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1

IN THE SUPREME COURT OF INDIA

WRIT JURISDICTION

WRIT PETITION (C) NO.1037 OF 2019

IN THE MATTER OF :

MOHD.AKBAR LONE & ANR. ... PETITIONERS

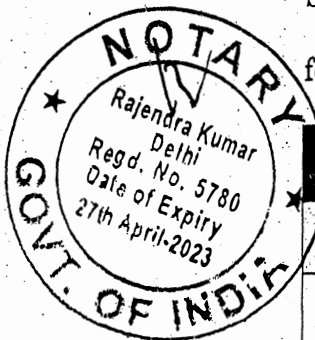
VS.

UNION OF INDIA & ORS. ... RESPONDENTS

COUNTER AFFIDAVIT ON BEHALF OF UNION
OF INDIA

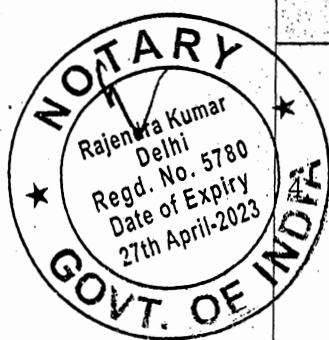
I, Gyanesh Kumar, S/o Shri S.K. Gupta, aged 55 years presently working as Additional Secretary in the Ministry of Home Affairs, Government of India, do hereby solemnly affirm and state as follows:

1. That in my official capacity I am acquainted with the facts of this case, and am competent and authorized to swear this affidavit on behalf of the Union of India.
2. It is submitted that the present writ petition has been filed on behalf of the Petitioner, along with other petitions, seeking following reliefs :

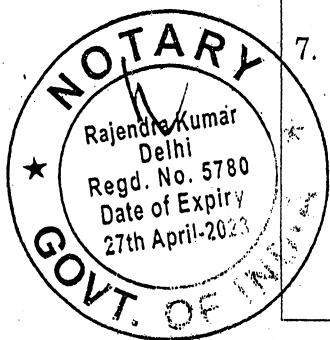


S.N	PRAYER	PETITION
	GSR 1223(E) dated 19.12.2018	
1.	A writ in the nature of mandamus, or any other writ, order or direction, declaring that Para c(ii) of the Proclamation of	WP(C) 1099/2019 Dr. Shah Faesal

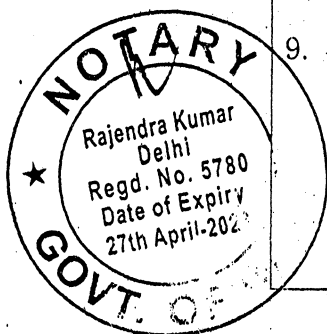
	President's Rule in the State of Jammu and Kashmir vide GSR 1223(E) dated 19.12.2018, and extended vide Cabinet Approval thereto with effect from 03.07.2019 to be ultra vires Article 14, 19 and 21 read with Article 356 and therefore void ab initio and inoperative.	vs. UOI
2.	An appropriate writ direction or order declaring that the notification dated 19.12.2018 GSR 1223E and the order dated 19.12.2018 GSR 1224E as unconstitutional, void and inoperative and as such the President ought not to have acted on the same.	WP(C) 1068 of 2019 Soayib Qureshi vs. UOI
3.	a writ in the nature of mandamus, or any other writ, order or direction, declaring that para(c) (ii) of the Proclamation of President's Rule in the State of Jammu and Kashmir vide, GSR 1223 (E) dated December 19, 2018 and extended vide Cabinet Approval thereto with effect from July 3. 2019 to be ultra vires Articles 14, 19 and 21 read with Article 356 and therefore void ab initio and inoperative	W.P.(C) 1165 of 2019 - Jammu and Kashmir Peoples Conference & Anr. V. Union of India & Anr.
Concurrence		
	A writ in the nature of certiorari, or any other writ, order of direction, setting aside the concurrence given by the Respondent No. 2 State enabling the President of India to issue the Constitution of India (Application to the	WP(C) 1099/2019 Dr. Shah Faesal vs. UOI



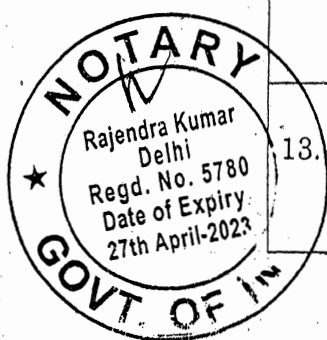
	State of Jammu and Kashmir) Order 2019 for being in violation of inter alia Article 14 and 19 of the Constitution of India.	
5.	A writ of mandamus declaring that impugned "concurrence of the State" is personal advice of Mr. Satyapal Malik (at present the Governor of the State of Jammu and Kashmir) and is ultra vires to the Constitution of the State of Jammu and Kashmir and cannot be used as "concurrence of the State for issuing any order by the President of India	WP(C) 1013 of 2019 Manohar Lal Sharma vs. UOI
6.	A Writ in the nature of certiorari or any other writ, order or direction, setting aside the concurrence given by the Respondent No.2 State enabling the President of India to issue the Constitution of India (Application to the State of Jammu and Kashmir), Order 2019 for being in violation of inter alia Articles 14 and 19 of the Constitution of India	W.P.(C) 1165 of 2019 - Jammu and Kashmir Peoples Conference &Anr. V. Union of India & Anr.
7.	A writ of mandamus declaring that advise/recommendation of the Governor of the State of Jammu and Kashmir (Mr.Satyapal Malik) without having advice and consultation of the Chief Minister and Cabinet Ministers, is unconstitutional, illegal and ultra vires to the Clause 35 of the Constitution of Jammu and Kashmir.	WP(C) 1013 of 2019 Manohar Lal Sharma vs. UOI



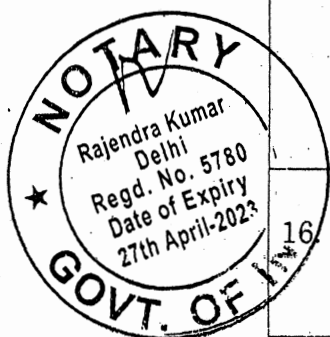
C.O. No. 272 dated 05.08.2019		
8.	A writ in the nature of mandamus, or any other writ, order or direction, declaring that the Constitution of India (Application to the State of Jammu and Kashmir) Order 2019 numbered C.O. No. 272 dated 05.08.2019 as ultra vires Article 14, 19 and 21 of the Constitution, unconstitutional, void and inoperative ab initio.	WP(C) 1099/2019 Dr. Shah Faesal vs. UOI WP(C) 1070/2019 Radha Kumar vs. UOI WP(C) 1068 of 2019 Soayib Qureshi vs. UOI W.P.(C) 1165 of 2019 - Jammu and Kashmir Peoples Conference &Anr. V. Union of India &Anr.
9.	A writ of mandamus to Respondent No. 1 for quashing of the impugned notification GSR 551(E) Order No. C.O. 272 of 2019 dated 5 th August of 2019, for amending Art 367 of the Constitution of India being illegal, unconstitutional and void ab initio and ultra vires to the Constitution of India to provide complete justice	WP(C) 1013 of 2019 Manohar Lal Sharma vs. UOI WP(C) 1048 of 2019 Shakir



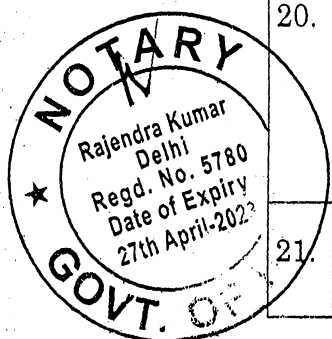
		Shabir vs. UOI
10.	An appropriate writ quashing the Constitution (Application to Jammu and Kashmir) Order 2019 dated 05.08.2019	WP(C) 1082 of 2019 Farooq Ahmad Dar vs. UOI WP(C) 1062 of 2019 Inder Salim vs. UOI
11.	An appropriate order declaring Presidential Order Presidential GSR 551(E) (CO 272) unconstitutional, void and inoperative.	WP(C) 1037 of 2019 Mohd. Akbar Lone vs. UOI WP(C) 1104 of 2019 Muzzafar Iqbal Khan vs. UOI
12.	A writ of mandamus or any other appropriate writ thereby declaring all actions of Respondent No. 2 in furtherance of CO 272 of 2019 as void ab initio, ultra vires and further directing the Respondent No. 2 to prevent all forms of human rights violations and exercise constraint while dealing with the bona fide citizens of the nation	WP(C) 1048 of 2019 Shakir Shabir vs. UOI
13.	A writ of mandamus or any appropriate writ thereby declaring the powers exercised by Respondent NO. 3 in	WP(C) 1048 of 2019 Shakir



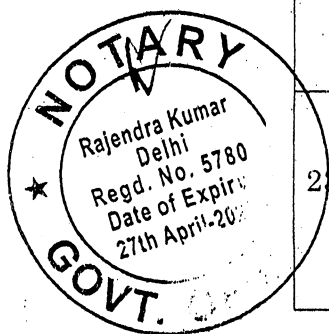
	furtherance of CO 272 of 2019 dated 05.08.2019 in violation of Article(s) 13, 21 and the basic structure of the Constitution of India	Shabir vs. UOI
14.	A writ of certiorari or any appropriate writ or order(s) declaring Presidential Order GSR 551(E) (CO 272) unconstitutional, void and inoperative.	WP(C) 1210 of 2019 Mohd. Yousuf Tarigami vs. UOI
C.O. No. 273 dated 06.08.2019		
15.	A writ in the nature of mandamus, or any other writ, order or direction, declaring that the declaration under Article 370(3) of the Constitution numbered C.O. No. 273 dated 06.08.2019 as ultra vires Article 14, 19 and 21 of the Constitution read with Article 370 and 356 of the Constitution and other provisions therein, unconstitutional, void ab initio and unoperative.	WP(C) 1099/2019 Dr. Shah Faesal vs. UOI WP(C) 1070/2019 Radha Kumar vs. UOI W.P.(C) 1165 of 2019 - Jammu and Kashmir Peoples Conference & Anr. V. Union of India & Anr.
16.	A writ of mandamus quashing the impugned notification GSR 562(E) order No. 273 dt 6 th August of 2019 for	WP(C) 1013 of 2019 Manohar Lal



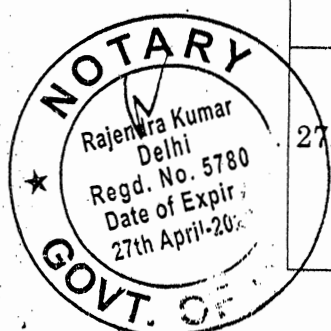
	amending Art 370 of the Constitution of India being illegal unconstitutional and void ab initio and ultra vires to the Constitution of India.	Sharma vs. UOI
17.	A writ in the nature of mandamus or any other appropriate writ, direction or order declaring the Presidential Order dated 06.08.2019 Presidential GSR562(E) (CO273) as ultra vires the Constitution of India, void, unconstitutional and inoperative.	WP(C) 1068 of 2019 Soayib Qureshi vs. UOI
18.	Issue an appropriate writ for quashing the Presidents Declaration under Article 370(3) dated 06.08.2019	WP(C) 1082 of 2019 Farooq Ahmad Dar vs. UOI WP(C) 1062 of 2019 Inder Salim vs. UOI
19.	Issue an appropriate order declaring Presidential Order GSR 562(E) (CO 273) unconstitutional, void and inoperative.	WP(C) 1037 of 2019 Mohd. Akbar Lone vs. UOI
20.	A writ of certiorari or any appropriate writ or order(s) declaring Presidential Order GSR 562(E) (CO 273) unconstitutional, void and inoperative.	WP(C) 1210 of 2019 Mohd. Yousuf Tarigami vs. UOI
21.	A writ in the nature of mandamus, or any other writ, order or direction declaring	W.P.(C) 1165 of 2019 -



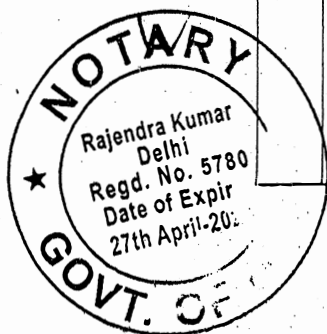
	that the Declaration Under Article 370(3) of the Constitution numbered CO. No. 273 dated August 6, 2019 as ultra vires Articles 14, 19 and 21, of the read with Article 370 and 356 of the Constitution and other provisions therein unconstitutional, void ab initio and inoperative	Jammu and Kashmir Peoples Conference & Anr. V. Union of India & Anr.
Jammu and Kashmir Reorganisation Act, 2019		
22.	A writ in the nature of mandamus, or any other writ, order or direction declaring the Jammu and Kashmir Reorganisation Act, 2019 as ultra vires Article 14, 19 and 21 of the Constitution read with Article 3, 370 and 356 of the Constitution, unconstitutional, void and unoperative.	WP(C) 1099/2019 Dr. Shah Faesal vs. UOI WP(C) 1070/2019 Radha Kumar vs. UOI W.P.(C) 1165 of 2019 - Jammu and Kashmir Peoples Conference & Anr. V. Union of India & Anr.
23.	A writ of mandamus quashing the Jammu and Kashmir Reorganisation Act of 2019 notified as No. 34 of 2019 dt.9.08.2019 being illegal, arbitrary,	WP(C) 1013 of 2019 Manohar Lal Sharma vs.



	unconstitutional and ultra vires to the Constitution of India as well as Constitution of the State of Jammu and Kashmir to provide complete justice to the Petitioner.	UOI
24.	Quash and set aside the Jammu and Kashmir Reorganisation Act 2019	WP(C) 1062 of 2019 Inder Salim vs. UOI
25.	An appropriate writ, order of direction for restraining the passage/enactment of the Jammu and Kashmir Reorganisation Bill, 2019.	WP(C) 1082 of 2019 Farooq Ahmad Dar vs. UOI
26.	An appropriate order declaring the Jammu and Kashmir (Reorganisation) Act of 2019 unconstitutional, void and inoperative.	WP(C) 1068 of 2019 Soayib Qureshi vs. UOI WP(C) 1037 of 2019 Mohd. Akbar Lone vs. UOI WP(C) 1104 of 2019 Muzzafar Iqbal Khan vs. UOI
27.	A writ of certiorari or any appropriate writ or order(s) declaring The Jammu and Kashmir (Reorganisation) Act, 2019 as unconstitutional, void and inoperative.	WP(C) 1210 of 2019 Mohd. Yousuf

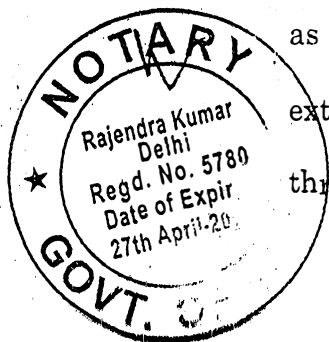


		Tarigami vs. UOI
Others		
28.	An appropriate writ, order or direction restraining the Respondents from taking any action pursuant to C.O. No. 272, C.O. No. 273, and the Jammu and Kashmir (Reorganisation) Act of 2019.	WP(C) 1070/2019 Radha Kumar vs. UOI
29.	Declare that all consequential actions based on the Constitution (Application to Jammu and Kashmir) Order 2019 and/or the Declaration made by the President under Article 370(3) of the Constitution vide Notification dated 06.08.2019 bearing GSR 562(E) are void ab initio and consequently quash and set them aside.	WP(C) 1062 of 2019 Inder Salim vs. UOI
30.	An appropriate order or direction for hearing the present writ by the Constitution Bench of this Hon'ble Court.	WP(C) 1082 of 2019 Farooq Ahmad Dar vs. UOI
31.	An appropriate order under Article 142 thereby including the will of people by directing the Respondent No. 1 to hold referendum with regard to the above mentioned subject matter to settle the impending Kashmir issue amicably, without any unnecessary loss of lives.	WP(C) 1048 of 2019 Shakir Shabir vs. UOI



PRELIMINARY SUBMISSIONS

3. At the outset, it is submitted that the Union of India, is filing this comprehensive counter affidavit, dealing with the entirety of the issues raised in various petitions without adverting to individual grounds raised therein as, in a reference to the Constitution bench, this Hon'ble Court will consider and decide only the questions of law involved.
4. Before setting out in detail the stand of the Union of India in regard to the grounds raised and the reliefs sought in the current batch of cases referred above, the leave of this Hon'ble Court is sought to summarise, in a few short paragraphs, the actions of the President of India, the Parliament and the Central Government, which have been impugned by the petitioners. This summary, with a brief background, is set out in paragraphs 5 - 9 below. More elaborate submissions in response to the issues raised in the writ petitions are set out thereafter in this affidavit.
5. Article 370 in its original form, which was constitutionally described as a temporary provision with respect to the State of Jammu and Kashmir, formed part of the Constitution of India as adopted by the Constituent Assembly on 26.11.1949. To the extent relevant for adjudicating the issues at hand, it contained three significant clauses:

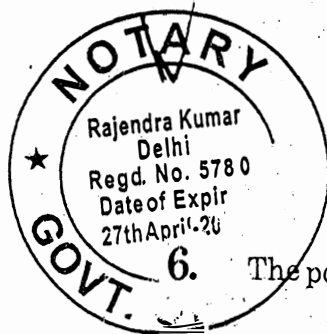


- (i) Article 370(1)(c) provided that the provisions of Article 1 of the Constitution, as well as Article 370 itself, would apply in relation to the State of Jammu and Kashmir.
- (ii) Article 370(1)(d) stated that such of the other provisions of the Constitution of India shall apply in relation to that State "*subject to such exceptions and modifications as the President may by order specify*".

The two provisos to Article 370(1)(d) laid down the requirement for consultation/concurrence, as the case may be, of the State Government for the "*exceptions and modifications*" made by the President of India.

- (iii) Finally, Clause (3) of Article 370 provided that, notwithstanding anything in other provisions of Article 370, the President of India may declare, by a public notification, that the provisions of Article 370 shall cease to be operative, or shall operate with such exceptions and modifications as the President may specify.

The proviso to Article 370 required that the "recommendation of the Constituent Assembly" of the State of Jammu and Kashmir would be necessary before the President issues such a notification.

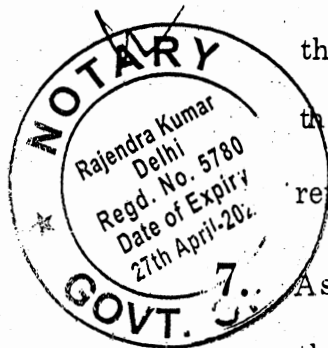


6. The power under Article 370(1)(d), to apply the provisions (other than Articles 1 and 370) of the Constitution of India, to the

State of Jammu and Kashmir, has exercised by the President of India on numerous occasions after coming in to force of the constitution of India.

The first Presidential Order, under Article 370(1)(d) was passed on 26.01.1950 itself. This was superseded and replaced by another Presidential Order issued in the year 1954 [i.e. the Constitution (Application to Jammu and Kashmir) Order, 1954]. This Presidential Order of 1954 was amended from time to time, on more than 50 occasions, in public interest and in the national interest.

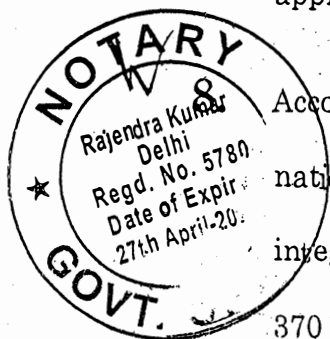
The power under Article 370(3) of the Constitution was also exercised in the year 1952, when Article 370 was modified by declaring that the reference to the '*Maharaja*' in the explanation to Article 370(1)(b) would be construed as a reference to the '*Sadar-e-Riyasat*' of the erstwhile State. This declaration was issued by the President on the recommendation of the Constituent Assembly of the erstwhile State of Jammu and Kashmir, which was then in existence, in accordance with the proviso to Article 370(3), and was necessitated by the fact that the Maharaja had, by then, ceased to exist and had been replaced by the '*Sadar-e-Riyasat*'.



As has been explained in greater detail in later paragraphs of this affidavit, it was observed over the years that the existing regime under Article 370 of the Constitution, and the

exceptions/modifications carried out to other provisions of the Constitution of India by Presidential Orders issued under Article 370(1)(d), were impeding, rather than enabling or facilitating, the full integration of the erstwhile State of Jammu and Kashmir with the rest of the country which was neither in the national interest nor in the interest of the State of Jammu and Kashmir. The militants and separatist elements, with the support of foreign forces inimical to India, were taking advantage of the situation and sowing discord, discontent and even secessionist feelings among the populace of the State. What is more, the residents of the erstwhile State were also being denied all the benefits of the rights guaranteed by the Constitution of India to all other citizens of the country.

It is a matter which cannot be disputed that existence of Article 370 for over seven decades inspite of it being an having been conceived to be merely a temporary provision, prevented the people of the state of Jammu and Kashmir to receive the benefits of evolving legal systems as even the amendment of the Constitution of India and other law of the Parliament were not applicable to the said State creating a separatist mindset.



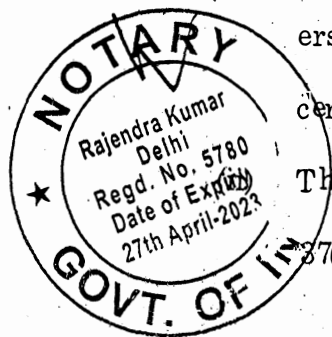
Accordingly, a decision was taken that it would be in the national interest, and in the interest of the security and integrity of the country, that the existing regime under Article 370 be discontinued. It was also decided that it would be

essential that the entirety of the provisions of the Constitution of India be made applicable to the erstwhile State of Jammu and Kashmir, so that the said State and its people may enjoy the full protection of all of the provisions of the Indian Constitution as well as all civil/penal welfare legislations are made applicable. This would also act as a catalyst for enabling the State to achieve its development potential to the fullest, and to provide to its people the best possible standard of living in an atmosphere of peace, amity and tranquility.

9. These constitutional decisions were effectuated strictly in accordance with the requirements of the Constitution of India, in the following manner:

- (i) On 05.08.2019, the President of India issued the 'Constitution (Application to Jammu and Kashmir) Order, 2019', in exercise of his power under Article 370(1)(d) of the Constitution. This Presidential Order of 2019 superseded the aforementioned earlier Presidential Order of 1954 in its entirety, and provided, *inter alia*, that all the provisions of the Constitution of India would apply to the erstwhile State of Jammu and Kashmir subject only to certain modifications to Article 367.

The said modifications to Article 367 under article 370(i)(d) were to the following effect:



"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—

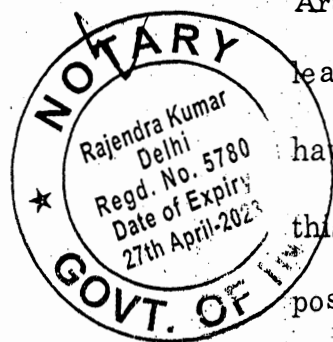
(a) references to this Constitution or to the provisions thereof shall be construed as references to the Constitution or the provisions thereof as applied in relation to the said State;

(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

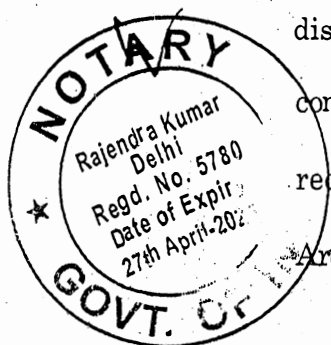
(d) in proviso to clause (3) of article 370 of this Constitution, the expression "Constituent Assembly of the State referred to in clause (2)" shall read "Legislative Assembly of the State".

- (iii) It is noteworthy that on the date of passing of this order by the President of India, the erstwhile State of Jammu and Kashmir was under President's Rule in terms of Article 356 of the Constitution. The circumstances leading to the invocation of Article 356, in December 2018, have been explained in greater detail in other portions of this affidavit though the same is neither, nor could possibly be under challenge.



- (iv) One of the consequences of this Presidential Order, by virtue of the insertion of Article 367(4)(d) extracted above, would be that the reference to the '*Constituent Assembly of the State*' in the proviso to Article 370(3) would now be construed as a reference to the Legislative Assembly of the erstwhile State.

Furthermore, in view of the imposition of the President's Rule in the erstwhile State, and the dissolution of the Legislative Assembly of the erstwhile State by the Governor even prior thereto (in November 2018), the functions of the Legislative Assembly and legislative counsel would have to be performed by Parliament as mandated under Article 356/357 of the Constitution of India. In other words, the recommendation to the President of India, under the proviso to Article 370(3) of the Constitution would be made by the Legislative Assembly of the erstwhile State (and not the '*Constituent Assembly of the State*'), and in a situation where the Legislative Assembly of the State stood dissolved, the Parliament would be the only competent constitutional body to make the necessary recommendation to the President as contemplated under Article 370(3).



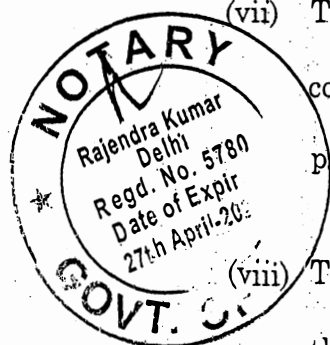
- (v) Accordingly, pursuant to the issuance of the above Presidential Order, a resolution was placed before the Rajya Sabha on the same date recommending to the President that Article 370 itself be modified, by the issuance of a public notification under Clause (3) of Article 370.

The modified Article 370 would replace the existing provision in its entirety, and would state that all provisions of the Constitution of India would apply to the erstwhile State of Jammu and Kashmir.

Secondly, a second resolution was also passed by the Rajya Sabha accepting the 'Jammu and Kashmir Reorganisation Bill, 2019', which had been referred to it by the President in terms of Article 3 of the Constitution of India.

- (vi) The 'Jammu and Kashmir Reorganization Bill, 2019' was itself tabled in the Rajya Sabha on the same date after taking the views of the Lok Sabha.

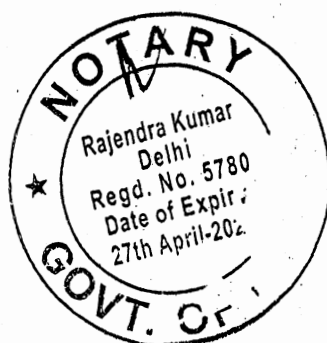
- (vii) The Rajya Sabha, after expressing its views as contemplated under Article 3 of the Constitution of India, passed the said Bill.



- (viii) The 'Jammu and Kashmir Reorganization Bill, 2019' was then tabled in the Lok Sabha on the next day, i.e. on

06.08.2019 for the consideration of the Lok Sabha. Both the above resolutions were also placed before the Lok Sabha. In other words, the Lok Sabha also took up for discussion resolutions relating to the recommendation to the President of India for modification of Article 370, in exercise of powers under Article 370(3), as well as to the acceptance of the 'Jammu and Kashmir Reorganization Bill, 2019'.

- (ix) After a detailed discussion, the said resolutions as well as the 'Jammu and Kashmir Reorganization Bill, 2019' were passed by the Lok Sabha on the same day.
- (x) Based on the recommendation made for the modification of Article 370 (by the aforementioned resolutions) by both Houses of Parliament to the President of India, the President issued a public notification on 06.08.2019 in exercise of his power under Article 370(3). This notification declared the then existing Article 370 would cease to be operative, and would be replaced with the following clause:

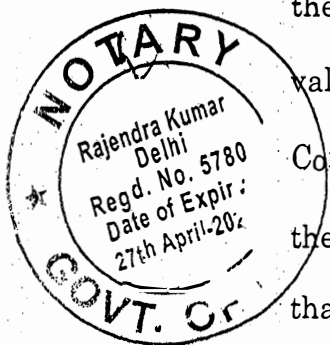


"370. All provisions of this Constitution, as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir notwithstanding anything contrary contained in article 152 or article 308 or any other article of this Constitution or any other provision of the Constitution of Jammu and Kashmir or any law,

document, judgement, ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law in the territory of India, or any other instrument, treaty or agreement as envisaged under article 363 or otherwise."

- (xi) Thereafter, on 09.08.2019, the President of India granted assent to the 'Jammu and Kashmir Reorganization Bill, 2019', which, as explained earlier, had been passed by both Houses of Parliament after expressing their respective views. The Jammu and Kashmir Reorganisation Act, 2019, was published in the Official Gazette on the same day.
- (xii) In exercise of its power under Section 2(a) of the Jammu and Kashmir Reorganisation Act, 2019, the Central Government then notified 31.10.2019 as the "Appointed Day" for the purposes of the said Act. The Lieutenant Governors appointed by the President under Article 239 of the Constitution have taken charge on the appointed date in the new Union Territory of Jammu and Kashmir and the new Union Territory of Ladakh.

10. I state and submit that it is the stand of the Respondent that the present batch of petitions concerns the constitutional validity of the impugned actions/legislative measures under the Constitution. It is submitted that while judicial review is part of the Constitutional power of this Hon'ble Court, it is submitted that the justification, efficacy, desirability and the wisdom of

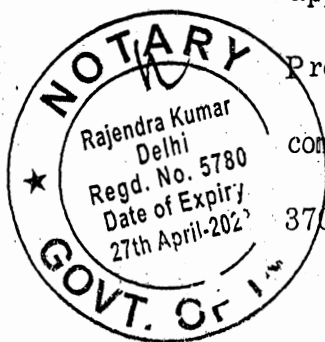


such decisions of the Hon'ble President as well as the Parliament is not amenable to judicial review.

It is submitted that the sphere of constitutional challenge is to be limited to Part III of the Constitution and the pleadings of the Petitioners with regard to the rationality or the wisdom of impugned decision/legislative measures, are to be rejected by this Hon'ble Court.

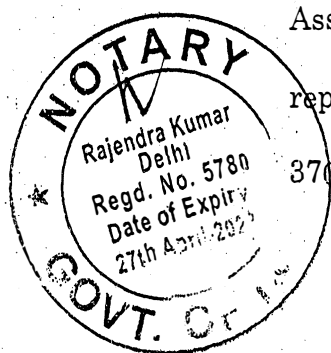
11. It is submitted that Article 370 of the Constitution of India is contained in the Chapter XXI of the Constitution that deals with temporary, transitional and special provisions in relation to certain states. The special provisions from Article 371A to Article 371J contain specific provisions for certain states such as Maharashtra, Gujarat, Nagaland, Assam, Manipur, Andhra Pradesh, Telangana, Sikkim, Mizoram, Arunachal Pradesh, Goa and Karnataka. However, the entirety of the Constitution of India is applicable to all of these states.

On the other hand, in case of the then State of Jammu and Kashmir, in the first instance, on the Constitution of India coming into force, only article 1 and Article 370 applied to that State. All other provisions of the Constitution were to be made applicable to the then State of Jammu and Kashmir by the President of India, with such exceptions and modifications as considered necessary, by an Order to be issued under Article 370(1)(d).



12. I state and submit that the past history of all the events prior to the country gaining independence, including the accession of the Maharaja of Kashmir to the Union of India, to the extent relevant to the issues at hand, has been set out in detail in the judgment of this Hon'ble Court in the case of *Prem Nath Kaul vs. State of Jammu & Kashmir* - 1959 Supp. (2) SCR 270 /AIR 1959 SC 749, as well as in *Mohd. Maqbool Damnoo v. State of J&K* - (1972) 1 SCC 536. The factual situation found by this Hon'ble Court is not being repeated herein for the sake of brevity, and may be read as part and parcel of this affidavit.

13. I state and submit that the Constituent Assembly set up for framing the Constitution of India, commenced its sittings on 09.12.1946. I state and submit that four representatives of the then State of Jammu & Kashmir, headed by the then Prime Minister of Jammu and Kashmir (Sheikh Abdullah) participated in the deliberations of the Constituent Assembly from 16.06.1949 onwards, when draft article 306A (later Article 370) was also discussed and debated. The Constitution of India included a temporary provision, relating to the then State of Jammu & Kashmir which was adopted by the Constituent Assembly, obviously, with the consent of the members representing Jammu & Kashmir. This provision became Article 370 of the Constitution of India as a temporary provision only.



14. I state and submit that in the year 1951, the Constituent Assembly for framing the Constitution of Jammu & Kashmir was brought into existence. This Constituent Assembly, after the completion of the task of drafting the Constitution of Jammu and Kashmir, ceased to exist with effect from 26.01.1957.

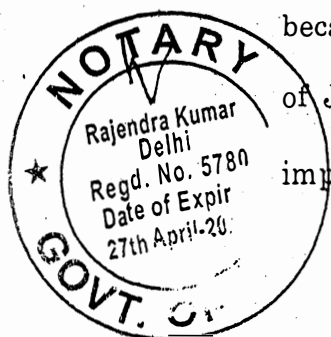
15. I state and submit that the Constituent Assembly of the erstwhile State of Jammu and Kashmir did not in any manner deviate from the provisions of the Constitution of India which would be applicable to the erstwhile State of Jammu & Kashmir. The Constitution of Jammu and Kashmir adopted by this Constituent Assembly included, Section 3, which unequivocally stated as under :

"State of Jammu and Kashmir is and shall be an integral part of the Union of India".

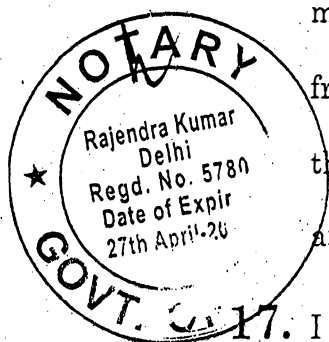
Additionally, Section 5 of the Constitution of Jammu and Kashmir stated read as under :

"The executive and legislative power of the State extends to all matters except those with respect to which Parliament has power to make laws for the State under the provisions of the Constitution of India" (emphasis supplied).

There can be no doubt, therefore, that Jammu & Kashmir became an integral part of India, and the Constituent Assembly of Jammu and Kashmir, an elected body, had also given its imprimatur to the provisions of the Constitution of India.



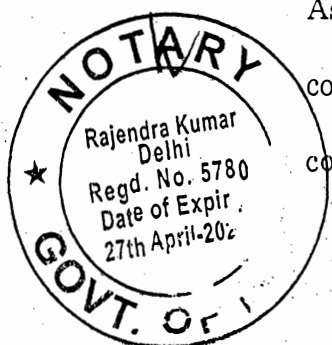
16. I state and submit that as briefly pointed out above, under Article 370(1)(d), as many as 54 Orders have been issued, from time to time. The first such order [The Constitution (Application to Jammu and Kashmir) Order, 1950] was issued on 26th January 1950 itself, when the Constitution of India came into force. This Order was amended twice, and was ultimately superseded by the 'Constitution (Application to Jammu and Kashmir) Order, 1954 issued on 14th May 1954. This Order applied the provisions of the Indian Constitution to Jammu and Kashmir, with a number of modifications and exceptions. An amendment was made to this Order on 26th February 1958, to the effect that provisions of the Constitution of India, as in force on 15th February 1958, were applicable the then State of Jammu and Kashmir, however, again with several modifications and exceptions. Thereafter in the year 1965, another significant amendment was carried out to this Order, making provisions of the Constitution of India as in force on 20th June 1964 applicable to Jammu and Kashmir, again with certain exceptions and modifications. A total of 54 amendments had been carried out, from time to time, to this Order prior to 03.08.2019. A copy of the orders issued under Article 370(1)(d) till 03.08.2019 is annexed herewith and marked **Annexure R - 1**.



17. I state and submit that though provisions of the Indian Constitution, as on 20th June 1964, were applied to Jammu and

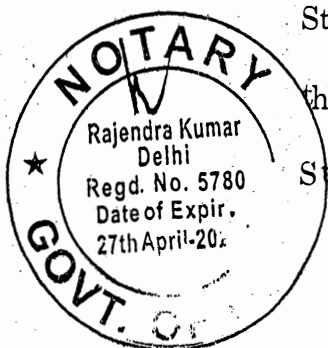
Kashmir, still major additions, omissions, exceptions and modifications to Indian Constitution still continued. To illustrate, one of the major constitutional ambiguity that was created was the addition of a new provision (Article 35A) to the Constitution of India (as applicable in Jammu and Kashmir). I state and submit that this provision enabled the then State to make laws giving special rights and privileges to '*Permanent Residents*', while imposing restrictions upon others.

It is submitted that the following deprivations of the residents of the erstwhile State of Jammu and Kashmir acted as a deterrent against complete integration of the erstwhile State. Chapter III of the Constitution of India, i.e. the fundamental rights, guaranteed to all citizens of India, were not made applicable to the people of Jammu and Kashmir in entirety. An additional proviso to article 3 was added, which mandated the consent of the then State Legislature for reorganisation of the erstwhile State of Jammu and Kashmir. The subjects in the Concurrent List of the Seventh Schedule to the Constitution of India were added to the State List in so far as Jammu and Kashmir is concerned and further, the residual power power of the Parliament in the Union List was also vested with the State Assembly. Article 170 of the Constitution, relating to the composition of the State Assembly and delimitation of assembly constituencies was omitted for Jammu and Kashmir.



18. I state and submit that Article 35A itself proved to be a serious obstacle to the socio-economic development of the erstwhile State of Jammu and Kashmir. It has prevented investments in the State, and adversely impacted job creation for the youth which again resulted in a cascading effect on other developmental indicators. It has led to a discriminatory regime against citizens of the erstwhile State from the rest of the country as well as a large number of residents of Jammu and Kashmir (those who were not 'State subjects'). I state and submit that women of the erstwhile State were also discriminated against if they chose to marry a Non-Permanent Resident.

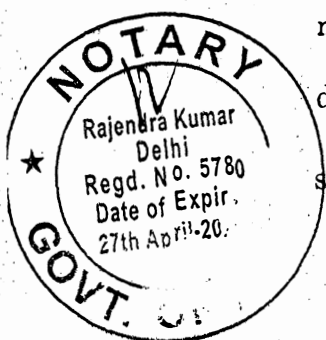
19. I state and submit that it has been felt, over the years, that this regime has worked to the detriment of the State itself, and has significantly contributed to the grave problems of terrorism, militancy and separatism which plague it. I state and submit that inimical forces from across the border have exploited the situation. The overall economic development in the State has been severely hindered on account of these factors, and, as a result, the erstwhile State has failed to live up to its full development potential. The growth potential of the erstwhile State was largely untapped despite large monetary support from the Government of India. The internal resources of the erstwhile State both public and private are very limited, and the situation



27

in the erstwhile State, coupled with the legal regime, operated as a severe disincentive to private financial investment. I state and submit that there are no private universities in the erstwhile State. I state and submit that the tourism potential has remained severely under exploited. I state and submit that the utter lack of industries, even in comparison to other hill states, has contributed to the economic detriment of the citizens. I state and submit that, in terms of education, the local medical and engineering Colleges were unable to get quality teachers and the full benefits of technological advancements were unavailable to the people in the region. I state and submit that as a result, over the years, the employment opportunities for the local youth remained extremely limited thereby aggravating the situation.

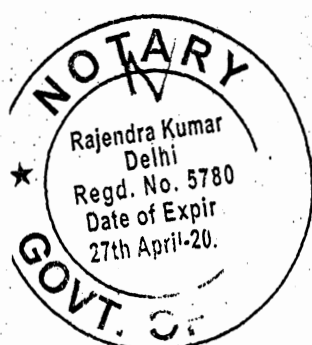
20. I state and submit that at the same time, these factors have contributed to fostering a separatist mind-set, which breeds militancy and terrorism, fuelled from across the border. I state and submit that this has resulted in a massive and tragic loss of human lives over the years, running into tens of thousands. The unfortunate situation prevailing on the ground affected not only the people of the region but also the brave and dedicated members of the Armed Forces and the police forces, coming from different parts of the country, many of whom made the ultimate sacrifice in the course of the performance of their duties. I state



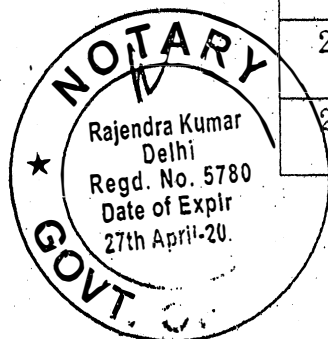
and submit that therefore, it became necessary that timely remedial constitutional measures to be made, in the interest of the region itself, as well as in the larger interest of the country as a whole, so that peace and prosperity may be restored in the region, and the obstacles sought to be created, over the years, by certain elements, to the fullest integration of Jammu and Kashmir with the rest of the country be removed.

21. I state and submit that over the years, the erstwhile State of Jammu and Kashmir has been severely affected by the terrorist violence. The unfortunate situation prevailing on the ground affected not only the people of the erstwhile State but also the brave and dedicated members of the Armed Forces and the police forces, coming from different parts of the country, many of whom made the ultimate sacrifice in the course of the performance of their duties. I state and submit that since 1990 to till 4th August, 2019, a total of 41,861 persons have lost their lives in 70,960 incidents of terrorist violence. This includes 14,035 civilians; 5,291 personnel of security forces and 22,535 terrorists. The following is a table of the said data :

YEAR	INCIDENTS OF TERRORIST VIOLENCE	CIVILIANS KILLED	SECURITY FORCES KILLED	TERRORISTS KILLED
1990	4158	461	155	550
1991	3765	382	173	844
1992	4817	634	189	819

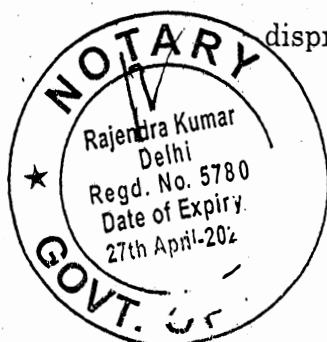


1993	5247	747	198	1310
1994	5829	820	200	1596
1995	5938	1031	237	1332
1996	5014	1341	184	1209
1997	3420	971	193	1075
1998	2932	889	236	999
1999	3071	873	355	1082
2000	3074	847	397	1520
2001	4522	996	536	2020
2002	4038	1008	453	1707
2003	3401	795	314	1494
2004	2565	707	281	976
2005	1990	557	189	917
2006	1667	389	151	591
2007	1092	158	110	472
2008	708	91	75	339
2009	499	71	79	239
2010	488	47	69	232
2011	340	31	33	100
2012	220	15	15	72
2013	170	15	53	67
2014	222	28	47	110
2015	208	17	39	108
2016	322	15	82	150



2017	342	40	80	213
2018	614	39	91	257
2019 (4 TH AUGUST)	287	20	77	135
TOTAL	709690	14035	5291	22535

22. I state and submit that the Government of India has initiated a number of development projects/schemes across all regions of Jammu and Kashmir. I state and submit that the Prime Minister has announced a development package worth Rs. 80,068 Crores for the erstwhile State comprising of 63 major projects in all the sectors such as Road, Power, Health, Water Resources, Human Resources Development and Tourism etc. including establishing two AIIMS, two IIMs and IIT. It may be noted that from 2004 to 2019, Government of India spent Rs. 2,77,000 Crore for the erstwhile State of Jammu and Kashmir. During 2011 and 2012, while only Rs. 3683 per person was given to rest of India, Rs. 14255 per person was given to the erstwhile State of Jammu and Kashmir. Further, during 2017-18, an average amount of Rs. 8,227 per person was spent to rest of India, whereas Rs. 27,358 per person was spent in Jammu and Kashmir. I state and submit that despite this overwhelmingly disproportionate expenditure, it was observed the

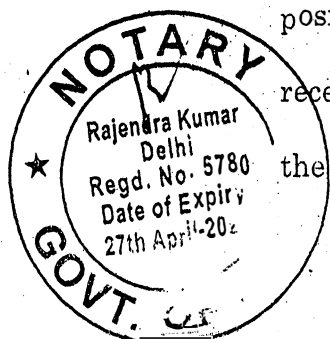


developmental benefits were not percolating to the citizens of the erstwhile State of Jammu and Kashmir.

POSITION PREVAILING PRIOR TO THE DATE OF THE CONSTITUTIONAL ORDER DATED 5TH AUGUST 2019

23. I state and submit that the last Government in the erstwhile State of Jammu and Kashmir was formed in March, 2015, after the announcement of the results of the elections to the Legislative Assembly of the State in December, 2014. However, the government could not last its full term, and the Chief Minister of the State resigned on 19.06.2018. I state and submit that no political party enjoyed a majority in the Legislature, and none stepped forward to stake a claim for forming the new government in the State. As a result, with the approval of the President of India, Governor's Rule was imposed in the State on 20.06.2018, in terms of section 92 of the Constitution of Jammu and Kashmir. A copy of the proclamation issued by the Governor dated 20.06.2018 is annexed herewith and marked as Annexure - R 2.

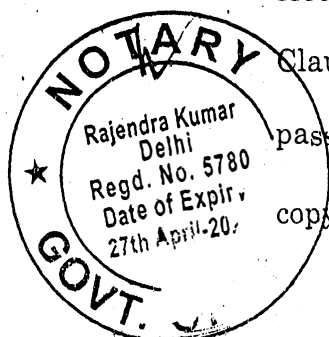
24. I state and submit that for about five months thereafter, this position continued. I state and submit that on 21.11.2018, on receiving complaints about the adoption of unethical practices, the Governor took a decision to dissolve the Legislative



Assembly. A copy of the Order of the Governor, dated 21.11.2018 is annexed herewith as Annexure R - 3.

25. I state and submit that the maximum duration of Governor's Rule under Section 92 of the Constitution of Jammu and Kashmir is 6 months. Section 92 does not contemplate any extension, beyond 6 months, of Governor's Rule in the State. The 6-month period, from 20.06.2018, would expire on 19.12.2018. At the same time, Assembly elections could not be held in the State by this date, as a period of only about a month was available after 21.11.2018. In these circumstances, pursuant to a report received from the Governor of the State, the President of India assumed all the functions of the Government of Jammu and Kashmir by issuing a Proclamation under Article 356 of the Constitution of India, dated 19.12.2018 which were delegated to the Governor of Jammu and Kashmir while vesting the Legislative powers with the Parliament. A copy of the proclamation under Article 356 dated 19.12.2018 is annexed herewith and marked as Annexure R -4.

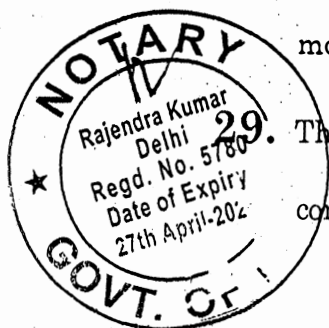
26. I state and submit that the imposition of President's Rule in the State under Article 356 of the Constitution was affirmed in both Houses of Parliament, by separate resolutions, in terms of Clause (3) of Article 356. The resolution in the Lok Sabha was passed on 28.12.2018, and in the Rajya Sabha on 03.01.2019. A copy of the Lok Sabha resolution dated 28.12.2019 is annexed



herewith and marked as Annexure R - 5. A copy of the Rajya Sabha resolution dated 03.01.2019 is annexed herewith and marked as Annexure R - 6.

27. It may be stated, at this juncture itself, that the duration of President's Rule in terms of Article 356(4), as was applicable in Jammu and Kashmir, was 6 months "from the date of the passing of the second of the resolutions approving the Proclamation under Clause (3)". This is the period specified in Article 356(4) of the Constitution of India, as originally adopted, was extended to the then State of Jammu and Kashmir by the 71st Constitution (Application to Jammu and Kashmir) Order, 1964. Though Clause (4) of Article 356 was amended twice thereafter, by the 42nd and 44th amendments to the Constitution of India, neither of these amendments was made applicable to the then State of Jammu and Kashmir. Therefore, the period originally specified in Article 356(4) continued to apply in the case of erstwhile State of Jammu and Kashmir.

28. This being so, the imposition of President's Rule in the erstwhile then State of Jammu and Kashmir on 19.12.2018, and approved by the resolutions of the Houses of Parliament on 28.12.2018 and 03.01.2019, would cease to operate on the expiry of 6 months from 03.01.2019.

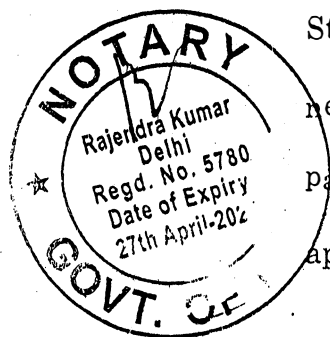


29. The Election Commission of India after taking into consideration the suggestions made by the Special Observers

appointed for this purpose and the inputs, suggestions and recommendations of the State functionaries, as well as legal advice, decided that it will consider holding Assembly elections in the then State of Jammu and Kashmir later in the year and announce the election schedule at the appropriate time. A Press Release was issued to this effect on 04.06.2019, which is annexed herewith and marked as **Annexure R - 7**.

30. I state and submit that since elections to the State Assembly could not be conducted within the period of validity of the President's Rule imposed on 19.12.2018, on the recommendation of the Governor, President's Rule was extended for a further period of six months beyond 3rd July 2019. The resolutions were passed by Lok Sabha and Rajya Sabha on 28th June, 2019 and 1st July, 2019 respectively extending President's Rule by six months. A copy of the Lok Sabha resolution dated 28.06.2019 is annexed herewith and marked as **Annexure R - 8**. A copy of the Rajya Sabha resolution dated 01.07.2019 is annexed herewith and marked as **Annexure R - 9**.

31. I state and submit that the above facts would show that the imposition, and the extension, of President's Rule in the then State of Jammu and Kashmir was wholly legitimate, and is/was never challenged. I state and submit that each of the orders passed, apart from being strictly in conformity with the applicable constitutional provisions, were based on the

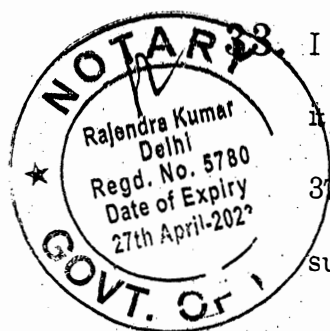


assessment of various germane facts, in order to ensure that the administration of the State is carried out in accordance with the Constitution of India. I state and submit that the requisite Parliamentary approval was also granted, as required in Article 356 itself. It is also noteworthy that the resolutions passed in both Houses of Parliament.

PROCESS OF DE-OPERATIONALISATION

C.O. 272 - Giving life to Article 370(3) through the Article 367 route

32. I state and submit that as stated above, subsequent to the accession of the erstwhile State of Jammu and Kashmir and its integration, the powers granted by Article 370 of the Constitution were exercised periodically, as and when the necessity arose, for the purpose of modifying the provisions of the Constitution of India in their application to the then State of Jammu and Kashmir. It may be noted there had been three amendments till 04.08.2019 in Article 370 of the Constitution, which were modified in the past, in exercise of powers under Article 370(1)(d), from time to time, include Article 367.

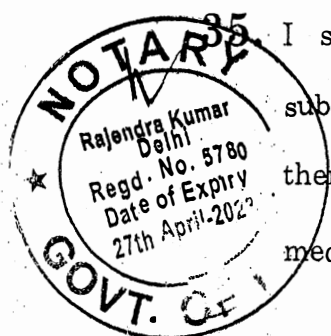


I state and submit that in the year in the year 1952, Article 370 itself was also modified, in exercise of powers under Article 370(3) and consistent with the proviso to Article 370(3), substituting 'Sadar-e-Riyasat' for 'Maharaja'. The original text

in the Explanation to Article 370(1) the Government of the State was to mean *"the person for the time being recognised by the President as a Maharaja of Jammu and Kashmir..."*. On the recommendation of the Constituent Assembly, the said part of the Article 370 was modified under Article 370(3) by way of the public order by the President [Shri Rajendra Prasad] dated 15.11.1952 which read as *"the person for the time being recognised by the President on the recommendation of the Legislative Assembly of the State as the Sadar-I-Riyasat of Jammu and Kashmir..."*. A copy of the public order C.O. 44 of the President under Article 370(3) dated 15.11.1952 is attached herewith and marked **Annexure R - 10**.

34. It may also not be out of place to mention that 'The Constitution (Application To Jammu And Kashmir) Order, 1954' (C.O. 48) issued on 14.05.1954, in exercise of powers under Article 370(1)(d) expressly provided, *inter alia*, that in Article 367 of the Constitution of India, a clause would be added to the following effect :

"(d) reference to the legislature or Legislative Assembly of the said State shall be considered as including reference to the Constituent Assembly of the said State."



I state and submit that thereafter, *"Sadar-I-Riyasat"* was substituted to mean *"Governor"*. I state and submit that since there was no Constituent Assembly at that particular time, the mechanism under Article 367 and Article 370(1)(d) was used. It

may be relevant to note that Article 367, was applied to the then State of Jammu and Kashmir, with the following modifications, by way of the amended Constitution (Application to Jammu and Kashmir) Order, 1954:

"(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;

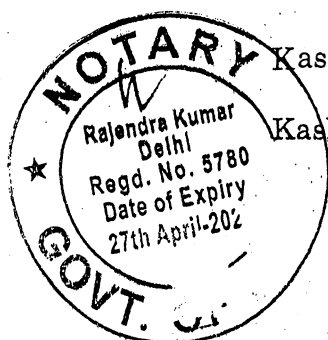
(aa) references to the person for the time being recognised by the President on the recommendation of the Legislative Assembly of the State as the Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office, shall be construed as references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

(b) 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;

Provided that in respect of any period prior to the 10th day of April, 1965, such references shall be construed as including references to the Sadar-i-Riyasat acting on the advice of his Council of Ministers;

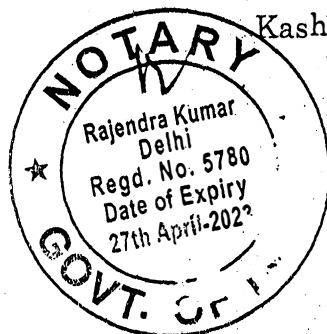
(c) references to a High Court shall include references to the High Court of Jammu and Kashmir;"

I state and submit that through an order under Article 370(1)(d), a proviso was added to Article 367 of the Indian Constitution as applicable to the erstwhile State of Jammu and Kashmir through the Constitution (Application to Jammu and Kashmir) Order, 1965, which states that all the references to



Sadar-I-Riyasat would be construed as references to the Governor of Jammu and Kashmir.

36. I state and submit that at that moment, the erstwhile State was under President's rule and all the functions of the State Government, vested with the Hon'ble President of India under Article 356. The President, thereafter, delegated these powers to the Hon'ble Governor. As a matter of political and territorial policy of the sovereign Indian nation, and in line with the previous convention, approach and mode of exercise of powers which has been upheld by the constitution bench of this Hon'ble Court in *Damnoo* supra, recourse was taken to Article 367 which is the interpretation clause in the Constitution. The Hon'ble President of India, in exercise of the wide powers under the then Article 370(1)(d), added a proviso to Article 367 of the Constitution of India [as applicable to the State of Jammu and Kashmir]. The Constitution (Application to Jammu And Kashmir) Order, 2019 [C.O. 272] was promulgated on 05.08.2019. The said order continued the changes previously made to the Article 367 by way of various Constitution Orders as mentioned above and sought to apply all other provisions of the India Constitution to the erstwhile State of Jammu and Kashmir. The said order, read as under :



"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;

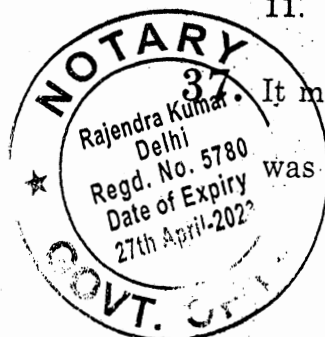
(b) references to the person for the time being recognized by the President on the recommendation of the Legislative Assembly of the State as the *Sadar-i-Riyasat* of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office, shall be construed as references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

The said Constitution Order was issued in supersession of the Constitution (Application to Jammu and Kashmir) Order, 1954 on 05.08.2019. A copy of the Constitution Order 272 dated 05.08.2019 is annexed herewith and marked as Annexure R -

11.



It may be worth noting that the power under Article 370(1)(d) was exercised by the President of India on as many as six

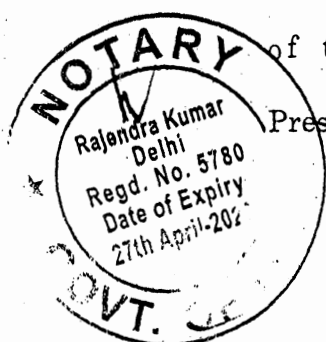
occasions when President's Rule was in force in Jammu & Kashmir. I state and submit that at no time was any issue/challenge ever raised against the exercise of this power on the ground that the Legislative Assembly of Jammu & Kashmir or the State Government of Jammu & Kashmir were not in existence as the said exercise of power is a valid, lawful and constitutional exercise.

Parliamentary Exercise and Approval

38. I state and submit that as per Article 356, the President by proclamation assumes all the functions/powers of the State Government/Governor except the Legislative power of the State Assembly. However, the President under Article 356(1)(b) can declare that the Legislative powers of the State would be exercisable by the Parliament.

39. I state and submit that as per the Proclamation of Emergency order of the President dated 19.12.2018, the power of the Legislature of the erstwhile State of Jammu and Kashmir was already vested with the Parliament of India as per the constitutional mandate. Therefore, for the purpose of Article 370(3), the recommendation contemplated under Article 370(3), was to be given by the Parliament which stepped in to the shoes

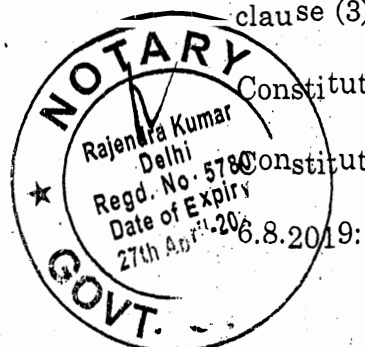
of the State Legislature during the proclamation by the President [under Article 356(1)(b)].



40. I state and submit that on 05.08.2019, a resolution was moved in the Rajya Sabha seeking recommendation of the Parliament, in place of the Legislative Assembly of the then State of Jammu and Kashmir, under Article 370(3) seeking to apply Article 370 to the erstwhile State of Jammu and Kashmir with such modifications as recommended therein. The said Resolution was passed by the Rajya Sabha on 05.08.2019. A resolution was also moved in the Lok Sabha for recommendation of the Parliament, in place of the Legislative Assembly of the erstwhile State of Jammu and Kashmir under Article 370(3) seeking to apply Article 370 to the erstwhile State of Jammu and Kashmir with such modifications as recommended therein. The said Resolution was passed by the Lok Sabha. A copy of the Resolution dated 05.08.2019 as passed by the Rajya Sabha is annexed herewith and marked as **Annexure R- 12**. A copy of the Resolution dated 06.08.2019 as passed by the Lok Sabha is annexed herewith and marked as **Annexure R- 13**.

Exercise of President's constitutional powers

41. I state and submit that pursuant to this recommendation of Parliament, the President, in exercise of the powers conferred by clause (3) of article 370 read with clause (1) of article 370 of the



Constitution of India, issued following declaration under the Constitution of India vide CO No. 273 (GSR 562(E) dated

6.8.2019:

**"DECLARATION UNDER ARTICLE 370(3) OF
THE CONSTITUTION OF INDIA**

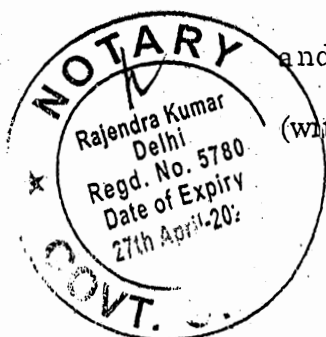
In exercise of the powers conferred by clause (3) read with clause (1) of Article 370 of the Constitution of India, the President on the recommendation of Parliament, is pleased to declare that, as from the 6th August, 2019, all clauses of the said Article 370 shall cease to be operative except the following which shall read as under, namely :-

"370. All provisions of this Constitution, as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir notwithstanding anything contrary contained in article 152 or article 308 or any other article of this Constitution or any other provision of the Constitution of Jammu and Kashmir or any law, document, judgement, ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law in the territory of India, or any other instrument, treaty or agreement as envisaged under article 363 or otherwise."

A copy of the Constitution of India vide CO No. 273 (GSR 562(E)) dated 6.8.2019 is annexed herewith and marked as **Annexure R - 14**.

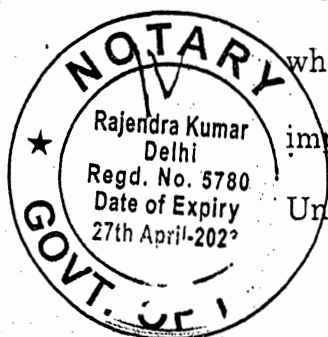
Bifurcation and alteration as Union Territories under Article 3

42. I state and submit that on 05.08.2019 and 06.08.2019, both Houses of Parliament passed the Jammu and Kashmir Reorganisation Bill, 2019, bifurcating the then State of Jammu and Kashmir into the Union territory of Jammu and Kashmir (with a Legislative Assembly) and the Union territory of Ladakh



(without a Legislative Assembly) after first expressing their respective views in favour of such an exercise as stipulated under Article 3 of the Constitution. This Bill was passed in terms of Article 3 of the Constitution of India, as Parliament considered it necessary to take this measure in the larger interest of Jammu, Kashmir and Ladakh. Further, in the Appendix to the Bill, a comprehensive Schedule contained the list of all the Central laws made under the Union List and the Concurrent List by the Parliament which would be applicable to the Union Territory of Jammu and Kashmir and Union territory of Ladakh. I state and submit that amendments have also been carried out to the existing State Laws made under the State List by the erstwhile State Legislature, in order to bring them in line with all the provisions of the Constitution of India. A copy of the resolution dated 05.08.2019 of the Lok Sabha expressing their views is annexed herewith and marked as **Annexure R- 15**.

43. In this regard, it is submitted that the powers of the Union Parliament, with regard to the nature of powers under Article 3 i.e. alteration of state boundaries, bifurcation, new States, etc, is very wide in nature. It is submitted that the said power represents an important part of our constitutional setup



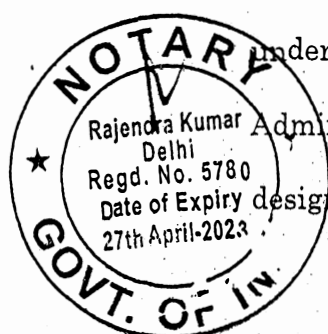
wherein the framers of the constitution, realising the importance of a united Union, reserved such powers to the Union Parliament. It is further submitted that the assertion of

the Petitioners that Article 3 does not contain the power to create a Union territory is ex-facie untenable as the Explanation to Article 3 clearly provides that the references to "State" in article 3, includes reference to "Union Territory". The said Explanation, is quoted as under :

"Explanation I In this article, in clauses (a) to (e), State includes a Union territory, but in the proviso, State does not include a Union territory"

44. The Jammu and Kashmir Reorganisation Act, 2009 (No. 34 of 2019) has been published in Gazette of India on 9th August, 2019. Thereafter, in exercise of the powers conferred by clause (a) of section 2 of the Jammu and Kashmir Reorganisation Act, 2019, the Central Government notified the "appointed day" for the purposes of the said Act as 31st October, 2019, vide S.O. 2889(E) dated 9th August, 2019. A copy of the Jammu and Kashmir Reorganisation Act, 2009 (No. 34 of 2019) is annexed herewith and marked as Annexure R - 16.

45. On the appointed date, i.e. 31st October, 2019, the President of India, in the exercise of his power under Article 239(1) of the Constitution appointed the Administrator of the Union Territory of Ladakh with the designation of Lieutenant Governor. On the same day, the President of India, in the exercise of his power under Article 239(1) of the Constitution, appointed the Administrator of the Union Territory of Ladakh with the designation of Lieutenant Governor. A copy of the Gazette



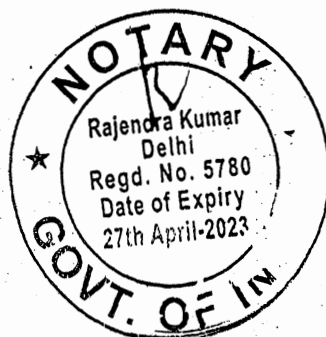
Notification dated 31.10.2019 for appointment of the Lieutenant Governor of Ladakh is annexed herewith and marked as **Annexure R - 17**. A copy of the Gazette Notification dated 31.10.2019 for appointment of the Lieutenant Governor of Jammu and Kashmir is annexed herewith and marked as **Annexure R - 18**.

LEGAL ISSUES - LIMITED REPLY

46. It is submitted, with respect, that the issues sought to be raised in the present batch of writ petitions are no longer *res integra*, and are squarely covered by the following decisions of this Hon'ble Court:

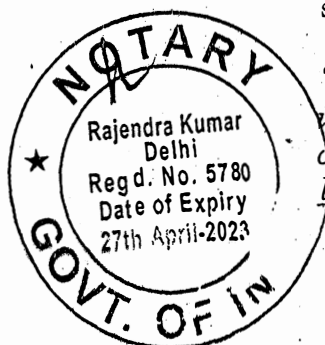
- (i) In *P.L. Lakhanpal v. State of J&K*, (1955) 2 SCR 1101, a Constitution Bench of this Hon'ble Court, while rejecting a petition for *Habeas Corpus*, explained the true position under Article 370 of the Constitution of India thus:

"6. The Constitution does not apply to the State of Jammu and Kashmir in its entirety. On 14-5-1954, the President of India in exercise of the powers conferred by clause (1) of Article 370 of the Constitution made and promulgated with the concurrence of the Government of the State of Jammu and Kashmir, the Constitution (Application to Jammu and Kashmir) Order, 1954 (which shall be described hereinafter as "The Order"). It came into force on the same day and superseded the Constitution (Application to Jammu and Kashmir) Order, 1950. By its terms the Order provides that in addition to Articles 1 and 370, the specified provisions of the Constitution shall apply to the State of Jammu and Kashmir subject to the exceptions and modifications indicated therein. Insofar as those



exceptions and modifications are relevant to our present purpose, it is provided that in clauses (4) and (7) of Article 22 "The legislature of the State of Jammu and Kashmir" shall be substituted for "Parliament", so that the Legislature of the State of Jammu and Kashmir is competent to legislate in respect of preventive detention. In Article 35, clause (c) has been added, which is in these terms: "No law with respect to preventive detention made by the legislature of the State of Jammu and Kashmir, whether before or after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, shall be void on the ground that it is inconsistent with any of the provisions of this Part, but any such law shall, to the extent of such inconsistency, cease to have effect on the expiration of five years from the commencement of the said Order, except as respects things done or omitted to be done before the expiration thereof."

The effect of this modification in Article 35 of the Constitution is that such of the provisions of the Act as are inconsistent with Part III of the Constitution shall be valid until the expiration of five years from the commencement of the Order. This is an exception which has been engrafted on the Constitution in respect of fundamental rights relating to personal liberty for the limited period of five years. The Act itself has a limited life of five years. Thus the exception aforesaid is co-extensive with the life of the Act itself. Hence, so long as the Act continues in force in its present form, the provisions of Articles 21 and 22 insofar as they are inconsistent with the Act are out of the way of the respondent and the petitioner cannot take advantage of those provisions. Therefore, there is no question of the provisions of Section 8 of the Act being unconstitutional by reason of their being inconsistent with Articles 21 and 22 of the Constitution; and consequently Article 13 is of no assistance to the petitioner." (emphasis supplied)



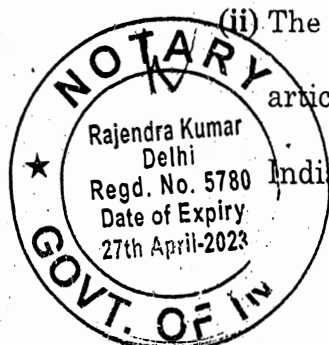
"8. Realizing the difficulty in the petitioner's way in view of the provisions of clause (c) added as aforesaid to Article 35 of the Constitution, the learned counsel for the petitioner faintly

suggested that clause (c) of Article 35 added by the President's Order was itself bad inasmuch as, so the argument further ran, that provision was in excess of the powers conferred on the President by Article 370 of the Constitution. No attempt was made on behalf of the petitioner to show how the Order promulgated by the President was in excess of his powers under Article 370 of the Constitution. It was not contended that that Article did not authorise the President to promulgate the Order. What was suggested was that in promulgating the Order which the President was authorized to make under Article 370 he had exceeded his powers. Beyond saying so, no tangible reason was adduced in support of this extreme position. It is manifest that Article 370(1)(c) and (d) authorizes the President by Order to specify the exceptions and modifications to the provisions of the Constitution (other than Articles 1 and 370) subject to which the Constitution shall apply to the State of Jammu and Kashmir. Clause (c) as indicated above has been added to Article 35 of the Constitution only so far as the State of Jammu and Kashmir is concerned. Section 8 of the Act is not in excess of or inconsistent with the provisions of clause (c) so added to Article 35 of the Constitution. That being so the orders as served upon the petitioner are not inconsistent with or in excess of such provisions of Part III of the Constitution as apply to the State of Jammu and Kashmir. It must therefore be held that the petitioner was not entitled to know the grounds upon which he had been detained beyond what is disclosed in the order itself...." (emphasis supplied)

A copy of the judgment in *P.L. Lakhanpal v. State of J&K*,

(1955) 2 SCR 1101 is annexed herewith and marked as

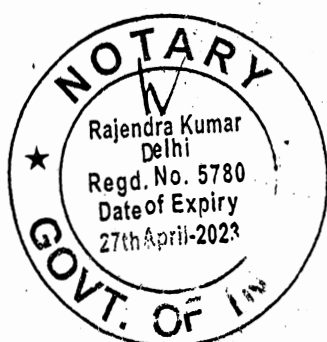
Annexure R - 19.



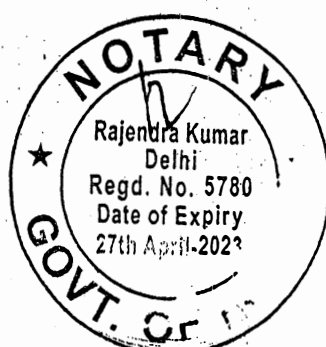
(ii) The extremely wide scope of the power of the President, under article 370(1)(d), to modify the provisions of the Constitution of India in their application to Jammu and Kashmir was explained

by a Constitution Bench of this Hon'ble Court in *Puranlal Lakhanpal v. President of India*, (1962) 1 SCR 688, in the following words:

"..... We are here dealing with the provision of a Constitution which cannot be interpreted in any narrow or pedantic sense. The question that came for consideration in In re Delhi Laws Act case [(1951) SCR 747] was with respect to the power of delegation to a subordinate authority in making subordinate legislation. It was in that context that the observations were made that the intention of the law there under consideration when it used the word "modification" was that the Central Government would extend certain laws to Part C States without any radical alteration in them. But in the present case we have to find out the meaning of the word "modification" used in Article 370(1) in the context of the Constitution. As we have said already the object behind enacting Article 370(1) was to recognise the special position of the State of Jammu and Kashmir and to provide for that special position by giving power to the President to apply the provisions of the Constitution to that State with such exceptions and modifications as the President might by order specify. We have already pointed out that the power to make exceptions implies that the President can provide that a particular provision of the Constitution would not apply to that State. If therefore the power is given to the President to efface in effect any provision of the Constitution altogether in its application to the State of Jammu and Kashmir, it seems that when he is also given the power to make modifications that power should be considered in its widest possible amplitude. If he could efface a particular provision of the Constitution altogether in its application to the State of Jammu and Kashmir, we see no reason to think that the Constitution did not intend that he should have the power to amend a particular provision in its application to the State of Jammu and Kashmir. It seems to us that when the Constitution used the word "modification" in Article 370(1) the intention was that the President



would have the power to amend the provisions of the Constitution if he so thought fit in their application to the State of Jammu and Kashmir. In the Oxford English Dictionary (Vol. VI) the word "modify" means inter alia "to make partial changes in; to change (as object) in respect of some of its qualities; to alter or vary without radical transformation". Similarly the word "modification" means "the action of making changes in an object without altering its essential nature or character; the state of being thus changed; partial alteration". Stress is being placed on the meaning "to alter or vary without radical transformation" on behalf of the petitioner; but that is not the only meaning of the words "modify" or "modification". The word "modify" also means "to make partial changes in" and "modification" means "partial alteration". If therefore the President changed the method of direct election to indirect election he was in essence making a partial change or partial alteration in Article 81 and therefore the modification made in the present case would be even within the dictionary meaning of that word. But, in law, the word "modify" has even a wider meaning. In Words and Phrases by Roland Burrows, the primary meaning of the word "modify" is given as "to limit" or "restrict" but it also means "to vary" and may even mean to "extend" or "enlarge". Thus in law the word "modify" may just mean "vary" i.e. amend; and when Article 370(1) says that the President may apply the provisions of the Constitution to the State of Jammu and Kashmir with such modifications as he may by order specify it means that he may vary (i.e. amend) the provisions of the Constitution in its application to the State of Jammu and Kashmir. We are therefore of opinion that in the context of the Constitution we must give the widest effect to the meaning of the word "modification" used in Article 370(1) and in that sense it includes an amendment. There is no reason to limit the word "modifications" as used in Article 370(1) only to such modifications as do not make any "radical transformation". We are therefore of opinion that the President had the power to make the modification which he did in Article 81 of the Constitution. The petition

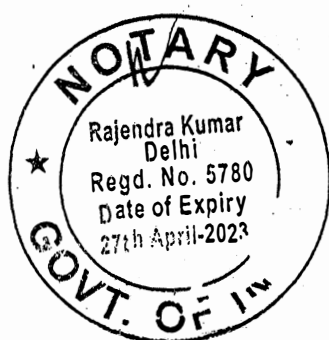


therefore fails and is hereby dismissed with costs." (emphasis supplied)

A copy of the judgment in *Puranlal Lakhanpal v. President of India*, (1962) 1 SCR 688 is annexed herewith and marked as Annexure R - 20.

(iii) The judgment in *Sampat Prakash vs State of Jammu and Kashmir*, (1969) 2 SCR 365, again by a Constitution Bench of this Hon'ble Court, affirmed the view expressed in *Puranlal Lakhanpal* supra, and held that the dissolution of the Constituent Assembly of Jammu and Kashmir would not render Article 370 of the Constitution of India inoperative or ineffective. In other words, it was held that the power under Article 370(1)(d) of the Constitution could validly be exercised even after the dissolution of the Constituent Assembly of Jammu and Kashmir. To the extent relevant, the judgment states thus in regard to article 370 of the Constitution of India:

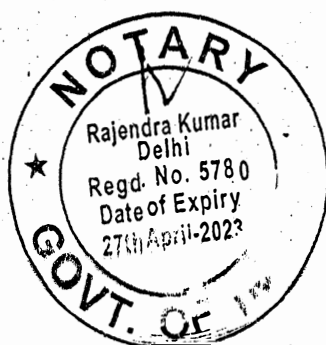
"5. We are not impressed by either of these two arguments advanced by Mr Ramamurthy. So far as the historical background is concerned, the Attorney-General appearing on behalf of the Government also relied on it to urge that the provisions of Article 370 should be held to be continuing in force, because the situation that existed when this article was incorporated in the Constitution had not materially altered, and the purpose of introducing this article was to empower the President to exercise his discretion in applying the Indian Constitution while that situation remained unchanged. There is considerable force in this submission. The legislative history of this article cannot, in these circumstances, be of any assistance for holding



that this article became ineffective after the Constituent Assembly of the State had framed the Constitution for the State.

6. The second submission based on clause (2) of Article 370 does not find support even from the language of that clause which 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.

7. There are, however, much stronger reasons for holding that the provisions of this article continued in force and remained effective even after the Constituent Assembly of the State had passed the Constitution of the State. The most important provision in this connection is that contained in clause (3) of the article which lays down that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as the President may specify by public notification, 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. This clause clearly envisages that the article will continue to be operative and can cease to be operative only if, on the recommendation of the Constituent Assembly of the State, the President makes a direction to that effect. In fact, no such recommendation was made by the Constituent Assembly of the State, nor was any order made by the President declaring that the article shall cease to be operative. On the contrary, it appears that the Constituent Assembly of the State made a recommendation that the article should be operative with one modification to be incorporated in the Explanation to clause (1) of the article. This modification in the article was notified by the President by Ministry of Law Order CO 44 dated 15th November, 1952, and laid down that, from 17th November, 1952, the article was to be operative with substitution of the new Explanation for the old Explanation as it existed at that time. This makes it very clear that



the Constituent Assembly of the State did not desire that this article should cease to be operative and, in fact, expressed its agreement to the continued operation of this article by making a recommendation that it should be operative with this modification only.

8. Further reference may also be made to the proviso added to Article 368 of the Constitution in its application to the State of Jammu & Kashmir, under which an amendment to the Constitution made in accordance with Article 368 is to have no effect in relation to the State of Jammu & Kashmir unless applied by Order of the President under clause (1) of Article 370. The proviso, thus, clearly requires that the powers of the President under Article 370 must be exercised from time to time in order to bring into effect in Jammu & Kashmir amendments made by Parliament in the Constitution in accordance with Article 368. In view of these provisions, it must be held that Article 370 of the Constitution has never ceased to be operative and there can be no challenge on this ground to the validity of the Orders passed by the President in exercise of the powers conferred by this Article." (emphasis supplied)

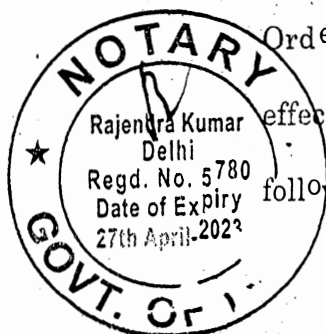
A copy of the judgment in *Sampat Prakash vs State of Jammu and Kashmir*, (1969) 2 SCR 365 is annexed herewith and marked as Annexure R - 21.

(iv) In *Mohd. Maqbool Damnoo v. State of J&K* - (1972) 1 SCC

536 was a case where the modification of Article 367 of the Constitution of India, carried out by way of the Constitution (Application to Jammu and Kashmir) Second Amendment

Order, 1965, was put in issue. The modification was to the

effect that for sub-clause (b) of clause (4) of Article 367, the following clauses be were inserted:



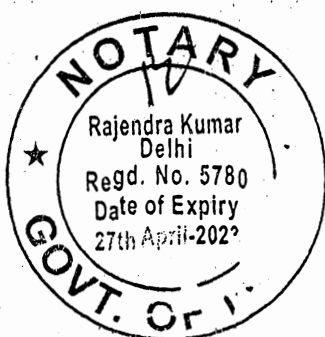
"(aa) references to the person for the time being recognised by the President on the recommendation of the Legislative Assembly of the State as the Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office, shall be construed as references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

(b) 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:

Provided that in respect of any period prior to the 10th day of April, 1965, such references shall be construed as including references to the Sadar-i-Riyasat acting on the advice of his Council of Ministers."

This provision was challenged, *inter alia*, on the ground that it was tantamount to an amendment of Article 370 itself, and was, therefore, beyond the scope of the power conferred by Article 370(1)(d) of the Constitution. Rejecting this contention, a Constitution Bench of this Hon'ble Court held thus:

"24. The learned counsel, relying on SampatPrakash v. State of Jammu and Kashmir¹ contended that the only way of modifying Article 370 is specified in Article 370(3) itself. He said that this was expressly laid down by this Court in the decision just referred to. We are not concerned with the question whether Article 370(3) can now be utilised to amend the provisions of Article 370(1) and (2), and therefore we do not express any opinion on that point. We are now not concerned with an amendment of Article 370(1). We are concerned with the situation where the explanation ceased to operate. It had ceased to operate because there is no longer any Sadar-i-Riyasat of Jammu and Kashmir. If the definition contained in the Explanation cannot apply to the words "government of the State" then the meaning given in Article 367(4).

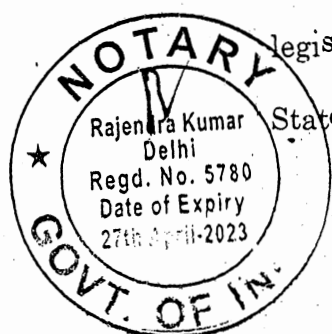


as amended, will have to be given to it. If this meaning is given, it is quite clear that the Governor is competent to give the concurrence stipulated in Article 370 and perform other functions laid down by the Jammu and Kashmir Constitution." (emphasis supplied)

"28. Mr Garg drew our attention to clauses (aa) and (b) of Article 367 (4), as substituted by CO 74 of 1966 [The Constitution (Application to Jammu and Kashmir) Second Amendment Order, 1965]. We have already set them out above. He said that this was amendment of Article 370(1) by the backdoor and the President could not exercise these powers under Article 370(1) when he had not purported to exercise these powers under Article 370(3). But, as we have already said, the explanation had become otiose and references to the Sadar-i-Riyasat in other parts of the Constitution had also become otiose. There were two alternatives; first, either to leave the courts to interpret the words "government of the State" and give it its legal meaning, or secondly, to give the legal meaning in a definition clause. What has been done is that by adding clauses (aa) and (b) a definition is supplied which the Courts would have in any event given. Therefore, we do not agree that there has been any amendment of Article 370(1) by the backdoor." (emphasis supplied)

A copy of the judgment in *Mohd. Maqbool Damnoo v. State of J&K* - (1972) 1 SCC 536 is annexed herewith and marked as Annexure R - 22.

(v) In *SBI vs Santosh Gupta*, (2017) 2 SCC 538, a Division Bench of this Hon'ble Court, following the earlier judgments referred to above, has explained the legal position with regard to the legislative competence of Parliament, in relation to the then State of Jammu and Kashmir, which is no longer restricted only

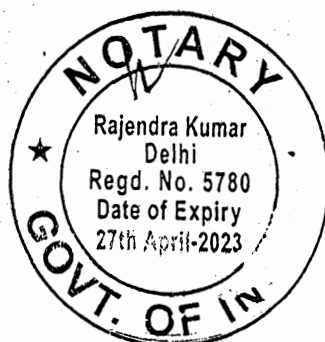


to the subjects referred to in the Instrument of Accession. This judgment contains the following important observations with regard to the status of the then State of Jammu and Kashmir as an integral part of India, as well as the status of the Constitution of Jammu and Kashmir:

"47. It is rather disturbing to note that various parts of the judgment speak of the absolute sovereign power of the State of Jammu & Kashmir. It is necessary to reiterate that Section 3 of the Constitution of Jammu & Kashmir, which was framed by a Constituent Assembly elected on the basis of universal adult franchise, makes a ringing declaration that the State of Jammu & Kashmir is and shall be an integral part of the Union of India. And this provision is beyond the pale of amendment....."

"48. It is also significant in this context to refer to the Preamble to the Constitution of Jammu & Kashmir, 1957 and compare it to that of the Constitution of India, 1950....."

50. It is to be noted that the opening paragraph of the Constitution of India, namely, "WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens ..." has been wholly omitted in the Constitution of Jammu & Kashmir. There is no reference to sovereignty. Neither is there any use of the expression "citizen" while referring to its people. The people of Jammu & Kashmir for whom special rights are provided in the Constitution are referred to as "permanent residents" under Part III of the Constitution of Jammu & Kashmir. Above all, the Constitution of Jammu & Kashmir has been made to further define the existing relationship of the State with the Union of India as an integral part thereof.

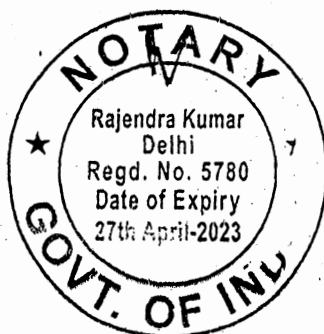


51. It is thus clear that the State of Jammu & Kashmir has no vestige of sovereignty outside the Constitution of India and its own Constitution, which is subordinate to the Constitution of India. It is therefore wholly incorrect to describe it as being sovereign in the sense of its residents constituting a separate and distinct class in themselves. The residents of Jammu & Kashmir, we need to remind the High Court, are first and foremost citizens of India....."
(emphasis supplied)

A copy of the judgment in *SBI vs Santosh Gupta*– (2017) 2 SCC 538 is annexed herewith and marked as Annexure R – 23.

(vi) In *Badrinath vs Govt. of T.N.*, (2000) 8 SCC 395, this Hon'ble Court took the view that during the currency of President's Rule in a State, orders passed by the President of India, either himself or acting through the Governor of the State, are equivalent to orders that might have been passed by an elected Government. In such a scenario, the President of India can exercise all the powers of the State Government. The relevant portions of this judgment read thus:

"24. In our opinion, the order of the Governor dropping all the four disciplinary cases including the one which was treated as pending, was passed during President's Rule and that order must have been treated as final so far as the State was concerned. In fact it dropped the three cases but treated the fourth case as pending, even though that was also dropped by the Governor. In as much as the Governor's orders are final, a serious question as to jurisdiction of the subsequent proceedings in the fourth case resulting in 'Censure' arises. Merely because the matter had gone to the UPSC before Governor dealt with the issue, the Governor's orders dated 28.6.77 could not have been ignored. By the date the State received the letter of the UPSC and passed the



final order of censure on 8.4.80, the Governor's orders dated 28.6.77 were already there and, therefore, Government should have refrained from passing the order of 'censure'.

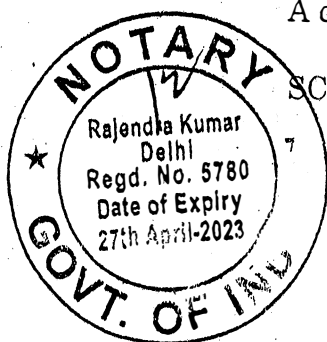
25. When an elected Government is not in office, the orders of the Governor u/art. 356(1)(a) as an agent of the President of India are equivalent to the orders that might have been passed by an elected Government in office and the Governor's orders had to be given effect fully and could not have been ignored either by the executive or by the Union Public Service Commission.

26. Under Sub-cl. (a) of Art. 356(1) of the Constitution of India, the President may assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than Legislature of the State. Where the President, after assumption of the powers of the State Executive, chooses to exercise those powers through the State Government, the latter acts as the agent of the President, acting on the advice of the Union Ministry, instead of the State Cabinet. In short, when the President vests the Governor with the powers of the State Government, the Governor can exercise all the powers of the State Government, without the advice of his Council of Ministers.

The Governor becomes responsible to the President i.e. the Union Government which has its responsibility to the Union Parliament. The Governor can exercise the statutory power exercisable by the State Government. (See Basu, 11th Ed. Shorter Constitution, p. 1192). Once that power was exercised by the Government on 28.6.77, all the consequential proceedings leading to the censure fall to the ground." (emphasis supplied)

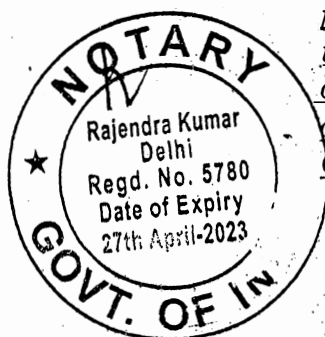
A copy of the judgment in *Badrinath vs Govt. of T.N.*, (2000) 8

SCC 395 is annexed herewith and marked as Annexure R - 24.



(vii) The kind attention of this Hon'ble Court is also invited, in this regard, to the judgment of a Division Bench of the Calcutta High Court in *Gokulananda Roy v Trapada Mukherjee & Ors.* – AIR 1973 Calcutta 233, where the Court had expressed a similar view. To the extent relevant, the judgment reads thus:

"14. The learned Advocate-General next contended and we think rightly, that under Clause (c) (i) of the notification G.S.R. No. 490, it was lawful for the President to act to such extent as he thought fit, through the Governor of the State. He also relied upon the notification G.S.R. No. 491, by which the President directed that all the functions of the Government of the State of West Bengal, and all the powers vested in or exercisable by the Governor of that State, which have been assumed by the President shall subject to the superintendence, direction and control of the President, be exercisable also by the Governor of the State. The Advocate-General argued that there was clear delegation by the President of all the functions of the State Government and also of all the powers vested in the Governor, which were assumed by the President by the notification No. G.S.R. No. 490, to the Governor of the State. Such a delegation, it was argued, fully invested the Governor not only with the powers of the Governor, but also with all the functions of the State Government which includes the duty or statutory obligation of the Governor to form an opinion. It seems to us that there is good deal of force in this contention on behalf of the respondents. Under Article 154(1) of the Constitution, the executive power of the State is vested in the Governor and is to be exercised by him directly or through the Officers subordinate to him. The President delegated to the Governor not only the powers of the Governor, but also the functions of the State Government. Quite apart from the position that delegation of powers carries with such delegation the duties and statutory obligations connected with the power, delegation of the functions of the State Government to the Governor, would include within its ambit the

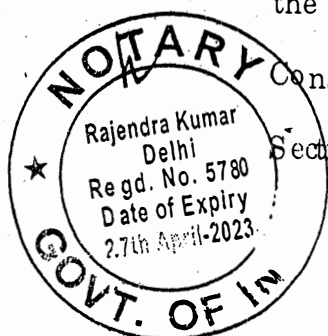


power to form an opinion about the necessity of an inquiry under the Commissions of Inquiry Act.

15. In support of the contention that delegation of powers includes a delegation of duties connected with the exercise of such power, reliance was placed by the Advocate-General on a decision of the Supreme Court in *Daluram Pannalal Modi v. Asst. Commr. of Sales Tax*. MANU/SC/0212/1963 : [1964]2SCR286 . A reference may also be usefully made to another decision of the Supreme Court on this point *H. S. S. M. Ali Alquadari v. Commr. of Wakf, West Bengal*, MANU/SC/0355/1961 : [1961]3SCR759 . In that case, it was held that where powers and duties were inter-connected, and it was not possible to separate one from the other in such way that the powers might be delegated, while the duties were retained and vice versa, the delegation of the powers took with it the duties also. A similar view was also taken in a Bench decision of this Court reported in (1970) 74 Cal WN 330." (emphasis supplied)

A copy of the judgment in *Gokulananda Roy v Trapada Mukherjee & Ors.* – AIR 1973 Calcutta 233 is annexed herewith and marked as Annexure R – 25.

(viii) It may also be pointed out that the reliance sought to be placed on Section 147 of the Constitution of Jammu and Kashmir, to impugn the Presidential Order of 05.08.2019 or the Declaration dated 06.08.2019, is wholly misconceived. Section 147 of the Constitution of Jammu and Kashmir deals with the amendment of that Constitution; and places certain fetters on the power of the Legislative Assembly of the State to amend that Constitution. These fetters are found in the second proviso to Section 147, which reads thus:



"Provided further that no Bill or amendment seeking to make any change in:

(a) this section;

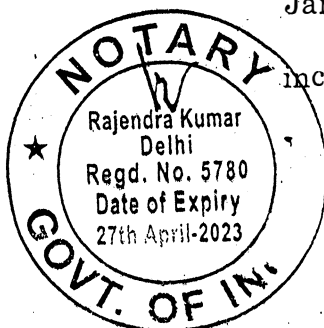
(b) the provisions of the sections 3 and 5; or

(c) the provisions of the constitution of India as applicable in relation to the State;

shall be introduced or moved in either house of the Legislature."

(ix) Section 147, it is submitted, cannot in any manner affect, dilute or control the power conferred on the President of India under Article 370 of the Constitution of India, and the exercise thereof by the President. Equally, it cannot fetter Parliament in the exercise of its functions under the Constitution of India. The provisions of the Constitution of India, including article 370(1)(d) and 370(3), are not subject to, or subservient to, section 147 of the Constitution of Jammu and Kashmir. On the other hand, as has expressly been held by this Hon'ble Court in *SBI v Santosh Gupta* supra, the then Constitution of Jammu and Kashmir was "*subordinate to the Constitution of India*". In any event, no Bill or Amendment of the nature set out in the second proviso to Section 147 was "*introduced or moved in either house of the Legislature*", or even in Parliament. The second proviso to Section 147 is inapplicable to the cases at hand for this reason as well.

(x) Insofar as the imposition of President's Rule in the then State of Jammu and Kashmir is concerned, any challenge to the same, including on the ground of *malafides*, is also utterly baseless



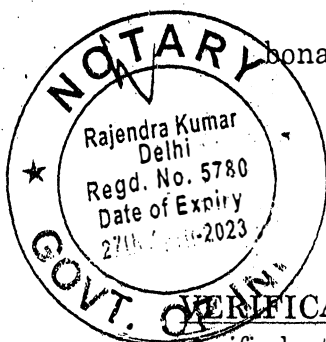
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and untenable. This would be evident from an examination of the true facts in this regard, which vindicate the stand of the Union of India which have been stated hereinabove.

- (xi) It is incorrect and misconceived to suggest that any of the applicable Rules of the Rajya Sabha and the Lok Sabha were violated in the course of the passage of the aforementioned resolutions on 05.08.2019 and 06.08.2019. It is submitted that each resolution was taken up and passed by the respective House of Parliament strictly in accordance with all applicable Rules. If necessary, the mode and manner of compliance with the applicable Rules would be elaborately dealt with at the time of the hearing in this Hon'ble Court.

47. In addition, this respondent craves leave of this Hon'ble Court to submit a further affidavit if required.

48. I state and submit that the present affidavit has been filed bonafides and in the interest of justice.



VERIFICATION

Verified at New Delhi on this 9th day of November, 2019, that the contents of the above affidavit are true and correct to my knowledge and belief derived from the official records. No part of the above affidavit is false and nothing material has been concealed therefrom.

[Signature]
DEPONENT
 (GYANESH KUMAR)
 Additional Secretary
 Ministry of Home Affairs
 Govt. of India
 New Delhi

[Signature]
DEPONENT

CERTIFIED THAT THE CONTENTS EXPLAINED TO THE
 DEPONENT EXECUTIVE WHO IS SEEMED PERFECT TO
 UNDERSTAND AND AFFIRMED DEPOSED BEFORE ME AT
 DELHI ON 09 NOV 2019. IDENTIFIED BY
 IDENTIFY THE EXECUTIVE DEPONENT WHO HAS
 SIGNED IN MY PRESENCE

IDENTIFIED

ATTESTED

[Signature]
 (GYANESH KUMAR)
 Additional Secretary
 Ministry of Home Affairs
 GOVERNMENT OF INDIA
 SUPREME COURT OF INDIA
 COMPOUND, NEW DELHI
 Register Pg./Sl. No. 19810-09 NOV 2019