

Round Table Discussion on

Legal Status of Indian Held Kashmir: Article 370 & Ambitions of BJP Government

Organized by
MUSLIM Institute

MUSLIM Institute organized a Round Table Discussion on "Legal Status of Indian Held Kashmir (IHK): Article 370 & Ambitions of BJP Government" on Wednesday 28th October, 2015 at National Library, Islamabad. Chief Executive, Center for International Strategic Studies, Ambassador Ali Sarwar Naqvi presided the discussion whereas renowned Columnist & Former Ambassador, Asif Ezdi, Minister of Social Welfare Azad Jammu & Kashmir, Ms. Farzana Yaqoob and Activist for Peace & Justice and Journalist, Mr. Edward Hasbrouk from USA (via video link) spoke on the occasion. Public Relations Coordinator of MUSLIM Institute, Mr. Tahir Mehmood delivered the opening remarks as well as moderated proceedings of the discussion. Foreign delegates, professors and students of universities, scholars and researchers from different institutions, analysts and media persons actively participated in the discussion.



Speakers expressed their views and observed as under:

Article 370 of Indian constitution relating to the state of Jammu & Kashmir came into force on 26th January 1950. It was drafted by Gopal swami Ayyangar who was former Diwan of Maharaja Hari Singh. It was actually a trick laid by India to satisfy the Kashmiri people to accept Indian occupation. Article 370 was found as a way forward to provide link to central Indian government to Kashmir. The Indian agenda behind article 370 is very much clear from the intentions of Indian Home Minister Gulzar Lal Nanda's address in the Lok Sabha on 4th December 1964 when he said: "the only way of taking the Constitution (of India) into Jammu and Kashmir is through the application of Article 370... It is a tunnel. It is through this tunnel that a good deal of traffic has already passed and more will" According to Article 370, Jammu & Kashmir will have its own constitution, Indian Parliament's powers over the state were restricted to only three sectors: Defense, Foreign Affairs and Communications (whereas, Article 352 & 360 for declaration of National & Financial emergency respectively cannot be applied in Kashmir). Indian citizens neither can become the citizen of IHK nor can buy any property there. Even Article 356 under which the Indian President can impose his rule in any state cannot be enforced in IHK (without the consent of Constituent Assembly of IHK). IHK can refuse building of any cantonment on any site or refuse to allot land for defense purposes to India. The Indian Supreme Court has no jurisdiction in IHK and disrespecting the tricolor and other national symbols is not a crime in the state.

Another important point is, when the state's first Assembly was convened on 31st October, 1951, it was not given authority to accord any 'concurrence' to the Union. Thus, leads to a conclusion that once the constitution of the state of Jammu & Kashmir was adopted on 17th November, 1956 and then Assembly was dispersed, the only authority to give more powers to the Union and accept the institutions of the Union other than those specified in the instrument of Accession, simply vanished. Thus, all the additions to the Union's powers within the state of Jammu & Kashmir since then are unconstitutional.

BJP has the agenda to modify the article 370 and merge IHK with India. Indian Held Kashmir (IHK) never fully merged with India in 1947 and its only link remains article 370, which itself is illegal. Omar Abdullah, Chief Minister of IHK once said, "Article 370 is the only constitutional link between Jammu & Kashmir and the rest of India. Talk of revocation is not just ill informed but also it is irresponsible." If the BJP Government recalls and reinstates a new constituent assembly; by putting the constitutional amendment in front of this assembly, the so called Instrument of Accession of Jammu & Kashmir to India will also be called into question. By doing this, India will lose the last so called reason of occupying Jammu & Kashmir. In case this constituent assembly adopts the constitutional amendment, then next task of India would be of initiating full merger of Kashmir into India which would again be possible by holding a plebiscite in Jammu and Kashmir to see if the locals do want to join India or not. IHK High Court that is favorable to India, even it is saying that Kashmir is not integral part of India. This is a historical decision being most recent precedent.



India's BJP government has also ambitions to change the demography of IHK and turn Muslim majority areas into Hindu majority areas just like in Jammu, due to massacre of Muslims by Indian troops, Muslims are now in minority apart from few districts. They have also designs of settling former Indian army soldiers in Kashmir. Six months back there was a move to give right of permanent residence to so called West Pakistani migrants in Kashmir. All these moves are intended for the cultural and human demographic changes of Kashmir.

Kashmir dispute is the oldest issue on UN agenda. Initially it was India who took Kashmir issue to the UN where many resolutions were passed and according to those resolutions, Jammu & Kashmir is disputed territory to be settled by free and fair plebiscite. Kashmir issue is not a question of separatism or a bilateral problem but it is basically struggle for democracy and right of self-determination which is a basic human right recognized internationally. People are being gunned down because they are struggling for their rights particularly the 'right to vote'. There is no justification for more than seven hundred thousand Indian military forces in IHK. It is most densely militarized zone in the world. Kashmir has not received international attention that it deserves as other issues like South Sudan and East Timor have attained. International support is necessary for its peaceful resolution which could be attained only come when individual people will pressurize their governments to provide this support. Kashmiri's lives are as precious as that of any other human being. World powers' policies continue to be driven by their strategic interests and they see India as potential trade partner. India has also been successful in propagating its propaganda through large number of overseas working as propaganda force for Indian government. Kashmiris' voices should be given the heed and amplified so that they can effectively present their case to international community.

27th October will remain black day until the plebiscite is held in Jammu & Kashmir because on this day Indian forces forcefully occupied Kashmir. Kashmiris were struggling for their freedom even before 1947 when it was ruled by Hindu Maharaja. In 1947 Kashmir issue came in limelight. Maharaja Hari Singh was reluctant for merger with either India or Pakistan. At that time India's only land route to Kashmir was through Pakistan. Maharaja came in standstill agreement with Pakistan. Following the withdrawal of British forces, fighting escalated and Indian army landed and occupied the Kashmir. At that time Lord Mountbatten and Indian PM Jawaharlal Nehru said the people wishes will address the future of accession of Kashmir.

Pakistan is presenting Kashmir issue on international level for its international recognition and has never stepped back from its legal and moral stance. Pakistan should also take the issue of demographic changes to the UNSC members and to other international forums. Due to denial of access to independent media by Indian authorities, Kashmiris' voices are not coming to international community. Pakistani media is giving attention to the Kashmir issue which can help bringing it on international media. Indian PM Narendra Modi's policies and Indian aggressive forces are bringing Kashmir issue to international focus. Kashmiris will not let down their freedom struggle whether article 370 is abrogated or not or whatever India does to scuffle their voices. Kashmiris are not going to give up the freedom struggle until right to self-determination is provided to them. Indian Home Minister P. Chidambaram also acknowledged in Rajya Sabha on 6th August 2010 that "Kashmir issue is a 'Unique Problem' which requires a 'Unique Solution' thus, it is important to win the hearts and minds of the people of Jammu and Kashmir".



Interactive Session

During the interactive session speakers responded to different questions raised by the participants. Gist of the same is as under:-

Indian intentions are that special status of Jammu & Kashmir should be eliminated to make it so called integral part. The special status given to permanent residents will be gone and that is what BJP wants. High court judgement doesn't make any difference internationally as the UNSC resolutions will not be affected. Similarly various conventions about human rights will still remain applicable as they are. The basic issue remains the right of self-determination.

Pakistani government is very active at the moment as it raised Kashmir issue in UN General Assembly and also PM raised it in visit to USA. We have to put our efforts in form of writings instead of only verbal discussions and need to do more research on different areas related to Kashmir dispute. Pakistan has to strengthen itself to promote its agenda and voice and gain international support. Pakistani and Kashmiri

diaspora have to be more active for lobbying to raise awareness about Kashmiris' right of self-determination. Young generation is becoming more and more active and raising awareness by using modern means. This is age of propaganda war and we need to deal with it upfront by engaging media.

OIC has contact group on Kashmir but we need much more efforts by Muslim community for resolution of Kashmir issue. There is no possibility of bilateral solution of Kashmir issue and therefore international fora must be used. Indian duplicity is further reinforced by conflicting stance on Junagarh and Kashmir as it occupied Junagarh forcefully despite of the fact that Nawab of Junagarh signed Instrument of Accession with Pakistan.

BJP was hoping overwhelming majority in Kashmir which remained pipedream and their ambitions have remained redundant. All Parties Hurriyat Conference is true representative of people of IHK. Azad Jammu & Kashmir government is not only representative of Azad Jammu & Kashmir but it also reflects the feelings of people of IHK.

