

ABROGATION OF ARTICLE 370: A FAIR ASSESSMENT AND THE WAY FORWARD

**A dissertation submitted to Indian Institute of Public
Administration(IIPA) for Master's Diploma in Public
Administration(MDPA) in Partial Fulfillment of the Requirement
for the Advanced Professional Programme in Public
Administration(APPPA)**

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**45th ADVANCED PROFESSIONAL PROGRAMME IN PUBLIC
ADMINISTRATION**

(2019-20)

INDIAN INSTITUTE OF PUBLIC ADMINISTRATION

NEW DELHI

CERTIFICATE

I have the pleasure to certify that Sh Arvind Kumar Tripathi has pursued his research work and prepared the present dissertation titled “**Abrogation of Article 370: A Fair Assessment and The Way Forward**” under my Guidance and Supervision. The dissertation is the result of his own research and to the best of my Knowledge, no part of it has earlier comprised any other monograph, dissertation or book.

The dissertation is being submitted to the Indian Institute of Public Administration(IIPA) for the Master’s Diploma in Public Administration(MDPA), in partial fulfillment of the requirement for the Advanced Professional Programme in Public Administration(APPPA)

I recommend that the dissertation of Mr Arvind Kumar Tripathi is worthy of Consideration for the award of Master’s Diploma in Public Administration.

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ACKNOWLEDGEMENT

It is an honour for me to be nominated on the prestigious APPPA Course at a premier academic institute like Indian Institute of Public Administration, New Delhi. Not only does it enjoy a formidable reputation in the academic field but also has one of the most accomplished intellectuals on its faculty.

I express my sincere thanks and gratitude to my Supervisor, Dr Sapna Chadha without whose sincere and careful guidance, this study could not have been completed. Dr Sapna Chadha has been a constant source of inspiration and encouragement in the pursuit of this study. Her painstaking efforts left no stone unturned to make this dissertation work possible.

I am indebted to the entire staff of the IIPA library and of the APPPA Office staff who are always forthcoming to willingly provide the necessary assistance and cooperation at all times.

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Chapter 1

Introduction

Article 370 pertains to granting special provisions to the state of Jammu and Kashmir. These provisions were included in Part XXI of the constitution of India under Temporary and Transitional Provisions under unusual circumstances. Recently on 05/08/2019 President of India through an order abrogated these provisions. The present study is aimed to make an assessment of Article 370 starting from its inclusion and traversing to its abrogation. It will also include an analysis of inclusion of Jammu and Kashmir in the federal set up of India. Since this article has always been a topic of hot debate and political parties have also been using it for electoral benefit, the study is expected to provide a perspective to the section of the society dealing with such affairs or the people affected by recent developments related with this article.

1.1 Overview

The state of Jammu and Kashmir has an area of 85861 sq km miles almost equal to England, Scotland and Wales put together) and has a population of 4410000. The state is located in the northernmost part of the Indian Subcontinent and is surrounded by snow-covered chain of high altitude mountains of Himalayas and Karakoram.

1.1.1 History

1. Rajtarangini authored by the celebrated historian Kalhan contains the chronicled old history of Jammu and Kashmir. The story of Kashmir has been related till 14th century when it was ruled by Hindu and Buddhists rulers.

2. In 1819, Maharaja Ranjit Singh of Punjab conquered Kashmir after four centuries of Muslim rule.
3. East India Company defeated the then Sikh Ruler of Punjab after Death of Maharaja Ranjit Singh. The Company imposed Rupees One Crore as the war indemnity imposed upon him and Kashmir was ceded in lieu of the indemnity
4. Kashmir was sold by the Company to Raja Gulab Singh the Dogra Governor of Jammu. Kashmir was continued to be ruled by Dogra Dynasty till 1949. Kashmir also continued to have almost same relation with the British Crown as the other native States of India till 15th August 1947 i.e. Independence of India.
5. After Independence the governance of India was handed over to two newly created Dominions, India and Pakistan. It was quite unfortunate that these new dominions were created on communal basis. It was left open on Indian states to accede to the any of newly created dominion states or to set up as sovereign and independent states.
6. By 15th August 1947 all excluding three states had acceded to India on three subjects of Defense, External Affairs and Communications. Three states which had not acceded to India by that time were Junagadh, Hyderabad and Kashmir.
7. Ruler of Kashmir offered to enter into a standstill agreement both with Pakistan and India. Standstill agreement was an agreement of no assault. The agreement was signed by Pakistan. India however announced that it can enter into standstill agreement only with the states which had signed the instrument of accession. Since Kashmir had not acceded to India no such agreement could be made.

8. On 22nd October 1947 Pakistan in utter disregard to its standstill agreement signed with Kashmir persuaded some tribesmen forming Azad Kashmir Forces upheld by Pakistan to invade Kashmir. Finally, Kashmir was invaded by some tribesmen assisted by Soldier and Officers of Pakistan Army. The state's forces miserably failed to resist the attack of the raiders and the composite army of raiders assisted by Pakistan Army. The raiders with an aim to capture entire state continued marching toward Srinagar defeating the state's army in battle after battle.
9. On 24th October, Maharaja found himself quite helpless and without any alternative. With an aim to save the throne and the identity of Kashmir the Maharaja approached Government of India to seek the help against the naked attacks and aggression by Tribesmen assisted and supported by Pakistan Army.
10. On 26th October, Maharaja after signing the instrument of accession requested Governor General of India to accept the accession of Kashmir into India. The request was accepted by the then Governor General Lord Mountbatten. However, it was said that the accession will attain finality after a reference to the people of Jammu and Kashmir.

Signing Instrument of Accession by the Rulers and Acceptance of the same by the Government of India was the settled principal for a state to become legal and integral part of India. Applying this principal Five hundred fifty and odd other states had already legally become the integral part of India. **Kashmir three months later though under compulsion chose the same well settled principle and became the legal and integral part of India.**

11. After the accession Indian Government sent Indian Forces to defend Kashmir, the raiders and their helpers and supporters including Soldiers and officers of Pakistani army had no alternative except to flee. The mountainous nature of the terrain prolonged the struggle and it continued for around fifteen months.
12. On 31st December 1947 the matter was taken up with Security Council by India. Security Council Appointed a Commission which successfully persuaded both India and Pakistan to agree for a cease fire effective from 1st January 1949.
13. India and Pakistan both also accepted the proposal of the commission contained in their resolutions of 13th August, 1948 and 5th January, 1949. According to these resolutions the future of Kashmir was to be decided by a free and impartial plebiscite under the United Nations auspices. The plebiscite was to be held when Pakistan and India had withdrawn their troops from the territory of the state. Pakistan was to withdraw its troops first but it has not withdrawn its troops up to this day. One third of the state is under illegal occupation of the so called Azad Kashmir Troops and that's why so no plebiscite could be held so far.
14. On 29/11/1950 India adopted its constitution namely the Constitution of India and it came into force on 26th Jan 1950. Article 1 of the constitution says that India, that is Bharat, shall be a union of states and the territory of India is composed of territories of states, the union territories and any acquired territories as listed in Schedule 1 per Article 1 (3). Schedule 1 or the First Schedule of the constitution contained four parts A, B, C and D; each containing the list of states and the territories of the respective state. There were eight states in the Part B of the First Schedule. The state of Jammu and Kashmir was placed at Sr. No. 2 in the list of eight states. The territory

of Jammu and Kashmir has been stated as the territory which immediately before the commencement of this Constitution was comprised in the Indian State of Jammu and Kashmir.

1.1.2 Inclusion of Article 370

1. All the states contained in Part B were governed by Article 238 of the Constitution. is there in the schedule. However, in view of exceptional, unusual and strange facts the state of Jammu and Kashmir was not governed by this article. The Drafters of the Constitution came up with a separate and special article for the state of Jammu and Kashmir.

This special article was article 370. It was included in Part XXI containing Temporary and Transitional Provisions. The Full text of the Article is as follows:

“

370. (1) Notwithstanding anything in this Constitution,—

(a) the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to—

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation.—For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

(c) the provisions of article 1 and of this article shall apply in relation to that State;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

“

A plain reading of the Article 370 makes it clear that the power of Parliament to make laws was curtailed or limited severely so far as the state of Jammu and Kashmir was concerned. As regards remaining states the parliament can make laws on all subjects subjected to the union and concurrent list.

2. As per Clause 1(b) (i) and (ii) of article 370 so far as Jammu and Kashmir is concerned the Parliament can make laws only on the matters in the union and concurrent lists which are in **consultation** with the Government of the State declared by President of India to correspond the matters specified in the instrument of accession and on other matters in the two lists which President may with **concurrence** of the state government, specify in his order.
3. As per Clause 1(c) and 1(d) of Article 370 stipulate that Article 1 of the constitution and provisions of this article (370) shall be applicable to state of Jammu and Kashmir. Remaining provisions of the Constitution to the state with exceptions and modifications specified by the President in his order and that all such orders of the President shall be issued either in consultation with or the concurrence of the government of the state.

However, The President can by public notification declare that this article (Article 30) ceases to be operative or shall be operative only with such exceptions and modifications from the specified date.

4. The Expression Government of state for the purpose of this article means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948. This explanation of the expression establishes that this article was only a temporary provision and it was not meant to be continued indefinitely
5. On 26/01/2019 President by an order notified that parliament could make laws for the state of Jammu and Kashmir only on 39 out of 97 entries in the Union list. Further any of matters contained in 47 entries of the concurrent list was not applicable to the state. This order severely curtailed the applicability of the Constitution of India to the state of Jammu and Kashmir. The order resulted to 235 articles of the constitution wholly inapplicable, 9 articles applicable in parts and 29 articles applicable with modifications. Inclusion of Article 370 created such a huge curtailment through long list of wholly or partially inapplicable provisions. Inclusion of this article is sufficient to establish that the state of Jammu and Kashmir had a special status in the constitution of Indian on 26/01/1950. The status of Jammu and Kashmir was entirely different from the remaining states.
6. Though the inclusion of the article was Temporary and Transitional its continuity had the linkage to the strange requirement stated by Governor General of India that people of the state would be asked to confirm the accession. However same has not

been possible so far because of illegal occupation of one third part of the state by so called Azad Kashmir forces held by Pakistan Army. The peaceful environment essential for a plebiscite could not be restored in the whole of the Kashmir. These were the strange facts and circumstances behind the inclusion of Article 370 and the President's order dated 26/01/1950.

1.1.3 Abrogation of Article 370

1. On 5th August 2019 The President by an order titled The Constitution (Application to Jammu and Kashmir) Order, 2019. Several provisions of the Article 309 were amended. The full text of the order is as follows.

"

In exercise of the powers conferred by clause (1) of article 370 of the Constitution, the President, with the concurrence of the Government of State of Jammu and Kashmir, is pleased to make the following Order:—

1. (1) This Order may be called the Constitution (Application to Jammu and Kashmir) Order, 2019.

(2) It shall come into force at once, and shall thereupon supersede the Constitution (Application to Jammu and Kashmir) Order, 1954 as amended from time to time.

2. All the provisions of the Constitution, as amended from time to time, shall apply in relation to the State of Jammu and Kashmir and the exceptions and modifications subject to which they shall so apply shall be as follows:—

To article 367, there shall be added the following clause, namely:—

“(4) For the purposes of this Constitution as it applies in relation to the State of Jammu and Kashmir—

(a) references to this Constitution or to the provisions thereof shall be construed as references to the Constitution or the provisions thereof as applied in relation to the said State;

(b) references to the person for the time being recognized by the President on the recommendation of the Legislative Assembly of the State as the Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office, shall be construed as references to the Governor of Jammu and Kashmir;

(c) references to the Government of the said State shall be construed as including references to the Governor of Jammu and Kashmir acting on the advice of his Council of Ministers; and

(d) in proviso to clause (3) of article 370 of this Constitution, the expression “Constituent Assembly of the State referred to in clause (2)” shall read “Legislative Assembly of the State”.

”

Withdrawal of the special status to the state of Jammu and Kashmir has been a long-pending demand of the BJP the ruling party. It was the part of its election promise. The move evoked massive protest from the Opposition which asked the Union government to roll back the presidential order.

1.1.4 Reorganization of state of Jammu and Kashmir:

On 05/08/2019 the Jammu and Kashmir Reorganisation Bill, 2019 was passed by the Parliament, creating way for the reorganization of the state of Jammu and Kashmir into two Union Territories of Jammu and Kashmir and Ladakh. The Bill was tabled by Union Home Minister Amit Shah after announcing that the special status granted to Jammu-Kashmir has been scrapped by modifying Article 370.

The essentially proposes to bifurcate the state into two Union Territories — Ladakh and Jammu-Kashmir. The Union Territory of Jammu and Kashmir will have a legislative assembly, whereas the Union Territory of Ladakh will not have a legislative assembly and will be administered by the Lieutenant Governor alone.

The Union Territory of Ladakh will include the districts Leh and Kargil which will, in effect, cease to be part of the existing state of Jammu and Kashmir. The remaining territories will remain with Jammu and Kashmir after the bifurcation.

Representation in the House of People: Out of the six Lok Sabha seats in the state of Jammu and Kashmir, five will remain with the Union Territory of Jammu and Kashmir and one will go to the Union Territory of Ladakh. The Election Commission may conduct Lok Sabha elections for both the Union Territories as per the allocation of seats specified in the Delimitation of Parliamentary Constituencies Order, 1976 as amended by this act.



1.1.5 Government Actions:

Government took a series of actions to avoid any possibility of unrest in the state.

These actions included

- 1) The cutting off of communication lines in the Kashmir Valley.
- 2) Suspending Mobile Phones and internet services in the Kashmir valley.
- 3) Ban of public gatherings. Section 144 was imposed in Srinagar.

- 4) Closing of schools.
- 5) Placing Prominent politicians in Kashmir under house arrest. Several political leaders were placed under house arrest, including Jammu and Kashmir's former chief minister Mehbooba Mufti and Sajjad Lone, chairman of People's Conference. Another former chief minister of Jammu and Kashmir, Omar Abdullah, the third-generation leader of the National Conference was also put under house arrest. A former legislator of Jamaat-e-Islami party, Syed Ali Geelani a veteran Kashmiri separatist and known for advocating the merger of Kashmir with Pakistan was also detained.

The exact figure of house arrest and detentions is not available. However, it included almost all the mainstream leaders who advocated the continuance of the Article 370.

- 6) Thousands of tourists were ordered to leave the valley, after the Indian government warned of a terror threat posed to pilgrim routes.
- 7) The main motive behind these actions was to maintain peace in the valley and keep the terror of separatists groups away and these actions are best described as measures for pre-empting the violence.
- 8) The Revocation was justified on the grounds that it will provide people of the state the full and unrestricted access to Government programmes such as reservation, right to education and right to information.

1.2 Literature Review:

1. To understand and have a deep idea about various events of the History of the Kashmir various Literatures have been consulted. Ganguly S. and Bajpai K Asian

Survey, Vol. 34 No. 5(May,1994),pp-401-416 describes that The Kashmir crisis has serious implications for India. At the domestic level, it has been and will continue to be consequential for secularism, democracy, federalism, and nationalism-the four pillars of India's political structure. Kashmir is also consequential for India's international relation. The paper also describes that the deployment and continued use of force within Kashmir is pernicious to the Indian Democracy. Ill-suited to internal security duties, the largely unblemished image of the Indian Army is being tarnished as accusations of military brutality mount. Whatever the truth of these charges, they are bound to have a demoralizing effect on the professional military with all the attendant dangers for its view of politics and civilian institutions. Further, Kashmir will continue to affect India's international relations as the volatile situation in the Kashmir Valley and Pakistan's support of the insurgents raises the possibility of inadvertent or even advertent war. In brief the importance of the issue and the implications of the pendency of the issue have been studied in depth. One of the possible options to deal with the issues of Kashmir, reorganization of the state has been suggested by this Paper.

2. As per Tawheeda N, Nazir S and Wani S H IJCRT Vol.6 Issue 2 April 2018, the Article 370 is changeless and can't be annulled according to before judgment of Supreme Court of India. India and Pakistan are guaranteeing over for the state of Jammu and Kashmir. This Article will remain insofar as joined country will constrain India and Pakistan to lead plebiscite in entire Kashmir not by tuning in to India or Pakistan but rather the voices of Kashmiri individuals.

The paper says that the control and directions which has been given or characterized in Article 370 must be executed legitimately and entirely in province of J&K. J&K is the most

burning issue which should be comprehended however is pending since more than Sixty years of freedom because of a few errors committed by the legislators. This is the opportune time to take legitimate choices with respect to the status of Jammu and Kashmir, if appropriate advances are not taken now then it is conceivable that issue will fire up more in coming future and will keep Jammu and Kashmir from improvement even the entire world will be developed.

3. Hoskote A and Hoskote A V Internation Journal of Social Sciences Vol. 3 Issue 1 pp. 813-835 describes the politics of Article 370 in depth and states that the very Genesis of Article 370 spawns conditions for inequality in India. Second, how the Retention of Article 370 implies festering of contentious issues. Third, how the Ramifications of Article 370 forge inequality within the state of J&K. Fourth, how the Politics over Article 370 only seek limited leverage from it.

As per the paper Article 370 was envisaged as an instrument for a vulnerable populace, unsure of protection of their identity and culture. In the same instance it was meant to assure autonomy to create space in governance and empower people to decide their future.

As can be seen from the arguments above, this delegation of power has remained mired in the clutches of only a few. The very basis of the autonomy granted is challenged due to the lack of accountability in public life. The extreme case of discrimination cannot be justified in terms of any reasoning offered by Article 370 or those who advocate it. Instead of empowering the people to decide their own future and fate, the article risks this very underlying reason for its incorporation in the first place, and has been abused

Therefore, the argument that it is the erosion of Article 370 and not its creation that is helping separatism bloom stands without merit. It is these factors which make a strong case for revocation of Article 370 to be taken at the highest levels without further delay and

discord. This paper also raises relevant questions which could be best addressed through future study and analysis. One of the important issues demanding resolution is the rehabilitation and return of Kashmiri Pandits whose exodus came in the wake of militancy in J&K. Similarly, the status of the population of Pakistan occupied Kashmir and Gilgit-Baltistan comes under a question mark. In the context of the conflict with seemingly no end in sight, entire generations of people affected have passed away. Possibly, the generation of today has only institutional memory connecting it to events of the decades gone by.

The paper deals with the implications of continuance of Article 370 and explores perplexing questions which the society frequently comes across. There are many issues with respect to Kashmir which are yet to emerge with clarity. The Chapter on Fundamental rights of the Indian Constitution is not applicable to the State and also the jurisdiction of the Supreme Court of India extends only to a limited extent. At present, Article 370 can be repealed in accordance with the provision of Clause 3 of Article 370 which lays down that the President may, by public notification, declare that this Article shall cease to be operative but only on the recommendation of the Constituent Assembly of the State. In other words, Article 370 can be revoked only if a new Constituent Assembly of Jammu and Kashmir is convened and is willing to recommend its revocation

4. JAMWAL S S. "ARTICLE 370 - ITS GENESIS AND REACTIONS IN J&K STATE." Proceedings of the Indian History Congress, vol. 54, 1993, pp. 467–471 has covered the historical roots of the Article and the special problems which have been created by the special provisions to the state. The minorities are not safe guarded and the Kashmiri Pundits have faced severe violence and are yet to return the valley.

The paper states that the state of Jammu and Kashmir is better integrated than the similar one like Catalonia in Spain. The state can retrace its steps toward full integration with India.

Research Gap

The issue of Abrogation of Article 370 and its assessment being a new Development is not covered in the literature reviewed and accordingly this study is warranted to explore the perplexing questions associated with it.

1.3 Objectives:

Article 370 of the Indian Constitution has been a very controversial Issue and questions have been raised about its introduction as well as its continuance and finally on its abrogation also.

The primary objectives of the current research study are as detailed below:

- To trace the facts and circumstances which led to inclusion of Article 370 in constitution of India
- To understand the facts and circumstances that led to recent abrogation of Article 370.
- Assessment of the process of Abrogation of Article 370.
- Assessment of the socio-economic impact of Article 370 on the state of Jammu and Kashmir.
- To recommend a possible way forward.

1.4 Rationale:

The study is intended to explore perplexing questions dealing with fairness of the abrogation of the Article 370 from its introduction to its abrogation. The present study is aimed to trace the facts and circumstances under which the state of Jammu and Kashmir was given a special status by means of inclusion of Article 370. The study also aims to make an assessment of Article 370 starting from its inclusion and traversing to its abrogation. It will also include an analysis of accession of Jammu and Kashmir in the federal set up of India.

1.5 Research Questions:

The Research study tries to answer the following questions:

- RQ1. What are the facts and circumstances under which a special status using article 370 was granted to the state of Jammu and Kashmir.
- RQ2. What socio-economic impact the special status on the state of Jammu and Kashmir in comparison to rest of the states.
- RQ3 Why the article 370 despite being under temporary and transitional part of the Constitution continued for more than 69 years.
- RQ4. What is the legality of the process adopted in recent Abrogation of the Article 370.
- RQ5. What is way forward to achieve normalcy after the abrogation of article 370 in the state of Jammu and Kashmir?

1.6 Research Methodology:

1.6.1 Research Strategy – Qualitative Approach

- The present study will be mainly analytical and theoretical, based on data collected from secondary sources so as to address the research question raised. Sources will also include data of courts and consultation with legal.
- The Socio-economic statistical data collected from secondary sources will be analysed using statistical tools through content analysis, case studies etc.

1.6.2 Research Design – Descriptive in nature

- Review of secondary data and Literature to assess the possible impact of the provisions of Article 370.
- Secondary data available in public domain i.e. Rulings laid down by the Supreme Court, reports released by Government of India etc.
- Secondary data also available in periodicals, national & international journals, published articles in newspapers & magazines, internet sites, etc. The data collected as such will be interpreted and analysed to impart a perspective on logical flow of thought & arrive at specific facets of the problem.

1.7 Chapterization Scheme

Chapter 1 of the Study is an introduction of the study and it includes the brief about the Kashmir and the literature Review, gaps observed in the review and the Rational of the Study.

Chapter 2 of the Study contains an over view of the Accession of the Jammu and Kashmir to India. The overview starts from the introduction of Princely states in India before the Independence and Accession of princely states to India. The invasion by the

Pakistan and United Nation's Resolutions including its losing context has been covered in this chapter. The chapter also includes the president's rule in Kashmir including the Proclamation dated 19/12/2018 issued by President of India.

Chapter 3 of the Study details about the Abrogation and subsequent reorganization of the state of Jammu and Kashmir, The rulings laid down by Hon'ble supreme court with emphasis supplied on relevant parts has also been detailed. The progress and growth in the state as per the information available has also been included.

Chapter 4 of the Study contains the conclusion and the Way forward after Abrogation of the Article followed by Reorganization of the state.

Chapter 2

Jammu and Kashmir Accession to India: An Overview

2.1 Princely States

Before proceeding further on the history behind it is very important to understand princely states and their significance in pre-independence era of India and how these princely states shaped the past and present of the India,

A princely state, also called native state, feudatory state or Indian state (for those states on the subcontinent), was a vassal state under a local or indigenous or regional ruler in a subsidiary alliance with the British Raj. Though the history of the princely states of the subcontinent dates from at least the classical period of Indian history, the predominant usage of the term princely state specifically refers to a semi-sovereign principality on the Indian subcontinent during the British Raj that was not directly governed by the British, but rather by a local ruler, subject to a form of indirect rule on some matters. The imprecise doctrine of paramountcy allowed the government of British India to interfere in the internal affairs of princely states individually or collectively and issue edicts that applied to all of India when it deemed it necessary.

565 princely states in the Indian subcontinent were officially recognised at the time of the British withdrawal. These princely states constituted 23% of the population and 40% of the area of pre-independent India in 1947. The most important states had

their own British Political Residencies: Hyderabad, Mysore and Travancore in the South followed by Jammu and Kashmir, and Sikkim in the Himalayas, and Indore in Central India. Roughly a quarter of these states enjoyed the status of a salute state, the one whose ruler was entitled to get a set number of gun salutes on ceremonial occasions.

The princely states varied greatly in status, size, and wealth; the premier 21-gun salute states of Hyderabad, and Jammu and Kashmir were each over 200,000 km² (77,000 sq mi) in size. In 1941, Hyderabad had a population of over 16 million, while Jammu and Kashmir had a population of slightly over 4 million. At the other end of the scale, the non-salute principality of Lawa covered an area of 49 km² (19 sq mi), with a population of just below 3,000. Some two hundred of the lesser states had an area of less than 25 km² (10 sq mi).

The era of the princely states effectively came to an end with Indian independence in 1947. By 1950, almost all of the principalities had acceded to either India or Pakistan. The accession process was largely peaceful, except in the cases of

- 1) Jammu and Kashmir (whose ruler opted for independence but decided to accede to India following an invasion by Pakistan-based forces).
- 2) Hyderabad (whose ruler opted for independence in 1947, followed a year later by the police action and annexation of the state by India).
- 3) Junagarh (whose ruler acceded to Pakistan, but was annexed by India).
- 4) Kalat (whose ruler declared independence in 1947, followed in 1948 by the state's accession to Pakistan).[10][11][12]

2.1.1 Princely state of Jammu and Kashmir

The state of Jammu and Kashmir was one of the 565 princely states and like other princely states was not under the direct control of the British colonial administration. Princely states including Jammu and Kashmir enjoyed a great degree of autonomy to manage their own affairs excluding the area of defence and foreign relations.

Indian Independence Act, 1947 was aimed to govern the partition of India into two dominion states. The Act in itself did not incorporate the Princely States in either dominion, and section 7(1)(b) of the Act provided that “suzerainty of His Majesty” over these states had lapsed and its powers had been returned back to them. Princely states were theoretically granted the option to stay independent or accede to either dominion.

However, as described in one journal article, “without British forces available for their defence, independence was not a real option for the princely states, many of which were quite small. The states were encouraged by then-Viceroy Lord Mountbatten to accede to one dominion or the other” and did so based on their geographical position, religious identity, or other factors. The ruler of Kashmir, Maharaja Hari Singh, was wavering between acceding to either dominion and choosing to remain independent and neutral at the time, as noted in another article *The Fate of Kashmir International Law or Lawlessness?* by By Vikas Kapur and Vipin Narang;

“ Maharaj Hari Singh in Kashmir inherited a unique conundrum: he was a Hindu, but held dominion over a Muslim majority. In addition, his was the only princely

state bordering both India and the newly born Pakistan, giving rise to the possibility of accession to either nation. Further complicating the already tense birth of two nations was Maharaj Hari Singh's open discussion of an independent Kashmir, which only served to confuse and delay the question of the state's accession."

2.2 Invasion by Pakistan

On 20 October 1947, after two months of independence Kashmir was attacked by a large number of armed tribesmen. The tribesmen army was under full assistance of ranks of Pakistani Army. The invaders kept on moving forward and killing people of the state. The brutal killing and sufferings of the people forced Maharaja Singh make a decision to turn to India for military assistance. Maharaja Hari Singh, the ruler of Kashmir was forced to request Governor General, Lord Mountbatten, asking India to provide the military aid. Attached to his letter asking for the military aid was the instrument of accession to India, signed by Maharaja Hari Singh.

2.3 The Instrument of Accession

The text of the Instrument of Accession is as follows:

“ Whereas the Indian Independence Act 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an Independent Dominion known as India, and that the Government of India Act, 1935 shall, with such omission, additions, adaptations and modifications as the governor-general may by order specify, be applicable to the Dominion of India.

And whereas the Government of India Act, 1935, as so adapted by the governor-general, provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof.

Now, therefore, I Shriman Inder Mahander Rajrajeswar Maharajadhiraj Shri Hari Singhji, Jammu and Kashmir Naresh Tatha Tibbetadi Deshadhipathi, Ruler of Jammu and Kashmir State, in the exercise of my sovereignty in and over my said State do hereby execute this my Instrument of Accession and

- 1) I hereby declare that I accede to the Dominion of India with the intent that the governor-general of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of Jammu and Kashmir (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India, on the 15th day of August, 1947, (which Act as so in force is hereafter referred to as "the Act").
- 2) I hereby assume the obligation of ensuring that due effect is given to the provisions of the ACT within this state so far as they are applicable therein by virtue of this my Instrument of Accession.
- 3) I accept the matters specified in the schedule hereto as the matters with respect to which the Dominion Legislatures may make laws for this state.

- 4) I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor General and the ruler of this state whereby any functions in relation to the administration in this state of any law of the Dominion Legislature shall be exercised by the ruler of this state, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.
- 5) The terms of this my Instrument of accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947 unless such amendment is accepted by me by an Instrument supplementary to this Instrument.
- 6) Nothing in this Instrument shall empower the Dominion Legislature to make any law for this state authorizing the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of a Dominion law which applies in this state deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.
- 7) Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future constitution.
- 8) Nothing in this Instrument affects the continuance of my sovereignty in and over this state, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this state or the validity of any law at present in force in this state.

- 9) I hereby declare that I execute this Instrument on behalf of this state and that any reference in this Instrument to me or to the ruler of the state is to be construed as including to my heirs and successors.

Given under my hand this 26th day of OCTOBER nineteen hundred and forty seven.

Hari Singh

Maharajadhiraj of Jammu and Kashmir State.

I do hereby accept this Instrument of Accession. Dated this twenty seventh day of October, nineteen hundred and forty seven.

(Mountbatten of Burma, Governor General of India).

”

The Schedule mentioned in Para 3 of the Instrument of Accession is as under:

SCHEDULE OF INSTRUMENT OF ACCESSION THE MATTERS WITH
RESPECT TO WHICH THE DOMINION LEGISLATURE MAY MAKE LAWS
FOR THIS STATE

A. Defence

1. The naval, military and air forces of the Dominion and any other armed forces raised or maintained the Dominion; any armed forced; including forces raised or maintained

by an acceding State, which are attached to, or operating with, any of the armed forces of the Dominion.

2. Naval, military and air force works, administration of cantonment areas.
3. Arms, firearms, ammunition.
4. Explosives.

B. External Affairs

3. External affairs, the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's Dominions outside India.
4. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India or subjects of any acceding State; pilgrimages to places beyond India .
5. Naturalisation.

C. Communications

1. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication.
2. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and services terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety

and the responsibility of the administrations of such railways as carriers of goods and passengers.

3. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.
4. Port Quarantine.
5. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.
6. Aircraft and air navigation; the provision of aerodromes; regulation and organization of air traffic and of aerodromes.
7. Lighthouses, including lightships, beacons and other provisions for the safety of shipping and aircraft.
8. Carriage of passengers and goods by sea or by air.
9. Extension of the powers and jurisdiction of members of the police force belonging to any unit to railway area outside that unit.

D. Ancillary

1. Election to the Dominion Legislature, subject to the provisions of the Act and of any Order made there under.
2. Offences against laws with respect to any of the aforesaid matters.
3. Inquiries and statistics for the purposes of any of the aforesaid matters.
4. Jurisdiction and powers of all courts with respect to any of the aforesaid matters but, except with the consent of the Ruler of the acceding State, not so as to confer any

jurisdiction or power upon any courts other than courts ordinarily exercising jurisdiction in or in relation to that State.

Governor General of India, Lord Mountbatten accepted and signed the instrument on 27 October 1947. As per the instrument of Accession and the schedule, only defence, external affairs and communications would be handed over to the government of India, while control over all other subjects was to be retained by ruler, under the Jammu and Kashmir Constitution Act 1939. These conditions of the accession were peculiar to Kashmir's accession to India, unlike the 565 native states that had chosen to integrate fully with India.

After signing and executing the Accession to India, Indian forces took the charge and engaged the war against the invaders to protect Kashmir. Maharaja Hari Singh made a proclamation in March 1948. His council of ministers were to convene a National Assembly based on adult franchise, to work out a new constitution for Jammu and Kashmir. In June 1949, he conferred all his powers as ruler to Yuvraj Karan Singh Bahadur, to be exercised by Bahadur in the absence of Maharaja. The terms of Kashmir's accession were worked out in the period between October 1947 and 26 November 1949, when the Constituent Assembly was drafting the Constitution of India. Article 370 was necessitated to accommodate the then prevailing legal status of the Jammu and Kashmir state in the body of the Constitution of India.

Eventually, regular Pakistani troops became involved and a direct conflict between the two new countries arose until a UN-brokered ceasefire was signed on January 1, 1949. Later that same year a ceasefire line was agreed upon. The northern and

western part of the former princely state was administered by Pakistan as Azad Kashmir and the Northern Areas (now known as Gilgit-Baltistan), and the state of Jammu and Kashmir acceded to India.

In 1965, Pakistan and India went through a second war over the status of Jammu and Kashmir, but by the end of the conflict the status quo 1949 ceasefire line was maintained. Terms for a plebiscite could not be agreed to by either side and, by 1954, India dropped the option for a plebiscite.

2.4 India's Constituent Assembly

The Constituent Assembly of India was elected to write the Constitution of India. The members of the Constituent Assembly were elected on a limited franchise. The Cabinet Mission Plan, which set up the Constituent Assembly of India, discarded full adult franchise for elections to the Constituent Assembly and instead suggested indirect elections by members of the recently elected Provincial Legislative Assemblies. In addition to members elected by the Provincial Legislative Assembly (292), the Princely States and the Chief Commissioner's Provinces contributed 93 and 4 members of the Constituent Assembly taking the total membership to 389.

The Constituent Assembly met for the first time in New Delhi on 9 December, 1946 in the Constitution Hall which is now known as the Central Hall of Parliament House. The semi-circular rows facing the Presidential dais was fully occupied by the members of the constituent assembly. The front row was occupied by Pandit Jawaharlal Nehru, Maulana Abul Kalam Azad, Sardar Vallabhbhai Patel, Acharya J.B. Kripalani, Dr. Rajendra Prasad, Smt. Sarojini Naidu, Shri Hare-Krushna

Mahatab, Pandit Govind Ballabh Pant, Dr. B.R. Ambedkar, Shri Sarat Chandra Bose, Shri C. Rajagopalachari and Shri M. Asaf Ali. Two hundred and seven representatives, including nine women were present.

After partition, some Provinces and Princely States became part of Pakistan and the total number of seats came down to 299. Rajendra Prasad was elected as the Chairman of the Constituent Assembly.

2.5 Participation by States/Princely States

The Constituent Assembly which was constituted to formulate a constitution applicable for the whole of India also invited all the princely states to send representatives to participate in the framing of new constitution. The Constituent Assembly also encouraged them to set up constituent assemblies for their own states. Most of the states could not set up assemblies in time however, only a few states, in particular Saurashtra Union Travancore-Cochin and Mysore were able to do it. In order to assist the states, the States Department had also drafted a model constitution for the states, on 19 May 1949. However, the rulers and chief ministers of all the states met in the presence of States Department and agreed that separate constitutions for the states were not required and they accepted the Constitution of India as their own constitution. Certain states that had set up their own constituent assemblies also requested few amendments in the Constitution of India and the same was accepted. Thus the status of all the states (or unions of states) became equivalent to that of

regular Indian provinces. That established that the subjects available for legislation by the central and state governments was uniform across India.

2.6 Case of Jammu and Kashmir

In the case of Jammu and Kashmir, the representatives to the Constituent Assembly requested that only such provisions of the Indian Constitution that was in conformity to the original Instrument of Accession should be applied to the State and other matters should be left for the state's constituent assembly to decide after its formation. The demand was agreed by the Government of India shortly before the above meeting with the other states. The introduction of an Article dealing with the prevalent situation in the Constitution of India was felt necessary so that the specific terms contained in the Instrument of Accession are preserved. Further it became the basis of introduction of Article 370 in the Constitution of India.

Accordingly, the Article 370 was incorporated into the Indian Constitution, stipulating that the other articles of the Constitution that gave powers to the Central Government would be applied to Jammu and Kashmir only with the concurrence of the State's constituent assembly.

2.7 Last Session of Constituent Assembly of India

The Constituent Assembly met on 24th January 1950 The Constituent Assembly met in the Constitution Hall, New Delhi, at 11:00 under Chairmanship of the President (The Honourable Dr. Rajendra Prasad).

During this session the Returning Officer Shri H. V. R. Iengar was invited by the President to announce the result of the elections for President of India. The President of the Constituent Assembly said

“The next item is the announcement of the result of the elections. I call upon Shri H. V. R. Iengar, the Returning Officer and the Secretary of the Constituent Assembly to make the announcement.”

Shri H. V. R. Iengar said

“ Mr. President, I have to inform honourable Members that only one nomination paper has been received for the office of the President of India. The name of that candidate is Dr. Rajendra Prasad. (Loud and prolonged cheers.) His nomination has been proposed by Pandit Jawaharlal Nehru (Renewed Cheers) and seconded by Sardar Vallabhbhai Patel (Continued Cheers), Under sub-rule (1) of rule 8 of the Rules for the election of the President, I hereby declare Dr. Rajendra Prasad to be duly elected to the Office of President of India. (Prolonged Cheers).”

After taking few other matters the constituent assembly then adjourned, sine die.

2.8 Constituent Assembly of Jammu and Kashmir

Constituent Assembly of Jammu and Kashmir was a body of representatives elected in 1951 to formulate the constitution of Jammu and Kashmir.[1] The Constituent Assembly of the state on 15 February 1954 unanimously voted ratifying the state's accession to India. The Constituent Assembly on November 17, 1956 adopted and

ratified Mir Qasim resolution to dissolve itself. According to this resolution, the Constituent Assembly of Jammu and Kashmir ceased to exist on January 26 1957.^[2]

The interesting fact here is the constituent Assembly was not dissolved. It was adjourned sine die, while in case of Jammu and Kashmir the constituent Assembly of the state was dissolved and ceased to exist after January 26, 1957. The constituent Assembly did not deliberate on continuation or abrogation of Article 370.

2.9 Special Provisions for States in the Constitution of India

Our constitution provided special status to certain states. The main objectives behind granting the special provisions to some states are to meet the unique needs of the backward regions of these states, protect the economic and cultural interests, combat local challenges and protect the customary laws in these regions

The main idea here is to conserve and protect the distinct culture practices having a unique system of administration which includes distinct social and religious practices, land ownership issues, criminal justice system etc. and in order to preserve the tribal culture of the region these special provisions have been introduced in the Constitution.

The Part XXI of the Constitution consists of articles on Temporary, Transitional and Special Provision of states. In this Part, there are Articles 370, 371, 371A, 371B, 371C, 371D, 371E, 371F, 371G, 371H, 371I, and 371J – which provide special provisions to Jammu and Kashmir, Maharashtra, Gujarat, Andhra Pradesh, Karnataka,

Goa and six of the seven sister states of North East India Nagaland, Assam, Manipur, Sikkim, Mizoram, Arunachal Pradesh.

Articles 370 and 371 have been a part of the Constitution since its adoption on January 26, 1950. Articles 371(A-J) were incorporated through amendments under Article 368. Article 368 provides power of the Parliament to amend the Constitution and procedure therefor.

2.9.1 States having special status

Following is the list of states that have special provisions under Article 371(A-J):

1) Article 371 – Maharashtra and Gujarat

This article was introduced to ensure “equitable allocation of funds for developmental expenditure over the said areas”, and “equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment” under the state government.

Governors of the states of Maharashtra and Gujarat are given special responsibilities to set up development boards in regions such as Vidarbha, Marathwada, Kutchh etc.

2) Article 371A – Nagaland

After introduction of this Article, the Indian Parliament in certain matters cannot legislate unless the State Legislative Assembly passes a resolution to do so. These matters are listed as follows

- a) Matters of Naga religion or social practices
- b) Naga customary law and procedure
- c) Administration of civil and criminal justice involving decisions according to Naga customary law
- d) Ownership and transfer of land and its resources

These provisions were included in the Constitution after a 16-point agreement between the Centre and the Naga People's Convention in 1960, which led to the creation of Nagaland in 1963. It also gives the Governor a special responsibility of law and order situations in Nagaland, especially in case of internal disturbances occurring in the Naga Hills-Tuensang Area.

Also, there is a provision for a 35-member Regional Council for Tuensang district, which elects the Tuensang members in the Assembly. A member from the Tuensang district is Minister for Tuensang Affairs

3) Article 371B – Assam

According to the special provision under Article 371B, the president may provide for the Constitution and functions of a committee of Legislative Assembly of the state consisting of members elected from the tribal areas of the state.

4) Article 371C – Manipur

The special provision under Article 371C in the case of Manipur is similar to 371B for Assam. Here, too, the president may provide for the Constitution and functions of

a committee of Legislative Assembly of the state, but consisting of members elected from the hill areas of Manipur.

It also entrusts “special responsibility” to the Governor to ensure its proper functioning. The governor must submit an annual report to the president regarding the administration of hill areas as well.

5) Article 371D & E – Andhra Pradesh

Article 371D, which was added to the Constitution in 1974 and according to this Articles the President of India must ensure “equitable opportunities and facilities for the people” or ensure reservation in the matter of government jobs, education and other schemes by the state government.

The President also has power for direct recruitment to posts in any local cadre of the state government, and admissions in any university or educational institution in the state. He is also entrusted for setting up an administrative tribunal outside the jurisdiction of the High Court to deal with issues of appointment, allotment or promotion in state civil services.

Article 371E states that the Parliament may by law provide for the establishment of a University in Andhra Pradesh.

6) Article 371F – Sikkim

Article 371F was incorporated into the Constitution in 1975. It states that the Legislative Assembly shall consist of not less than 30 members. In order to protect

the rights and interests of the different sections of the population in the state of Sikkim, seats in the assembly are provided to people of these different sections.

The Governor of the state also has “special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the population”. It also states that any existing laws in Sikkim during its formation shall continue, and any adaptation or modification shall not be questioned in any court.

7) Article 371G – Mizoram

The Legislative Assembly of the state of Mizoram must consist of not less than 40 members. In addition, following the same provisions as Nagaland, an act of Parliament would not apply to Mizoram in matters relating to religious or social practices of Mizo, Mizo customary law and procedure, administration of civil or criminal justice involving decisions according to Mizo customary law, ownership and transfer of land and its resources.

8) Article 371H – Arunachal Pradesh

The Governor of Arunachal Pradesh shall have special responsibility with respect to law and order in the State of Arunachal Pradesh and in the discharge of his functions in relation thereto, the Governor shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken: Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under this clause required to act in the exercise of his individual

judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment: Provided further that if the President on receipt of a report from the Governor or otherwise is satisfied that it is no longer necessary for the Governor to have special responsibility with respect to law and order in the State of Arunachal Pradesh, he may by order direct that the Governor shall cease to have such responsibility with effect from such date as may be specified in the order;

The Legislative Assembly of the State of Arunachal Pradesh shall consist of not less than thirty members

9) Article 371I – Goa

The Legislative Assembly of the state of Goa must consist of not less than 30 members.

10) Article 371J

Article 371J grants special status to six backward districts of Hyderabad-Karnataka region. The special provision requires that a separate development board be established for these regions (similar to Maharashtra and Gujarat) and also ensures local reservation in education and government jobs.

2.10 Article 370 of the Constitution of India

In view of exceptional, unusual and strange facts, the Drafters of the Constitution came up with a separate and special article for the state of Jammu and Kashmir.

This special article was article 370. It was included in Part XXI containing Temporary and Transitional Provisions.

The Full text of the Article is as follows:

“

370. (1) Notwithstanding anything in this Constitution,—

(a) the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to—

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation.—For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

(c) the provisions of article 1 and of this article shall apply in relation to that State;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

“

The provisions of Article 370 were "temporary provision" in that its applicability was intended to last till the formulation and adoption of the constitution framed by the constituent assembly of the State. However, the State's constituent assembly dissolved itself on 25 January 1957 without recommending either abrogation or amendment of the Article 370. This gave rise to multiple interpretations about the applicability of Article 370 to the state of Jammu and Kashmir. A line of thought that the Article have become a permanent feature of the Indian constitution also came into light while the contrarian line of thought that the provisions of the Article are temporary and the sole purpose was to give special status to the state of Jammu and Kashmir also continued. The Supreme Court of India and the High Court of Jammu and Kashmir also confirmed the same through various rulings laid down in various Judgements. The latest was in April 2018.

2.11 Scenario after Article 370

Indian Parliament is the apex body which is empowered to frame rules for the governance of the nation. The plain reading of the Article 370 makes it clear that the right and authority of the Parliament to make rules for the state of Jammu and Kashmir was severely restricted by the provisions of the Article 370. The state was enjoying a special status and was far away from the status of other states. The article made the status of Jammu and Kashmir and exception to the uniform treatment given to Indian States. departure

2.12 The Kashmir Conflict

As we have seen the entire base of incorporating Article 370 lies in accession of Jammu and Kashmir to India after Independence. Most of the Princely states acceded to Dominion of India or Pakistan based on their geographic location and demographic distribution. Jammu and Kashmir having proximity with both the Dominions India and Pakistan had preferred to retain its full sovereignty and had signed a standstill agreement with Pakistan. Pakistan in turn disregarding the agreement assisted the tribal army which was ruthlessly killing the people and marching toward Srinagar the Capital of Jammu and Kashmir.

The Maharaja, to protect his subjects, requested military help from India and India put a precondition of accession to extend the military help. Subsequently the Accession of completed with limited sovereignty to Jammu and Kashmir. Despite the accession around half of the Kashmir was kept occupied by Pakistan now called PoK(Pakistan occupied Kashmir).

Thus the conflict of Kashmir arose almost instantaneously as Dominions of India and Pakistan came into existence after independence from British rule.

2.13 Pakistan's Problem of Kashmir

Pakistan has consistently called for the implementation of UN resolution to determine the status of Kashmir according to the will of the people. For Pakistan Kashmir is a Disputed Territory which on the basis of the Muslim Majority principle (Two Nation Theory) should not form part of the Hindu Majority Indian State.

2.14 India's Problem in Kashmir

India on its part out rightly rejects Pakistan's stand and considers the accession legal, indisputable and final. India's approach has been to address the problems in Kashmir and focus on the cross-border terrorism, unemployment, misgovernance, call for election boycotts by All Party Huriyat Committee; the fate of exiled Kashmiri Pandits and the alienation of the people towards New Delhi.

2.15 Pakistan's Kashmir Policy

There are two main components of Pakistan's Policy on Kashmir. The resolution of UN and the Cross Border Terrorism. The success of both the components have eroded over the years. The UN Resolution has become more redundant and the Cross-border Terrorism is becoming a bigger problem for Pakistan itself.

2.16 The resolutions of UN on Kashmir

2.16.1 UN Security Council Resolution (UNSCR) 38

In view of the Pakistani aggression India referred the case to the United Nations Security Council (UNSC) on January 1, 1948. The UNSC president under UN Security Council Resolution (UNSCR) 38 of January 17, 1948, called for direct talks between India and Pakistan.

2.16.2 UN Security Council Resolution (UNSCR) 39

The UNSC on January 20, 1948, passed Resolution 39 to investigate any 'dispute or situation' as a matter of 'urgency'. UNSC constituted the United Nations Commission on India and Pakistan (UNCIP) to proceed to the spot with 'dual functions'. One, to "investigate the facts pursuant to Article 34 of the UN Charter"

and two, “to exercise, without interrupting the work of the Security Council, any mediatory influence likely to smooth away difficulties.”

2.16.3 UN Security Council Resolution (UNSCR) 47

Subsequently, the Security Council vide its Resolution 47 of April 21, 1948, ‘strongly’ opined that “early restoration of peace and order in Jammu and Kashmir is essential and that India and Pakistan should do their utmost to bring about a cessation of all fighting”, [and] “noting with satisfaction that both India and Pakistan desire that the question of the accession of Jammu and Kashmir to India or Pakistan should be decided through the democratic method of free and impartial plebiscite.”

The UNSCR 47 recommended measures to end hostility and create ‘proper conditions’ for “a free and impartial plebiscite to decide whether the State of Jammu and Kashmir is to accede to India or Pakistan.” It called upon Pakistan to “secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purpose of fighting, and to prevent any intrusion into the State of such elements and any furnishing of material aid to those fighting in the State.”

The Resolution recommended to India that once the withdrawal by Pakistan has been affected, India in consultation with the UNCIP should draw its own plan for troop withdrawal from Jammu and Kashmir to the “minimum strength required for the support of the civil power in the maintenance of law and order.”

The Resolution also recommended certain directions about the necessary law and order conditions for concluding the plebiscite.

2.16.4 Resolution of United Nations Commission on India and Pakistan

The UNCIP passed a resolution on August 13, 1948. The resolution was in three parts.

Part I called for a 'ceasefire', which India implemented from January 1, 1949.

Part II made it incumbent upon Pakistani forces, both 'regular' and 'irregular' to withdraw from the occupied territory and urged India to reduce its troop strength in the area.

Part III, now the fulcrum of debate, talked about determining the status of J&K in accordance with the 'will of the people'

The A2 section of the Truce Agreement reaffirmed the UNSCR 47 and laid down that "The Government of Pakistan will use its best endeavour to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistan nationals who are not normal residents therein and have entered the state with the purpose of fighting."

India maintains that the resolutions were both time and context-specific and the implementation of the UNCIP resolutions was conditional. It was subjected to Pakistan's compliance with Part I and II. India's compliance was subject to the assurances given by the UNCIP to India that Pakistan would be excluded from all affairs of Jammu and Kashmir; 'Azad J&K Government' would not be recognized, sovereignty of the government of J&K over the entire territory occupied by Pakistan shall not be questioned, and Pakistani troops would be withdrawn completely.

2.17 Erosion of UN Resolutions

Due to non-compliance of UN resolutions by Pakistan and passing decades the ground realities including the demography of the Pakistan occupied Kashmir changed considerably and severely. Rampant cases of cease fire violation, cross border terrorism and deployment of Army in the region occupied by Pakistan was witnessed. In 1963, Pakistan also illegally ceded a part of occupied J&K to China.

In the name of suppression of the Shia revolts against Sunni-dominated administration in the Gilgit region the then Brigadier, General Pervez Musharraf, used Pathan tribesmen from NWFP and Afghanistan along with his troops to silence the Shias. This operation resulted in large scale Shias butchered and displaced from Gilgit. These operations were widely reported in the Herald, a monthly magazine of the daily Dawn in its April and May 1990 issues. It is also said that the Wahabi Pakhtuns who raided Gilgit under Musharraf's command were led by none other than Osama bin Laden

There have been large scale pushing of the Non-Kashmiri people from other regions. Large scale displacements under insurgency made permanent and large scale changes in the demographics of the region and having a plebiscite lost its significance. Continued killing of normal resident also became a regular feature.

With passing decade after decade it became more difficult to distinguish between the normal residents and those entered in the region for the purpose of fighting and insurgency. The outcome of the plebiscite is time and demography specific and once the demography of the region is manipulated the outcome, fairness and reliability of the entire process also gets manipulated and loses the context as well.

Pakistan has forced demographic changes through terrorism in the Kashmir valley as well, forcing around 1.25 lakh Kashmiri pundits to flee to Jammu and other parts of India.²⁵ The continued non-compliance of the UN resolutions by Pakistan has made the resolutions recommending a free and fair plebiscite completely non-implementable and redundant. It has lost its significance and context.

2.18 Shimla Agreement

Shimla Agreement was signed between India and Pakistan on July 2, 1972. The Agreement envisaged bilateralism as the basis for all Indo-Pakistan negotiations. Clause 1(i), (ii) and 4(ii) of the Agreement are significant.

Clause 1(i) provides, “The principles and purposes of the Charter of the United Nations shall govern the relations between the two countries”.

Clause 1(ii) mentions, “the two countries are resolved to settle their differences by peaceful

means through bilateral negotiations or by any other peaceful means mutually agreed upon between them. Pending the final settlement of any of the problems between the two countries, neither side shall unilaterally alter the situation and both shall prevent the organization, assistance or encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations.”

Clause 4(ii) says, “In Jammu and Kashmir, the Line of Control resulting from the ceasefire of December 17, 1971 shall be respected by both sides without prejudice to

the recognized position of either side. Neither side shall seek to alter it unilaterally, irrespective of mutual differences and legal interpretations...”

The agreement stipulates that countries are to “settle their differences by peaceful means through **bilateral negotiations**” and prohibited either country from “unilaterally altering the situation.” Moreover, the 1949 ceasefire line became the line of control – a de facto border between the areas controlled by the respective countries.

The Shimla Agreement putting more emphasis on bilateralism weakened the Locus Standi of Pakistan on Kashmir based on UN resolutions.

2.19 Rise of Insurgency and Terrorism

In the year 1989, a widespread and armed insurgency started in the state of Jammu and Kashmir. Some of the results of the state legislative assembly election held in 1987 were disputed and that gave rise to the creation of militant groups. These incidents laid the foundation of the Mujahadeen insurgency. This insurgency was largely started by Afghan Mujahadeen who entered the J&K after the end of the Soviet–Afghan War. The main conflict was between various Kashmiri separatist and the Government of India.

Some of the groups started supporting the idea of complete independence of Kashmir (Azad Kashmir), while others started supporting the idea of Kashmir's full control to Pakistan. The Bhartiya Janta Party an eminent political party has been demanding to repeal the special status accorded to the state under Article 370.

The continued nefarious actions of Pakistan and intrusion of terrorists into Jammu and Kashmir resulted in the social breakdown of J&K. These intruders have been Jihad to brainwash and convert the weak youth into terrorists. According to the data of United Nations Drug Control Programme (UNDCP), there are approximately 70,000 substance abusers present in the J&K, out of which 31 percent are women. The addiction data released by the Government Psychiatric Hospital, Srinagar, the youth falling in the age group of 17-35 constitute around 90 percent of the drug abusers.

Due to this rage between the groups and the armed forces of India the rise in violence takes place and situations like infamous massive stone-pelting towards the security forces, everyday protests violence etc. are on the rise.

2.20 Lahore Declaration

The Lahore Declaration signed between Atal Bihari Vajpayee and Nawaz Sharif on February 21, 1999 almost three decade after Shimla Agreement. The declaration reiterated bilateralism enshrined in the Simla Agreement. The Declaration says that India and Pakistan are "...reiterating the determination of both countries to implement the Simla Agreement in letter and spirit..."³² Similarly, the January 6, 2004, Indo-Pak joint statement also makes similar commitments.

2.21 Kargil Conflict

Over the years, continuous clashes and cease fire violations including infiltration have been witnessed. In May 1999, the Kargil war broke out when Pakistan-trained militants and regular soldiers from the Force Command Northern Areas (FCNA) and 10th Corps, Islamabad intruded 140 miles inside the Line of Control (LoC) and occupied several Indian peaks in J&K. The intrusion was effected by creating four independent groups from four infantry battalions and two companies of the Special Service Group (SSG), already located in FCNA. The operations were eventually supported by the Northern Infantry Battalion, Gilgit; Northern Infantry Battalion, Skardu; Northern Infantry Battalion, Minimarg; and Northern Infantry Battalion, Dansam. During the course of the war in Kargil, arms and ammunition with Pakistani markings, identity cards, uniforms and divisional and battalion patches among other articles, were recovered from the dead.

Besides, the Kargil War, Pakistan-backed hijacking of IC 814 in December 1999, attacks on the J&K Assembly on October 1, 2001, on the Indian Parliament on December 13, 2001, on the military cantonment in Kaluchak, in J&K on May 14, 2002 deteriorated bilateral relations further. In response to the attack on Parliament, India deployed troops on the border (Operation Parakram) to respond punitively. Eventually, war was averted but not before rupturing bilateral relations further.

2.22 India's Policy on Kashmir

While Pakistan considers the problem of Kashmir an unfinished partition dispute, India considers it an internal matter. Currently, the Indian government asserts that Jammu and Kashmir is an “integral part of India and is a matter strictly internal to

India” and any dispute with Pakistan should be resolved bilaterally. Pakistan, on the other hand, takes the position that India’s recent actions are a “violation of the U.N. Security Council resolutions on Kashmir and bilateral Pakistan-India agreements, such as the 1972 Shimla Agreement and the Lahore Declaration” and wishes to internationalize the dispute in a global forum.

India’s consistent effort has been to address the grievances and demands of the people of J&K within the constitutional framework and deal with the ‘problem in Kashmir’. India’s J&K policy can be said to have following broad components.

2.23 Combating the Cross Border Terrorism

India has sought to find solutions to the problems in J&K at the local level. It has adopted a range of measures to counter the impact of terrorism on the people with an emphasis on “planned and balanced regional development, building/strengthening physical and social infrastructure and improving the productive potential of the state”.

- Directly countering terrorism through security measures undertaken by Jammu & Kashmir Police and security forces;
- Accelerating economic development, improved provision of services and good governance to maintain satisfaction level among the people of J&K;
- Willingness to talk to the people of J&K, especially those who have adopted the path of violence; and
- Strengthening the political process through elections at all prescribed levels and encouraging open debate.

2.24 Challenges posed by Special Status:

Although the special provisions under Part XXI of the constitution aim to preserve the culture and specific need of the region, it poses dissatisfaction also. The rules framed by Parliament are not automatically extended to these states having special provisions. The various benefits granted to other parts of the country may not be available in these states having special provisions.

As a result of this non-uniformity the growth and progress of the region also gets affected adversely. As can be seen that most of the states having these special provisions have fallen behind in the progress and growth. There needs to be a flexibility or balance between the cultural practices and progress of the region. The growth and progress are key to governance and once the region is developed and progressed the requirement such special provisions can be minimized.

2.25 President's Rule in Jammu and Kashmir

Although the special provisions under Part XXI of the constitution aim to preserve the culture and specific need of the region, it poses certain strange problems as well. It is a well-established fact that the Article was included in the constitution to deal with the strange circumstances prevailing in the state at the time of its accession. Cross-border terrorism and cease fire violations are some of the factors which have always been a deterrent to the peace in the state. The people of Jammu and Kashmir don't get any benefit from the Rules and Acts framed by the Parliament unless the same is extended by the legislative Council of the State. The rules and Acts framed by Parliament are not automatically extended to these states having special

provisions. The various benefits granted to people belonging to the other parts of the country may not be available to the people in these states and because of the special status the people of the state as well as the people from rest of the nation also develop impression that the integration of the state is still pending and people of the state are yet to be included in the India. The sense of non-inclusiveness is exploited by the separatist stream of thoughts fuelled by the continued cross border influences. Such separatist actions involving insurgencies create frequent disruption to the peace and growth of the state. It also creates severe break down of law and order.

As a result, the government at state very frequently failed to protect the peace and life of the people and the state also came under the President's rule very frequently.

The Following Table provides the information about the president's rule imposed in the state.

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Sr No.	Start Date	End Date	Duration	Reason
1	26/03/1977	09/07/1977	105 days	Loss of Majority
2 <u>P</u>	06/03/1986	07/11/1986	246 days	Loss of majority
3	19/01/1990	09/10/1996	6 Yr, 264 days	Insurgency and break down of law and order.
4	18/10/2002	02/11/2002	15 days	Indecisive outcome of elections.
5	11/07/2008/	05/01/2009	178 days	Loss of majority
6	09/01/2015	01/03/2015	51 days	Failure of Government formation
7	8 January 2016	04/04/2016	87 days	Death of chief minister
8	19/06/2018	30/10/2019	1 Yr, 299 days	Resignation of the Chief Minister following loss of coalition partner.

ated 19/12/2018

The President of India on receipt of a report from the Governor of the State of Jammu and Kashmir and after considering the report and other information received by him was satisfied that a situation had arisen in which the Government of that State could not be carried on in accordance with the provisions of the Constitution of India, as applicable to that and of the Constitution of Jammu and Kashmir. Therefore, in exercise of the powers conferred by article 356 of the Constitution, and of all other powers enabling in that behalf, issued proclamation dated December 19, 2018 imposing Central Rule in Jammu and Kashmir.

The President himself assumed all the functions of the Government of the said State and all powers vested in or exercisable by the Governor of that State under the Constitution and the State Constitution. The Proclamation declared that the powers of the Legislature of the said State shall be exercisable by or under the authority of Parliament.

The proclamation also suspended the operation of the following provisions of the Constitution and of the State Constitution, namely:—

“So much of the first proviso to article 3 of the Constitution as relates to the reference by the President to the Legislature of the State and the second proviso to that article; so much of clause (2) of article 151 of the Constitution as relates to the laying before the Legislature of the State of the report submitted to the Governor by the Comptroller and Auditor-General of India; sections 35 to 41 (both inclusive), so much of section 43 as relates to the allocation among the Ministers of the business of the Government of the State, section 44, subsection (1) and clause (a) of sub-section

(2) of section 53, sections 54, 55, 56 and 57, clauses (b) and (c) of section 58 and the first proviso thereto, section 59, section 60, sub-section (2) of section 61 so far as it relates to clause (c) of, and the first proviso to section 58 and to section 60, sections 65, 66, 67, 71 and 72; sections 74, 75 and 76, sub-sections (3) and (4) of section 77, sections 85 to 88 (both inclusive) and so much of section 137 as relates to the laying of the report with a memorandum before the Legislature of the State, of the State Constitution”;

The proclamation declared that any reference in the Constitution and the State Constitution to the Governor shall, in relation to the said State, be construed as a reference to the President, and any reference in the Constitution and the State Constitution to the Legislature of the State or the Houses thereof shall, in so far as it relates to the functions and powers thereof, be construed, unless the context otherwise requires, as a reference to Parliament, and, in particular, the reference in section 91 of the State Constitution to the Governor and to the Legislature of the State or the Houses thereof, shall be construed as references to the President and to Parliament or to the Houses thereof respectively: Provided that nothing herein shall affect the provisions of sub-section (1) of section 26, sections 27 to 31 (both inclusive), section 122, section 143 and paragraph 1 to 8 (both inclusive) of the Second Schedule to the State Constitution or prevent the President from acting under sub-clause (1) of this clause to such extent as he thinks fit through the Governor of the said State;

By the virtue of the proclamation any reference in the Constitution or in the State Constitution to Acts or laws of, or made by, the Legislature of the State shall be

construed as including a reference to Acts or laws made, in exercise of the powers of the Legislature of the State, by Parliament, by virtue of this Proclamation, or by the President or other authority referred to in sub-clause (a) of clause (1) of article 357 of the Constitution and the Jammu and Kashmir General Clauses Act, 1977 (Act no. XX of 1977) and so much of the General Clauses Act, 1897 (10 of 1897) as applies to State laws, shall have effect in relation to any such Act or law as if it were an Act of the Legislature of the State..

In brief by issuing the proclamation and assuming to himself the functions of the State government and Assembly in exercise of the powers conferred under Article 356 of the Constitution, the President also suspended few portions of the Constitution.

One such suspended part was the proviso to Article 3 (this Article empowers Parliament to create or divide States and alter their boundaries). The proviso says the President must refer any proposal to alter a State's name or boundaries to the State legislature for its views.

It is an acknowledged fact that under the constitutional scheme, Parliament has overriding powers over the States in this matter. However, in respect of J&K, there is an additional proviso, one found only in the State's own Constitution.

This says J&K's legislature has to give its consent to any altering of its boundaries or size or name. Significantly, the Presidential proclamation suspends the second proviso too.

Chapter 3

Abrogation of Article 370

The insurgency and continuous break down of law and order in the state and heavy deployment of Army units in the state became a regular feature and the peace and harmony in the state practically never existed. The special status granted to the state miserably failed to bring the peace. The state has been continuously a disturbed state and the nation has witnessed several instances of large scale loss of life. The peace and harmony has always been missing in the state. Further, because of involvement of cross border infiltration the issue became a threat to the security of entire nation.

It is here the demands for revocation of the special status also came up forward. Over the period it became the prime agenda of the Bhartiya Janta Part, the ruling party at the Centre at present.

3.1 Abrogation of Article 370

On 5th August 2020, the President of India using the powers under the Article 370, issued an order overriding the prevailing 1954 Presidential Order. The order nullified all the provisions of autonomy enjoyed by the state. A Reorganisation Bill was also introduced in the Indian Parliament by the Home Minister, seeking to divide the state into two union territories to be governed by a lieutenant governor and a unicameral legislature. The resolution seeking the revocation of the special status granted to the state and the bill for the reorganisation of the state was debated and passed by the Rajya Sabha on 5 August 2019. On 6 August, the Lok Sabha – India's lower house of parliament also debated and passed the reorganisation bill along with

the resolution recommending the revocation. The opinion of the constitutional experts also came divided on whether the revocation is legally sound. The presidential Order issued overriding the prevailing presidential order 1954 is reproduced as follows:-

“

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

NOTIFICATION

New Delhi, the 5th August, 2019

G.S.R .551(E).— the following Order made by the President is published for general information:-

THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR) ORDER,
2019 C.O. 272

In exercise of the powers conferred by clause (1) of article 370 of the Constitution, the President, with the concurrence of the Government of State of Jammu and Kashmir, is pleased to make the following Order:—

1. (1) This Order may be called the Constitution (Application to Jammu and Kashmir) Order, 2019.
- (2) It shall come into force at once, and shall thereupon supersede the Constitution (Application to Jammu and Kashmir) Order, 1954 as amended from time to time.
2. All the provisions of the Constitution, as amended from time to time, shall apply in relation to the State of Jammu and Kashmir and the exceptions and modifications subject to which they shall so apply shall be as follows:—

To article 367, there shall be added the following clause, namely:—

“(4) For the purposes of this Constitution as it applies in relation to the State of Jammu and Kashmir—

(a) references to this Constitution or to the provisions thereof shall be construed as references to the Constitution or the provisions thereof as applied in relation to the said State;

(b) references to the person for the time being recognized by the President on the recommendation of the Legislative Assembly of the State as the Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office, shall be construed as references to the Governor of Jammu and Kashmir;

(c) references to the Government of the said State shall be construed as including references to the Governor of Jammu and Kashmir acting on the advice of his Council of Ministers; and

(d) in proviso to clause (3) of article 370 of this Constitution, the expression “Constituent Assembly of the State referred to in clause (2)” shall read “Legislative Assembly of the State”.”

RAM NATH KOVIND,

President.

“

The order was issued in exercise to powers granted under clause (1) of the Article 370. All the provisions of the Constitution were made applicable to the state of Jammu and Kashmir by amending the Article 367 of the constitution. References to the person for the time being recognized as the Sadar-i-Riyasat of Jammu and

Kashmir was replaced construed as references to the Governor of Jammu and Kashmir and further the references to the Government of the said State shall be construed as including references to the Governor of Jammu and Kashmir acting on the advice of his Council of Ministers and in proviso to clause (3) of article 370 of this Constitution, the expression “Constituent Assembly of the State referred to in clause (2)” shall read “Legislative Assembly of the State. The non-existent constituent assembly was replaced by the legislative assembly of the state.

The state was under president’s rule when this order was issued.

3.2 Reorganization of the State

The Jammu and Kashmir Reorganisation Bill, 2019 was introduced in Rajya Sabha on August 5, 2019 by the Minister of Home Affairs, Mr. Amit Shah. The Bill provides for reorganisation of the state of Jammu and Kashmir. The Bill reorganises the state of Jammu and Kashmir into:

- (i) The Union Territory of Jammu and Kashmir with a legislature. The Union Territory of Jammu and Kashmir will comprise the remaining territories of the existing state of Jammu and Kashmir. The Union Territory of Jammu and Kashmir will be administered by the President, through an administrator appointed by him known as the Lieutenant Governor.
 - (ii) The Union Territory of Ladakh without a legislature. The Union Territory of Ladakh will comprise Kargil and Leh districts. The Union Territory of Ladakh will be administered by the President, through a Lieutenant Governor appointed by him.
- **Legislative Assembly of Jammu and Kashmir:** The Bill provides for a Legislative Assembly for the Union Territory of Jammu and Kashmir. The total number of seats

in the Assembly will be 107. Of these, 24 seats will remain vacant on account of certain areas of Jammu and Kashmir being under the occupation of Pakistan. Further, seats will be reserved in the Assembly for Scheduled Castes and Scheduled Tribes in proportion to their population in the Union Territory of Jammu and Kashmir. In addition, the Lieutenant Governor may nominate two members to the Legislative Assembly to give representation to women, if they are not adequately represented.

- **The Assembly** will have a term of five years, and the Lieutenant Governor must summon the Assembly at least once in six months. The Legislative Assembly may make laws for any part of the Union Territory of Jammu and Kashmir related to: (i) any matters specified in the State List of the Constitution, except “Police” and “Public Order”, and (ii) any matter in the Concurrent List applicable to Union Territories. Further, Parliament will have the power to make laws in relation to any matter for the Union Territory of Jammu and Kashmir.
- **Council of Ministers:** The Union Territory of Jammu and Kashmir will have a Council of Ministers of not more than ten percent of the total number of members in the Assembly. The Council will aide and advise the Lieutenant Governor on matters that the Assembly has powers to make laws. The Chief Minister will communicate all decisions of the Council to the Lieutenant Governor.
- **High Court:** The High Court of Jammu and Kashmir will be the common High Court for the Union Territories of Ladakh, and Jammu and Kashmir. Further, the Union Territory of Jammu and Kashmir will have an Advocate General to provide legal advice to the government of the Union Territory,

- **Legislative Council:** The Legislative Council of the state of Jammu and Kashmir will be abolished. Upon dissolution, all Bills pending in the Council will lapse.
- **Advisory Committees:** The central government will appoint Advisory Committees, for various purposes, including: (i) distribution of assets and liabilities of corporations of the state of Jammu and Kashmir between the two Union Territories, (ii) issues related to the generation and supply of electricity and water, and (iii) issues related to the Jammu and Kashmir State Financial Corporation. These Committees must submit their reports within six months to the Lieutenant Governor of Jammu and Kashmir, who must act on these recommendations within 30 days.
- **Extent of laws:** The Schedule lists 106 central laws that will be made applicable to Union Territories of Jammu and Kashmir and Ladakh on a date notified by the central government. These include the Aadhaar Act, 2016, the Indian Penal Code, 1860, and the Right to Education Act, 2009. Further, it repeals 153 state laws of Jammu and Kashmir. In addition, 166 state laws will remain in force, and seven laws will be applicable with amendments. These amendments include lifting of prohibitions on lease of land to persons who are not permanent residents of Jammu and Kashmir.

The Bill was passed on the same day by Rajya Sabha (upper house) on August 5, and was passed by Lok Sabha on 06 August 2019.

Soon after the bill was passed, Pakistan's Prime Minister, Imran Khan, downgraded diplomatic relations with India, recalled Pakistan's top diplomat from New Delhi, expelled India's High Commissioner from Pakistan, and suspended bilateral trade. Following a meeting of Pakistan's National Security Committee on August 7, the prime minister's office

stated they would raise the issue to the United Nations (UN) and the UN Security Council (UNSC). This came just two weeks after the Pakistani prime minister visited the United States to meet with US President Donald J. Trump and described the relationship with India as “turbulent,” largely due to the issue of Kashmir.

3.3 Reactions Within India

Reactions within India have been largely in favour of the president’s order. The Lok Sabha (lower house) passed the resolution supporting the presidential order in addition to the Jammu and Kashmir Reorganization Bill by solid margins.

Indian National Congress (INC) chief whip in the Rajya Sabha, Bhubaneswar Kalita resigned in protest of his party’s opposition to the J&K decisions. While many congressional ministers of parliament (MPs) have been vocal in opposition to the actions, Kalita’s resignation suggest that there is a lack of consensus within the party.

Reactions within J&K have largely not been known. The region was placed under a nearly total communications blackout, raising concerns regarding press freedom and the accuracy of

reporting emanating from the Valley. Prominent Kashmiri politicians including two former chief ministers, Omar Abdullah and Mehbooba Mufti, have been placed under house arrest. Abdullah issued a statement, claiming “GOI [the government of India] has resorted to deceit and stealth in recent weeks to lay the ground for these disastrous decisions...The announcement was announced after the entire State, particularly the

Kashmir Valley, was turned into a garrison.” Restricted internet access has also made it nearly impossible for the reactions of Kashmir’s seven million citizens known to outside.

Shri Jamyang Tsering Namgyal, a BJP MP from Ladakh, issued a statement saying, “people in Ladakh wanted that the region be freed from the dominance discrimination of Kashmir,” suggesting that prevailing sentiments may differ between Jammu, Kashmir, and Ladakh.

3.4 Reactions Outside India

Pakistan: The foreign Ministry of Pakistan immediately after the events on 5th August 2019 issued a statement saying, “as party to this international dispute, Pakistan will exercise all possible options to counter the illegal steps.”

Prime Minister Imran Khan stated, “if India attacks us, we will respond...we will fight until the last drop of blood.” He called on the prime Ministers of leaders of Malaysia and Turkey as well as the Crown Princes of Saudi Arabia and the UAE, to recognize the act as violations of UNSC resolutions, and warned these leaders that it would pose “serious implications for regional peace and security.”

Pakistan’s foreign minister, Shah Mehmood Qureshi also tried to internationalize the matter and addressed an emergency meeting of the Organization of Islamic Cooperation (OIC), as well as meeting with the Chinese leadership in Beijing. Qureshi also spoke with UN High Commissioner for Human Rights Michelle Bachelet and “highlighted that the recent Indian measures are in breach of international human rights and humanitarian law.”

In a press conference Qureshi stated, “the Pakistan government has decided to take this issue to the UN Security Council. We will be needing China’s help there...China has assured full support to Pakistan.”

In addition to seeking immediate international support and action by the UNSC, Pakistan has been continuously raising this issue on all possible forums but the offensive diplomatic efforts of India do not permit him to succeed. India re-iterates that it is a an internal matter of governance and Pakistan has no authority to interfere in internal matters of India.

China: China, a permanent member of the UNSC, called a private meeting to discuss Kashmir, the first time the international body has done so in nearly half a century. Following the meeting, Pakistani Ambassador to the UN, Maleeha Lodhi, argued that, “the fact that this meeting took place, is testimony to the fact that this is an international dispute.”

Indian ambassador to the UN, Syed Akbaruddin, reaffirmed the view that this is an internal matter for India. The UNSC did not issue any statement on the issue. Chinese interest in the region centers around Ladakh, where India claims parts of Chinese administered Aksai Chin. Under the 1963 Sino-Pakistan Agreement—which is not recognized as legal by India—Pakistan recognized Chinese sovereignty over portions of Northern Kashmir and Ladakh.

Chinese Foreign Ministry spokeswoman Hua Chunying called for negotiation on the recent actions, and stated that “India’s unilateral amendment to its domestic law, continues to damage China’s territorial sovereignty.”

The Indian Ministry of External Affairs spokesperson responded that the proposed formation of a “Union Territory of Ladakh” is an “internal matter concerning the territory of India,” to which other countries should refrain from comment.

United States: During Khan’s recent visit to the United States, President Trump claimed that Prime Minister Narendra Modi asked for assistance in mediating tensions in Kashmir. While Khan welcomed the mediation, Indian External Affairs Minister Subrahmanyam Jaishankar responded that “no such request,” had been made, and reiterated that “it has been India’s consistent position that all outstanding issues with Pakistan are discussed only bilaterally.”

In light of the revocation of Articles 370 and 35A, BJP MP Subramanian Swamy said there is now nothing for Trump to mediate in the Kashmir issue, except for him to tell Khan to return the land taken illegally from India.

The UAE expressed that The move of India to abrogate Article 370 is mainly aimed at helping improve social and economic conditions in J&K.

3.5 Abrogation of Article 370: Legal Aspects

3.5.1 Tale of Two Judgements

The circumstances under which Article 370 providing special status to the Jammu and Kashmir State has already been discussed in detail. However, the nature of this whether it is a temporary provision or a permanent feature in Indian Constitution, has always been under debate. Any provision which is temporary in nature and made under exceptional situation to address the unusual and exceptional situation should go once the situation eased down. Such has been the impression the temporary nature

of this article conveys. On the contrary any permanent feature of the constitution owing to its nature should exist and continue to exist till the situation gets unusual and exceptional demanding appropriate change in the article.

3.5.1.1 Prem Nath Kaul Vs. The State of Jammu and Kashmir, 1959 AIR 749, 1959 SCR Supl. (2) 270

The matter got the attention of Hon'ble Supreme Court a number of times while hearing matter arising out due to issues related with interpretation of this article in various petitions but first time in the Judgement of the appeal Prem Nath Kaul Vs. The State of Jammu and Kashmir, 1959 AIR 749, 1959 SCR Supl. (2) 270, delivered on 02/03/1959.

The appeal challenged the validity of the Jammu and Kashmir Big Landed Estate Abolition Act, XVII of 2007(1941) which was enacted by Yuvaraj Karan Singh on October 17, 1950, in exercise of the powers vested in him by S. 5 of the Jammu and Kashmir Constitution Act 14 of 1996 (1930) and the final proclamation issued by Maharaja Hari Singh on June 20, 1949, by which he entrusted all his powers and function to the Yuvaraj. The object of the Act was to improve agricultural production by abolishing big landed estates and transferring land to the actual tillers of the soil. The suit out of which the appeal arose was brought by the appellant in a representative capacity for a declaration that the Act was void, inoperative and ultra vires and that he was entitled to retain peaceful possession of his lands. Both the trial Court as also the High Court in appeal found against him and dismissed the suit. Hence this appeal by special leave.

The validity of the Act was challenged on the grounds which included (1) the powers of the Yuvaraj were substantially limited by his own proclamation issued on November 25, 1949,

by which he sought to make applicable to his State the Constitution of India, that was soon to be adopted by its Constituent Assembly, in so far as it was applicable, (2) as a result of the application of certain specified Articles, including Art. 370 of the Constitution of India to the State of Jammu and Kashmir, the Yuvaraj became a constitutional monarch without any legislative authority or powers and (3) the decision of the Constituent Assembly of the State not to pay compensation was invalid since the Assembly itself was not properly constituted. The appellant strongly relied on the application Article 370 of the Constitution to the state in support of his argument that the Yuvaraj had ceased to hold the plenary legislative powers, it is necessary to examine the provisions of this Article and their effect.

In the judgement Hon'ble Supreme Court Observed that

“

*Since Mr. Chatterjee has strongly relied on the application of Art. 370 of the Constitution to the State in support of his argument that the Yuvaraj had ceased to hold the plenary legislative powers, it is necessary to examine the provisions of this Article and their effect. This Article was intended to make **temporary provisions** with respect to the State of Jammu & Kashmir. It reads thus:*

Art. 370: (1) Notwithstanding anything in this Constitution,-

(a) the provisions of article 238 shall not apply in relation to the State of Jammu & Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to-

(i) those matters in the Union List and the Con-current List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation.-For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

.....

Clause (1) (b) of this Article deals with the legislative power of the Parliament to make laws for the State; and it prescribes limitation in that behalf. Under paragraph (1) of sub-cl. (b) of cl. (1) Parliament has power to make laws for the State in respect of matters in the Union List and the Concurrent List which the President in consultation with the Government of the State declares to correspond to matters specified in the Instrument of Accession; whereas in regard to other matters in the said Lists Parliament may, under paragraph (ii), have power to legislate for the State

after such other matters have been specified by his order by the President with the concurrence of the Government of the State. It is significant that paragraph (i) refers to consultation with the Government of the State while paragraph (ii) requires its concurrence, Having thus provided for consultation with, and the concurrence of, the Government of the State, the explanation shows what the Government of the State means in this context. It means according to the appellant, not the Maharaja acting by himself in his own discretion, but the person who is recognised as the Maharaja by the -President acting on the advice of the Council of Ministers for the time being in office. It is on this explanation that the appellant has placed considerable reliance. Sub-clauses (c) and (d) of cl. (1) of the Article provide respectively that the provisions of Art. I and of the present Article shall apply in relation to the State; and that the other provisions of the Constitution shall apply in relation to it subject to exceptions and modifications specified by the Presidential order. These provisions are likewise made subject to consultation with, or concurrence of, the Government of the State respectively. Having provided for the legislative power of the Parliament and for the application of the Articles of the Constitution to the State, Art . 370, el. (2) prescribes that if the concurrence of the Government of the State required by the relevant sub-cl. of cl. (1) has been given before the Constituent Assembly of Kashmir has been convened, such concurrence shall be placed before such Assembly for such decision as it may take thereon. This clause shows that the Constitution makers attached great importance to the final decision of the Constituent Assembly, and the continuance of the exercise of powers conferred on the Parliament and the

President by the relevant temporary provisions of Art. 370(1) is made conditional on the final approval by the said Constituent Assembly in the said matters.

Cl. (3) authorises the President to declare by public notification that this article shall cease to be operative or shall be operative only with specified exceptions or modifications; but this power can be exercised by the President only if the Constituent Assembly of the State makes recommendation in that behalf. Thus the proviso to cl. (3) also emphasises the importance which was attached to the final decision of the Constituent Assembly of Kashmir in regard to the relevant matters covered by Art. 370.

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Above observations of the Hon’ble Supreme Court appears sufficient to establish that Article 370 introduced in the Constitution of India has been of temporary nature and final decision on continuance of exercise of powers conferred on the parliament and the President of India was left to be decided by the Constituent Assembly of the state.

3.5.1.2 Sampat Prakash vs State Of Jammu & Kashmir & Anr AIR 1118, 1970 SCR (2) 365

On 10 October, 1968 Hon’ble Supreme Court delivered the judgement in the case Sampat Prakash vs State Of Jammu & Kashmir & Anr, AIR 1118, 1970 SCR (2) 365. The brief facts of the case as observed by Hon’ble Supreme Court is as follows:

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On October 25, 1967, Government employees and teachers of the Jammu Province held a mass meeting making a demand that dearness allowance at Central rates should be paid to them. They further resolved that, if the Government did not accept this demand, the employees and the teachers would go on 'Dharna' on 5th November 1967. The Revenue Minister of the Jammu & Kashmir State promised dearness allowance at half the rates applicable to Central Government servants. No dharna was started on 5th November 1967, but, on 17th November, 1967, a notice was given on behalf of the employees to the Government that there would be a hunger strike on 18th November, 1967. On that day, the employees went on a hunger strike for one day outside the residence of the Chief Minister. Then, there was a mass meeting on 27th November 1967, in which it was announced that, if their demands were not met, the employees would go on a pen-down strike on 2nd December, 1967. The Government failed to comply with this demand. Then, between 4th and 10th December, 1967, the employees went on a strike--first a pendown strike and, later, a general strike. Between this period, on 5th December, 1967, there was another mass meeting which was addressed by the petitioner. On 11th December, 1967, even the workers of the various industries in the State went on a general strike in sympathy with the Government employees. On that day, the petitioner was dismissed from government service and on 12th December, 1967, he addressed another mass meeting. In view of these activities of the petitioner and the continuance of such a situation, the District Magistrate of Jammu, on 16th March, 1968, made an order of

detention of the petitioner under section 3 of the Jammu & Kashmir Preventive Detention Act No. 13 of 1964 (hereinafter referred to as "the Act") and, on 18th March, 1968, the petitioner was actually placed under detention. The grounds of detention were served on the petitioner on the 26th March, 1968 and the State Government granted approval to the order of detention on 8th April, 1968. The detention of the petitioner was continued without making a reference to the Advisory Board, as the State Government purported to act under s. 13A of the Act. The present petition was filed by the petitioner on 3rd May, 1968.

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After the accession of the State of Jammu and Kashmir to India in Art 35 of the Constitution of India in its application to the State, cl. (c) was introduced in 1954 providing protection to any law relating to preventive detention in the State against invalidity on the ground of infringement of any of the fundamental rights guaranteed by Part III of the Constitution. The protection was limited to a period of five years. In 1956, the Constituent Assembly of the State completed its work by framing a Constitution for the State and it came into force on 26th January 1956. In 1959 the period of 5 years in Art. 35(c) was extended to 10 and in 1964, it was further extended to 15 years by Orders passed by the President of India under Art.370(1). On 18th March 1968, the petitioner was detained by the District Magistrate under the Jammu and Kashmir Preventive Detention Act, 1964. The State Government acting under S. 13A of the Act continued the detention without making any reference to the Advisory Board.

In a petition under Art. 32 challenging his detention the petitioner contended that the Orders making the modifications in 1959 and 1964 could not be validly passed by the President, because.

(1) the Article contained only temporary provisions which ceased to be effective after the Constituent Assembly of the State had completed its work by framing a Constitution for the State;

(2) Under Art. 370(2) the power of the President depending on the concurrence of the State Government, must be exercised before the dissolution of the Constituent Assembly of the State;

(3) Under Art. 370(1), at the time of applying any provision of the Constitution to the State, the President was competent to make modification and exceptions, but after a provision of the Constitution had been applied the power under the Article ceased;

(4) Since Art. 368 relating to amendment of the Constitution with proviso added to it is 'applied to the State Art. 370 was no longer applicable for amending or modifying the provisions of the Constitution applied to the State;

(5) The power of making modifications under the Article should be limited to making minor alterations and not to abrogate an Article applied to the State; and

(6) The modifications made by the Presidential orders under Art. 370 had the effect of abridging the fundamental rights of citizens of Kashmir under Art. 22 and other Articles of Part III, after they had been applied to the State and so were void under Art. 13 of the Constitution.

Hon'ble Supreme Court held that

(1) The-political situation that existed when Art, 370 was incorporated in the Constitution had not materially altered either in 1959 or 1964 and the purpose of introducing it was to empower the President to exercise his discretion in applying the Indian Constitution while that situation remained unchanged.

Article 370(3) envisages that the Article will continue to be operative until and can cease to be operative only if, on the recommendation of Constituent Assembly of the State, the President makes a direction to that effect. No such recommendation was made nor was any order made by the President. On the contrary **the Constituent Assembly of the State made a recommendation that the Article should be operative with a modified Explanation. Therefore, the Article did not cease to be operative.**

(2) Article 370(2) only refers to the concurrence given by the Government of the State before the Constituent Assembly was convened. and **makes no mention at all of the completion of the work of the Constituent Assembly or its dissolution.**

(3) **The power under the Article is to be exercised from time to time and includes within it the power to add, amend, vary or rescind** Article 367 lays down that, unless the context otherwise requires, the General Clauses Act, 1897 shall apply for the interpretation of the Constitution. Therefore, S. 21 of the General Clauses Act, under which a power to issue a notification or order includes a power to add, amend, vary or rescind it, is applicable to the power of the President under Art. 370: If it were held that S. 21 of the General Clauses Act is not to be applied to the interpretation of the Constitution, it will lead to the anomaly that when once rules are made under the rule

Making powers- under various Articles such as Arts. 77(3), 166(3) and 309, they would be inflexible. Further the legislative history of the Article shows that it was envisaged that the President would have to take into account the situation existing in the State when applying a provision of the Constitution and that such situations arise from time to time: There was the possibility that, when applying a particular provision, the situation might demand an exception or modification of the provision applied; but subsequent changes in the situation might justify the rescinding of those modifications or exceptions. This could only be brought about by conferring on the President the power of making Orders from time to time under Art. 370.

(4) The proviso to Art. 368, serves the purpose that amendments to the Constitution should be made applicable to the State only with the concurrence of the State Government and that after such concurrence available the amendments should take effect when an order is made under Art.370 of the Constitution. Therefore, **the powers of the President under Art. 370 have to be exercised and the applicability of Art.368 to the 'State does not curtail the President's power under Art. 370.**

(5) **There is-no reason to limit the word 'modification' in Art. 370(1) only to such modification as do not make any 'radical transformation'. [377 H] Puranlal Lakhanpal v. The President of India, [1962] 1 S.C.R. 688, 692, followed.**

(6) Under Art. 35(c) as originally enacted, the applicability of the provisions of Part III for the purpose of judging the validity of a law relating to preventive detention made by the State 'Legislature was postponed for a period of five years.

The object of the subsequent Orders of 1959 and 1964 was to extend the period of protection. The result of the extension is that a detenu cannot, during the period of protection challenge the law on the ground of its being inconsistent with Art 22, and not to infringe or abridge fundamental rights.

It is clear from the above that the nature of the article 370 granting special status to Jammu and Kashmir was not a temporary feature and after the constituent assembly of Jammu and Kashmir completed its task and dissolved itself it acquired a permanent nature. The proviso to Art. 368, serves the purpose that amendments to the Constitution should be made applicable to the **State only with the concurrence of the State Government and that after such concurrence available the amendments should take effect when an order is made under Art.370** of the Constitution. Therefore, **the powers of the President under Art. 370 have to be exercised and the applicability of Art.368 to the 'State does not curtail the President's power under Art. 370.** There is no reason to limit the word "modifications" as used in Art. 370(1) only to such modifications as do not make any "radical transformation".

3.5.2 Resolution of contradiction

Above two judgements one delivered before the constituent assembly of the state of Jammu and Kashmir completed its task and the other after it completed the task and it dissolved itself have given ample opportunities to various scholars to project the facts as per their understanding and purpose. After abrogation of the Article 370 a number of cases were filed before the Apex court. One appeal was also filed before

the Apex Court having prayer to refer the matter to a higher bench sighting the contradiction existing in above two judgements. Although these judgements dealt entirely different matters and context has also been entirely different.

After abrogation of Article 370 a number of writ petitions were filed before the 5-judge Constitution bench headed by Justice N V Ramana in the Hon'ble Supreme Court. The learned senior counsel appearing for one of the Petitioners in W.P. (C) No. 1013/19 and Petitioner in W.P. (C) 1368/19 raised the contention that the matter needs to be referred to a larger Bench as there were contrary opinions by two different Constitution Benches on the interpretation of Article 370 of the Constitution.

Hon'ble Supreme Court without considering any issue on the merits of the dispute passed an order confined to the limited preliminary issue of whether the matter should be referred to a larger Bench. The bench said there were no reasons to refer the matter to a larger bench.

The petitioners sought referring the matter to a larger bench on the ground that two judgements of the apex court -- Prem Nath Kaul versus Jammu and Kashmir in 1959 and Sampat Prakash versus Jammu and Kashmir in 1970 -- which dealt with the issue of Article 370 were conflicted each other and therefore, the current bench of five judges could not hear the issue.

" ...

8. *Learned senior advocate Mr. Dinesh Dwivedi, after placing reliance upon the Constituent Assembly debates and interpreting the language of Article 370, submitted that Article 370 was a transitory provision, which provided for an interim arrangement between the State of Jammu and Kashmir and the Union of India. It was the Constituent Assembly of Jammu and Kashmir which took a final decision on the form of Government the State of Jammu and Kashmir should adopt. It was argued that this Court, in the case of Prem Nath Kaul v. State of Jammu and Kashmir, AIR 1959 SC 749, after considering the various issues, held that Article 370 was temporary in nature, but the subsequent judgment of Sampat Prakash v. State of Jammu and Kashmir, AIR 1970 SC 1118 reversed the aforesaid position, recognizing Article 370 as a permanent provision giving perennial power to the President to regulate the relationship between the Union and the State. Learned senior counsel contended that this conflict needs reconsideration by a larger Bench.*

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Disagreeing with the petitioners, the bench, also comprising Justices Sanjay Kishan Kaul, R Subhash Reddy, B R Gavai and Surya Kant, said it was of the opinion that "there is no conflict between the judgements".

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45. Thus, this Court is of the opinion that there is no conflict between the judgments in the Prem Nath Kaul case (supra) and the Sampat Prakash case (supra). The plea of the counsel to refer the present matter to a larger Bench on this ground is therefore rejected.

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The apex court also did not agree with the contention that judgement in the Prem Nath Kaul case was not considered by the top court in its subsequent verdict in the Sampat Prakash matter.

The petitioners had contended that as decision in the Kaul case was not considered in the subsequent judgement, the latter verdict was "per incuriam" or wrongly decided.

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10. The learned senior counsel further submitted that, the subsequent cases of Sampat Prakash (supra) and Mohd. Maqbool Damnoo v. State of Jammu and Kashmir, (1972) 1 SCC 536, have not considered the earlier judgment of Prem Nath Kaul (supra). On the contrary, this Court in Sampat Prakash (supra) held that neither the Constituent Assembly nor the President ever made any declaration that Article 370 has ceased to be operative. Moreover, this Court in the aforesaid case

further held that in the light of the proviso to Article 368, the President under Article 370 is required to exercise his powers from time to time in order to bring into effect constitutional amendments in the State of Jammu and Kashmir, under Article 368. Therefore, by virtue of the aforesaid mechanism, it cannot be said that Article 370 was temporary.

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The bench decided as follows

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46. An additional ground canvassed by the learned senior counsel is that the judgment of the Court in the Prem Nath Kaul case (supra) was not considered by the Court in its subsequent decision in Sampat Prakash case (supra), which is therefore per incuriam. At the cost of repetition, we note that the rule of per incuriam being an exception to the doctrine of precedents is only applicable to the ratio of the judgment. The same having an impact on the stability of the legal precedents must be applied sparingly, when there is an irreconcilable conflict between the opinions of two co-ordinate Benches. However, as indicated above there are no contrary observations made in the Sampat Prakash case (supra) to that of Prem Nath Kaul (supra), accordingly, the case of Sampat Prakash (supra) is not per incuriam.

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The apex court further said that

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47. In light of the aforesaid discussion, we do not see any reason to refer these petitions to a larger Bench on the questions considered.

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3.6 The Present Legal Status

The main petitions challenging the abrogation of the Article 370 and reorganization of the state are pending before the Hon'ble Supreme Court. Once the hearing of these petitions is completed and the matter is settled the legal issues associated with the matter will also be settled. However, the political issues need not wait the final outcome of the case. The Government is taking visible steps to bring peace and harmony in the state by ensuring that people of the state are not marginalized and deprived of all the benefits which rest of the people in the nation are enjoying. Here, the most important thing to mention is that the Government has already extended all the benefits available for rest of people of India to the people of Jammu and Kashmir.

Apparently, the real settlement of the issues or the dispute is to be made outside the court by winning the trust of the people and bring the useful energies of the people into the main stream of the nation.

3.7 Abrogation and Progress and Development of Jammu and Kashmir

Because of continuous cross-border terrorism and continued threat to life and peace the full potential of the state in contributing to the growth of the nation has never been realized. Same was reiterated by the Union Minister of State for Home Affairs, Shri G Kishan Reddy, in a written reply in Lok Sabha to a question regarding the economic impact of the abrogation of Article 370 on Jammu and Kashmir said that the full economic potential of Jammu, Kashmir and Ladakh regions could not be realized for the last 70 years as the people of Jammu and Kashmir have suffered from terrorist violence and separatism supported from across the border for the past many decades. On account of article 35A and certain other constitutional ambiguities, the people of this region were denied full rights enshrined in the Constitution of India and other benefits of various Central Laws that were being enjoyed by other citizens of the country.

As reported by the Government of Jammu and Kashmir, the agriculture operations are going on smoothly in the valley. During FY 2019-20 (upto January, 2020), 18.34 lakh MTs of fresh fruit (apples) have been dispatched. In the horticulture sector, under the Market Intervention Schemes (MIS) launched by the Government of India in September 2019, for the first time, 15769.38 MTs of apples valued at Rs. 70.45 crores have been procured up to 28th January 2020, directly from the growers in

Kashmir valley through National Agriculture Marketing Federation of India (NAFED). This scheme has been extended up to 31st March, 2020. The sericulture sector recorded a production of 813 MTs of silk cocoon in the year 2019. During the 1st three quarters of FY 2019-20, handicrafts worth Rs. 688.26 crores were exported. Various tourism promotional campaigns have also been launched.

Government of Jammu and Kashmir has informed that as per the Periodic Labour Force Survey, last conducted for FY 2017-18, by the Ministry of Statistics and Programme Implementation of Government of India, the worker-population ratio for persons in the age group of 15 years and above for Jammu and Kashmir is 51%.

The Government of India is fully committed to the overall development of the Union Territory of Jammu & Kashmir and Union Territory of Ladakh. Under the Prime Minister's Development Package-2015 of Rs. 80,068 crores, major development projects in Road, Power, Health, Tourism, Agriculture, Horticulture, Skill Development Sectors etc. are already under various stages of implementation. Many flagship schemes including the individual beneficiary centric schemes are being proactively implemented by the Government of India towards development of J&K region.

Sufficient data to make an item by item comparison will require more time to build up. The prime task right ahead is making the situation normal in the state. It is to at present is not available but it should be accepted beyond doubt that once the terrorism is wiped out and the people of Jammu and Kashmir find the environment

safe and secure the full potential of the state in building the strong economy and thereby contributing to the nation's economy will be realized.

Chapter 4

Conclusion and Way Forward

The Article 370 which was introduced to grant special status to Jammu and Kashmir under extra-ordinary situation prevailing at the time of at the time of its Accession, has now been abrogated. The Article still remains in the constitution. After the abrogation all the provisions of Indian Constitution have been made applicable to the state. The erstwhile state of Jammu and Kashmir has been reorganized and two union territories out of erstwhile state of Jammu and Kashmir have been created.

The abrogation and re-organization of the state was certainly a very big blow to the ongoing separatist movements causing insurgency in the state. The reactions within India and out of India have been every effectively dealt by the Government and sufficient hope that the state will follow the path of development and growth is clearly visible. It sure is a great relief to the entire nation and the same was celebrated by the entire nation.

The applicability of all the provisions the Indian constitution to the re-organized state will automatically extend the benefits and protections which are available for the rest of the people of the Nation. However, a lot more is required to be done to put the state on the path of sustained development and growth. A way forward based on issued having its root in the disturbed history of the state is summed up as following.

Perception Management: The long history of disturbance created by the separatists in the state has created a wrong perception within the people of Kashmir about the

Government and rest of the nation. This perception needs to be removed. Soft measures creating a new perception is very important and necessary to win the confidence of the people in the state and the same is the foremost challenge.

The restrictions imposed in the valley can be relaxed in phased manner without affecting the peace and law and order in the state. The restoration of communication is of prime importance to give a message to the people of Kashmir about beginning of the new era of growth and development.

Boosting up the distressed economy

The continued political instability and insurgency has put the economy of the state under distress. The investment and creation of jobs for youth is very important. Industrialists from the nation are to be invited and should be facilitated to put industries in the state. Welfare initiatives including financial assistance to the downtrodden classes, waiver of the small loans etc. may also be considered.

Overhaul of the Local Administration

The overhaul of the local administration to eliminate the possibility of corruption or other malpractices is the need of the hour. A visible people oriented change in the administration and governance will guarantee the peace and harmony in the state which the most important to facilitate the growth.

The problems being face by the people under the existing system of the administration and the mistakes made by the earlier governments of the troubled state can be analyzed to remove the possibility of corruption, appeasement, favoritism and nepotism etc.

Start of new Political Process

A new political process to hold free and fair elections in the state should start at the appropriate time. The process of election involves the direct participation of people and will bring a spirit of inclusiveness among the Kashmiris and will create a new perception towards being part of India under the constitution of India

Improving Socio economic Framework

The establishment of modern higher educational institutions including AIIMS and IITs in its new UT are important and needs completed as soon as possible. Attractive scholarships for motivating and assisting the students of the region will convey a strong message that the nation is committed to the over-all growth of the region. This will enhance the quality of the manpower which is a prerequisite for the sustained growth of economy in the region.

Improving the Infrastructure:

The rail, road and flight connectivity in the state requires the prime focus and will form a base for further development and growth in the state. Good transport facility facilitates the carriage of important goods and is essential for the growth and development of the state.

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