

The Kashmir Compromise

■ Dr. M.N. Buch

Jammu & Kashmir in many ways is sui generis amongst our States. It is the only Muslim majority State in India and as Morarji Desai told Zia Ul Haq when the latter promised eternal peace between India and Pakistan if we gave them Kashmir, “We can give you Kashmir today, but will you accept fourteen crore Muslims with it?” When Zia expressed astonishment over this comment Morarji told him that India opted for a secular State in 1947 and for our secular polity and society to remain intact it was essential that Jammu & Kashmir remains a part of India. If the State breaks away it would prove that Muslims cannot live with Hindus and, therefore, there would be no justification for India to remain a secular State. Zia immediately caught the point and stated that so long as Morarji was Prime Minister the word ‘Kashmir’ would not come from his mouth. Zia kept his word.

The importance of Jammu & Kashmir goes well beyond the fact that under Article 1 of the Constitution it is a part of the Union of States that is India. Kashmir is the result of our secular culture and the justification for our secular culture. It is not only the territory of the State which has to form a part of India, It is the hearts and minds of the people of the State, whether Hindu, Muslim, Buddhist, Sikh or Christian, which have to be Indian, with a real feeling of integration of the people of the State into the vastness of India. At the same time there is no gainsaying the fact that there is a strong separatist element of Kashmiri society which would rather have Kashmir as a part of Pakistan than a constituent of India. The Hurriyat Conference is at the core of the separatist group, though there is also a large militant element inducted by Pakistan, sponsored, training and armed by it and directed by the Pakistani authorities to foment trouble and violence in the State.

The new government in Delhi organised elections in Jammu & Kashmir in which there was a heavy turnout and in which people voted without fear. The Election Commission made elaborate arrangements and the security forces provided a security cover which kept the militants and other violent elements at bay. The people of the State, reeling as they were under the terrifying floods which hit the State, decided that they needed firm government, but one which was accountable to the people of the State rather than to a distant Government of India. That is what happens in every State election in India. The Peoples’ Democratic Party (PDP) led by Mufti Mohammed Saeed garnered the largest number of seats, 28 and BJP emerged as the second largest party with 25 seats. In the 83 seats State Assembly 44 seats form a majority and the only way in which this could be done was if PDP and BJP, the second largest party, formed a coalition or otherwise came to an understanding on government formation. The National Conference captured 15 seats and the Congress eight. The main strength of PDP is in the Kashmir Valley and of BJP is in the Jammu region. The National Conference and the Congress have their main strength in Ladakh, parts of the Valley, with some presence in Jammu. If PDP alone had formed the government Jammu would remain totally unrepresented which is why, in order to maintain a balance, it was necessary for the PDP and BJP to come together. There were many hurdles to this, including the question of Article 370 of the Constitution, the attitude towards the Hurriyat and other separatists and the holding

of talks with Pakistan. The stand of PDP and BJP respectively was diametrically opposite and, therefore, the hammering out of an agreement which would enable a coalition to be formed appeared to be impossible.

Ultimately an agreement was hammered out between PDP and BJP whereby a coalition was formed. Mufti Mohammed Saeed was to be the Chief Minister and as per the agreement a common programme was evolved. In this BJP decided to shelve, for the present, reference to Article 370 of the Constitution for change of Jammu & Kashmir's special status, PDP was not to forcefully canvass for a semi-independence type of autonomy and both parties were to periodically review the law and order position with a view to denotifying areas as disturbed so that the use of the Armed Forces Special Powers Act could be minimised. On 1st March 2015 the new government was sworn in and the Chief Minister thanked the separatists and Pakistan for ALLOWING (capitals mine) the election to take place. Did he imply that India is so weak as to be dependent on Pakistan's mercy to hold an election in one of the States of the Union? He also called for talks with the Hurriyat and with Pakistan. This has caused a public uproar.

Is Mufti Saheb disloyal to India? It would appear so, but one must also realise that however ill-timed and misplaced his statements, he was addressing a constituency that has voted him to power. Kashmir is a troubled State and whereas it is immutable and irreversible that Jammu & Kashmir is and for ever will be a part of India, there is a substantial portion of it under foreign occupation by a power which seeks to swallow the whole State. The Mufti, while allying with BJP, has to adopt a public posture of not surrendering to BJP. If this is only posturing while firmly governing Jammu & Kashmir and moving it closer to total integration, well and good. If, however, Mufti Saheb in any way encourages separatism, then the Centre will have to and must intervene. For the present let us wait and watch how a party with a mainly Muslim following works together with one having largely Hindu support, for the greater good of Jammu & Kashmir and of India.

A controversy has arisen about the release of Masarat Alam who has been under detention since 2010. He is a separatist who has led major agitations, resulting in police action to contain them. The Chief Minister has been accused of favouring separatists because he has asked the police to review the cases of all detainees. Unfortunately the media has blown this episode out of all proportions. Masarat Alam has not been convicted for a substantive offence and his detention was by order of the District Magistrate under the Public Safety Act. Article 19 (2) and (3) as also Article 22 allow reasonable restrictions to be imposed on the exercise of fundamental rights and permit preventive detention for a limited period. However, unlimited detention without trial and conviction is not permitted. Masarat Alam could not have been kept under preventive detention any longer. If he does anything wrong in the future he can be rearrested. The release of Masarat Alam must be looked at in this perspective.

What BJP has to worry about is whether its compromise on some of its key concerns about Jammu & Kashmir will be deemed by BJP supporters in other States as abandonment of basic principles for a share in power. Will BJP be able to convince its workers that a popular government in Jammu & Kashmir with BJP as partner of a party trying for a separate identity for the State is our best bet to hold the State together? In a way this partnership of two parties who are ideologically so different is itself an interesting experiment. DMK in Tamil Nadu did not cause the State to secede from India, nor did the

Akalis create Khalistan. The long Left Front rule in West Bengal did not impose a dictatorship of the proletariat. Provided that PDP and BJP maintain their mental equilibrium and do not blow individual statements or actions out of proportion, the partnership can work. If the government can last its full term it would indicate the maturity and deep rootedness of our democracy. That is the strength and beauty of the Indian Constitution, which allows totally contrary views to coexist in mutual harmony.