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Ambivalence Constitutional Developments during 2019 in India: Impacts and Implications on its Muslim Community

Abstract

Indian society has divided in the standpoint of contentious constitutional developments that have made in the second consecutive tenure of BJP in the history of India. Stiff ideology of Modi's government may pave the way to replace the state secularism with Hinduism. For improvising theocratic values in the state affairs, drastic steps have been taken by the current government of BJP & State Institutions. These constitutional updates are making intentionally to marginalize the second largest Muslim community of India. Research work mainly focuses on the issues of CAB-NRC, abolish of special status of Kashmir and Ayodhya verdict. Paper is explaining, how the Muslim community is directly affecting from these amendments and what would be the long term impacts & implications on Indian society while how the Muslim community is responding on these constitutional changes. On the other hand, it is deeply examining the multi ethno- religious society of India could digest the bitter dose of supremacist tenets of BJP government.

Key words: Hindutava Ideology, Contentious Laws, Hindustani Muslims, Marginalize Community, Siege Secularism.

1. Introduction

Constitutional developments make for eradicate the complications and drawbacks, which have begotten by varying trends including internal & external circumstances of the state. Legal developments are made for the welfare of citizens of any State and Society by the Parliament. Purpose of the developments if would be hand down or target a specific community in multi ethno-religious society results would be fusses and frustrations in the state. India's Bharatiya Janata

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Party (BJP) had made exultant victory with parallel support of a stiff Hindu ideological group Rashtriya Swayamsevak Sangh (RSS) in India's Lok Saba elections which were held from April to May in 2019. BJP has taken big steps for improvise hindutava ideology in secular state under the Prime Ministership of Narendra Modi which prerogative manifesto was openly announced by the BJP leadership in public processions during election's campaign.

BJP government on early August 2019 started to work on its manifesto; it revoked Article 370 and abolished the special status of Jammu & Kashmir and it split into two peripheral union territories and ten thousand of additional Indian troops were deployed (Whitehead, 2019). Article 35A in the constitution of India which gave special rights to the people of the Jammu & Kashmir had been scrapped. BJP leadership was considering after Supreme Court verdict in November 2019 on Ayodhya dispute, they made everything that their founders dreamed. BJP and RSS had leaded mob that was involved to demolish the Babri Mosque in Uttar Pradesh on 6th December 1992 because they claimed it was the birth place of god Ram (Petersen, 2019).

CAB bills was regarding to the illegal migrants from Bangladesh, Pakistan, Myanmar, Afghanistan and rest of neighboring countries who had illegal entered in India. NRC bill also related to four million Bengali Muslims who have settled in Assam and west Bengal since 1966 or even later would provide their forefather's Indian citizenship proof in the perspective of 1955 citizenship act or must be name in final migrant list which was prepared by home department otherwise they would be considered illegal in a year 2020 and they would deport or sent to detention centre (Jeffrey, 2019).

The purpose of the research is to highlight the specific constitutional developments during 2019 under the Prime Ministership of Modi which are mainly concern by Muslim community of India. It elaborates the different impacts and implications on Muslim community and examines how the government of India is trying to implicate these contentious laws and bills on Muslim community under the secular state of affairs. This Research also focuses how BJP's government is letting down the constitutional norms & values of secular state and society of India by implementing its supremacist ideology and extremist Hindu dogma under the umbrella of RSS. For this purpose of research qualitative technique is applied with using secondary source of data. Research has furnished through explanatory research design which conclusively explains the aspects and modus operandi that present government are using to demoralize the moral of Muslim community of India.

2. Historical Backgrounds

Policies and developments in BJP government are doubtful for secular society and especially for the Muslim Community due to its stiff Hindu ideology. During 2019, two major developments have made that particularly hit the Muslim community those numbers are equal to Brazilian population. In the history of India not only Muslim community but other minorities like Sikh, Buddhists and even Dalit Hindu have severely persecuted by the antagonistic Hindu groups. Since 2014, Narinder Modi is legitimizing India for Hindu belligerent groups and these

groups' atrocities are rising consistently to replace secular state into spiritual state (Griswold, 2019)

2.1 Origin of Article 35A-370 and Status of Jammu & Kashmir

According to Indian Constitution Article 35A covers the jurisdictions of state legislature of Jammu & Kashmir which defined the permanent residents of the state and it also covers the privileges and rights to the native Kashmiries which added by the presidential order in 1954. According to Article 370, Jammu & Kashmir covers these privileges which are relating to votes, contest elections, Jobs, Scholarships, property of Land strict to the Indian native Kashmiris rest of Indian citizens of other states have not entitled to keep these benefits (Bhadoriya, 2016).

Before the Partition, Jammu & Kashmir was a princely state under the British Raj that had own state subjects and it was not under the direct jurisdiction of the British colonial subjects. On the accession of Jammu & Kashmir with India on 26th October 1947, The Maharaja of Kashmir handed over defense, communication and foreign affairs to the government of India and later these matters became ceded subjects to the state of India. Article 370 was connected constitutional order 1950 which was further formalizing the discussion and way to making relationship between Centre and State. Delhi Agreement was signed reciprocally on 1952 in which government of India and state was agreed on citizenship of India (Raghavan, 2017).

The constitution of J&K was adopted on 17th November 1956 by the state assembly in which permanent resident of state would be the state subject and definition of permanent citizen is a person who has been residing in J&K since ten year including he or she acquires legally immovable property in State of J&K while State legislative assembly has right to alter or update the citizenship laws by pass an amendment bill with two third majority by state assembly” (Roy A. , 2019). President Ram Nath released presidential order and later passed by both houses of state assembly of India on 5th August 2019, in which article 35A and 370 were revoked including provisions of Indian's constitution would be apply same on J&K as other parts of the India without any Privileges. Furthermore, any special status or constitution would not stand any more for state of J&K, while J&K would split into two parts Kashmir and Ladakh.

2.2 Ayodhya Dispute in Historical Perspectives

Ayodhya dispute has been politically, socially and religiously hot and burning issue since long time ago. Hindu and Muslim both are claiming on this plot that is located in Ayodhya city in Uttar Pradesh. Hindus have been averring since five centuries, it was the place of Ram Janambumi temple that was destroyed when Mogul Babur was ruled on subcontinent and he constructed Babri Mosque with the replacement of Ram Maunder.

BJP was formed in 1980 from the remaining of Jana Sangh and it made campaign for its political face. In 1986, a district judge ruled, the gate of this contentious site would be opening for both Hindus & Muslims for their worship. L.K Advani BJP top leader went on Rath Yatra to Ayodhya in September 1990 for support of Rama temple movement. He stated during yatra “If Muslims entitled to the Mecca,

Christens entitled to Vatican then why Hindu can't entitled to Ayodhya in religious atmosphere" (Bacchetta, 2002).

Vishnu Hindu Parshad leader of BJP organized a rally in 6th December 1992 in which o hundred and fifty thousand Kar Savak reached at contentious site where leadership of BJP made controversial speeches. Mob went aggressive and attacked on Mosque and Mosque bought to the ground within few hours, though numbers of police officer were deployed for security of this site. In these communal riots more than two thousand Indian killed in different cities (Griswold, 2019). A Liberahan commission was setup and Commission's report presented to government in which many leaders of BJP like LK Advani, Vajpayee, Monohar Joshi, Kalyan singh UP chief minister and many others were declared culprits also revealed these leaders made offensive statements and speeches during really.

First suit was filed in 1950 in Allahabad high court by the Gopal Singh Visharad and he requested to honorable court for offer Pooja at Baburi Mosque. Later on, another law suit was filed which was similar to last one by the Parhaman Das Ayodhya that was later withdrawn. Third law suit was filed by Hindu Religious Institution Nirmohi Akhara in 1959, requested to court for taking control over disputed land. Finial law suit was filed by the Indian Sunni Waqf board for deceleration and possession of this property. Allahabad high court started haring of Ayodhya dispute on 2002 and it completed this case in 2010. On September 2010, three member's bench gave decision in which part of land divided into three parts. Ramlala idol site would give to Ramlala Virajman while Nirmohi Akhara would keep Sita Rasaoi and Ram Chabutra on this site finally rest of remaining site would be hand over to Sunni wakf. Three contentious parties appeared in front of the SC on controversial decision of high court. SC of India made finial hearing on august 2019 while finial decision was made on 9th November 2019.

2.3 Different Developments in Citizenship Law in Indian History

Citizenship Act was given in 1955 in the history of Indian legislation while different amendments were made in different times as in 1986, 1992, 2003, 2005, 2015 and finally recent update was made in December 2019. Recent Amendment which was done on the edge of 2019 by the government which was directly religion base prosecution towards the specific community, while it bestowed with privilege of other minorities from Bangladesh, Pakistan, Afghanistan excluding Muslims.

The update of registration in Assam according to Assam accord and Supreme Court ruling was made according to the 2003 amendment in citizenship Act; it was process of national registration of citizens which was done by home department officials with the help of state departments (whitehead, 2019). This NRC was made publically in August 2019 in which nearly two million residents were not in government citizenship list or may their status in danger position and it might be possible they would drop from citizenship status due to their illiteracy including influence on government by majority Hindu community of Assam.

3. Contentious Constitutional Developments Impacts and Implications on India
Different developments which are made from August to December 2019 are directly affecting Muslim community in India. Although these developments relate

to the suspension of Kashmir special status, NRC-CAA bill and Supreme Court verdict on Ayodhya dispute it seems that India secular constitution is being tried to replace with spiritual constitution by the government of BJP.

3.1 Position of Jammu & Kashmir after Updating Article 370- 35A

Reorganization act and annulled special status of J&K immediately enforced by the government of India which made unrest in Jammu and Kashmir valley. After Abolished the Article 35A with the presidential order and article 370 by the constituent assembly, New Delhi had kept more control on Administrative, law & order and legislative matters of J&K while privilege status of J&K was replaced into ordinary state as other states in India by the central government.

From 1954 to 1994 total forty seven presidential orders were issued with the concurrence of the government and without any constituent assembly while these provisional orders in Indian constitution were applicable on J&K (Mahapatra, 2018). The presidential order was issued by using 3rd clause in Article 370. This clause allows to President of India that president declare Article 370 inoperative for modifications and exceptions by the recommendation of (non-existent) state constituent assembly if it do so. For cope with the legal challenges on no exist of state assembly, President worn first clause of Article 370, which gave authority to the president to update and modify the provision in the constitution of India and it related including subject to J&K, while interpretation of the constitution a new clause was added in Article 367.

A resolution was moved by the Amit Shah Home Minister of India in Upper House of Indian to give necessary recommendation to the President for declare article 370 inoperative, later revoked of Article 370 and bill for reorganization of state was debated and consequently passed in Rajya Sabha on 5th August, 2019 with sixty-seven percent vote in favor and thirty-three percent against it. While on next day resolution was passed with eighty six percent in favor and fourteen percent it's against in Lok Saba (Jeffrey, 2019). Supreme Court on 28th August was ready to hear numerous petitions which were filed against the revocation of Article 370 and split of J& K in two union territories.

Reaction on the Abrogation of special status and reorganization of J&K seemed differently in Indian society. Most of opposition parties and community of Intellectuals in India were considering that decision was taken in haste and it would make ethnic cleansing of Kashmiries as well as distribution of Kashmir valley into two parts made on communal base for securing strong vote bank of BJP and Hindu nationalist parties. While leaders of Indian National Congress party had contradictory point of view on Kashmir Issue, Ashok Gehlot chief minister of Rajasthan was against the revocation of Article 370 as well as arrest of prominent kashmiries leaders as Mehboba Mufi, Umer Abdullah, yaseen Malik and many others while many cabinet ministers including congress member from Rajasthan welcomed this act. Ramachandra Guha, A G Norani, Arundhati Roy, Amartya Sen and many other historians and novelists were against the removal of Article 370 and they considered that detention and arrest of Kashmiri Leaders were classical colonial example (Hussain, 2019).

People of Kashmir valley protested on revocation of Article 370-35A and ongoing blockade on Kashmiris. On 9 August 2019, they threw stone on security forces after Jumma Prayer in Srinagar while security forces used ballot guns and tear gas for disperse the crowd in which many protesters injured. Hundreds of peoples of Kashmir killed during protests and search operations by the security forces of India. Voice president of Kashmir chamber of commerce said “More than half million people have lost their job and hundreds of farmers could not harvest apple crop since barricade and these factors have disturbed the domestic economy while majority people of Kashmir have reached beneath the poverty line” (Parvaiz, 2020). People of Kashmir who were living in foreign countries, they have had made daily protest against lock down and cut off communication in J&K valley in front of Indian consulates & embassies in different countries.

International reaction on Kashmir issue was also differently by different countries. Soon after the revoked of Article 370, a statement was given by the foreign office of Pakistan “As a party of international dispute, Pakistan will make possible steps to counter the Indian (UNSC) violation of resolutions and will put forward this matter on international forums including UN Assembly” (Syed, 2019). Pakistan had suspended bilateral trade through border with India since 9th August 2019. While China Foreign Ministry spokesman Hua Chuang stated that jurisdiction of Ladakh union into India would be challenge the territorial sovereignty of China which would create escalation between India and China. International Community such as France, Turkey, Russia, USA, UK and many other countries were stressing to deal this matter bilaterally by both India & Pakistan. President of US had already offered to make third party between Pakistan and India for resolving Kashmir Issue. Furthermore, EU, UN, OIC, and Human Right watch these organizations stressed on India government to lift curfew and unbanned communication on Kashmiris while these international organizations closely monitored the situation of Jammu & Kashmir.

3.2 Court Decision on Ayodhya Dispute & Muslim Community of India

Indian Supreme Court bench made unanimous judgment on Ayodhya dispute on 9th Nov 2019. This bench consisted of five members Judge which headed by Chief Justice Ranjan Gogoi. Salient points of verdict of Supreme Court bench’s as follow

- SC bench ordered to the Government of India that government would produce a trustee’s board within the three month from the date of verdict for built a Ram temple as well as the board would take care of Temple and disputed land and ownership would hand over to government of India for three months until board will start to function.
- Disputed 2.7 acres’ piece of land given to Ram Maunder while 5 acres of land would be allocated to Sunni waqf for built a Mosque in Ayodhya on suitable place.
- SC court nullified the decision of Allahabad high court which was given in 2010 on the division of piece of Property into three parts.

- SC ruled that Demolition of Babari Masjid in 1992 and profanation of Masjid in 1949 both were defiance of law.
- Court observed from archeological site survey of India which made many evidence of the architecture and Structure of the Mosque that Babari Mosque had dissimilar the Islamic architecture and design.
- The court also observed all the Janamsikya which stated that Guru Nanik had offered prayer in Ram Temple Ayodhya in the year of 1510, while a group of Nihang Sikh had also performed Puja in same place in the year of 1857 in Mosque.
- SC bench wrote in its verdict that Muslim parties including Sunni Waqf enabled to provide satisfactory proof of possession of contentious site while Hindu parties provided better evidences and they proved that they had worshipped inside the Mosque as they believing it is the Janmabhoomi of god Ram
- Bench ruled that Nirmohi Akhra suit could not be uphold as well as it would not Shebait Right while a suitable representation of Nirmohi Akhra would be given in trustee's board.
- Claim of Shia waqf board against Sunni waqf on the possession of Babari Mosque was rejected by the SC court. The SC discharged all eighteen petitions on 12th December 2019 which were seeking review of decision (Roy D. D., 2019).

Verdict on Ayodhya dispute was making mix reaction domestically in Indian society. Many political parties in India great welcomed this decision. Although BJP leadership was supporting this decision while it was surprising that Muslim Sunni waqaf had accepted this decision with further no review of petition including Imam of Jamia Masjid Delhi was also in appreciated of this decision. On the other hand, All India Majlis-e- Ithedul Muslimeen a prominent Party of South India was highly criticized this verdict and party president Assaddin Owasi was also unsatisfied from the court decision while he felt this decision was under the pressure of the BJP government (Parvaiz, 2020). Indian Congress party was opposing to this decision because Party leadership was feeling Ayodhya dispute would make disharmony and increasing anti sentimental approach against the Indian nationalism by the Muslim Community which would further outbreak angst in Indian society. All India Muslim Law Board and JUH both decided to file for review petition on 17th November 2019 against Ayodhya verdict and they were not satisfying alternative piece of land for Mosque (Petersen, 2019).

3.3 Impacts of CAB on the Muslims of Assam and Response of Indian Society

Assam is complex multi ethnic and second largest Muslim population state after Indian administrative Kashmir. Around thirty-two million Muslim populations are residing in this northeast State of India. State of Assam shares about 900 KM boundary with Bangladesh. A large number of Bangladeshi Hindu & Muslims enter in India every year from Bangladesh through Assam border due to better jobs opportunities. Nearly ten million illegal foreigners have been residing in Assam since 1971.

Timung Arleng a young activist in Assam stated “The Citizenship Amendment Bill is possibly to curtail the continuity of languages, cultures including economic well-being of the Indigenous Peoples of Assam and the northeast” further he said “If the government of India grants residency to foreign migrants irrespective of religion, race, or culture, it will cause effects not only on the political rights but also the cultural and land rights of the majority of local populations in Assam as the commandment motivates more migration from other countries” (Sunuwar, 2020).

The Indian Union Muslim league challenged CAB in Supreme Court on 12th December 2019 and Party petitioned in court to make the status of citizen bill null & void. The Petitioner made plea against this bill, it has violated the article 14 in Indian constitution which gives fundamental rights, equality and right of life while particular community and group cannot facilitate or privilege on ethnic or religious base by making any contentious amendment. On 22nd January 2020 the SC ordered to the government of BJP to submit written reply next four weeks on the defense of the sixty petitions file against citizen amendment bill while a constitutional bench was made in which three judges including chief justice S.A Bobde would deal the constitutional sensitivity of the bill (Sunuwar, 2020). Massive protests held in India against ambivalence update in citizen bill since it came into force. This bill was affecting from 10th January 2020 while the next hearing in SC would be in the end of February.

Protests against this bill are held in different cities of India as Delhi, Kolkata, Mumbai, Jaipur, Hyderabad and Bangalore while small protest rallies are in South India States. Capital city of Delhi people are protecting against the discrimination of the Muslim community. Protesters believe that this bill is targeting the cultural and religious harmony in the society of India and it violate the essence of secular Indian constitution while Protesters are demanding to overturn this contentious bill that may renew the declaration their identity as an Indian Muslim. This contentious bill was challenged legally by the Indian national congress and it adored that it would create communal tensions while many states of India where BJP was not ruling on state level as Madhya Pradesh, West Bengal, Punjab, Karla, Rajasthan and union territories were opposing to implement CAA-NRC law.

4. Conclusions

Religious sadism includes acts of aggression & suppression under secular constitution committed by followers of one majority religious group against followers and institutions of minority religious group which begets communal riots in multi ethno-religious society. Government of BJP since 2014 seems to legitimize the India for belligerent groups, these Hindu groups are targeting the religious minorities and their atrocities are rising consistently to replace secular state into spiritual state. Government of BJP has been making many controversial steps since its victory in the elections of 2019 and all these constitutional steps have been taken in haste.

Government of BJP is showing the positive face of these updates as annulment of the special status of Kashmir and improvises the NRC-CAA while it seems it is the part of Hindu Nationalism and these all constitutional measures have been taking to marginalize the Muslim community as well as these amendments will

change the Muslim majority into minority in selected parts & states of India. Implications of BJP government to abrogate the article 370-35A may achieve political favor from majority Hindu community in India while Central government may try to prove that Kashmir's Issue is an internal matter of India. Impacts on India may highly risk of civilian turbulence, communal riots as well as it is possible chance of internationalization of disputed territory of Jammu and Kashmir between India, China and Pakistan.

These laws will create many confusions & drawbacks. According to CAA bill, people of minorities from Pakistan, Bangladesh and Afghanistan if they are persecuted in their countries, they could be entered in India without documents, while NRC bill will allow to Indian authorities to deport or detain the Muslim migrants from Bangladesh who have been living in Assam since decades. It is presenting the double standard of BJP government as well as government of BJP is violating the rules of international human rights and it is trying to manipulate core values of Indian secular constitution. It is difficult for the Indian secular class to digest these bitter constitutional capsules that may possible to beget communal tensions and uncertainty in State & society. These amendments may misbalance the relations of India towards neighboring countries such as Bangladesh, Pakistan and China in near future.

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