

# Kashmir, Kashmir, and Yet Again Kashmir

■ Dr. M.N. Buch

Prashant Bhushan in 2010 demanded that a referendum be held in Kashmir to determine whether it will remain a part of India, or not. Now he has come out with another statement to the effect that a referendum be held in the Valley so that people can decide whether the army should be used in aid of civil power. Is this activism, or is it treason?

When India became independent Paramountcy lapsed because the Paramount Power so decided. Lapse of Paramountcy amounted to Britain unilaterally granting independence to the Princely States, thus ignoring the interests of India and Pakistan. Because the Princely States were vassals of the British, sovereignty over them should have vested in the successor governments of India and Pakistan. It is fortunate for India that Sardar Patel was able to persuade the Princely States to enter into standstill agreements with India whereby the question of sovereignty remained at status quo. This was followed by Instruments of Accession by the Rulers to the Indian Union which clearly recognised that the Union was sovereign. A few States such as Hyderabad, Junagadh and Travancore resisted but were soon brought to heel by determined action. Apart from this every State either acceded to India or to Pakistan. Jammu & Kashmir hesitated but because Pakistan by proxy invaded that State the Maharaja, with the full approval of the National Conference President, Sheikh Abdullah, acceded to India and Indian troops were flown in and Kashmir was saved. Of course part of Kashmir, including Gilgit, was occupied by Pakistan, but the major part of the State remained in Indian hands. For some strange reason Jawaharlal Nehru said that the people of Kashmir, where Muslims formed a majority, would be offered a plebiscite in which they could exercise a choice between remaining in India or merging with Pakistan. Because the conditions for holding a plebiscite were never fulfilled by Pakistan the option of a plebiscite was foreclosed and Jammu & Kashmir is a full constituent State of the Indian Union. Unfortunately, some so called activists like Prashant Bhushan call our sovereignty in Kashmir into question.

Let us understand the process of re-establishment of sovereignty of India over the Princely States. Each State had a Ruler whom the British had recognised. The Ruler was the sole government for that State in whom all powers vested. In every case it is the Ruler who decided to sign the Instrument of Accession and in no State was there a referendum. In every case it is the Ruler who signed the Instrument of Accession. That happened in Jammu & Kashmir also. If there has to be a plebiscite in Jammu & Kashmir should the people of Bhavnagar be denied this right? If people of the acceding States are given this option this could lead to a vivisection of India. Anyone who even remotely suggests this is guilty of treason. There is nothing in the Constitution of India which permits the taking away of any territory from the Union and if a situation is created in Jammu & Kashmir whereby that State separates from India, that would be tantamount to taking away our territory and this would constitute an act of treason and make the guilty person a traitor. My allegation is that Prashant Bhushan is guilty of treason and, therefore, is a traitor.

I am not advocating penal action against him under section 124A IPC because that would only highlight what should in fact be killed through ignoring it, but I certainly object strongly to Prashant Bhushan's posturing.

The latest statement relates to the deployment of the Army in Jammu & Kashmir in aid of civil power. Prashant Bhushan is an eminent advocate practising in the Supreme Court. Surely he has read the Code of Criminal Procedure, especially Chapter X. For the maintenance of public order and tranquility any Executive Magistrate, including one in Jammu & Kashmir, can requisition the help of the armed forces for restoring public order. For this the Armed Forces Special Powers Act is not required because the Code of Criminal Procedure itself has this provision. An Executive Magistrate does not have to canvass public opinion in this behalf because it is he who is required to judge whether the police force would be capable of handling the situation or whether it needs assistance from the armed forces. For example, Bastar Division of Chhattisgarh is Naxal affected where there is a substantial breakdown of law and order. Shall we hold a referendum there to ascertain whether the people will allow central forces to be deployed to assist the State Government in fighting this violent insurgency? If a riot breaks out in Delhi tomorrow in which Muslims are targeted by a communal mob, will we have to hold a referendum to ascertain whether the people of Delhi will permit central forces and the armed forces to be deployed to restore order? Jammu & Kashmir is as much a part of India as Chhattisgarh, Delhi, Nagaland, or Karnataka. It is subject to the same Constitution, the Government of India is responsible there to ensure that the government is carried out according to the provisions of the Constitution and if the constitutional order fails, then the Government of India is empowered under the Constitution to takeover all or any of the functions of the State till constitutional order is restored.

Article 370 of the Constitution bears the title, "Temporary provisions with respect to the State of Jammu & Kashmir". This provision was included in the Constitution at the time of its framing and adoption, that is, on 26<sup>th</sup> January, 1950. Sixty-four years have passed since then. A temporary provision lapses after a reasonable period of time, sixty-four years cannot be considered unreasonable and to all intent and purpose Article 370 does not exist. I am not speaking the language of BJP in this behalf; I am speaking the language of the Constitution itself. If Jammu & Kashmir is an integral part of India, if the temporary provisions relating to the State have lapsed over time, where is the question of treating Kashmir differently from the rest of India? I want to add a word of caution, as Morarji Desai did to Zia Ul Haq. Jammu & Kashmir is the only Muslim majority State in India. If on this account it separates itself from India it would be a signal that Muslims cannot co-exist with Hindus. Would there be any justification for a secular State in India thereafter? Prashant Bhushan is not only questioning our sovereignty in Jammu & Kashmir, he is advocating something which could destroy the secular character of our nation. Can there be a bigger act of treason than this? And, so help us God, this is the man who is the chief mentor of the Aam Admi Party.

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