

IN THE SUPREME COURT OF INDIA

(Civil Original Jurisdiction)

WRIT PETITION (CIVIL) No.

OF 2019

Between:

MOHD AKBAR LONE & Anr.

.....PETITIONERS

Versus

UNION OF INDIA & Ors.

.....RESPONDENTS

Petition under Article 32 of the Constitution of India

ADVOCATE FOR THE PETITIONERS: D. MAHESH BABU

SYNOPSIS & CHRONOLOGY OF EVENTS

India, that is Bharat, is a union of States, bound together by a unique federal structure. This federal structure has evolved organically over the years, based on the needs, requirements, and history of our Nation. The question that this Hon'ble Court is now called upon to answer is whether the Union Government can unilaterally unravel this unique federal scheme, under cover of President's Rule, while undermining crucial elements of due process and the rule of law. This case therefore, goes to the heart of Indian federalism, democratic processes and the role of this Hon'ble Court as the guardian of the federal structure.

The framers of the Indian Constitution, in their wisdom, believed national integration is best served by a pluralistic federal model. Under this model, one size need not always fit all, and the requirements of different states – based on unique historical, cultural, social, and political factors – could be accommodated within the overall constitutional framework.

In particular, Article 370 (Article 306A of the Draft Constitution) was extensively considered and carefully drafted,

in order to ensure the peaceful and democratic accession of the former princely State of Jammu and Kashmir to the Indian Union.

The scheme of Article 370 was as follows. It was a self-contained Code that defined and regulated the relationship between the state of Jammu and Kashmir and the Union of India. Apart from Article 370, Article 1 of the Indian Constitution would apply – *unchanged* – to the state of Jammu and Kashmir. From time to time, the President of India could, with the *concurrence* of the Government of the State of Jammu and Kashmir, pass orders applying – with exceptions and modifications – specific provisions of the Indian Constitution to the State, based upon the exigencies of the situation. To this end, through numerous Presidential Orders, starting in 1954, provisions of the Indian Constitution in a modified form to the State. Meanwhile the Constituent Assembly of Jammu and Kashmir drafted a Constitution for the State, specifically recognising that Jammu and Kashmir was an integral part of the Union. Crucially, the existence of the Constituent Assembly of Jammu and Kashmir is

recognised in the scheme of Article 370. Clause (3) of Article 370 provided that any change to the relationship between the State of Jammu and Kashmir and the Indian Union, expressed Article 370, could only be brought about on the recommendation the Constituent Assembly.

The impugned Presidential Orders and Jammu and Kashmir Reorganisation Act unconstitutionally undermine the scheme of Article 370. *First*, Presidential Order C.O. 272 uses Article 370(1)(d) – which was meant to apply *other* provisions of the Constitution to the state of Jammu and Kashmir – to alter Article 370 itself, and thereby the terms of the federal relationship between the state of Jammu and Kashmir and the Union of India.

Secondly, having been passed during an extended period of President's Rule, the Presidential Order substitutes the concurrence of the *Governor* for that of the *Government* (and effectively, therefore, amounts to the Central Government (acting through the President) taking its own consent (under President's Rule) to change the very character of a federal unit. In other words, the Presidential Order takes cover of a *temporary* situation, meant to hold the field until the return of

the elected government, to accomplish a fundamentally, permanently, and irreversibly alteration of the status of the State of Jammu and Kashmir *without* the concurrence, consultation or recommendation of the people of that State, acting through their elected representatives. This, it is respectfully submitted, amounts to an overnight abrogation of the democratic rights and freedoms guaranteed to the people of the State of Jammu and Kashmir upon its accession.

Thirdly, by making *all* the provisions of the Indian Constitution applicable *per se* – and in perpetuity – to the State of Jammu and Kashmir, the impugned Order undermines one of the basic purposes of Article 370, which was to facilitate the extension of constitutional provisions to the State in an incremental and orderly manner, based upon the needs and requirements at a particular time, *without dismantling the State Constitution*.

Fourthly, the impugned Order – by replacing the recommendation of the Constituent Assembly with that of the legislative assembly in order to alter the terms of Article 370 – assumes that the legislative assembly of the State of Jammu and Kashmir has a power that its own Constitution, under Article 147, denies to it. Thus, at the very least, the impugned

Presidential Order is ineffective insofar as it seeks to alter the scheme of Article 370.

It is further submitted that in addition to the impugned Presidential Orders, which wrongly attempt to abrogate Article 370 of the Constitution, the Parliament of India has attempted – through the Jammu and Kashmir Reorganisation Act of 2019 – to degrade the status of the State of Jammu and Kashmir into two Union Territories (one with a legislature and one without). It is respectfully submitted that the Indian federal scheme – as exemplified by Article 1 and Article 3 of the Indian Constitution – does not permit Parliament to retrogressively downgrade statehood into a less representative form such as a Union Territory.

It is respectfully submitted this Hon'ble Court has repeatedly held that federal republican democracy is a basic feature of the Indian Constitution. An essential element of democracy is the right of people to have a say in affairs that directly concern their political and constitutional status, through their elected representatives. The Indian freedom movement, as exemplified in the Constituent Assembly, was of *swaraj*, or self-governance. It is respectfully submitted that the right to autonomous self

government and to ones identity within a federal framework are essential fundamental rights for the purpose of Part III of the Constitution and that these valuable rights have been taken away without the “procedure established by law” in a manner that violates every canon of Constitutional morality. Dr.Ambedkar memorably equated Constitutional Morality with “a paramount reverence for the forms of the constitution, enforcing obedience to authority and acting under and within these forms.”

The impugned Orders and Act derogate impermissibly and unconstitutionally from this founding ideal enshrined in our Constitution, and are capable of public mischief if allowed to stand.

16.03.1846 The Treaty of Amritsar was signed between the East India Company (British Government) and a Dogra Ruler, Maharaja Gulab Singh, whereby the independent possession of the Jammu & Kashmir region was transferred to Maharaja Gulab Singh and the heirs male of his body. Ever since then,

the princely state of Jammu & Kashmir was ruled by the Jamwal Dogra Dynasty.

1925 The last ruling Maharaja of the princely State of Jammu & Kashmir, Hari Singh, ascended to the throne and continued to rule till 1949.

1939 The Jammu & Kashmir Constitution Act was promulgated. Jammu and Kashmir was governed under this constitutional scheme until the Constitution of 1957, unlike the relationship between the rest of the princely States and the Indian Union.

18.07.1947

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15.08.1947 The Indian Independence Act, 1947 was passed on 18.07.1947 dividing the then British India into two independent Dominions, *i.e.* India and Pakistan, from 15.08.1947. The princely states could have joined either of the Dominion of India or Pakistan. The then Maharaja of Jammu of Kashmir, Hari Singh, opted to remain independent.

26.10.1947 The princely State of Jammu & Kashmir was invaded by tribesmen from the Northwest Frontier Province, supported by Pakistan. Maharaja Hari Singh sought military help from India, which eventually resulted in him signing of 'Instrument of Accession of Jammu & Kashmir' with India (authority was given to the Union of India to legislate on defence, foreign affairs, and communication). It was stated in the 'Instrument of Accession' *inter-alia* that:

"1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purpose of the Dominion shall, by virtue of this my Instrument of Accession, but subject always to the terms therefore and for the purpose only of the Dominion, exercise in relation to the State of Jammu and Kashmir.....such functions may be vested in them by or under the

Government of India Act, 1935 as in force in the Dominion of India on the 15th Day of August, 1947...

4. *I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of the State where by any functions in relations to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.*

5. *The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947, unless such amendment is accepted by me by an Instrument supplementary to this Instrument.*

7. *Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future Constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future Constitution.*

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or save as provided by or under this Instrument the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.”

20.06.1949 Maharaja Hari Singh abdicated in favour of his son Dr. Yuvraj Karan Singh, who was made head of the State and subsequently served as *Sadr-i-Riyasat* and Governor of Jammu & Kashmir.

26.11.1949 The Rajpramukhs of the Princely States that had acceded to the Union of India signed and adopted the Constitution in its entirety, except the Maharaja of the State of Jammu and Kashmir.

27.05.1949 The original draft of Article 370 was drawn up by the Government of Jammu and Kashmir. A modified version of the draft was passed in the

Constituent Assembly of India on 27.05.1949. Article 370, in effect, mirrored the terms of the Instrument of Accession (in particular, clauses (4) and (8)).

17.10.1949 Article 370 was included in the Indian Constitution by the Constituent Assembly.

26.01.1950 The Constitution of India came into force. Article 1(2) & Schedule I thereof indentifies Jammu & Kashmir as a state of India. Article 370 provides for “temporary provisions” with respect to the State of Jammu and Kashmir.

01.05.1951 Dr. Yuvraj Karan Singh issued a proclamation for the convening of a Constituent Assembly for the State of Jammu & Kashmir.

31.10.1951 The Constituent Assembly for the State of Jammu & Kashmir, which is the body responsible for

creating the state's constitution, convened its first session.

1952

The Government of Jammu and Kashmir and the Government of India came out with a comprehensive agreement titled 'Delhi Agreement, 1952', to further the relationship of the state with the union. It was agreed *inter alia* that:

“(i) In view of the uniform and consistent stand taken up by the Jammu and Kashmir Constituent Assembly that sovereignty in all matters other than those specified in the Instrument of Accession continues to reside in the State, the Government of India agreed that, while the residuary powers of legislature vested in the Centre in respect of all states other than Jammu and Kashmir, in the case of the latter they vested in the State itself;

(ii) it was agreed between the two Governments that in accordance with Article 5 of the Indian Constitution, persons who have their domicile in Jammu and Kashmir shall be regarded as citizens

of India, but the State legislature was given power to make laws for conferring special rights and privileges on the 'state subjects' in view of the 'State Subject Notifications of 1927 and 1932: the State legislature was also empowered to make laws for the 'State Subjects' who had gone to Pakistan on account of the communal disturbances of 1947, in the event of their return to Kashmir.

(v) there was complete agreement with regard to the position of the Sadar-i-Riyasat; though the Sadar-i-Riyasat was to be elected by the State Legislature, he had to be recognised by the President of India before his installation as such; in other Indian States the Head of the State was appointed by the President and was as such his nominee but the person to be appointed as the Head, had to be a person acceptable to the Government of that State; no person who is not acceptable to the State Government can be thrust on the State as the Head. The difference in the case of Kashmir lies only in the fact that Sadar-i-Riyasat

will in the first place be elected by the State legislature itself instead of being a nominee of the Government and the President of India.....

(vi) with regard to the fundamental rights, some basic principles agreed between the parties were enunciated; it was accepted that the people of the State were to have fundamental rights. But in the view of the peculiar position in which the State was placed, the whole chapter relating to 'Fundamental Rights' of the Indian Constitution could not be made applicable to the State, the question which remained to be determined was whether the chapter on fundamental rights should form a part of the State Constitution of the Constitution of India as applicable to the State;

(viii) here was a great deal of discussion with regard to the "Emergency Powers"; the Government of India insisted on the application of Article 352, empowering the President to proclaim a general emergency in the State; the State Government argued that in the exercise of its powers over

defence (Item 1 on the Union List), in the event of war or external aggression, the Government of India would have full authority to take steps and proclaim emergency but the State delegation was, however, averse to the President exercising the power to proclaim a general emergency on account of internal disturbance.....Both the parties agreed that the application of Article 356, dealing with suspension of the State Constitution and 360, dealing with financial emergency, was not necessary.”

This was signed and ratified by both parties.

14.05.1954 A presidential order, the same being ‘The Constitution (Application to Jammu and Kashmir) Order, 1954’, was passed. This was in terms of the Delhi Agreement. It introduced Article 35A, which protects laws passed by the state legislature regarding permanent residents from any challenge on the ground that they are in violation of the Fundamental Rights. Also, a proviso was inserted

in Article 3, which provides that no Bill altering the name/ boundary of the State of Jammu & Kashmir shall be introduced in the Parliament without the consent of the Legislature of the State.

17.11.1956

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26.01.1957

The Constitution of State of Jammu & Kashmir was adopted on 17.11.1956 and came into effect on 26.01.1957. It was made clear that the State of Jammu & Kashmir is and shall remain integral part of the Union of India. Article 3 states that the state is and shall be an integral part of India. Article 5 states that the executive and legislative power of the state extends to all matters except those with respect to which Parliament has powers to make laws for the state under provisions of the Constitution of India. The proviso to Section 147 of the Constitution of J&K states that no legislative assembly can alter Articles 3 and 5 of the Constitution and that there can be no amendment to the provisions of the Constitution of India applicable to the state.

1957 The first legislative elections for the State of Jammu & Kashmir were held where its constituent assembly was dissolved and replaced by a legislative assembly.

May, 1965 The titles of Prime Minister and Sadr-i-Riyasat were officially changed to Chief Minister and Governor, respectively in the State of Jammu & Kashmir.

13.11.1974 The then Prime minister, Indira Gandhi and Sheikh Abdullah signed Kashmir Accord, known as 'Sheikh-Indira Accord, 1975', reemphasising Article 370 as:

"1. The State of Jammu and Kashmir which is a constituent unit of the Union of India, shall, in its relation with the Union, continue to be governed by Article 370 of the Constitution of India."

1977 to 2016 The Presidential Rule was imposed seven times in the State of Jammu & Kashmir.

20.06.2018 The Governor's Rule was imposed in the State of Jammu & Kashmir as the State Government collapsed.

21.11.2018 The Legislative Assembly for the State of Jammu & Kashmir was dissolved by the Governor.

19.12.2018 The Presidential Rule was imposed in the State of Jammu & Kashmir for the eighth time, which was subsequently approved by the Lok Sabha & Rajya Sabha.

12.06.2019 The Union Cabinet approved the extension of President's Rule in Jammu and Kashmir for a further period of six months with effect from 03.07.2019, under article 356(4) of the Constitution of India.

05.08.2019 A Presidential Order, the same being G.S.R. 551(E) - 'The Constitution (Application to Jammu and Kashmir) Order, 2019', was passed by the

President. The said Order supersedes the Constitution (Application to Jammu and Kashmir) Order, 1954. Also, it has added Clause (4) to Article 367, making the Constitution of India applicable to the State of Jammu & Kashmir.

05.08.2019 The Rajya Sabha passed Jammu and Kashmir (Reorganisation) Bill, 2019 unanimously. *Vide* the said Bill, the existing state of Jammu & Kashmir is bifurcated into two Union territories – (1) the Union Territory of Jammu & Kashmir with a Legislative Assembly, and (2) the Union Territory of Ladakh without a Legislative Assembly.

06.08.2019 A Declaration, the same being G.S.R. 562(E), was issued by the President under Article 370(3) of the Constitution of India that:

“...as and 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 provision of this Constitution as amended from time to time, without any modification 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, judgment, ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law in the territory of India, or any instrument, treaty or agreement as envisaged under article 363 or otherwise.”

09.08.2019 The President has given assent to the Jammu and Kashmir (Reorganisation) Act, 2019.

10.08.2019 HENCE THIS WRIT PETITION INVOKING JUSTICE, EQUITY AND GOOD CONSCIENCE.

IN THE SUPREME COURT OF INDIA
(Civil Original Jurisdiction)

WRIT PETITION (CIVIL) NO.

OF 2019

Between:

1. Mohd. Akbar Lone

S/o. Shri Abdul Gani Lone

Aged about 72 years

R/o. Naid Khai

Tehsil-Hajin Sonawari

Distt.-Bandipore-193501

JAMMU & KASHMIR.

2. Hasnain Masoodi

S/o Shri Ghulam Ali Masoodi

Aged about 65 years

R/o. Khrew, District Pampore

Khrew-191103

JAMMU & KASHMIR.

.....Petitioners

VERSUS

1. Union Of India

Through its Secretary,

Ministry of Home Affairs,

Central Secretariat,

North Block,

New Delhi-110001.

2. Union of India

Through its Secretary

Ministry of Law and Justice

Shastri Bhawan,
New Delhi-110001.

...Respondent

To

The Hon'ble Chief Justice of India

and the Hon'ble Judges of the Supreme Court of India.

The Petitioners Most Respectfully Showeth:

PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

1. That the Petitioners are citizen of India entitled to invoke the jurisdiction of this Hon'ble Court under Article 32 of the Constitution of India in as much as their fundamental rights guaranteed under part III of the Constitution of India have been infringed/violated.

2. That this Writ Petition is being filed for issuance of appropriate Writ, Direction or Order declaring the Presidential Order G.S.R. 551(E) (C.O. 272), Presidential Order G.S.R. 562(E) (C.O. 273), AND the Jammu and Kashmir (Reorganisation) Act of 2019 as unconstitutional being violative of Petitioners' fundamental rights under Articles 14 and 21 of the Constitution of India; and for issuance of consequential writ quashing the same.

3. That the Respondent Union of India particularly, the Ministry of Home Affairs is responsible for maintaining, sustaining and working of the constitutional provisions of both the Constitution of the State of Jammu and Kashmir and the Constitution of India; and their mutual independence and interplay.

4. That the State of Jammu and Kashmir is being arrayed as Respondent No.3 as the Impugned Presidential Orders and the Legislation as having the effect of constitutional upheaval is of grave public importance which specifically concerns the State of Jammu and Kashmir in as much as the Constitutional rights of the State of Jammu and Kashmir and its Citizen has been taken away without the mandate of the people of the State of Jammu and Kashmir.

5. That the impugned Presidential Orders and the legislation being unconstitutional *ex facie*, the Petitioners have no other alternative, effective, efficacious remedy other than approaching the sole Constitutional Arbiter as this Hon'ble Court and therefore, the Petitioners have not approached any other authority for any relief.

6. It is respectfully submitted that both the petitioners being Members of the Parliament and as citizen of India are

aggrieved by the Impugned Presidential Orders culminating in unconstitutional legislation having the effect of tumultuous constitutional repercussions and thus the Petitioners are constrained to invoke the writ jurisdiction of this Hon'ble Court.

FACTS OF THE CASE

7. That the facts of the case leading to filing of this Writ Petition are that the Treaty of Amritsar was signed between the East India Company (British Government) and a Dogra Ruler, Maharaja Gulab Singh, on 16.03.1846 whereby the independent possession of the Jammu & Kashmir region was transferred to Maharaja Gulab Singh and the heirs male of his body. Ever since then, the princely state of Jammu & Kashmir was ruled by the Jamwal Dogra Dynasty.

8. The last ruling Maharaja of the princely State of Jammu & Kashmir, Hari Singh, ascended to the throne in 1925 and continued to rule till 1949.

9. The Indian Independence Act, 1947 was passed on 18.07.1947 dividing the then British India into two independent Dominions, *i.e.* India and Pakistan, from 15.08.1947. The princely states joined the Dominion of India

or the Dominion of Pakistan. The then Maharaja of Jammu of Kashmir, Hari Singh, opted to remain independent.

10. The princely State of Jammu & Kashmir was invaded by tribesmen from the Northwest Frontier Province, supported by Pakistan. Maharaja Hari Singh sought military help from India, which eventually resulted in him signing of 'Instrument of Accession of Jammu & Kashmir' with India on 26.10.1947.

It was stated in the 'Instrument of Accession' *inter-alia* that:

"1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purpose of the Dominion shall, by virtue of this my Instrument of Accession, but subject always to the terms therefore and for the purpose only of the Dominion, exercise in relation to the State of Jammu and Kashmir.....such functions may be vested in them by or under the Government of India Act, 1935 as in force in the Dominion of India on the 15th Day of August, 1947...

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947, unless such amendment of the Act or of the Indian Independence Act 1947, unless such amendment

is accepted by me by an Instrument supplementary to this Instrument.

7. Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future constitution.”

A true typed copy of the Instrument of Accession of Jammu & Kashmir dated 26.10.1947 is annexed herewith and marked as **ANNEXURE P1** (-).

11. On 20.06.1949, Maharaja Hari Singh abdicated in favour of his son Dr. Yuvraj Karan Singh, who was made head of the State and subsequently served as *Sadr-i-Riyasat* and Governor of Jammu & Kashmir.

12. The original draft of Article 370 was drawn up by the Government of Jammu and Kashmir. A modified version of the draft was passed in the Constituent Assembly of India on 27.05.1949.

13. Article 370 was included in the Indian Constitution by the Constituent Assembly on 17.10.1949 after extensive discussions.

14. The Constitution of India came into force on 26.01.1950. Article 1(2) & Schedule I thereof indentifies Jammu & Kashmir as a state of India. Article 370 provides for temporary provisions with respect to the State of Jammu and Kashmir.

15. On 01.05.1951, Dr. Yuvraj Karan Singh issued a proclamation for the election of a Constituent Assembly for the State of Jammu & Kashmir. The Constituent Assembly for the State of Jammu & Kashmir, which is the body responsible for creating the state's constitution, convened its session on 31.10.1951.

16. The Constituent Assembly of Jammu & Kashmir came out with a comprehensive agreement titled 'Delhi Agreement, 1952' which defines the relationship of the state with the union. It was agreed *inter alia* that:

“(i) In view of the uniform and consistent stand taken up by the Jammu and Kashmir Constituent Assembly that sovereignty in all matters other than those specified in the Instrument of

Accession continues to reside in the State, the Government of India agreed that, while the residuary powers of legislature vested in the Centre in respect of all states other than Jammu and Kashmir, in the case of the latter they vested in the State itself;

(v) there was complete agreement with regard to the position of the Sadar-i-Riyasat; though the Sadar-i-Riyasat was to be elected by the State Legislature, he had to be recognised by the President of India before his installation as such; in other Indian States the Head of the State was appointed by the President and was as such his nominee but the person to be appointed as the Head, had to be a person acceptable to the Government of that State; no person who is not acceptable to the State Government can be thrust on the State as the Head. The difference in the case of Kashmir lies only in the fact that Sadar-i-Riyasat will in the first place be elected by the State legislature itself instead of being a nominee of the Government and the President of India.....

(vi) with regard to the fundamental rights, some basic principles agreed between the parties were enunciated; it was accepted that the people of the State were to have fundamental rights. But in the view of the peculiar position in which the State was

placed, the whole chapter relating to 'Fundamental Rights' of the Indian Constitution could not be made applicable to the State, the question which remained to be determined was whether the chapter on fundamental rights should form a part of the State Constitution of the Constitution of India as applicable to the State;

(viii) here was a great deal of discussion with regard to the "Emergency Powers"; the Government of India insisted on the application of Article 352, empowering the President to proclaim a general emergency in the State; the State Government argued that in the exercise of its powers over defence (Item 1 on the Union List), in the event of war or external aggression, the Government of India would have full authority to take steps and proclaim emergency but the State delegation was, however, averse to the President exercising the power to proclaim a general emergency on account of internal disturbance.....Both the parties agreed that the application of Article 356, dealing with suspension of the State Constitution and 360, dealing with financial emergency, was not necessary."

True copy of the Delhi Agreement, 1952 dated NIL is annexed as **ANNEXURE: P2** (-).

17. A presidential order, the same being 'The Constitution (Application to Jammu and Kashmir) Order, 1954', was passed 14.05.1954. It introduced Article 35A, which protects laws passed by the state legislature regarding permanent residents from any challenge on the ground that they are in violation of the Fundamental Rights. Also, a proviso was inserted in Article 3, which provides that no Bill altering the name/ boundary of the State of Jammu & Kashmir shall be introduced in the Parliament without the consent of the Legislature of the State. A true typed copy of the Presidential Order dated 14.05.1954 is annexed herewith and marked as **ANNEXURE: P3** (-).

18. The Constitution of State of Jammu & Kashmir was adopted on 17.11.1956 and came into effect on 26.01.1957. It was made clear that the State of Jammu & Kashmir is and shall remain integral part of the Union of India.

19. The first legislative elections for the State of Jammu & Kashmir were held in 1957 where its constituent assembly was dissolved and replaced by a legislative assembly.

20. The titles of Prime Minister and Sadr-i-Riyasat were officially changed to Chief Minister and Governor, respectively in the State of Jammu & Kashmir in May, 1965.

21. On 13.11.1974, The then Prime minister, Indira Gandhi and Sheikh Abdullah signed Kashmir Accord, known as 'Sheikh-Indira Accord, 1975', reemphasising Article 370 as:

"1. The State of Jammu and Kashmir which is a constituent unit of the Union of India, shall, in its relation with the Union, continue to be governed by Article 370 of the Constitution of India."

True copy of the Sheikh-Indira Accord, 1975 dated 13.11.1974 is annexed as **ANNEXURE: P4** (-).

22. The Presidential Rule was seven times imposed in the State of Jammu & Kashmir between 1977-2016.

23. On 20.06.2018, The Governor's Rule was imposed in the State of Jammu & Kashmir as the State Government collapsed. Subsequently, the Legislative Assembly for the State of Jammu & Kashmir was dissolved by the Governor on 21.11.2018.

24. As the six months of Governor's rule in the State of Jammu & Kashmir got over on 19.12.2018, the Presidential Rule was imposed in the State of Jammu & Kashmir for the eighth time, which was subsequently approved by the Lok Sabha & Rajya Sabha. True copy of the Notification, GSR 1223 (E) dated 19.12.2018 issued by the Ministry of Home Affairs is annexed as **ANNEXURE: P5** (-).

25. The Union Cabinet approved the extension of President's Rule in Jammu and Kashmir for a further period of six months with effect from 03.07.2019, under article 356(4) of the Constitution of India.

26. A Presidential Order, the same being G.S.R. 551(E) - 'The Constitution (Application to Jammu and Kashmir) Order, 2019', was passed by the President on 05.08.2019. The said Order supersedes the Constitution (Application to Jammu and Kashmir) Order, 1954. Also, it has added Clause (4) to Article 367, making the Constitution of India applicable to the State of Jammu & Kashmir. A true typed copy of the Notification GSR 551(E) dated 05.08.2019 issued by Ministry of Law & Justice is annexed as **ANNEXURE: P6** (-).

27. On the same day, i.e. on 05.08.2018, the Rajya Sabha passed Jammu and Kashmir (Reorganisation) Bill, 2019

unanimously. *Vide* the said Bill, the existing state of Jammu & Kashmir is bifurcated into two Union territories – (1) the Union Territory of Jammu & Kashmir with a Legislative Assembly, and (2) the Union Territory of Ladakh without a Legislative Assembly. A true typed copy of the Bill No. XXIX of 2019 dated 05.08.2019 is annexed as **ANNEXURE: P7** (-).

28. A Declaration, the same being G.S.R. 562(E), was issued by the President under Article 370(3) of the Constitution of India on 06.08.2019 that:

“...as and 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 provision of this Constitution as amended from time to time, without any modification 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, judgment, ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law in the territory of India, or any instrument, treaty or agreement as envisaged under article 363 or otherwise.”

A true typed copy of the Notification GSR 562(E) dated 05.08.2019 issued by the Ministry of Law & Justice is annexed as **ANNEXURE: P8** (-).

25. That on 9.8.2019, the President having given assent, the Impugned Jammu and Kashmir (Reorganisation) Act, 2019 came into being.

GROUND

I. Presidential Order G.S.R. 551(E) (C.O. 272) is constitutionally invalid.

A. Because Presidential Order C.O. 272, purportedly passed under Article 370(1) of the Constitution, is *ultra vires* the authority conferred by that Article. This is because, *first*, the Presidential Order incorrectly invokes Article 370(1)(d) to effectively amend the proviso to Article 370(3); *secondly*, the concurrence in question is an insufficient constitutional foundation upon which to base a Presidential Order of this nature; *thirdly*, the power under Article 370(1)(d) does not contemplate the wholesale application of “all provisions of the Indian Constitution” -

at present and in perpetuity - to “apply in relation to the state of Jammu and Kashmir”; and *fourthly*, even if C.O. 272 was otherwise valid, insofar as it seeks to amend Article 370(3), it is legally invalid, as the legislative assembly of the State of Jammu and Kashmir has no power under the Constitution of Jammu and Kashmir to bring about an amendment to any provision under the Constitution of India.

(i) Article 370(1)(d) cannot be invoked to (indirectly) amend Article 370(3) of the Constitution of India

B. Because clause (2) of the Presidential Order purports to amend Article 367 of the Constitution; however, the effect of these amendments is to bring about changes in the text of Article 370 of the Constitution, *via* Article 367. In particular, sub-clause (d) of clause 2 of the Presidential Order stipulates that “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.” It is respectfully submitted that the Presidential Order, in effect, amends

Article 370 of the Constitution; it is a well-established principle that “what cannot be done directly cannot be done indirectly.” If, therefore, Article 370 cannot be directly amended through a Presidential Order (as demonstrated below), neither can it be amended through the *device* of inserting a new provision into Article 367, in relation to the State of Jammu and Kashmir.

- C.** *The Rule of Literal Construction:* Because Article 370(1)(c) of the Constitution stipulates that “notwithstanding anything in this Constitution, the provisions of Article 1 and of **this article** shall apply in relation to that State [i.e., the State of Jammu and Kashmir].” Article 370(1)(d) stipulates that “... such of the **other provisions of this Constitution**” shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify.” It is therefore evident that Article 370(1)(d) provides constitutional authority to the President - by order - to amend or modify the application of all provisions of the Constitution in relation to the State of Jammu and Kashmir **except** Articles 1 and 370 itself.

- D.** *The Rule of Harmonious Construction:* Because Article 370(3) authorises the President to “declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications ... as he may specify.” Consequently, the power to alter the terms of Article 370 of the Constitution are contained within Article 370(3); to vest that power in Article 370(1)(d) would render Article 370(3) and its proviso otiose.
- E.** *The Rule in Nazeer Ahmed’s Case:* Because it is a well-established principle that “where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.” (**Nazeer Ahmed v King-Emperor, AIR 1936 PC 253, 257**).
- F.** Because, the historical genesis of Article 370 supports this argument. During the debates around Draft Article 306A (and later Article 370) on 17th October 1949, Shri Gopalawami Ayyangar - the mover of the Article - made it clear that the terms of the relationship between the State

of Kashmir and the Indian Union could *only* be altered following the method set down in clause (3) of the Article.

G. Because Article 370(1)(d) only authorises the President to “apply in relation to that State subject to exceptions and modifications”... “**such of the other provisions of this Constitution.**” The power under Article 370(1)(d), therefore, extends to amending or modifying the **application** of the **provisions** of the Constitution to the State of Jammu and Kashmir. This power does not extend to creating a **fresh** constitutional provision (in this case, Article 367(4)), which is **then** applied solely to the State of Jammu and Kashmir. It is respectfully submitted that in **Puranlal Lakhanpal v The President of India 1962 SCR (1) 688** this Hon’ble Court, while according a wide amplitude to the meaning of the word “modification”, conspicuously refrained from using the word “create”. In **Puranlal Lakhanpal**, this Hon’ble Court held that the word “modify” means “to vary” and “may even mean to extend or enlarge.” It is clear that the

underlying premise of this definition is the **existence of a constitutional provision** that is then “varied”, “extended”, or “enlarged” in its specific application to the State of Jammu and Kashmir; as submitted above, this conspicuously refrains from covering a situation where a new constitutional provision is fashioned out of whole cloth. The principled rationale for this is that a *Presidential Order* cannot create a new constitutional right, liability, or disability. It is a cornerstone of democracy and the common law that constituent power does not vest in a single functionary.

H. Because while in **Mohd. Maqbool Damnoo v State of J&K, 1972 1 SCC 536**, this Hon’ble Court held that a Presidential Order could bring about a change in Article 370 if it was *elucidating* the constitutional position of the state of Jammu and Kashmir, the holding of that case is inapplicable to the present situation. In **Damnoo**, it was held that the substitution of Sadar-i-Riyasat with the Governor in Article 370 was valid, because the Governor had substituted the Sadar-i-Riyasat. However, in the present circumstances, the “legislative assembly” cannot

in any sense be understood as having substituted the “Constituent Assembly” of the state of Jammu & Kashmir. Not only is the distinction between legislative power and constituent power well-established in Indian constitutional jurisprudence, but also, Article 147 of the Constitution of Jammu and Kashmir expressly bars the legislative assembly of Jammu and Kashmir from exercising constituent power with respect to the provisions of the Indian Constitution relating to the state of Jammu and Kashmir.

(ii) The concurrence in the present case is insufficient

- I. Because, in any event, the second proviso to Article 370(1)(d) stipulates that for matters that do not relate to those specified in the Instrument of Accession, the **consent** of the Government of the State [of Jammu & Kashmir] is required. This Hon’ble Court has held that the constitutional right to consent to presidential orders is the essential feature of Article 370(1)(b) and 370(1)(d) and further, that the State [of Jammu and Kashmir] is

entitled to decide who will consent on its behalf [**Mohd**

Maqbool Damnoo v. State of J&K, 1972 1 SCC 536]

J. Because, the Presidential Order states that it has been made with “the concurrence of the Government of the State of Jammu and Kashmir.” However, as the State of Jammu and Kashmir has been under President’s Rule since 19 December 2018, the consent - in fact – is that of the President himself, acting on the advice of the Union Cabinet. This, effectively, amounts to the same constitutional functionary taking its own consent, to effect a fundamental structural change without consultation or concurrence of the persons affected by that change, or their elected representatives. This, it is respectfully submitted, is contrary to the rule of law, and is manifestly arbitrary.

K. It is respectfully submitted that in any event, “government” cannot be equated with “governor” in matters involving the **fundamental and permanent restructuring of the state itself**. This is because, as is well-established, President’s Rule is a *temporary and*

exceptional phenomenon, designed to address an emergent situation until such time that an elected government is restored to power. [**S.R. Bommai v Union of India, (1994) 3 SCC 1.**] In the context of Article 370, therefore, this Hon'ble Court ought not to read "government" to include "governor", in cases involving **irreversible alteration of the relationship between the state and the Union of India.**

- L.** Because, it is respectfully submitted that in **NCT of Delhi v Union of India [2018 8 SCC 501]**, a Constitution Bench of this Hon'ble Court made it clear that representative democracy is a basic feature of the Constitution, and that the Constitution should be interpreted to advance - and not retard - this principle. It is respectfully submitted that an interpretation of Article 370(1)(d) that would include "governor" within the meaning of "government" **during the imposition of President's Rule** would destroy the principle of representative government, for the reasons stated above.

(iii) The power under Article 370(1)(d) does not extend to a wholesale replacement of the Constitution of Jammu and Kashmir

M. Because clause 2 of the Presidential Order, that seeks to extend “all the provisions of this Constitution, as amended from time to time”, *ipso facto* and in perpetuity, is *ultra vires* and beyond the authority conferred by Article 370(1)(d) of the Constitution.

N. Because any grant of power under the Indian Constitution carries within it implied limitations upon the exercise of that power, consistent with the reasons why the power in question has been granted [**Kesavananda Bharati v Union of India, (1973) 4 SCC 225**]. It is respectfully submitted that - as the debates in the Constituent Assembly (referred to above) indicate, the purpose of this clause was to extend certain provisions of the Indian Constitution to the State of Jammu and Kashmir, from time to time, based upon the exigencies of the situation (and this, indeed, is how it has been applied, through various Presidential Orders, from 1954).

The intention was not to apply the Indian Constitution as a whole, through a single order, and until perpetuity, to the State of Jammu and Kashmir (thus making the Constitution of Jammu and Kashmir redundant through a legislative back-door). Such a situation is contemplated only under the process outlined in Article 370(3).

- . Because Article 370(1)(d) requires application of mind by the President about which provisions shall be made to apply to J&K as held in *Sampath Prakash* 1969 2 SCR. The Constitution (Application to J&K) Order 1954 applied all the provisions of the Constitution of India in force as of Jun 20, 1964 to J&K but subject to the modifications and exceptions detailed in that Order. The power to apply provisions with modifications and exceptions does not imply a power to apply the provisions without any modifications or exceptions, because doing so forecloses the possibility of future re-consideration by president from time to time, which is constitutionally required, per *Sampath Prakash* 1969 2 SCR:

“It was envisaged that the President would have to take into account the situation existing in the State

when applying a provision of the Constitution and such situations could arise from time to time. There was clearly the possibility that, when applying a particular provision, the situation might demand an exception or modification of the provision applied; but subsequent changes in the situation might justify the rescinding of those modifications or exceptions.”

(iv) Even if C.O. 272 was otherwise valid, insofar as it seeks to amend Article 370(3), it is legally invalid, as the legislative assembly of the State of Jammu and Kashmir has no power under the Constitution of Jammu and Kashmir to bring about an amendment to any provision under the Constitution of India.

P. Because the “consent” to Order C.O. 272 was invalidly given, as powers under President’s Rule are co-terminous with that of the legislative assembly of the State of Jammu and Kashmir. However, under the proviso to Article 147 of the Constitution of Jammu and Kashmir, the legislative assembly of the State of Jammu and

Kashmir is barred from “seeking to make any change in the provisions of the constitution of India as applicable in relation to the State”; consequently, since the legislative assembly could not have given its consent to Presidential Order C.O. 272, nor could the Governor .

Q. Because, and consequently, insofar as it seeks to vest in the legislative assembly of the State of Jammu and Kashmir powers that it is expressly barred from exercising under the Constitution of Jammu and Kashmir, Presidential Order C.O. 272 is to that extent invalid and inoperative.

R. Because in any event, the Constituent Assembly of Jammu and Kashmir was aware of its power and authority to recommend amendment, modification, or abrogation of Article 370 upon the conclusion of its proceedings. However, the Constituent Assembly did not do so, and clearly intended Article 370 to remain intact. It is respectfully submitted that the “legislative assembly” standing alone is not an automatic successor to the Constituent Assembly, as the distinction between

constituent power and legislative power is well-established in Indian constitutional jurisprudence.

II. Presidential Order G.S.R. 562(E) (C.O. 273) is constitutionally invalid.

S. It is respectfully submitted that Presidential Order C.O. 273, which purports - under authority of Article 370(3) - to abrogate all clauses of Article 370 (except for clause (1)) is constitutionally invalid. A presidential order under Article 370(3) of the Constitution of India requires the Constituent Assembly of J&K to recommend a presidential notification under Article 370(3) declaring that Article 370 shall cease to be operative. It is respectfully submitted that the J&K Constituent Assembly no longer exists and thus could not have made a recommendation to that effect. Furthermore, no recommendation was made by any legislative body in J&K in exercise of its constituent power or otherwise that Article 370 cease to have effect.

T. Because the invalidity of Presidential Order C.O. 273 follows from the invalidity of Presidential Order C.O. 272. It is respectfully submitted that Presidential Order C.O. 273 is based upon the consent of the Indian Parliament, standing in for the (temporarily non-existent) legislative assembly of the state of Jammu and Kashmir. This authorisation, in turn, flows from Presidential Order C.O. 272, which substitutes “legislative assembly” for “Constituent Assembly”, under Article 370(3) (which itself has been shown to be impermissible above). It therefore follows that Presidential Order 273 cannot stand without the authority of Presidential Order 272.

U. Because, in any event, the Presidential Order C.O. 272 cannot save Presidential Order CO 273. Since C.O. 272 was passed under the powers granted to the President under Article 370(1)(d) to apply the provisions of the Indian Constitution to the State of Jammu and Kashmir, the modification of Article 367 - and thus of Article 370 - carried out in C.O. 272 applies only qua the State of Jammu and Kashmir. It is respectfully reiterated that the plain textual intent of Article 370(1)(c) is to apply Article

1 and Article 370 to the State of Jammu and Kashmir *in the same manner in which they apply* the Indian Constitution. However, even if it were constitutionally permissible to apply Article 370 in a modified form via Article 367 as applied to Jammu and Kashmir, Article 370 of the Indian Constitution would remain untouched by C.O. 272. Since C.O. 272 does not amend Article 370 qua India, a presidential notification under Article 370(3) continues to be bound by Article 370(3) and requires a recommendation by the Constituent Assembly of Jammu and Kashmir, or some equivalent constituent power in the State of Jammu and Kashmir. Thus, C.O. 273 is ultra vires Article 370(3) of the Indian Constitution.

- V.** Because, it is respectfully submitted that treating C.O. 273 as validly passed under Article 370(3) of the Constitution of India, as it binds India, is to legitimize amendment of the text of Article 370(3) through presidential order C.O. 272 passed under Article 370(1)(d). While the President's powers under Article 370(1)(d) - exercised in C.O. 272 - permit applying the Constitution's provision in modified form to Jammu and Kashmir, they

do not extend to amending Article 370(3) of the Indian Constitution, as it applies qua India. The only constitutionally permissible route to amending Article 370(3) of the Constitution of India as it applies to India, is by following the procedure expressly laid down in Article 370(3) for ceasing, modifying or excepting its operation qua India & the State of Jammu and Kashmir.

III. The President Orders CO 272 and 273 enact constitutional change in the State of Jammu and Kashmir and are thus ultra vires Article 356 read with 357 of the Constitution of India

W. Because the President does not have the power to change the provisions of the Constitution of India, as applied to Jammu and Kashmir, during President's rule under Article 356(1). The President can issue a proclamation under Article 356(1), as applied to the State of Jammu and Kashmir by the Constitution (Application to Jammu and Kashmir) Order 1954, if s/he is "satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of

the Constitution of the State of Jammu and Kashmir.”

Therefore, by necessary inference, President’s intervention under Article 356 must be to ensure that government in Jammu and Kashmir can be carried out *in accordance* with the provisions of the Constitution of Jammu and Kashmir, and towards restoring constitutional machinery in the State. As a corollary, the President ought not amend the provisions of the Constitution of Jammu and Kashmir through the powers under Article 356(1) as applied to Jammu and Kashmir.

- X.** Because, it is respectfully submitted that the President has instead completely eliminated the Constitution of Jammu and Kashmir by altogether superseding the 1954 Order in impugned orders CO 272 and CO 273. In doing so, the President conflated powers under Article 370(1)(d) with the powers under Article 356 of the Constitution of India as applied to the State of Jammu and Kashmir. It is submitted that the power of the President under Article 370(1)(d) is under the Constitution of India qua India, while the power of the President under Article 356 is under the Constitution of India as applied to Jammu and

Kashmir, and that the merger of powers granted to the President in two separate capacities is unconstitutional.

- Y.** Because the power of the President under Article 356(1)(c) to suspend “in whole or in part the operation of any provisions of the Constitution of Jammu and Kashmir relating to any body or authority in the State...” does not save the impugned orders for two reasons: *first*, the power under Article 356(1)(c) can only be exercised to “make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation”; and *second*, the power under Article 356(1)(c) ought to be read with Article 356(1)(c) and Article 357 as applied to Jammu and Kashmir. By such a holistic reading, the President is only empowered to transfer the “*legislative powers*” of the State legislature to the Parliament/the President under Article 357(1)(a). By way of CO 272, the President effectively repeals the Constitution of Jammu and Kashmir altogether, by superseding the 1954 Order which made provision for application of the Constitution of Jammu and Kashmir in the State of Jammu and

Kashmir. Thus CO 272 enacts a constitutional change that is ultra vires the *legislative powers* transferred to the President under Article 356(1)(b) read with Article 357 and is hence unconstitutional.

IV. The Jammu and Kashmir (Reorganisation) Act, 2019 is constitutionally invalid.

Z. Because, in seeking to downgrade the status of the State of Jammu and Kashmir into a Union Territory (with a legislature), the J&K (Reorganisation) Act is *ultra vires* Article 3 of the Constitution. Article 3 authorises the formation of new States, and the alteration of areas, boundaries or names of existing States, but it does not authorise the *degradation of the status of an existing state into a union territory*. This is made even clearer by Explanations I and II to Article 3, where the word “state” is to be read to include a “union territory”, and parliament’s power is deemed to include “the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory.” It is respectfully submitted that Article 3

provides a range of powers involving the *inter-se* alteration of states, the *inter-se* alteration of Union Territories, but conspicuously *does not* authorise the degradation of the status of a state into a Union Territory.

AA. Because, it is respectfully submitted that this interpretation is supported by the principle of non-retrogression, that was set out by this Hon'ble Court in **Navtej Johar v Union of India [2018 10 SCC 1]**. According to the principle of non-retrogression, "the State should not take measures or steps that deliberately lead to retrogression on the enjoyment of rights either under the Constitution or otherwise." It is respectfully submitted that the crucial right at stake here is the right to representation, and to be governed by one's elected representatives, as set out by this Hon'ble Court in **NCT of Delhi v Union of India, supra**. Consequently, having once achieved the degree of representation offered by statehood, the peoples of a state cannot be *retrograded* to the lesser degree of representation offered by a Union Territory.

BB. Because Article 1 of the Constitution of India stipulates that “India, that is Bharat, shall be a Union of **States.**” Article 1(3) of the Constitution further stipulates that “the territory of India shall comprise - (a) the territories of the States”; (b) the *Union* territories specified in ... the First Schedule...” It is therefore submitted that for the purposes of Article 1, “states” and “union territories” are treated differently, and “states” remain the **constituent units** of the Indian Union. Consequently, it is respectfully submitted that the Article 3 of the Constitution cannot be read to grant the power to the Union to convert the status of states into Union Territories, as this power carries with it the necessary implication that the Union could - if it chose - convert India into a “Union of Union Territories” instead of a “Union of States.” It is respectfully submitted that the framers of the Constitution could not have - and did not - vest so wide or untrameled a power in the Union Government.

CC. Because it is respectfully submitted that this interpretation of Articles 1 and 3 is buttressed by the

holding of this Hon'ble Court in **S.R. Bommai v Union of India, supra**, where it has been clearly held that “the Courts should not adopt an approach, an interpretation, which has the effect of or tends to have the effect of whittling down the powers reserved to the states ... let it be said that the federalism in the Indian Constitution is not a matter of administrative convenience, but one of principle - the outcome of our own historical process and a recognition of the ground realities.”

DD. Because it is respectfully submitted that this interpretation is supported by the consistent history of our Nation, where the movement has always been from the status of Union Territory to Statehood, and never the other way round.

EE. Because this interpretation is further supported by the fact that Union Territories (with legislatures) have always been the creations of Constitutional *amendments*, and not under the plenary power of Article 3. Examples include Pondicherry (Article 239A) and the National

Capital Territory of Delhi (NCT) (Article 239AA). Indeed, at the time of the framing of the Constitution, the concept of a Union Territory with a legislature did not even exist. It is therefore submitted that Article 3 could not have been intended to authorise the degradation of a state into a Union Territory.

FF. Because, as this Hon'ble Court has held on multiple occasions, federalism is a basic feature of the Indian Constitution. It is respectfully submitted that the model of federalism followed by our Nation is *sui generis* (**Durga Das Basu, Constitution of India**, 9th ed., vol. 1, p. 622). It is *sui generis* in the sense of being a *pluralistic federation*, where different constituent units of the federation can have a different relationship with the Union, based upon their terms of accession, historical, social, political, and cultural circumstances (**R.C. Poudyal v Union of India, 1994 Supp 1 SCC 324**). This is reflected in Articles 371A to 371J, which provide a special status - in different respects - to the states of Nagaland, Mizoram, Manipur, Maharashtra, Karnataka, Sikkim, and others. It is respectfully submitted that the

principle of pluralistic federalism would be set at nought if *one* of the two parties to the federal relationship (i.e., the Union) can unilaterally amend the terms of their relationship, without even passing through the rigours of the amending process under Article 368.

GG. Because the right to autonomous self government and the right to an identity within the federal framework are fundamental rights flowing from the right to life and other provisions contained in Part III of the Constitution. Their removal in a manner that has made a mockery of the “procedure established by law” is clearly in violation of fundamental rights and ought to be struck down forthwith.

HH. Because the promulgation of C.O. 272 and C.O. 273 are arbitrary exercises of government power in violation of fundamental rights and further, are in violation of Constitutional morality.

II. Because the J&K (Reorganisation) Act, 2019 violates fundamental rights contained *inter-alia* in Articles 14, 19 and 21 of the Constitution.

JJ. Because the Impugned Act is contrary to the Constitutional Scheme.

29. That the Petitioners have not filed any other petition in any High Court or the Supreme Court of India on the subject matter of the instant Petition.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a)** Issue an appropriate order declaring Presidential Order Presidential G.S.R. 551(E) (C.O. 272) unconstitutional, void, and inoperative; and
- b)** Issue an appropriate order declaring Presidential Order G.S.R. 562(E) (C.O. 273) unconstitutional, void, and inoperative; and

- c) Issue an appropriate order declaring The Jammu and Kashmir (Reorganisation) Act of 2019 unconstitutional, void, and inoperative; and/or
- d) Pass any other writ, order or direction as this Hon'ble Court deems fit in the interests of justice and in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONERS SHALL, AS IN DUTY BOUND, EVER PRAY

DRAWN BY:

Filed by

MR. GAUTAM BHATIA

MS. MALAVIKA PRASAD

MR. RAHUL NARAYAN

(D. MAHESH BABU)

ADVOCATES

Advocate-on-Record for the Petitioners

Drawn on: 09.08.2019

Filed on: 10.08.2019

IN THE SUPREME COURT OF INDIA

Civil Original Jurisdiction

WRIT PETITION (CIVIL) No.

of 2019

Between:

MOHD AKBAR LONE & Anr.

....PETITIONERS

Versus

UNION OF INDIA

...RESPONDENT

AFFIDAVIT

I, Hasnain Masoodi, S/o. Shri Ghulam Ali Masoodi, Aged about 65 years, R/o. Khrew , District Pampore, Khrew-191103, Jammu & Kashmir, do hereby solemnly affirm and state as under:

1. That I am the Petitioner No.2 herein and as such I am well conversant with the facts and circumstances of the case and hence competent to swear to this Affidavit.

2. That I have read and understood the contents of the Synopsis and Chronology of Events at page Nos. B to ____; and Writ Petition at paragraphs Nos. ____ to ____; and the IAs and state that the averments as to facts set out therein are true and correct to my knowledge, information; and submissions as to law, Questions of law, Grounds and Prayer are based on legal advice which I believe to be true.

3. That the Annexure(s) P1 to P being filed herewith are the true copies of their respective originals.

DEPONENT

VERIFICATION:

I, Hasnain Masoodi, S/o. Shri Ghulam Ali Masoodi, Aged about 65 years, R/o. Khrew , District Pampore, Khrew-

191103, Jammu & Kashmir, do hereby verify that the contents of the Affidavit hereinabove, are true and correct to my knowledge, information derived from the record and legal advice which I believe to be true. No part of this Affidavit is false nor has anything material been concealed there from.

Verified at New Delhi on this the 10th day of August, 2019.

DEPONENT