

People's voice and Kashmir's future

The all-party conference failed because it completely ignored Kashmiri sentiments



A.G. NOORANI

The all-party conference on Jammu and Kashmir (J&K) revealed the failure of the strategy crafted by the Government of India. The Bharatiya Janata Party (BJP) has long urged the abrogation of Article 370 of the Constitution. But the constitutional coup went miles beyond that. It abrogated Article 35A as well, broke up the State of J&K by lopping off Ladakh, and reduced the rest to a Union Territory. It is unthinkable that any other State would have received the treatment meted out to J&K whose 'special status' was an eyesore.

But the elephant in the room was the law on delimitation of the constituencies. It trumpeted the real object of the coup loud and clear, which was to wipe out the political set-up in J&K and establish a new political order. To accomplish this, virtually the entire political class of Kashmir had to be put out of action, the press muzzled, assemblies banned, tourists given marching orders, schools and colleges shut, and electronic communications suspended.

Abrogation of Article 370

Article 370 cannot be abrogated even by Parliament, let alone by the President. Even the letter of Article 370 bars that. But there is a profound reason which fundamentally bars such a result. To cite an example, insurgency erupted in Mizoram on February 28, 1966. The Mizo National Front (MNF) led by Laldenga began an armed insurgency and declared independence the next day. On June 30, 1966, the Mizoram Accord was signed. It said: "Notwithstanding anything contained in the Constitution, no Act of Parliament in respect of (a) Religion or social practices of the Mizos, (b) Mizo customary law or procedure, (c) Administration of civil and criminal justice involving decisions according to Mizo customary law, (d) Ownership and transfer of land, shall apply to the State of Mizoram unless the Legislative Assembly of Mizoram by a resolution so decides." On February 20, 1987, the 53rd Constitution Amendment came



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into force inserting Article 371G which reads thus: "Notwithstanding anything in this Constitution, no Act of Parliament in respect of (i) Religious or social practices of the Mizos, (ii) Mizo customary law and procedure, (iii) Administration of civil and criminal justice involving decisions according to Mizo customary law, (iv) Ownership and transfer of land, shall apply to the State of Mizoram unless the Legislative Assembly of Mizoram by a resolution so decides."

The two are identically worded because Article 371G gives legal force to an accord between the Union and the MNF. Parliament cannot repeal it or even amend it unilaterally.

Article 370 stands on a higher footing. It gives legal force to an accord between the Union and a State of the Union and the parleys were held by Prime Minister Jawaharlal Nehru and his deputy, Sardar Vallabhbhai Patel. They began at Patel's residence on May 15, 1949 and ended in mid-October with an agreed text. But it was moved in an altered form in the Constituent Assembly on October 17, 1949 by N. Gopalaswami Ayyangar in the absence of Sheikh Abdullah who happened to be in the lobby. He rushed to the House.

Article 370 made Kashmir's Constituent Assembly the sole authority to accord consent to any addition to the Centre's power and to further extension to Kashmir of India's Constitution. The Assembly first met on October 31, 1951 and was formally dissolved on November 17, 1956. Article 370 enabled the State government to accord its concurrence only subject to J&K's Constituent Assembly's concurrence. This was abused to make the State government and even the Governor alone to be the consenting authority.

The result? Ninety-four of the 97 entries in the Central List were ap-

plied to Kashmir leaving a balance of three. So much for the 'special status'. The Constitution is studded with 'special' provisions for Nagaland, Assam, Manipur, Andhra Pradesh, Sikkim, Mizoram, Arunachal Pradesh, and Goa (Article 371A-1). Kashmir had an elected Sadr-E-Riyasat. The Centre replaced him with a Governor it nominated.

We have high legal authority for challenging the 'laws' of August 5, 2019. After the First World War, countries of the British Empire were restive about their independence. In 1926, the Earl of Balfour devised a formula which pleased all. The autonomy of those countries was recognised simultaneously with their loyalty to the British Crown. This was incorporated in the Statute of Westminster passed in 1931 by the British Parliament. It said that no law it passed would extend to the Dominions unless they had so wished (Section 4). In 1935, the Privy Council ruled that "the Imperial Parliament could, as a matter of abstract law, repeal or disregard Section 4 of the Statute. But that is theory and has no relation to realities. In truth, Canada is in enjoyment of the full scope of self-government" (*British Coal Corporation v. The King*).

Areas of 'special status'

Areas of 'special status' abound the world over. Scotland joined England in 1707 to form Great Britain. It held a referendum on its independence without its being called 'treason'. Quebec held two referenda on secession in 1980 and 1995. All three failed.

For historic reasons, the German-majority South Tyrol is partly Italy. Its autonomy is guaranteed by an Austro-Italian accord. The Swedish-majority Aaland Islands are Finnish territory under an accord of 1921.

The autonomy of both territories (Aaland Islands and South Tyrol) is internationally guaranteed.

Indonesia quelled militancy in Aceh by an accord on August 15, 2005 based on "special autonomy". Newfoundland signed the Terms of Union with Canada on December 11, 1948 after a referendum. Denmark conferred home rule on Greenland in 1979. On June 12, 2009, Denmark enacted an Act on Greenland Self-Government to confer greater power than that of our States.

Fifty years ago, Sheikh Abdullah told former Foreign Secretary Y.D. Gundevia, "Only that person who enjoys the confidence of the Government of India can be Chief Minister of Kashmir". A 'special status' worse than, say, Kerala or Tamil Nadu, which can have Chief Ministers that the Centre does not approve of.

The Supreme Court's record on Kashmir is uninspiring. The matter is too politicised. The petitions must be withdrawn in favour of a political, peaceful, constitutional approach. The Gupkar Declaration of August 4, 2019 must be amplified in a Convention.

On July 9, 1953 Maulana Azad offered to Sheikh Abdullah that the Government of India "is willing to declare that the special position given to Kashmir will be made permanent without any conditions". Abdullah replied on July 16, "If such a declaration had been earlier, it would have strengthened my hands". Now, "if I fail to gain the confidence of my people here, I will not be able to render my service to my friends." The people matter more than they did in 1953. Statesmanship lies in crafting a solution acceptable to them.

Time is running out. The Delimitation Commission visited Kashmir to fulfil the vision of the BJP's Vision Document – more seats for Jammu. A lot depends on the statesmanship of Farooq Abdullah, Mehbooba Mufti and Mirwaiz Mohammad Umar Farooq. Their objectives should be two-fold: to work for the restoration of Kashmir's identity and pride and help to complete the four-point formula which former Prime Minister Dr. Manmohan Singh and former Pakistani President Pervez Musharraf had built four-fifth. The all-party conference failed because it ignored Kashmiri sentiments.

A.G. Noorani is a constitutional expert