessed in recent years when the law prohibiting misuse of religious places could not be extended to Jammu and Kashmir with the result the state does not come within the ambit of secularism. And even after the independence the ignoble thing happened in Kashmir where hundreds of temples were destroyed and where people belonging to a particular community were victimised and subjected to cruelties. On the question of Ayodhya and the consequent Babri Masjid episode the Union Home Ministry had been issuing threats to the Uttar Pradesh Government and ultimately the Government was dismissed under Article 356 of the constitution but this article cannot be implemented directly in Jammu and Kashmir.

The President of India cannot dare to issue any order under Article 356 to Jammu and Kashmir. The President has no right to suspend his Constitution in the State. The National emergency under Article 352 of the Constitution can be extended to Jammu and Kashmir to a limited extent and the financial emergency under Article 360 cannot be enforced in Jammu and Kashmir.

Under part four of the Constitution of India there is procedure for one constitutional practice, one administrative structure and one economic pattern. But under Article 370 Jammu and Kashmir has its right under its own constitution to do whatever it likes. It is because of the separate flag and separate symbol that two flags flutter on the Government buildings in the state. For hoisting freely the National flag, permission has to be sought from the State flag because it is necessary to hoist the national flag with the state flag.

There is only one system of citizenship for the people of the country but in case of Jammu and Kashmir, it is dual citizenship, one of the state and the other of India. The citizens of Jammu and Kashmir are citizens of India but the citizens of the rest of India cannot be citizens of Jammu and Kashmir. He does not have the right to have property and the right to vote in Jammu and Kashmir. If a girl belonging to Jammu and Kashmir marries a boy from outside the state, who is not a state subject, she loses all her rights in the state. Even the wealth tax cannot be imposed in the state. The Urban Land Act, 1976, which is in force in the entire country is not applicable to Jammu and Kashmir. The result of it is that rich landlords, belonging to the majority community in the Valley, indulge in economic exploitation of the poor and the Indian citizens, who are non-state subjects and living in the valley, cannot even secure loans from the financial institutions.

It is because of Article 370 that political groupism receives encouragement and no local nationalist Government can remain durable if it is not the product of anti-national elements. The state Government did not accept the Anti-defection law adopted in the country and instead made several amendments. Here the decision on defection is not taken by the speaker of the Assembly but by the leader of the connected political party. This gives constitutional legitimacy to the unbridled authority of the leader of the party. Since the Governor usually is not a citizen of the state, he has no right to vote, the separatist elements treat him an outsider and equate themselves with slaves. During the 80's the Wazir Commission had recommended measures for political reforms in Kashmir but due to Article 370 these recommendations have not been implemented.

Burning of the national flag is not a cognizable offence in Kashmir because there cannot be proper arrangement for the basic duties enshrined in the Constitution under which the tricolour, the national anthem and the national symbol have to be shown due respect. Under Article 370 the Indian Parliament cannot increase or reduce the borders of the state. The Union Government implements international agreements and accords under Article 253 of the Constitution but Jammu and Kashmir is beyond its jurisdiction. Muslims from other parts of the country become successful in getting the citizenship of the Jammu and Kashmir but about one lakh Hindus, who had been uprooted in the neighbourhood at the time of the partition, have not been given citizenship so far. Under the umbrella of Article 370 the fundamentalists have received strength in their campaign for Islamisation.

Article 370 revives the two-nation theory and secures security for it in the future. On one side we proclaim in the world that in India there is no discrimination on the basis of religion, community or sect, on the other hand special facilities are being given to Kashmir because there the Muslims are in majority. If these special privileges are being given on the plea that Kashmir is a backward area, is there no other place in India where backwardness and poverty are less important? In fact several thousand crores of rupees have been spent in Kashmir and the result is apparent. Anti-national elements are active. Instead of bringing the people to the national mainstream, we have, in comparison to other states, given unlimited rights to the people which have made them a pampered lot. People of Kashmir became suspicious about the accession and the anti-national elements got an opportunity for launching an open disinformation campaign against India. Pakistan supported these separatist organisations. The result was that Kashmiri youths picked up arms against India and forced over three lakh Hindu patriots to leave their houses and property in Kashmir and live in the plains a life of penury and misery.

Our Constitution gives equal rights to all citizens but this right is not available in Jammu and Kashmir. It is the tale of local versus non-local who are not state subjects. They do not enjoy any political and economic rights. Their wards cannot get admission in the colleges in Kashmir. Article 370 has violated the principle of Indian citizenship. The maker of the Constitution of India, Dr. Ambedkar, had cautioned Nehru on the plea that it can create difficulties in full integration of the state with India. This Article

would sow the seeds of separatism in the Valley. At least Dr. Ambedkar's warning can be understood now but the politics of vote appeasement does not allow it.

It is quite evident that Article 370 has not integrated Jammu and Kashmir with India but it has delinked it. There in Kashmir is no place for secularism and nationalism in the mind of the youth. The feelings of regionalism, communalism and separatism have been developed in their mind. Instead of coming closer to the national mainstream, they have distanced themselves from it and have now started raking up the question of independence. On April 7, 1958 the Plebiscite Front, of Sheikh Abdullah adopted a resolution and the wording of the resolution clearly indicates how Kashmiri leaders have been working for making the Muslim society anti-India and pro-Pakistan and for this the leaders took the refuge under Article 370. The resolution had made a mention of this Article and said:

"Jammu and Kashmir state has not yet acceded to any of the two dominions, India and Pakistan. Therefore, it will not be right to call Pakistani invasion on Jammu and Kashmir as an attack on India."

Under Article 370 Kashmiri Muslim leaders have been opposing any welfare schemes formulated by the Government of India. No scheme relating to family welfare, formulated by the Government of India, is in force in Kashmir. The programme was implemented in the Jammu region because of being a Hindu majority area. A former Chief Minister, G.M. Shah, had said that the aim of the Government family planning programme was to convert the Muslim majority into a minority. Such type of false propaganda has given birth to separatism which received shelter under Article 370.

According to a former Governor, Jagmohan, Article 370 should be scrapped because it has become an instrument of injustice and inequalities. It waters the roots of corrupt elements. It nourishes narrow-minded and reactionary forces. It fully accepts the principle of two-nation theory. It fills the mind of the youth with the garbage of false desires. It gives birth to narrow lines and narrow faith. This encourages and nourishes regional tensions.

Historical facts reveal that prior to this Article, both Hindus and Muslims were part of the national mainstream. There was no animosity or hatred. During the 1947 Pakistani aggression on Kashmir, Kashmiri Muslims not only welcomed the Indian Army but also assisted them in nabbing the infiltrators. Then why the same Muslim society is launching an attack on the Indian Army at present? This is the result of the poison of Article 370. On seeing the Poisonous impact of this Article on the Kashmiri mind that a former External Affairs Minister, M.C. Chagla, had told the United Nations that the Article was a temporary measure. This Article should be abolished. The two former Chief Ministers of Jammu and

Kashmir, Bakshi Ghulam Mohammad and G.M. Sadiq, too wanted this Article to be repealed. The Government of India too had assured people that when the time comes, the Article would be scrapped. But our political interests and the mean and directionless politics of vote bank based on appeasement have not allowed this to materialise. By duping people in the name of secularism, removal of poverty and promotion of equality our leaders have abolished the Privy purses but it is difficult for them to abolish Article 370 for the sake of the integrity of the country. Who will make these leaders understand that after having tasted the bitter fruit of Article 370 let them watch the other side of the coin by abrogating the Article. The armed struggle for liberation is not something separate from the demand for plebiscite and self-determination.

This Article, meant to be a temporary clause in the Constitution, has become a special barrier which is promoting and encouraging Muslim state in the Kashmir valley. This anti-national Article has strengthened its roots because of our weak policies, wavering decisions and growing Islamic fundamentalism and this Article cannot be abrogated so long Governments, favouring the policy of appeasement, remain in power in the centre. This Article opens the door for subversion in the country. The basic idea behind the Anandpur Sahib resolution of the Akalis is the same Article 370. This Article is not a constitutional necessity. The special status given to Jammu and Kashmir is an insult to the people of all other states in the country. There are innumerable facilities, under this special status, for the people who have begun their revolt against India and who are conspiring for Islamisation of entire India, against helplessness and suffocation for people who are nationalists and are one with the ups and downs of India. Article 370 is like a piece of bone stuck in the gullet: if it is swallowed, it may lead to death and if not, still death is there. But when the bone has become dangerous for the existence of the body. it is better to throw it out. There is now need for the abrogation of Article 370 in the interests of security and integrity of the country. It is the need of hour to fully integrate the state with India by abolishing the special status and by abrogating its own constitution.

A political section is of the opinion that this Article cannot be abrogated. But according to Dr. Babu Ram Chauhan, an expert on international law and the Constitution of India, this Article can be scrapped even without the concurrence and approval of the state Assembly The President of India and the Indian Parliament can repeal it. It is clear from Articles 3 and 5 of the State Constitution that Jammu and Kashmir state will remain an "inseparable" part of India. The Constitution of Jammu and Kashmir has been framed under the Constitution of India. Why cannot the Government abrogate the Article in the interest of the nation when the same Government has allowed the State to frame its constitution ?

The utility of Article 370 has been finished now. Its utility has ceased with the people in Kashmir having launched an open revolt and with their guerrilla war against the Indian Army. It is nothing but ridiculous to tell a man, who has come to kill you, to slap you and forge an agreement. What is the meaning of the bait of Article 370 for those who are fully equipped with arms to secure independence for Kashmir? Will

a glutton feel satisfied with a crumb ? Now only one way is left: launch a full military campaign against the anti-national elements for finishing them and start, on a war footing, measures for bringing the remaining Kashmiri society to the national mainstream. For this there is need for a search of nationalist leadership among the Kashmiri youth, particularly the Muslim youths. This plan can fructify only after giving up the politics of narrow-mindedness. This is certain that it can pave the way for the national plan of abrogating Article 370.