

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)
(PUBLIC INTEREST LITIGATION)

WRIT PETITION (CIVIL) NO. _____ OF 2019

IN THE MATTER OF:

1. JAMMU & KASHMIR PEOPLE'S CONFERENCE
 Through its Spokesperson
 Mr. Adnan Ashraf
 Having its office at
 House No.1, Housing Colony Rawalpura,
 Srinagar - 190005, Jammu & Kashmir ... Petitioner No.1

2. ADNAN ASHRAF
 Spokesperson,
 Jammu & Kashmir People's Conference
 Friends Enclave, Humhuma
 Srinagar - 190021, Jammu & Kashmir ... Petitioner No.2

-VERSUS-

1. UNION OF INDIA
 Through its Secretary
 Ministry of Home Affairs
 North Block, New Delhi - 110001 ... Contesting
 Respondent No.1

2. STATE OF JAMMU AND KASHMIR
 Through the Chief Secretary
 R. No. 2/7, 2nd Floor Main Building
 Civil Secretariat, Jammu-180001

- ALSO AT;
 R.No. 307, 3rd Floor Main Building ... Contesting
 Civil Secretariat, Jammu-190001 Respondent No.2

WRIT PETITION UNDER ARTICLE 32 OF
THE CONSTITUTION OF INDIA

To,

The Hon'ble Chief Justice of India
 and his companion justices of the
 Hon'ble Supreme Court of India

The humble petition of the
 above named Petitioners:

MOST RESPECTFULLY SHOWETH:

1. The Petitioners are filing the present Writ Petition under Article 32 of the Constitution in the nature of Public Interest Litigation praying inter alia from this Hon'ble Court for an appropriate writ, order or direction declaring para (c) (ii) of the President's Proclamation under Article 356 of the Constitution dated December 19, 2018 which was further extended with effect from July 3, 2019 (hereinafter, "Impugned Proclamation") to be unconstitutional and void; for an appropriate writ, order or direction declaring the Constitution Order bearing GSR. 551(E) (C.O. 272) dated August 5, 2019 (hereinafter, "Impugned Order C.O. 272"), Constitution Order bearing GSR 562(E) (C.O. 273) dated August 6, 2019 (hereinafter "Impugned Order C.O. 273"), and the Jammu and Kashmir (Reorganization) Act of 2019 (hereinafter "Impugned Act") which received the President's assent on August 9, 2019 to be and ultra vires the provisions of the Constitution of India including its articles 14, 19 and 21. The impugned Legislation is also arbitrary and violates the basic feature of federalism enshrined in the Constitution of India. The Petitioners herein also challenge the Proclamation issued on December 19, 2018, under Article 356 of the Constitution promulgating the President's Rule in the State of Jammu and Kashmir to the extent that it suspends the operation of the proviso to Article 3 in the State of Jammu and Kashmir (hereinafter "Impugned Proclamation") and the extension thereof as approved by Cabinet w.e.f. July 3, 2019 (included within the expression "Impugned Proclamation"), inter alia on the ground that it violates Article 14 for having no rational nexus with the objects of the proclamation, for being manifestly arbitrary and for being in violation of the basic feature of federalism.

A true copy of the Impugned Proclamation dated December 19, 2018 which was further extended with effect from July 3, 2019 is annexed hereto and marked as **Annexure P-1 [Page Nos. 83 to 85 in Volume-I]**.

A true copy of the press release dated June 12, 2019 is annexed hereto and marked as **Annexure P-2 [Page Nos. 86 to 87 in Volume-I]**.

A true copy of the Constitution Order bearing GSR. 551(E) (C.O. 272) dated August 5, 2019 is annexed hereto and marked as **Annexure P-3 [Page No.88 in Volume-I]**.

A true copy of the Constitution Order bearing GSR 562(E) (C.O. 273) dated August 6, 2019 is annexed hereto and marked as **Annexure P-4 [Page No.89 in Volume-I]**.

A true copy of the Jammu and Kashmir (Reorganization) Act of 2019 which received the President's assent on August 9, 2019 is annexed hereto and marked as **Annexure P-5 [Page Nos. 90 to 144 in Volume-I]**.

2. The Petitioner No.1 Jammu and Kashmir People's Conference is a political party registered by the election commission of India for the State of Jammu & Kashmir was established in Srinagar in 1978 by Abdul Gani Lone along with other colleagues including Maulvi Iftikhar Ansari. It was established with the vision to provide a clean, accountable and development-centric alternative to the one-party system prevalent in the State, built on a network of entrenched patronage, serving a select political clique. The party which did not participate in the electoral process was brought back into electoral relevance when the present Chairman of Petitioner No.1 Mr. Sajad Gani Lone decided to contest the Parliamentary elections under its banner in the year 2009. It took part in the 2014

Legislative Assembly elections, after a gap of almost 30 years, consolidating two seats from North Kashmir.

3. The Petitioner No.1 is being represented by its Spokesperson Mr. Adnan Ashraf. He is filing the present Writ Petition also as Petitioner No.2 in the present Writ Petition.

4. The Petitioner No.2 has been duly authorized by the Chairman of the Petitioner No.1 Mr. Sajad Gani Lone to file the vakalatnama and the affidavit for filing the present Writ Petition before this Hon'ble Court.

5. That the necessary details of the Spokesperson through whom the Petitioner No.1 is approaching this Hon'ble Court and which is the details also of Petitioner No.2 are as follows:-

(i) Name : Mr. Adnan Ashraf



Copies of Aadhar Card and PAN Card of Petitioner No.2 are annexed hereto and marked as **Annexure P-6 [Page No. 145 in Volume-I]** and **Annexure P-7 [Page No. 146 in Volume-I]** as personal identification in this Writ Petition because the same is being filed as a Public Interest Litigation.

6. The Petitioner No.2 is a citizen of India and also a Spokesperson of Petitioner No.1.

7. That the Petitioners have no personal gain, private motive or oblique reason in filing the present Petition. The petition is filed for common cause and the benefits of the society at large.

8. That the Petitioners state that no civil, criminal or revenue litigation involving the Petitioners, which has or could have a legal nexus with the issues involved in the Petition is pending.

9. That the Petitioners state, that there is no concerned Government authority which could be moved for the reliefs sought for by the Petitioners in the present Petition as the only efficacious remedy lies before this Hon'ble Court under Article 32 of the Constitution.

10. That the Respondents herein are the Union of India through the Secretary, Ministry of home affairs and the State of Jammu and Kashmir through the Chief Secretary.

11. The Brief facts leading to the filing of the present Writ Petition are as follows:-

(i) That on March 9, 1846, the Treaty of Lahore was executed between Maharaja Runjeet Singh of Lahore and the British Government, resulting in the transfer of certain territories to the East India Company. The relevant article of the said Treaty is Article 4 which reads as follows: -

“In particular, under Article 4 of the Treaty, “the Maharaja cedes to the Honourable Company all his forts, territories, rights and interests in the hill countries which are situated between the Rivers Beas and Indus, including the Provinces of Cashmere and Hazarah.”

A true copy of the Treaty of Lahore dated March 9, 1846 is annexed hereto and marked as **Annexure P-8 [Page Nos. 147 to 153 in Volume-I]**.

- (ii) The treaty of Amritsar was executed on March 16, 1846. Under the said treaty the territories ceded to the East India Company under Article 4 of the Treaty of Lahore were transferred by the British Government to Maharaja Gulab Singh of Jammu. A true copy of the Treaty of Amritsar dated March 16, 1846 is annexed hereto and marked as **Annexure P-9 [Page Nos. 154 to 156 in Volume-I]**.
- (iii) That on June 30, 1857 Maharaja Gulab Singh died on June 30, 1857 and was succeeded by his son, Maharaja Ranbir Singh.
- (iv) That the Government of India Act was passed in 1858 after which the territories formerly in control of the East India Company were vested in the British Monarch, in whose name India was to be governed. Following the passage of the Government of India Act, 1858, territories formerly in possession or under control of the East India Company were vested in the British Monarch, in whose name India was to be governed.
- (v) That in 1885, Maharaja Ranbir Singh died in the year 1885 and was succeeded by Maharaja Pratap Singh.
- (vi) The interpretation Act of 1889 was passed by the U.K. Parliament on August 30, 1889. Section 18 (4) of this Act defined the expression 'British India' as all territories and places within Her Majesty's dominions which were for the time being governed by Her Majesty through the Governor General of India. In addition, the term 'India'

was defined under Section 18 (5) as 'British India together with any territories of any native Prince or Chief under the suzerainty of Her Majesty exercised through the Governor General of India.

- (vii) That in the year 1925, Maharaja Pratap Singh was succeeded by Maharaja Hari Singh who was the last ruler of the Princely state of Jammu and Kashmir.
- (viii) That a notification bearing No.44 dated April 20, 1927 was issued wherein the term "State Subject" by the Maharaja Hari Singh which subsequently became the basis of the definition of 'Permanent Residents" of Jammu and Kashmir under the Jammu and Kashmir Constitution and Article 35A of the Constitution of India. A true copy of the notification dated April 20, 1927 is annexed hereto and marked as **Annexure P-10 [Page Nos. 157 to 160 in Volume-I]**.
- (ix) That Maharaja Hari Singh enacted Regulation No.1 on April 22, 1934 which corresponds to Samwat 1991. The Regulation established a Legislative Assembly for the State of Jammu and Kashmir called the 'Praja Sabha'. While certain legislative functions were delegated to the Praja Sabha, the Ruler, Maharaja Hari Singh, retained supremacy over all Legislative, Executive and Judicial matters.
- (x) That the Government of India Act 1935 was passed on August 2, 1935 was passed by the Parliament of the United Kingdom. The Act established India as federation comprising the Governor's Provinces, Chief Commissioner's Provinces and the Indian States which had or would accede to the Federation of India. Under Section 6 of the Act, the ruler of an Indian princely state was empowered to execute an

instrument of Accession declaring that he accedes to the federation of India subject to the terms of such instrument. Under sub clause (2), an instrument of Accession was to specify matters with respect to which the Federal Legislature would have competence to legislate for a particular State and the limitations, if any, on the Federal Legislature's powers to make law or exercise executive authority over such State. Interestingly, as the State of Jammu and Kashmir was not a part of British India, provisions of the Government of India Act, 1935 did not apply to it unless an Instrument of Accession was executed by its Ruler in accordance with Section 6. A true copy of Sections 5 and 6 of the Government of India Act 1935 is annexed hereto and marked as **Annexure P-11 [Page Nos. 161 to 165 in Volume-I]**.

- (xi) That the Jammu Kashmir Constitution Act was promulgated on September 7, 1939 by which Maharaja Hari Singh retained sovereignty and supremacy over all Legislative, Executive and Judicial functions. The Act empowered the Praja Sabha to make laws for the entire State of Jammu and Kashmir or any part thereof (Section 23) subject to certain conditions (Section 24). Further, the said Act vested executive functions with Council consisting of a Prime Minister and other Ministers appointed by the Ruler. The Act also provided for the High Court (which had been established by the Ruler in 1928) to be a Court of Record with jurisdiction to adjudicate upon inter alia Civil suits, and Criminal and Revenue Appeals.
- (xii) That the report of the Cabinet Mission was tabled on May 16, 1946 before the UK Parliament. Under Paragraphs 15 (1) and (4) of the Cabinet Mission Plan it was envisaged that there will be a Union of

India wherein the Union would have control and responsibility over Defence, Foreign Affairs and communications, and the states would retain jurisdiction over all the subjects not ceded to the Union.

- (xiii) That the Cabinet Mission issued a Memorandum dated May 22, 1946 titled as 'State's Treaties and Paramountcy' which affirmed that following the establishment of an independent Government in India, the paramountcy of the British Monarch over Indian States would lapse and paramount power over their respective territories would return to the States.
- (xiv) That the Constituent Assembly of India on January 22, 1947 unanimously adopted the Objectives Resolution which declared the Assembly's firm and solemn resolve to proclaim India as an Independent Sovereign Republic". Importantly, Paragraph (3) of the Objectives Resolution declared that Princely States that had joined the Union of India "whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous units together with residuary powers, and exercise all powers and functions of Government and administration, save and except such powers and functions as are vested in or assigned to the Union..."
- (xv) That the Constituent Assembly of India on January 25, 1947 adopted a resolution for the establishment of the Union Powers Committee to inter alia draw up lists of matters included in and interconnected with the subjects assigned to the Union before the framing of the Constitution.

- (xvi) That the Union Powers Committee submitted its Second Report dated July 5, 1947 to the Constituent Assembly. Significantly, the Report noted at Paragraph 3; “It is necessary to indicate the position of Indian States in the scheme proposed by us. The States which have the Constituent Assembly have done so on the basis of the 16th May Statement. Some of them have expressed themselves as willing to cede wider powers to the Centre than contemplated in that Statement. But we consider it necessary to point out that the application to States in general of the Federal List of subjects, in so far as it goes beyond the 16th May Statement, should be with their consent. It follows from this that in their case, residuary powers would vest with them unless they consent to their vesting in the Centre.”
- (xvii) That the U.K. Parliament passed the Indian Independence Act of 1947 on July 18, 1947. Under Section 1 (1) of the Act, from August 15, 1947, two independent Dominions – India and Pakistan – were to be established. Significantly, Section 7 (1) (b) of the Act stated that following independence, the suzerainty of the British Monarch over Indian States would lapse and return to the Rulers of such States. Resultantly, as sovereign States, as many as 562 Princely States had the choice to remain independent or accede to either of the two Dominions established by the Act. As a transitional measure, Section 8 prescribed that provisions of the Government of India Act, 1935 would continue to apply to the Dominions of India and Pakistan subject to certain conditions.

- (xviii) That Under Section 9 of the Indian Independence Act, 1947, the Governor General of India issued the India (Provisional Constitution) Order, 1947, which made certain sections of the Government of India Act, 1935 applicable to India until other provisions were made by the Constituent Assembly. Among the applicable provisions was Section 6, which dealt with the accession of Princely States to India through the execution of an Instrument of Accession.
- (xix) That India attained independence on August 15, 1947 and was partitioned into the Dominions of India and Pakistan. Further, as British paramountcy had lapsed. Princely States that had not executed Instruments of Accession with either Dominion became independent states. These included the States of Junagadh, Hyderabad, and Jammu and Kashmir.
- (xx) That the Ruler of Jammu and Kashmir, Maharaja Hari Singh signed the Instrument of Accession on October 26, 1947 and acceding to India subject to the terms of such instrument. Under Article 3 of the Instrument, the Dominion Legislature had authority to make laws for the State of Jammu and Kashmir on the subjects of Defence, External Affairs and Communication. Article 7 provided that the Instrument did not commit the Ruler to the acceptance of any future Constitution of India, while Section 8 vested sovereignty over subjects not acceded to India in the Ruler. A true copy of the Instrument of Accession of the State of Jammu and Kashmir dated October 26, 1947 is annexed hereto and marked as **Annexure P-12 [Page Nos. 166 to 174 in Volume-I]**.

- (xxi) That by a letter dated October 27, 1947, the Instrument of Accession dated October 26, 1947 was accepted by Lord Mountbatten on behalf of the Dominion of India. A true copy of the reply by Lord Mountbatten dated October 27, 1947 is annexed hereto and marked as **Annexure P-13 [Page No. 175 in Volume-I]**.
- (xxii) That Maharaja Hari Singh, issued a Proclamation on March 5, 1948, under which a popular Interim Government was established in the State of Jammu and Kashmir, pending the framing of a Constitution for the State. A proclamation was issued on June 20, 1949 by Maharaja Hari Singh delegating his powers and authority to Yuvraj Karan Singh who would function as the ruler of the state. After becoming the ruler, Yuvraj Karan Singh nominated 4 representatives from Jammu and Kashmir to the Constituent Assembly of India.
- (xxiii) That thereafter, Pakistan Army entered Jammu and Kashmir, thus commencing the First Kashmir War. In January 1949, the first Kashmir War ends and a United Nations negotiated ceasefire comes into effect.
- (xxiv) That Maharaja Hari Singh issued a Proclamation on June 20, 1949 delegating his powers and authority to Yuvraj Karan Singh, who would function as the Ruler of the State. The proclamation stated as follows:

“Whereas I have decided for reasons of health to leave the State for a temporary period and to entrust to Yuvraj Shree Karan Singh Ji Bahadur for that period all my powers and

functions in regard to the Government of the State. Now, therefore, I hereby direct and declare that all powers and functions, whether legislative, executive or judicial which are exercisable by me in relation to the state and its Government, including in particular my right and prerogative of making laws, of issuing proclamations, order and ordinances, of remitting, commuting or reducing sentences and of pardoning offenders, shall during the period of my absence from the State be exercisable by Yuvraj Shree Karan Singh Ji Bahadur.”

- (xxv) That in June 1949, following his appointment as Ruler, Yuvraj Karan Singh nominated four representatives from Jammu and Kashmir to the Constituent Assembly of India.
- (xxvi) That in exercise of its constituent powers, the Constituent Assembly drafted the Constitution of India which was adopted on November 26, 1949. The Constitution of India came into force on January 26, 1950, repealing inter alia the Indian Independence Act, 1947 and the Government of India Act, 1935. The State of Jammu and Kashmir was governed by Article 370 of the Constitution of India. It is evident from both the negotiations that the Article 370 could not be changed unilaterally by the Union of India or the Parliament. In exercise of powers under Article 370(1) of the Constitution, and following consultation with Government of Jammu and Kashmir, the President issued the Constitution (Application to Jammu and Kashmir) Order, 1950. Under paragraph 2 of this Order, matters in the First Schedule to the order were declared to correspond to matters ceded to the Union of India through the Instrument of Accession and,

consequently, the power of parliament to make laws for Jammu and Kashmir was limited to such matters. Furthermore, paragraph 3 of the order declared that in addition to Articles 1 and 370 of the Constitution, provisions specified in the Second Schedule to the Order would apply to the State of Jammu and Kashmir.

- (xxvii) That Yuvraj Karan Singh son of Maharaja Hari Singh issued a Proclamation on May 1, 1951 directing the establishment of an elected Constituent assembly to draft a constitution for the State of Jammu and Kashmir. Under Article 370(1) of the Constitution of India, and following consultation with the Government of Jammu and Kashmir, the President issued the Constitution (Application to Jammu and Kashmir) (Amendment) Order, 1952 on March 20, 1952 (C.O.39), modifying Articles 54 and 55 of the Constitution insofar as they applied to the State of Jammu and Kashmir.
- (xxviii) That the Basic Principles Committee of Jammu and Kashmir Constituent Assembly submitted the interim report on June 10, 1952 to the Jammu and Kashmir Constituent Assembly and recommended the following;
- a. “the form of the future Constitution of Jammu and Kashmir shall be wholly democratic;
 - b. the institution of hereditary Rulership shall be terminated; and
 - c. the office of the Head of the State shall be elective.”
- (xxix) That the Delhi Agreement of 1952 was entered into between the Government of India and the Government of Jammu and Kashmir. Under this agreement, the Government of India agreed that while

residuary powers of the Legislature vested in Parliament in respect of other states, in the case of Jammu and Kashmir, such powers vested in the State itself. A true copy of the Delhi Agreement 1952 is annexed hereto and marked as **Annexure P-14 [Page Nos. 176 to 179 in Volume-I]**.

(xxx) That under 370(3) of the Constitution of India, the President, on November 15, 1952 after a recommendation from the Jammu and Kashmir Constituent Assembly, issued Notification titled C.O. 44, modifying Article 370 to include an explanation that the phrase 'State Government' meant the Sadar-i-Riyasat acting in the aid and advice of his Council of Ministers.

(xxxi) That with concurrence of the Government of Jammu and Kashmir, the President issued the Mother Order, the Constitution (Application to Jammu and Kashmir) Order, 1954, which came into force on May 14, 1954. This Order superseded the Constitution (Application to Jammu and Kashmir) Order, 1950 paragraph 2 of the said order set out those provisions of the Constitution which, in addition to Articles 1 and 370, would be applicable to the State of Jammu and Kashmir. A true copy of the Constitution Order dated May 14, 1954 is annexed hereto and marked as **Annexure P-15 [Page Nos.180 to 191 in Volume-II]**.

(xxxii) That through Section 2 of the Constitution (Fifth Amendment) Act 1955, a proviso was added to Article 3 of the Constitution: "*Provided that no bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the bill affects the area,*

boundaries or name of any of the states, the bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such period as the President may allow and the period so specified or allowed has expired.”

- (xxxiii) That the Constituent Assembly of Jammu and Kashmir on November 17, 1956 in exercise of its constituent powers, approved and adopted the Constitution of Jammu and Kashmir.
- (xxxiv) That the Constitution of Jammu and Kashmir, 1957 came into force on January 26, 1957. By means of this Constitution, *“the people of the State of Jammu and Kashmir, having solemnly resolved, in the presence of the accession of this State of India which took place on the twenty-sixth day of October, 1947, to further define the existing relationship of the State with the Union of India as an integral part thereof...”*. Section 5 of the Constitution of Jammu and Kashmir provided that the legislative power of the State extended to all matters except those with respect to which parliament had power to make laws for the State under the Constitution of India. Legislative powers in the State were to lie with the Legislative Assembly and the Legislative Council. Significantly, Section 147, which dealt with amendments to the Constitution of Jammu and Kashmir, provided that no Bill or amendment seeing to change the provisions of the Constitution of India as they applied to Jammu and Kashmir would be introduced or moved in either House of State legislature.
- (xxxv) That the Constitution of Jammu and Kashmir, (Sixth Amendment) Act, 1965 was passed. Through this Act, the expressions “Sadar-i-

Riyasat” and “Prime Minister” in the State’s Constitution were to respectively be substituted with the expressions “Governor” and “Chief Minister”.

(xxxvi) That the Kashmir Accord, 1975 was entered into between the Government of India and the Constitution of Jammu and Kashmir on November 13, 1974. Under Clause 1 of the Accord, the relationship of the Constitution of Jammu and Kashmir with the Union of India was to continue to be governed by Article 370 of the Indian Constitution. Clause 2 reiterated that residuary powers of legislation would remain with the State. A true copy of the Kashmir Accord 1975 dated November 13, 1974 is annexed hereto and marked as **Annexure P-16 [Page Nos. 192 to 194 in Volume-II]**.

(xxxvii) That in March-July 1977 for the first time there was imposition of President’s Rule in the State of Jammu and Kashmir under Article 356 of the Constitution of India as applied to the State, after the fall of Sheikh Abdullah’s Government. In 1986, President’s Rule was imposed for the second time in the State of Jammu and Kashmir. President’s Rule imposed for the third time in the State and the Armed Forces Special Powers Act was implemented for the first time in the Kashmir Valley.

(xxxviii) That in 1995 while the State continued to be under President’s Rule, Prime Minister P.V. Narsima Rao offered maximum autonomy to the State – “the sky is the limit”- as would be permissible under the terms of Article 370 of the Constitution of India, and issued an assurance in Parliament that Article 370 will not be abrogated. He reiterated

that Jammu and Kashmir is an integral part of India and that he desired the end of President's Rule.

(xxxix) That in 1996, the President's Rule in the State of Jammu and Kashmir was revoked, and a Committee is appointed to study the issue of autonomy of the state and elections to the State's legislative Assembly are conducted.

(xi) That in 2000, a resolution was passed in the State legislative Assembly urging that Jammu and Kashmir's autonomy be restored to the pre 1953 position. On 22.04.2003, the then Prime Minister A.B. Vajpayee raises the slogan of, Insaniyat (humanism), Jamhooriyat (democracy) and Kashmiriyat (inclusivity culture of Kashmir with amity between Hindus and Muslims), in his speech in the Lok Sabha.

(xli) That in October 2010, the Central Government appointed a group of interlocutors to conduct a dialogue with the people of Kashmir. The group was headed by Dileep Padgaonkar, a former editor of the Times of India; Ms. Radha Kumar, an author; and M.M. Ansari, a former Election Commissioner.

(xlii) That in 2011, the Interlocutor's Report urged that a Constitutional Committee was established to review all the constitutional changes and applications of Central Laws by President's Orders, as well as recommended that Article 370 and the title of part XXI be amended to replace the word "Temporary" with the word "Special" akin to the provisions for other states such as Article 371 (Maharashtra and Gujarat), 371A (Nagaland); 371B (Assam); 371C (Manipur); 371D

and E (Andhra Pradesh); 371F (Sikkim); 371G (Mizoram); 371H (Arunachal Pradesh); 371I (Goa).

(xliii) That the Report of the Interlocutors Group was submitted recommending that a political settlement in Jammu and Kashmir be achieved only through dialogue with all stakeholders, addressing all the diverse aspirations of the people of Jammu, Kashmir and Ladakh, and that the State's status under Article 370 be reaffirmed, by reconsidering its erosion over the years. It further recommended that the marginal note in Article 370 of the Constitution of India be amended from "temporary" to "special" instead. A true copy of the Interlocutors Report in 2012 is annexed hereto and marked as **Annexure P-17 [Page Nos. 195 to 373 in Volume-II]**.

(xliv) That March 2015, it was discussed that the principles of the earlier NDA Government under Prime Minister AB Vajpayee of "Insaniyat, Jamhooriyat, and Kashmiriyat" will be followed by the Government, to facilitate and help initiate a sustained and meaningful dialogue with all stakeholders including political groups:

1. The dialogue will aim to build a broad-based consensus for resolution of all outstanding issues of the State.
2. The Government will examine the need for de-notifying disturbed areas to enable the Union Government to take a final view on the continuation of the Armed Forces Special Powers Act (AFSPA) in these areas.
3. The Constitution's guarantees under Article 370 and other constitutional provisions on special status will be maintained.

The coalition Government will facilitate sustained dialogue with all stakeholders, irrespective of their ideological views.

The Government will work out a one-time settlement for refugees from Pakistan occupied Kashmir of 1947, 1965 and 1971.

The Government will take measures for sustenance and livelihood of the West Pakistan refugees.

It will extend all benefits accruing to the people living on the Line of Control (LOC) to the people living on the international border.

- (xiv) That during the legislative Assembly budget session 2016-2017, one MLA, Mr. Usman Abdul Majid raised a question in relation to peace initiatives and dialogue in Jammu and Kashmir. To which it was replied that the coalition Government will seek to support and strengthen the approach and initiatives taken by the Government of India to create a reconciliatory environment and build stakes for all in the peace and development within the sub-continent. It was also answered that the Government would facilitate in initiating a meaningful dialogue amongst all stakeholders irrespective of their ideological views and predilections. A true copy of the budget session 2016-17 question No.97 raised by Mr. Usman Abdul Majid regarding the dialogue process is annexed hereto and marked as **Annexure P-18 [Page Nos. 374 to 375 in Volume-II]**.

(xlvi) That a Member of Parliament Dr. Ratna De Nag raised a question before the Minister of Law and Justice on March 29, 2017 as to
“Whether the Government proposes to,

- a) *Amend and remove Article 370’ related to Jammu and Kashmir in the near future;*
- b) *If so, the details thereof;*
- c) *If not, the reason therefor, and*
- d) *Whether this will help in providing equitable justice to the people of the State and if so the details thereof?*

The Ministry of State for Law and Justice and Electronics and Information Technology, Mr. PP Chaudhary stated:-

- (a) At present, there is no such proposal under consideration of the Government.
- (b) to (d) do not arise’

A true copy of the question raised by Dr. Ratna De Nag and its reply by Mr. PP Chaudhry on March 29, 2017 is annexed hereto and marked as **Annexure P-19 [Page No. 376 in Volume-II]**.

(xlvii) That the Member of Parliament Mr. Ashwini Kumar on March 27, 2018 raised a starred question 449 before the Lok Sabha on;

- (i) Whether the Government is committed to scrapping Article 370 of the Constitution which gives special status to the State of Jammu and Kashmir?; and

- (ii) If so, the details including the present status thereof along with the procedure laid down for such scrapping?
- (xlviii) That the Minister of State in the Ministry of Home Affairs (Shri Hansraj Gangaram Ahir) answered, "There is currently no such proposal under consideration of the Government." A true copy of the question No.449 raised by Mr. Ashwini Kumar and its reply dated March 27, 2018 is annexed hereto and marked as **Annexure P-20 [Page Nos. 377 to 378 in Volume-II]**.
- (xlix) That the Governor, with the concurrence of the President, issued a proclamation under Section 92 of the Constitution of Jammu and Kashmir on June 20, 2018 declaring 'Governor's Rule' in the State of Jammu and Kashmir. On November 21, 2018 the Governor, under Section 53(2) of the Constitution of Jammu and Kashmir, dissolved the Legislative Assembly of the State.
- (l) That the proclamation issued by the Governor on June 20, 2018 expired on December 19, 2018. Thus, the President of India issued the Impugned Proclamation under Article 356 of the Constitution of India imposing "President's Rule' in the State of Jammu and Kashmir. A resolution approving this proclamation was passed in the Lok Sabha on December 28, 2018 and in the Rajya Sabha on January 03, 2019. The President's proclamation was, in terms of Article 356(4), to expire on July 02, 2019. Consequently, President's Rule in Jammu and Kashmir was extended for a further period of six months with effect from July 03, 2019. Such extension was passed by the Lok Sabha on June 28, 2019 and by the Rajya Sabha on July 1, 2019.

- (li) That the Cabinet approved the extension of the Impugned proclamation on June 12, 2019 for a further period of six months with effect from July 3, 2019.
- (lii) That Shri Prabhat Jha, member of Rajya Sabha, on June 26, 2019 through question No.497 in the Rajya Sabha asked the State Minister for Home Affairs,
- (i) “a) Whether Article 370 of the Constitution of India gives special status to Jammu and Kashmir under which the Central Government has to take the approval of the State Government to dispose off all the works except the Defence Sector, External Affairs, Financial matters and Communication;
- (ii) If so, the details thereof;
- (iii) Whether Article 370 is a hurdle in the all round and suitable development of Jammu and Kashmir and also a perpetual threat to the Unity and Integrity of the Country; and
- (iv) If so, whether the Government is initiating to take the necessary steps to terminate special status given to Jammu and Kashmir under Article 370?
- (v) Mr. Reddy replied,
- “(a) to (d): At present, Article 370 is contained as a temporary provision with respect to the State of Jammu and Kashmir in part XXI (Temporary, Transitional and Special provisions) of the Indian Constitution. In terms of Article 370, the provisions of Article 1 and 370 shall apply in relation to the State of Jammu and Kashmir. With regards to matters relating to the Instrument

of Accession, President of India can issue orders in consultation with the State Government, whereas for applying other provisions of the Constitution of India, with such exceptions and modifications as the President may by order specify, the concurrence of the State Government is required.”

A true copy of the question raised by Mr. Prabhat Jha on June 26, 2019 is annexed hereto and marked as **Annexure P-21 [Page Nos. 379 to 380 in Volume-II]**.

(liii) That Smt. Chhaya Verma, Ch. Sukhram Singh Yadav, Mr. Vishambar Prashad Nishad members of Parliament in the Rajya Sabha asked question No.485 from the Minister of Home Affairs as to,

- a) the view point of the Government regarding Article 370 and 35A in respect of Jammu and Kashmir;
- b) The policy Government is working on to control the terrorist activities in Jammu and Kashmir and
- c) The details thereof?

Mr. Reddy replied,

- a) At 'present, Article 370 is part of the Constitution of India under title "Temporary provisions with respect to the State of Jammu and Kashmir' and Article 35A is contained in the Constitution (Application to the Jammu and Kashmir) Order 1954 issued by the President of India under Article 370.

(b) and (c); The Government has adopted a policy of zero tolerance towards terrorism. Effective response is given by the security forces to counter terrorist activities in the state of Jammu and Kashmir. In order to combat activities of terrorists, several steps have been taken including strengthening operational grid, enhancing coordination amongst security agencies, effective retaliation of terror acts, strengthening of ROP to protect convoys etc.'

A true copy of the question raised by Smt. Chhaya Verma dated June 26, 2019 is annexed hereto and marked as **Annexure P-22 [Page Nos. 381 to 382 in Volume-II]**.

(liv) "That Mr. Ajay Pratap Singh member of Parliament before the Rajya Sabha asked question No.1309 from the Minister of State in the Ministry of Home Affairs (Mr. G Kishan Reddy),

- a) Whether the Government is contemplating on abrogating Article 35A of the Constitution;
- b) If so, whether two third vote of majority of all the members of the house is required for this purpose; and
- c) if not by when a decision will be taken in this regard?

Mr. Reddy replied

(a) to (c): At present Article 35A is contained in the Constitution (Application to Jammu and Kashmir) Order 1954 issued by the President of India under Article 370 of the Constitution of India.

A true copy of the question No.1309 raised by Mr. Ajay Pratap Singh dated July 3, 2019 is annexed hereto and marked as **Annexure P-23 [Page No. 383 in Volume-II]**.

(iv) On July 10, 2019, Mr. Sanjay Seth in Rajya Sabha through question No. 1948 asked the State Minister of Home Affairs Mr. G Kishan Reddy:-

“a) Whether it is fact that the Government is going to repeal Articles 370 and 35A.

b) if so the reasons the reasons therefore;

c) Whether repeal of these articles in any way violate any United Nations Regulation or international obligation of the Country;
and

d) if so, How will the same be mitigated?

To which the Minister answered:

“(a) to (d): At present, Article 370 is contained as a temporary provision with respect to the state of Jammu and Kashmir in part XXI (Temporary, Transitional and Special Provision) of the Indian Constitution. At present, Article 35A is contained in the Constitution (Application to Jammu and Kashmir) Order 1954 which was added through the Constitution Order issued by the President of India under Article 370 Jammu and Kashmir is an integral part of India. Matters relating to the Constitution of India are internal and entirely for the Indian Parliament to deal with.

No foreign Government or organization has any locus standi in the matter.”

A true copy of the question No.1948 raised by Mr. Sanjay Seth in Rajya Sabha dated July 10, 2019 is annexed hereto and marked as **Annexure P-24 [Page Nos. 384 to 385 in Volume-II]**.

(Ivi) That Mr. Prabhat Jha asked a question No.1971 in the Rajya Sabha from the State Minister of Home Affairs Mr. G. Kishan Reddy on July 10, 2019:-

Will the Minister of Home Affairs be pleased to state:

- a) Whether the citizen of Jammu and Kashmir has dual citizenship due to Article 370 of the Constitution and whether Pakistani Citizens living in Kashmir also get Indian citizenship;
- b) If so, whether Government is making any remedial efforts in this regard and if not, the details thereof;
- c) Whether abrogation of Article 370 of the Constitution can prove to be an effective step for prevention of terrorist activities;
- d) If so, the efforts being made by the Government in this regard?

To which the minister replied,

“(a) to (b): No sir, No citizen of India including those belonging to the State of Jammu and Kashmir, is eligible for dual citizenship under the provisions of the Indian Constitution or the Constitution of Jammu and Kashmir.

(c) to (d): At present, Article 370 is contained as a temporary provision with respect to the State of Jammu and Kashmir in part XXI (Temporary, Transitional and special provisions) of the Indian Constitution.

A true copy of the Question raised by Mr. Prabhat Jha on July 10, 2019 is annexed hereto and marked as **Annexure P-25 [Page Nos. 386 to 387 in Volume-II]**.

(lvii) That Mr. Jai Prakash through question No.4949 on July 23, 2019 asked the Minister of Home Affairs as to:-

- a) Whether it is a fact that the Government is contemplating to remove Section 370 and 35A of the Constitution relating to Jammu and Kashmir;
- b) If so the time by which it is likely to be done; and
- c) if not, the reasons therefor?

To which, the Minister of State of Home Affairs answered from (a) to (c) at Present Article 370 is contained as a temporary provisions with respect to the State of Jammu and Kashmir in Part XXI (Temporary, Transitional and Special Provisions) of the Indian Constitution. At present Article 35A is contained in the Constitution (Application to Jammu and Kashmir) Order 1954 which was added through the Constitution Order issued by the President of India under Article 370.

A true copy of the question sheet raised by the Mr. Jai Prakash on July 23, 2019 is annexed hereto and marked as **Annexure P-26 [Page No. 388 in Volume-II]**.

(lviii) That the Respondent No.2 on August 2, 2019 issued a Security Advisory, advising all Amarnath Yatris to stop their yatra mid-way and return. It said, "Keeping in view the latest intelligence inputs of terror threats, with specific targeting of the Amarnath Yatra, and given the prevailing security situation in the Kashmir Valley, in the interest of safety and security of the tourists and Amarnath Yatris, it is advised that they may curtail their stay in the Valley immediately and take necessary measures to return as soon as possible". There was no such grave security threat to ask the Amarnath Yatris and a false pretext of security threat was created which was actually a preparation to abrogate Article 370 of the Constitution of India and the entire nation was kept in dark.

(lix) That the Governor of the State of Jammu and Kashmir gave a Press Statement on the night of August 3, 2019 that he was not aware of any proposal to amend Article 370 of Article 35 A and that all security arrangements and reinforcements in the State were being done pursuant to intelligence inputs forecasting a major imminent terror incident. A true copy of the news report that appeared in "Greater Kashmir" dated August 3, 2019 is annexed hereto and marked as **Annexure P-27 [Page Nos. 389 to 390 in Volume-II]**.

(lx) That the Gupkar Declaration was adopted on August 4, 2019 in an all parties meeting. This meeting was attended by the Chairman of Petitioner No.1 Mr. Sajad Ghani Lone. This meeting was convened

to deliberate upon the prevailing political situation triggered by massive deployment of security forces, advisories issued, abandonment of Amarnath Yatra midway and forced removal of tourists from the Valley. The meeting was presided over by Dr. Farooq Abdullah, was attended by, Ms. Mehbooba Mufti, President JKDP, Patron PDP Muzaffar Hussain Beg, Abdul Rehman Veeri GS PDP, Sajad Ghani Lone Chairman JKPC, Imran Reza Ansari, Abdul Ghani Vakeel, Taj Mohiuddin Vice President JKPC, M Y Tarigami CPIM, Vice President JKNC Omar Abdullah, MPs of NC, Justice Hassnain J. Masoodi, Mohamad Akbar Lone, Provincial President JKNC Nasir Sogami, Shah Faesal, PUF, Ali Mohammad Sagar GS JKNC, Muzaffar Shah ANC, Uzair Ronga PUF, Suhail Bukhari PDP, and it was unanimously resolved, that:

1. That all the parties would be united in their resolve to protect and defend identity, autonomy and special status of the JK against all attacks and onslaughts whatsoever.
2. That modification, or abrogation of Articles 35A,370, unconstitutional delimitation or trifurcation of the state would be an aggression against the people of Jammu Kashmir and Ladakh.
3. That the Parties resolve to seek audience with the President and Prime Minister of India and the leaders of other political parties to apprise them of the current situation and appeal to them to safeguard the legitimate interests of the people of state with regard constitutional guarantees given to the state under the Constitution of India.

(ixi) That on August 5, 2019, the President issued the Impugned Order on August 5, 2019 titled the Constitution (Application to Jammu and Kashmir) Order, 2019 (“C.O 272”). The said Order, issued under Article 370 (1) with the purported concurrence of the Government of the State of Jammu and Kashmir, inserted Article 367 (4) of the Constitution of India. In particular, the newly inserted Article 367 (4) (c) stated that references in the Constitution to the Government of the State of Jammu and Kashmir would be construed as including references to the Governor of Jammu and Kashmir. Further, Article 367 (4) (d) amended sub clause (3) of Article 370 by replacing the expression “Constituent Assembly of the State..” with the “Legislative Assembly of the State.”

A true copy of the Supplementary list of business in the Rajya Sabha dated August 5, 2019 is annexed hereto and marked as **Annexure P-28 [Page Nos. 391 to 392 in Volume-II]**.

A true copy of the Supplementary list of business in the Lok Sabha dated August 5, 2019 is annexed hereto and marked as **Annexure P-29 [Page No. 393 in Volume-II]**.

A true copy of the revised list of business in the Lok Sabha dated August 6, 2019 is annexed hereto and marked as **Annexure P-30 [Page Nos. 394 to 397 in Volume-II]**.

A true copy of the Notification S.O. 2889 (E) dated August 9, 2019 issued by Respondent No.1 is annexed hereto and marked as **Annexure P-31 [Page No. 398 in Volume-II]**.

12. A batch of Writ Petitions were filed challenging the abrogation of Article 370 of the Constitution of India which came up before this Hon'ble Court on August 28, 2019 and this Hon'ble Court was pleased to issue notice and directed the matter to be listed before a bench of five Hon'ble judges.

A true copy of the order dated August 28, 2019 passed by this Hon'ble Court in Writ Petition (Civil) No. 1013 of 2019 is annexed hereto and marked as **Annexure P-32 [Page Nos. 399 to 402 in Volume-II]**.

13. That the Jammu and Kashmir Reorganization Bill 2019 was passed in the Parliament on August 06, 2019 to provide for the reorganization of the existing state of Jammu and Kashmir and for matters connected therewith or incidental thereto. The Act in essence provides for the formation of a new Union Territory to be the Union Territory of Ladakh comprising of Kargil and Leh Districts as well as the formation of another Union Territory to be known as the Union Territory of Jammu and Kashmir comprising of all territories except Kargil and Leh. Under the Act there shall be a Legislative Assembly for the Union Territory of Jammu and Kashmir. That the Petitioners are therefore filing the present Writ Petition under Article 32 of the Constitution of India on the following amongst other grounds which are taken without prejudice to one another:-

GROUND

A. BECAUSE the Impugned Constitution Order C.O. 272 dated August 05, 2019 and the consequent C.O. 273 dated August 06, 2019 are unconstitutional as the "concurrence" of State Government taken is unconstitutional and violative of Articles 14, 19 and 21 of the Constitution of India.

- B. BECAUSE the Impugned Order C.O. 272 issued by the President under Article 370 (1) of the Constitution, has been issued pursuant to the “concurrence” of the Government of Jammu and Kashmir, despite there being no popularly elected Government in the State of Jammu and Kashmir, under the provisions of the Constitution and it is an affront on the Constitution of India and a blatant attack on the federal nature of the Indian Constitution.
- C. BECAUSE the state of Jammu and Kashmir has been under the President’s rule under Article 356 of the Constitution of India (applied under the 1954 order) since June 2018, and all routine decisions of the Government of the State are taken by the Governor, who himself is a delegate of the President under the Presidential Proclamation issued under Article 356 (1) (a). Therefore, concurrence of the Government of the State provided by the Governor, does not express the will of the people, as the Governor is merely substituting for a popularly elected Government, as an emergency measure under Article 356 of the Constitution. The imposition of the President’s Rule for the abrogation of Article 370 of the Constitution of India was an illegal and unconstitutional exercise of Article 356 of the Constitution of India.
- D. Because the Governor of State of Jammu and Kashmir kept the entire nation in the dark and the country was not informed that such a drastic action against the interest of the state is being taken and the Amaranth pilgrims were asked to interrupt their religious pilgrimage and were asked to return back to their home towns on the false pretext of the security threat to the country. All the outstation students from all

communities were asked to vacate again on the false pretext of a security threat. The entire state particularly the valley was put under curfew and then only those C.O's were passed and the impugned legislation was enacted. Never ever in the history of the nation reorganization under Article 3 has taken place which shows a blatant attack on our constitution and the freedom of people of a state.

- E. Because the impugned legislation has been passed by the Parliament exercising its power under Article 370 (3) of the Constitution of India which clearly mandates that the President can exercise its power under Article 370 (3) after it complies with the proviso of the said Article and the present exercise is null and void and therefore the impugned legislation is ultra-vires and it offends Article 370 (3) under which such an exercise has been undertaken which is patently in the teeth of the proviso of Article 370 (3) and the same has to be declared unconstitutional by this Hon'ble Court.
- F. Because only the State of Jammu and Kashmir had a separate Constitution and the Parliament had a limited scope to enact legislation for the state of Jammu and Kashmir and therefore by a Parliamentary Act the powers given to the state of Jammu and Kashmir by its own constitution could not have been abrogated by merely taking away Article 370 by the impugned legislation.
- G. Because Section 14 of the impugned legislation will be a dead letter because the Pakistan occupied Kashmir (PoK) has not yet been included in the Union of India and the Governance of that part of Jammu and Kashmir as per the said section is not with India and the same parameters of seeking the approval of the people of Jammu &

Kashmir of that part has to be taken as per their Constitution and as provided by the proviso to sub-clause 3 of Article 370 of the Constitution of India and on this ground also the impugned Constitutional Orders and the impugned legislation are ultra vires.

- H. Because the entire state particularly the valley has been in the state of lockout for more than one month which clearly shows that a Constitutional change has been enacted without seeking the approval of the Constituent Assembly of the State of Jammu and Kashmir as mandated by the proviso to sub-clause 3 of Article 370 of the Constitution.
- I. Because the state of Jammu and Kashmir had a historical background for becoming a state of Union of India and it was governed by its own Constitution and the parliament could not have taken a short cut route to abrogate Art 370 of the Constitution of India without the popularly elected state government in the state of Jammu and Kashmir.
- J. The power of formation of new states and alteration of area, boundaries can be made by a law to be made by the Parliament under Article 3 of the Constitution. The relevant extract of Article 3 is as follows:-

“3. Formation of new States and alteration of areas, boundaries or names of existing States.— Parliament may by law— (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State; (b) increase the area of any State; (c) diminish the area of any State; (d) alter the

boundaries of any State; (e) alter the name of any State: 4 [Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States⁵, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.] 6 [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. Explanation II.—The power conferred on Parliament by clause (a) includes 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.]”.

Since coming in force of the Constitution of India several reorganization of states have taken place and in none of the Reorganization Acts, the Acts have been enacted by the parliament without seeking the approval of the concerned state legislature and in the present case two union territories have been created out of the State of Jammu and Kashmir during the governor’s rule which is an affront on the constitution. The reorganization of the state takes place by exercising powers given to the parliament under Article 3 of the Constitution of India.

- K. BECAUSE the State of Jammu and Kashmir has the right to decide who will provide consent on its behalf, as held in a Constitution Bench decision of this Court in Mohd Maqbool Damnoo vs. State of Jammu & Kashmir, (1972) 1 SCC 536. Since Jammu and Kashmir had constituted themselves into an elected Republican Government under the terms of the Constitution of Jammu and Kashmir, the only authority whose concurrence would be valid under Article 370 (1) (d) is the concurrence of an elected Government and not the Governor of the State.
- L. BECAUSE once the State of Jammu and Kashmir had chosen to be represented by an elected Republican Form of Government under its Constitution, any constitutional functionary under the Indian Constitution must consult with a broad base of citizens and to deliberate on giving the concurrence for such a move is not only a requirement of Article 14 of the Constitution, wherein it is an obligation of the State to consider all relevant factors before such concurrence, but the practice of such democracy, as a deliberative democracy is a basic feature of the Constitution and operate as an implied limitation to the exercise of such power. Therefore, an exercise of power in the instant case to give concurrence to a radical change to Article 370 (3) is a violation of basic structure of the Constitution.
- M. BECAUSE taking the concurrence of the state of Jammu and Kashmir at the time of such emergency in the State and in the absence of popularly Elected Government is in violation of the principles of democracy, which is a basic feature of the Constitution (see S.R. Bommai v. Union of India (1994) 3 SCC 1). Substituting the

concurrence of State with concurrence by Governor under President's Rule, thereby ignoring the need for significant political decisions flowing from a popularly elected Government is equally a violation of the Constitution and the basic tenets of democracy. It is further an abuse of the provisions of Article 356 of the Constitution and a fraud on the Constitution of India, not dissimilar to abuse of the constitutional device of executive legislation under Ordinance making powers- which has been held to be a fraud on the Constitution (See Krishna Kumar Singh Vs. State of Bihar 2017 (2) SCJ 136).

- N. BECAUSE any Constitutional Authority under the Indian Constitution must respect the decision of the State to be represented by a popularly elected Government enabling democratic participation of people. It is pertinent to note that it is a basic feature of the Indian Constitution, to be governed by participatory democracy as has been held in R.C. Poudyal V. Union of India, 1994 Supp 1 SCC 324. In State (NCT of Delhi) v. Union of India, (2018) 8 SCC 501.
- O. BECAUSE a conjoint understanding of federation and democracy requires the Union to respect and defer to the popularly elected Government and the elected legislatures in significant decisions concerning the State.
- P. BECAUSE such concurrence provided by the Government is in effect manifestly arbitrary and irrational and unreasonable non consideration of relevant factors and therefore in violation of Article 14 and unconstitutional. Such manifest arbitrariness and non-consideration of relevant factors is evidenced and further aggravated by the fact that the entire state is in a near lock down mode since at least 02.08.2019,

and the evidence on record indicates how the proposal for the order under Article 370 did not reach the Governor until the night of the August 3, 2019 and that it is a factual impossibility of the Governor having consulted or held dialogue with any of the Officers of the State and any Community Representatives or Civil Society Organizations. Taking the concurrence of a State Government when the freedoms of the people are particularly restrained with Section 144 of the Code of Criminal Procedure is clearly of a coercive nature. It is respectfully submitted that this Hon'ble Court ought not to hold such concurrence to be proper in the eyes of law

- Q. BECAUSE the Impugned Constitution Orders C.O. 272 and C.O. 273 dated August 5, 2019 and August 6, 2019 are unconstitutional for abuse of emergency powers.
- R. BECAUSE Article 356 of the Constitution, even though it contemplates transfer of legislative and executive powers in the State to the Parliament and the President respectively, it does not contemplate the transfer of any constituent power. The power under Article 370 (1) (d) of the Government of Jammu and Kashmir to give concurrence for a modified application of the Constitution's provisions, is a constituent power. Therefore, the constituent power to give concurrence does not vest with either the Parliament or the President and therefore cannot be exercised by the Governor, who is merely a delegate of the President in the State under the terms of the Presidential Proclamation.
- S. BECAUSE even assuming constituent power may be transferred and can vest in the President of Parliament, as the case may be, in terms

of an emergency Proclamation Under Article 356, only those powers properly available to the Legislative Assembly can be transferred. In other words, if such powers are to be circumscribed by any express or implied limitations, then the powers as vested in the President (or the Parliament) are also subject to the same express and implied limitations.

- T. BECAUSE since constituent power is not vested in either the President or Parliament under Article 356 of the Constitution of India, the constituent power of the Legislative Assembly of the State of Jammu and Kashmir cannot vest in the Parliament under Article 356 (even assuming without admitting- the validity of the Impugned Order C.O. 272 redefining “Constituent Assembly” to mean “Legislative Assembly”). Therefore, the resolution passed by both houses of the Parliament, recommending the issue of an Article 370 (3) Presidential notification, purportedly in exercise of powers that vest in the “Legislative Assembly” of the State of Jammu and Kashmir is invalid and non est in the eyes of law.
- U. BECAUSE under Article 356 as applied under the 1954 Presidential Order, the provision under which Parliament has purportedly assumed powers of the Legislative Assembly, the term ‘Constitution’ means the Constitution of Jammu and Kashmir. In other words, the President owes an equal duty to respect the provisions of the Constitution of Jammu and Kashmir even when the state is under President’s Rule. Such power cannot be used to effectively supersede or abrogate that very Constitution, as has been done in the case of the Impugned Order C.O. 273. This duty to respect and protect the Constitution of

the State of Jammu and Kashmir limits the powers exercisable under Article 356.

- V. BECAUSE furthermore, the resolution passed in both the houses of Parliament in a matter of two days with little or no advance notice as required under the rules of procedure of both the houses is clearly violative of the principle of deliberative democracy and due process enshrined in the Constitution as a basic feature.
- W. Because the Impugned Constitution Order C.O. 272 dated August 5, 2019 was passed contrary to Article 370(1) and is Manifestly colourable exercise of power, and is therefore unconstitutional.
- X. BECAUSE Article 370(1)(d) does not permit the modification of Article 370 in its application to the state of Jammu and Kashmir, inasmuch as the said provision clearly carves out an exception for “Article 1 and *this* Article” (wherein “this” stands for Article 370). Thus, Article 1 and Article 370 of the Constitution of India apply to the State of Jammu and Kashmir by the express terms of Article 370(1)(c) itself, whereas other provisions of the Indian Constitution are to be applied through Presidential Orders, with exceptions/modifications subject to the concurrence of the elected government of the State. Thus, the power to modify through Presidential Orders is only in respect of “other” provisions and not in respect of Articles 1 and 370 themselves.
- Y. BECAUSE the modification of Article 370 in relation to the State of Jammu and Kashmir purportedly effected through a modification of Article 367, giving the term “constituent assembly” the meaning of “legislative assembly” is a colourable device. This amounts to letting

the President do indirectly, through the interpretation clause of Article 367, what he could not have done directly, through his powers under Article 370(3). In a catena of decisions of this Hon'ble Court, such colourable exercise of power has been struck down (See *Maharajadhiraja Madhav Rao Scindia v. Union of India* 1971 AIR 530). Such modification also exceeds the constitutionally permissible limits to the power of creating 'legal fiction'.

Z. BECAUSE Article 367 of the Constitution of India defines the manner of interpretation of provisions of the Constitution of India. Thus, the modified application of Article 367 by adding in a clause (4) has been used in the past to modify merely the *interpretation* of constitutional provisions generally, when applied to the State of Jammu and Kashmir. However, C.O. 272 goes much beyond merely modifying interpretation, insofar as it seeks to alter the *substantive nature* of the power under Article 370(3) to recommend a presidential notification. In effect, C.O. 272 vests powers of a certain kind, only exercisable by one body, and under Article 370 alone, *in a wholly different body* that lacks the competence to exercise such powers.

AA. BECAUSE the Impugned Constitution Order C.O. 272 dt. 5.8.2019 is unconstitutional for exceeding the limits of the power of 'modification' Under Article 370 (1).

BB. BECAUSE through Article 370 (1) (d) the President- instead of merely modifying Article 367 (4) of the Constitution of India as applied to the State of Jammu and Kashmir has:

a) Created a wholly new and substantive power in the hands of the Legislative Assembly of the State of Jammu and Kashmir,

to recommend revocation of Article 370 under clause (3), to the President of India,

- b) Overridden the entire Constitutional Form of the State of Jammu and Kashmir by superseding the 1954 Order and applying all the provisions of the Indian Constitution to the State.
- c) By way of such supersession and creation of new substantive powers Under Article 370(3) above described, has superseded the Constitution of the State of Jammu and Kashmir.

It is submitted that the President is not authorized to carry out the above three sweeping changes Under Article 370(1) (d) for the following reasons:

- (i) The president's power under Art 370(1) (d) is not a "constituent power" but is merely a power to "apply" provisions with "modifications and exceptions" under Article 370(1)(d),
- (ii) "Constituent power" is the power to create new political forms, and only inheres in bodies that are authorized to frame the constitution or political forms for a new State. It is an extraordinary and wide power that is unconstrained by any limitations, as it does not owe its existence to any higher law. Such a "constituent power" has not been conferred upon any authority operating under the Constitution of India, instead all constitutional authorities are duty-bound to act in accordance with and towards sustaining the Constitution of India, by upholding already existing forms of authority and the powers

conferred upon them without creating new forms of power and authority.

- (iii) By conferring the substantive power to revoke Article 370 on the State Legislative Assembly – a body that was not originally envisioned as competent to exercise such power – the President has changed the fundamental political form of the State of Jammu and Kashmir. Similarly, supersession of the 1954 Order changes the fundamental political form and political essence of the State.
- (iv) The President however does not have the power to change the political form and essence of the State under Article 370(1)(d). Since revocation of Article 370 would fundamentally alter the political form and political essence of the State of Jammu and Kashmir vis-à-vis the Union of India, a recommendation for such revocation can only be done by way of the “Constituent Power” held by the Constituent Assembly of the State of Jammu and Kashmir under Article 370(3).
- (v) The President’s power under Article 370(1)(d) cannot be considered a constituent power, because even the power under Article 368 of the Constitution of India is not a constituent power but merely an amending power that is confined by limitations which inhere and are implicit in the word amendment” as held by Hon’ble Mr. Justice H R Khanna in *Kesavananda Bharati v. State of Kerala* AIR 1973 SC 1461.

- (vi) If the President's power under Article 370(1)(d) is interpreted as conferring a constituent power such that new substantive powers may be created for the legislature of the State of Jammu and Kashmir, then there would be no limitation on the kinds of new powers that the President can create by mere presidential order, as an executive authority, who neither holds constituent power nor amending power in the design of the Indian Constitution, and cannot said to be representing even the democratic will of the State of Jammu and Kashmir, or of the Union of India.
- (vii) None of the previous Constitution (Application to the State of Jammu and Kashmir) Orders issued under Article 370(1)(d) have created a wholly new, substantive power or authority, but have only applied provisions of the Indian Constitution with either modifications, such as Article 356, which permits President's intervention in the State of Jammu and Kashmir only to ensure Government of the State of Jammu and Kashmir is carried out in accordance with provisions of the constitution of the State of Jammu and Kashmir, or exceptions, such as Article 35A on "Saving of law with respect to permanent residents and their rights", which is merely an exception to the application of Article 13 read with Article 32 of the Constitution of India as applied to the State of Jammu and Kashmir, and Article 35(c) on protecting "laws with respect to preventive detention made by the Legislature of the State of Jammu and Kashmir" from being struck down for being "inconsistent" with

the fundamental rights in Part III of the Constitution of India as applied to the State of Jammu and Kashmir.

CC. BECAUSE the term “modification” ought to be read as having been circumscribed by Article 368, which is also made applicable to the State of Jammu and Kashmir vide the 1954 Order. This necessitates that any proposal to change the Constitution of India and Constitution of India as applicable to Jammu and Kashmir (unlike modifications that are specially made only qua the State of Jammu and Kashmir), ought to first be affected by way of the procedure under Article 370(3) as a modification thereto. In the instant case, the intent appears to be that the expression “Constituent Assembly” in Article 370(3) ought to mean “Legislative Assembly” both qua the rest of India and in the State of Jammu and Kashmir. Such a change can only be affected by modifying Article 370 under Article 370(3). The Impugned Order C.O. 272 therefore is issued without the procedure as provided for under the Constitution and is for that reason unconstitutional and void ab initio.

DD. BECAUSE the power vested with President both under Article 370(1) and 370(3) are limited powers. The interpretation given to the term ‘modification’ implying no limitations thereto, by this Hon’ble Court in *Puranlal v. President of India & Ors.* 1961 AIR 1519, *Sampath Prakash v. State of Jammu and Kashmir & Anr.* 1970 AIR 1118 and *State Bank of India v. Santosh Gupta & Anr.* (2017) 2 SCC 538 cases is:

- a) specific to the facts and the context of those cases, which did not include the modification to the text or meaning of any expressions of Article 370 itself.
- b) Based on the Puranlal ratio, which was decided in 1962 i.e. prior to *Kesavananda Bharati v. State of Kerala*, in which this Court recognized implied limitations on constituent power such as the amending power under Article 368. Therefore, the ratio in Puranlal and Damnoo and other cases that followed those cases will have to be read and understood suitably in light of the settled law following the thirteen – Judge bench decision in *Kesavananda*, that no power is unlimited and all power, including constituent amending power is subject to limitations.

EE. BECAUSE the modifications effected vide the Impugned Orders, with the first order superseding the existing provisions of the 1954 Order and applying all provisions of the Constitution of India; and effecting a radical change in the meaning of Article 370(3) by redefining the meaning of ‘Constituent Assembly’, and with the second order virtually declaring the Jammu and Kashmir Constitution a nullity, are all clearly in excess of the powers contemplated under ‘modifications’ in Article 370(1)(d) and 370(3) and are liable to be struck down as unconstitutional for that reason.

FF. BECAUSE the Impugned Constitution Order C.O. 273 dated August 6, 2019 was passed contrary to Article 370(3) and is unconstitutional.

GG. BECAUSE the Rule of Law is guaranteed and protected inter alia under Article 14 of the Constitution and is further held to be a basic

feature of the Constitution of India. Any exercise of powers contrary to the provisions of the Constitution is an affront to the Rule of Law and is amenable to judicial review under Article 32 of the Constitution.

HH. BECAUSE Article 370(3) of the Constitution of India requires the Constituent Assembly of Jammu and Kashmir to recommend a Presidential Notification under Article 370(3) declaring that Article 370 shall cease to be operative. In other words, the proposal must emanate from the Constituent Assembly (or its successor in law, if any, under the Constitution of Jammu and Kashmir)- i.e. the constituent power in the State. In the instant case however, the proposal in effect emanated from the President and the concurrence given by the Parliament- both of which are Union entities.

II. BECAUSE, furthermore, the Jammu and Kashmir Constituent Assembly does not exist at the current time and thus could not have made a recommendation to that effect. The proviso was incorporated to ensure that Article 370 could be changed during the existence of the Constituent Assembly. The use of the word “temporary” in the marginal note of Article 370 is only for the purpose that when Article 370 was introduced, it could be amended / abrogated with the recommendation of the Constituent Assembly of Jammu and Kashmir. Moreover, the framers of the constitution would have included a reference to the State Legislature if it was intended that the State Legislature should be able to make such a recommendation. It is pertinent to note that the terms State Legislature is used several times in the Constitution and the omission to use that expression in Article 370(3), even as an inclusion ought to be interpreted as the intent to

give the Constituent Assembly the exclusive power to determine the relationship with India and to recommend the abrogation or modification of Article 370.

JJ. BECAUSE the Impugned Order C.O. 272 does not save the Impugned Order C.O. 273 insofar as the modification of Article 367 carried out through C.O. 272 dated 05.08.2019 applies only “in relation to” the State of Jammu and Kashmir, under Article 370(1)(d), and thus only qua Jammu and Kashmir. The effect of the modification in C.O. 272, OF Article 370 does not apply qua India, and particularly does not extend to New Delhi. Therefore, by virtue of C.O. 272, the limitation on the President’s powers under Article 370(3) was removed, qua the State of Jammu and Kashmir but not qua the Union of India. Thus a presidential notification under Article 370(3), issued from New Delhi, that applies qua India continues to be bound by Article 370(3) and requires a recommendation by the Constituent Assembly of Jammu and Kashmir or a successor in law to such assembly, if any. Evidently, no modification to the Constitution has been duly affected under Article 370(3) of the Constitution of India, which is a specific provision to do so.

KK. BECAUSE elaborate and detailed protections were provided for under Article 370 of the Constitution of India, the Impugned Order C.O. 272 stripping them through a mere Presidential Order is sans all legal reasoning and manifestly arbitrary, unreasonable and in violation of every known principle of constitutional law.

LL. BECAUSE the Impugned Presidential Proclamation of December 19, 2018 (as extended w.e.f. July 03, 2019) is unconstitutional.

MM. BECAUSE Para (c)(ii) of the Impugned Proclamation statedly under Article 356(i)(c) is ultra vires Article 356 read with Article 14 insofar as the suspension of the proviso to Article, which in relation to the State of Jammu and Kashmir, provided an essential federal safeguard for a mandatory consent of the State legislature before the boundaries of the State are altered, is not an incidental or a consequential provision in relation to the proclamation of President's Rule.

NN. BECAUSE it is respectfully submitted that the device of President's Rule, which by its very nature is meant to be a temporary provision until the restoration of the elected Government of the state, cannot be used to irreversibly and permanently alter the character of the state. President's Rule represents a temporarily suspension of the federal structure vis-à-vis the centre and the affected federal unit. During that time, therefore, the centre's actions must be oriented towards the eventual restoration of the federal unit. Federalism, therefore, places an implied limitation upon the powers of the President during President's Rule, namely, a limitation upon the powers of the President during President's Rule, namely, a limitation upon the President's power to change the status of the federal unit itself.

OO. BECAUSE para (c) (ii) of the Impugned Proclamation has no rational nexus with the object of the Proclamation i.e. to promulgate a President's rule because of political exigencies in the State and the alteration of the boundaries of the State is clearly not related to such exigency.'

PP. BECAUSE the power to consent to the alteration of the boundaries of the state is constituent power vested with the legislative assembly of

the State under the Constitution of Jammu and Kashmir, harmoniously read with Article 3 as applied under the 1954 Order and as such cannot be appropriated by the Union Legislature. To that extent, the Impugned Proclamation is ultra-vires not only of Article 356 for not staying within the limitation of such power, but also an affront to the principle of federalism and the respect for the institutions of the State and the respect for the State's constitution, thereby destroying the basic structure of the Constitution.

QQ. BECAUSE The Jammu And Kashmir Reorganization Act, 2019 Is unconstitutional as the passage of the Impugned Act was enabled, only by assuming the validity of Impugned Orders C.O. 272 and C.O. 273 and the Impugned Proclamation, and in view of the above submissions that both are individually and independently unconstitutional and non-est in law, the Impugned Act is also unconstitutional as a direct consequence of the same.

RR. BECAUSE the Impugned Act is clearly in violation of Article 3 of the Constitution insofar as the character of a state can be changed only under the procedure prescribed within Article 3 of the Constitution. Under the said article, it is impermissible for Parliament to extinguish the character of the state in its entirety and create two union territories from it going against the federal structure of the constitution and violating the basic structure doctrine. Taking recourse to Article 3 in terms of the reconstituting Jammu and Kashmir is different from what has been done in the case of carving out states from existing states, like Telangana for instance. Following the provisions under Article 3 of the Constitution in letter and spirit is an essential safeguard of

India's federal character and the principle of federalism, a basic feature of the Constitution, and has clearly not been followed in the present case.

SS. BECAUSE as explained earlier, the Parliament cannot exercise the functions of the State Legislature as required under Article 3 of the Constitution, which is a constituent power in the case of the State of Jammu and Kashmir (in view of the Article 3 of the Constitution of Jammu and Kashmir) and that under Article 356 and 357 of the Constitution of India as applied under the 1954 Order and as such neither of those provisions contemplate a transfer of constituent power properly exercisable only by the legislature of the State to either the Parliament or the President.

TT. BECAUSE although the Legislative Assembly in the State is dissolved, the Legislative Council still subsists and there has been no attempt whatsoever to call for or solicit the views of members thereof or the views of such Council, even if the matter is of such and utmost urgency. Under Article 3, even as it applied to the rest of India, it is necessary to obtain the views of "the Legislature of that State". This would include both the Legislative Assembly and the Legislative Council in a bicameral State.

UU. BECAUSE even assuming that Para (c) (ii) of the Impugned Proclamation is valid, it stands overridden by the Impugned C.O. 272 which applied all provisions of the Constitution to the State, and thereby applying the proviso to Article 3 in relation to the State of Jammu and Kashmir, effectively revoking the suspension of such proviso and bringing in the mandate of resolution being introduced in

the houses of the legislature for the legislature to express its views on the reorganization/redrawing its boundaries.

VV. BECAUSE a critical decision as to bifurcation of the State and conversion thereof as two Union Territories is clearly vitiated for want of procedural reasonableness insofar as it was done without consulting the legislature of the State which embodies the popular will of the residents in the State. Further, it is pertinent to point out that although the Legislative Assembly in the State is dissolved, the Legislative Council is still functioning and there has been no attempt whatsoever to call for a session of the Legislative Council to take its view on this matter.

WW. BECAUSE with the passage of the Impugned Reorganization Act of 2019, the political aspiration of the people of Ladakh in Jammu and Kashmir is restricted substantially by reducing it into a Non Legislative Union Territory. Under Article 370 of the Constitution Ladakh had 4 MLAs, 2 MLCs over a population of 2.5 Lakhs assuring a strengthened democratic representation in the state assembly, of which it has been completely stripped of by the Impugned Act. The Ladakh Autonomous Hill Development Council Act 1995, provided decentralized autonomous governing body keeping the minorities of the state well assured of political representation.

XX. BECAUSE the effect of the Impugned Act, with the State of Jammu and Kashmir ceasing to be a state and being split into two Union Territories is manifestly arbitrary and a disproportionate measure, liable to be struck down for being violative of Article 14 of the

Constitution inasmuch as the statement of objects and reasons in the Bill clearly don't justify the measure of reducing the State to a Union Territory, particularly in view of the fact that several constitutional devices such as Article 356 exist for the Union Government to step in and handle the emergency caused by the internal security situation as stated in the Statement of Objects and Reasons for the Impugned Act and as such without any justification as to the specific benefits of passing the Impugned Act.

YY. BECAUSE the Impugned Act is clearly in violation of Article 3 of the Constitution. Under the said article, it is impermissible for Parliament to extinguish the character of the state in its entirety and create two union territories impinging on the federal character of the Constitution and violating its basic structure. Taking recourse to Article 3 in terms of reconstituting Jammu and Kashmir is different from what has been done in the case of carving out states from existing states, like Telangana, for instance. In fact, there is no precedent in our constitutional history, after the concept of Union Territories was introduced in the seventh amendment to the Constitution of India, where a State has been completely extinguished, and reduced only to Union Territory/Territories. This is for the reason that the text of Article 3 and any of the provisions thereunder do not permit the same. This is contradistinction to Article 2 where the power of the Parliament to create new states is almost unlimited. This specific structure of Article 2 and Article 3 is in consonance with federalism being a basic feature of the Constitution, the power to enhance federalism and federating the union further under Article 2 is broader than the power to reduce the

federating nature of the union further under Article 2 is broader than the power to reduce the federating nature of the union Article 3. If the approach and actions of the Respondent in the instant case is upheld. India can be reduced to a “union of Union Territories” merely by parliamentary legislations, which is neither permitted by the text nor the spirit of the Constitution. Therefore, the legislative power of Parliament Under Article 3 does not extend to diminish a state into a Union Territory.

ZZ. BECAUSE the terms of entry of Jammu and Kashmir into the Indian Union, recognized in the 1954 Order accord protection to the territorial integrity of Jammu and Kashmir by making the powers exercisable by Parliament under Article 3 of Indian Constitution applicable, subject to the consent by the state’s legislature. This protection ensured that the territorial extent of the State of Jammu and Kashmir can only be changed subject to strict federal and democratic guarantees. This is demonstrated by the Jammu and Kashmir Constituent Assembly and its Legislative Assembly under the Indian Constitution earmarking “empty” seats to represent absent members from those constituencies. The break up of Jammu and Kashmir, is thus a violation of this recognition.

AAA. BECAUSE assuming but not conceding that the Parliament was exercising the powers of the State Legislature under Article 3 as per Article 356 (1) (b) of the Constitution of India, the Bill was passed in violation of the proviso to Article 3. The proviso to Article 3 provides that “no bill for the purpose shall be introduced in either house of Parliament except on the recommendation of the President, where

the proposal contained in the Bill affects the area, boundaries or name of any of the States.” The Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such time further period as may be specified in the reference or within such time further period as the President may allow and the period so specified or allowed has expired.” In the present case, the Bill was introduced in Parliament before both houses had completed voting upon the Statutory Resolution purportedly moved in respect of obtaining the views of both houses of Parliament (exercising powers of the State Legislature).

BBB. BECAUSE as a result to the Bill and statutory resolutions being introduced in secrecy and haste, it was impossible for any meaningful deliberation to take place on the Bill in the Rajya Sabha. It is respectfully submitted that meaningful deliberation is the plank on which the presumption of constitutionality of laws rests, and in the absence of meaningful deliberation, it is respectfully submitted that no presumption of constitutionality can attach to the Bill.

CCC. BECAUSE evidence of the secrecy and haste in introducing the Bill lies in the violation of the following procedural rules:

- a) the bill was passed in violation of Rule 33, Rules of Procedure and Conduct of Business in Rajya Sabha (hereinafter, “Rules of Procedure”) as per which the Business Advisory Committee must recommend allocation of time for debate in respect of Bills which was not done in the present case.

- b) the Bill was discussed in violation of Rule 37 of Rules of Procedure as per which no variation in Allocation of Time Order can be made except if the Chairman makes such variation after taking the sense of the Council that there is general agreement for such variation, as no such sense of the Council was taken.
- c) the Bill was not placed in the List of Business but placed in the Supplementary List of Business which was circulated only after the introduction of the Bill.
- d) the bill itself circulated only after its introduction. Assuming but not conceding that the Chairman, under Rule 69 of the Rules of Procedure read with Direction 20 B of the Directions of Chairman, Rajya Sabha (hereinafter, "Directions of Chairman") could have waived the requirement of minimum two day period between introduction and consideration of a bill, but he could have done so only once the Bill was circulated. The aforementioned rule does not provide the Chairman with the power to waive the requirement of prior circulation altogether. Similarly, the residuary power under Rule 226 would not apply as circulation is specifically dealt with in the Rules of Procedure read with the Directions of Chairman. As a result of this violation, Members of Parliament voted for the introduction of a Bill that they had not even seen.

It is submitted that all these violations among others, made it impossible for any meaningful deliberation to take place on the Bill

in the Rajya Sabha and as a result no presumption of constitutionality can be attached to the Bill.

DDD. BECAUSE, a structural reading of the Constitution makes clear that the Constitution specifically provides for functions and powers that can be exercised by Parliament by way of Resolutions. For instance, resolutions may be moved for the impeachment of the President, removal of the Vice President, removal of the Deputy Chairman of Rajya Sabha, disapproval of Ordinance promulgated by the President, legislation by Parliament with respect to matters enumerated in the State List, creation of All India Services approval of Proclamation of Emergency, Proclamation in case of failure of constitutional machinery in a State and Proclamation in case of Financial Emergency. In contrast, the Constitution does not envisage that any action specifically required to be taken by the State Legislature under Article 3 be instead done by way of a statutory resolution by the Parliament during President's Rule. The need for the expression of views by the State Legislature is based on the principle of meaningful deliberation within the federal unit and cannot be replaced by statutory resolutions unilaterally passed by Parliament in violation of Constitutional procedures.

EEE. BECAUSE following the provisions under Article 3 of the Constitution in letter and spirit is an essential safeguard of India's federal character and the principle of federalism, a basic feature of the Constitution, and has clearly not been followed in the present case.

FFF. BECAUSE in view of the above, the Impugned Act is liable to be struck down as unconstitutional for being in violation of Article 3 read with part III of the Constitution of India.

GGG. BECAUSE the Impugned Constitution Orders C.O. 272 and C.O. 273 and consequent acts are void for violation of the basic feature of federalism.

HHH. BECAUSE the federal balance must be upheld in the federal relationship of all states to the union. There is no one size fits all federalism. Several states have unique federal relationships to the Union Government as in Article 371 A- 371 I. The federal relationship of each such State with the Union of India is at a federal balance, which can be amended but not damaged or destroyed, as part of the basic structure of the Constitution. This asymmetric federal balance confers powers on the President to issue orders as per the conditions and limits laid down in the special provisions in 371 through 371 I. For instance, the powers to issue presidential orders under Article 370 are similar to powers under subsequent articles which are as follows:

- a) Article 371- power to issue Presidential Order qua the states of Maharashtra and Gujarat conferring special powers and responsibilities on the governor for certain specific purposes;
- b) Article 371 B- Power to issue PO in respect of State of Assam concerning a committee of members of legislative assembly of the state from tribal areas;

- c) 371 C- Power to issue PO in respect of State of Manipur concerning a committee of members of legislative assembly of the state from hill areas;
- d) 371 D- power to issue PO in respect of States of AP and Telangana in matters of education and public employment,
- e) 361 J- Power to issue Pos in respect of State of Karnataka entrusting special responsibility to the governor for the development of certain areas with the State- namely the Hyderabad- Karnataka entrusting special responsibility to the governor for the development of certain areas within the State- namely the Hyderabad-Karnataka region. These Presidential Orders can only be issued in respect of the subject matters identified in the above provisions and cannot be issued for unconnected and extraneous purposes or to abrogate those special provisions themselves.

III. BECAUSE these differences constitute the unique federal balance in the relationship between Jammu and Kashmir and the Union of India.

JJJ. BECAUSE the essential feature of article 370(1)(b) and 370(1)(d) is that the State of Jammu and Kashmir has the constitutional right to consent to Presidential orders. The State of Jammu and Kashmir is entitled to decide who will consent on its behalf as held by a Constitution Bench of this Court in *Mohd. Maqbool Damnoo v. State of Jammu and Kashmir* 1972 SCR (2) 1014. Therefore, the application of all the provisions of the Indian Constitution to Jammu

and Kashmir, in a manner that does not account for the participation and consent of the people of Jammu and Kashmir, destroys the federal balance, which is the content of federalism that is recognized as basic structure of the Constitution.

KKK. 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) 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 371, 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 naught 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 rigors of the amending process under Article 368.

LLL. BECAUSE the Constitution of Jammu and Kashmir is a legal document that establishes the framework of Government at the State level. The Constitution was adopted on November 17, 1956 and came into effect on January 26, 1957. The special status to the State of Jammu and Kashmir flowing from the Jammu and Kashmir

Constitution is a solemn pact between the Union and the State which cannot be unilaterally altered.

MMM. BECAUSE the right of participation of the State of Jammu and Kashmir in the question of revocation of Article 370, is not merely a right to consent but a right to recommend. Thus, a proactive recommendation initiated by the State of Jammu and Kashmir is necessary under this provision. AG Noorani in his book "*Article 370: A constitutional History of Jammu and Kashmir*" writes that Article 370 of the Constitution embodies 6 special provisions for the State of Jammu and Kashmir wherein the 6th feature is that Article 370(3) empowers the President to make an order abrogating or amending it. However this requires that 'recommendation' of the State's Constituent Assembly shall be necessary before the President issues such a notification.

NNN. BECAUSE the proactive recommendation of the State was a choice made by the framers of the Indian Constitution. N Gopaldaswamy Ayyangar while debating Article 370 on 17th October 1949 expounded, "*We have also agreed that the will of the people, through the instrument of a constituent assembly will determine the constitution of the State as well as the sphere of the union jurisdiction over the state... You will remember that several of these clauses provide for the concurrence of the Government of Jammu and Kashmir State. Now these relate particularly to matters which are not mentioned in the instrument of accession, and it is one of our commitments to the people and Government of Kashmir that no such additions should be made except with the consent of the*

Constituent Assembly which may be called in the state for the purpose of framing its Constitution". This exposition is sufficient enough to reiterate the fact that the framers of the constitution with respect to Article 370 were very clear in giving the people of the State of Jammu and Kashmir the right to be consulted in all matters falling from Article 370. Further the Constitution (Application to Jammu and Kashmir) order of 1954, May 14 introduced a proviso to Article 3 of the Constitution that, "no bill providing for increasing or diminishing the area of the State of Jammu and Kashmir or altering the name or boundary of that State shall be introduced in Parliament without the consent of the legislature of that state".

OOO. BECAUSE the provision under Article 370 though noted as temporary in the marginal notes has been held to be a permanent provision by the Hon'ble Supreme Court in the case of *Kumari Vijayalaxmi Jha v. Union of India*. For instance, Justice AS Anand in his book on the Constitution of Jammu and Kashmir has written that:

"the temporary nature of the Article arises merely because the power to finalize the constitutional relationship between the State and the Union of India had been specifically vested in the Jammu and Kashmir constituent Assembly. The Constitution of India clearly envisaged the convening of a constituent assembly for the Jammu and Kashmir state and also provides that whatever modifications, amendments or exceptions that might become necessary either to article 370 or to any other article in the Constitution of India in their application to the Jammu and Kashmir State were subject to the decision of that assembly.

Therefore the temporary provision does not mean that the article is capable of being abrogated, modified or replaced unilaterally". (pp 105-106)

Further in *State Bank of India v. Santosh Gupta*, this Hon'ble Court observed,

"The first thing that is noticed in Article 370 is that the marginal note states that it is a temporary provision with respect to the State of Jammu and Kashmir. However, unlike Article 369, which is also a temporary provision limited in point of time to five years from the commencement of this Constitution, no such limit is to be found in Article 370. Despite the fact that it is, therefore, stated to be temporary in nature, sub-clause (3) of Article 370 makes it clear that this Article shall cease to be operative only from such date as the President may by public notification declare. And this cannot be done under the proviso to Article 370(3) unless there is a recommendation of the Constituent Assembly of the State so to do".

PPP. BECAUSE moreover, the population of the territory of Ladakh, a perfect 100% belongs to the Schedule Tribe, the tribal areas therein have their own unique cultural and traditional identity. Ladakh is not protected by any other provision under the Indian Constitution. Article 35A and Article 370 of the Constitution were the only safeguarding provisions for the people of this region. Ladakh was granted divisional status on February 8, 2019 to ensure equal stake and development pursuits in the State. The abrogation of Article 370

denies the opportunity of development in the region by disintegrating it from the State in the early stages of its divisional establishment.

QQQ. BECAUSE the Impugned Order C.O. 272 and C.O. 273 and consequent acts are void for having violated the fundamental premise of the relationship between Union of India and the State of Jammu & Kashmir and thereby violating the principles of Federalism.

RRR. BECAUSE all powers exercisable by the President of India, the Governor of the State of Jammu and Kashmir, the Parliament and the Legislative Assembly of Jammu and Kashmir are circumscribed by express provisions of the Constitution of India, Constitution of India as applicable to the State of Jammu and Kashmir, and the Jammu and Kashmir Constitution; and are further subject to implied limitations therefrom.

SSS. BECAUSE the history of constitution-making both under the Constitution of India and the Constitution of Jammu and Kashmir, and the practice that is established following the coming into force of the constitutions demonstrate that the preservation of autonomy of the State of Jammu and Kashmir even as it is an integral part of the Indian Union is an essential and fundamental feature of the constitutional relationship between the State and the Union.

TTT. BECAUSE the multiple levels of checks built into the Constitution of India and the Jammu and Kashmir Constitution are to fortify this essential feature of autonomy in the constitutional relationship between the State and the Union and demonstrate abundant caution

adopted by the constitution makers against any erosion of that essential feature, which have all been brazenly violated in the present case.

UUU. BECAUSE the provisions of Article 370 read with the provisions of Articles 368 and 356 of the Constitution as applicable to the State under the 1954 Order, and the provisions of the Jammu and Kashmir Constitution, together constitute the said check against any alteration of this relationship in general, and against affecting autonomy in particular.

VVV. BECAUSE the very fact of the State of Jammu and Kashmir having a separate Constitution distinct from the Constitution of India and the recognition of the same under the Constitution of India and the 1954 Order demonstrates a promise of autonomy to the State which has received constitutional recognition and consequently, all state entities, including the President and Parliament have a basic duty of not only guaranteeing and protecting rights flowing from the said Constitution of Jammu and Kashmir, but also promoting the fulfilling those rights. This recognition is further reinforced in the recognition of the territorial integrity of the State of Jammu and Kashmir and the protections to its permanent residents vide the 1954 Order and the Jammu and Kashmir Constitution.

WWW. BECAUSE the Constitution of Jammu and Kashmir inherits the values of Socialism, Secularism, Democracy and Republicanism from the preamble of the Constitution of India inasmuch as it gives a preambular recognition of the fact of the State's accession to the Indian Union, and further expressly reiterates the values of liberty,

equality and fraternity in its preamble, identical to the preamble of the Constitution of India. Furthermore, all residents of the state are guaranteed the fundamental rights under Part III of the Constitution of India.

XXX. BECAUSE the principles of living constitutionalism, basic structure and essential values of the rights under part III traceable from the preamble, the directive principles and a holistic and a synoptic reading of the provisions of the Constitution of India, also applies to the reading of the Constitution of India as applied to the state of Jammu and Kashmir under the 1954 Order, as well as the Constitution of Jammu and Kashmir.

YYY. BECAUSE such essential values informing the rights are as enforceable as the rights themselves as held by the nine judge bench of this Hon'ble Court in I.R. Coelho v. State of Tamil Nadu (2007) 2 SCC 1 both under the Constitution of India and the Constitution of India as applied to the state of Jammu and Kashmir under the 1954 Order. Furthermore, any exercise of power of any nature, constituent, Legislative or Executive shall be subject to the implied limitations of the test of the basic structure.

ZZZ. BECAUSE under Article 32 of the Constitution of India as applied to the state of Jammu and Kashmir, the fundamental rights of the residents enforceable thereunder are to be read and understood 'synoptically' by reading all the provisions of Part III, the other provisions of the constitution of India under the 1954 order and the provisions of the Constitution of Jammu and Kashmir and the

Preambles of both the Constitutions. (See generally, Coelho (super) and Indira Gandhi v. Raj Narain (1975 SCC (2) 159))

AAAA. Because the autonomy of the state of Jammu and Kashmir is protected as a right flowing from a such a synoptic reading of the Constitution, particularly Part III and more particularly under Article 14, 19 and 21 of the Constitution enforceable under Article 32 of the Constitution of India and as such any exercise of the power by any of the state actors – be it constituent or legislative, is subject to judicial review under Article 32 of the Constitution of India. (See Madras Bar Assn. V. Union of India, (2014) 10 SCC 1 at page 189). Consequently, the Impugned Orders are amenable to judicial review under Article 32, which is also a basic feature of the Constitution as held by this Hon'ble Court on several occasions. (See for example, L. Chandra Kumar v. Union of India (1997) 3 SCC 261)

BBBB. BECAUSE the Impugned Order CO 272 has been issued without due deliberation and application of mind as to the effect of applying each provision to the Constitution of India and without due regard to the existing modifications qua the state of Jammu and Kashmir and particularly Articles 35A and 3 and is therefore manifestly arbitrary and violation of the fundamental premise of the relationship between the State of Jammu and Kashmir and the Union and thereby violating the basic feature of federalism of the Indian Constitution.

CCCC. BECAUSE the impugned orders by revoking the legal status and protection accorded to Permanent Residents of Jammu and Kashmir, amount to a unilateral erasure of historical proto-citizenship rights vested in all State Subjects of the erstwhile

Princely State of Jammu and Kashmir, across the provisional international boundary line (LoC), including those presently resident in Pakistan held territory, thus placing those in Jammu and Kashmir at an disadvantage vis a vis other State Subjects.

DDDD. BECAUSE insofar as the effect of the Impugned Orders and the Impugned Act allows for a complete and a wholesale supersession of the Constitution of Jammu and Kashmir even to the extent of Jammu and Kashmir Reorganization Bill, 2019 in Parliament, is in clear violation of this right to autonomy of the State that inhere in its residents part III rights and destructive of the basic structure of the constitution as applied to the state of Jammu and Kashmir, sans Constitutional Morality, and are therefore liable to be held to be void and inoperative under Article 13, by this Hon'ble Court.

EEEE. BECAUSE moreover, in the case of Ladakh, which is an Ecologically sensitive zone recognized by the Ministry of Forest and climate Change, the applicability of Article 35A was the one safeguard that ensured the prevention of its unique environmental character and the issues arising therefrom and the manifestly arbitrary and unreasonable removal of that safeguard vide the Impugned Order C.O. 272 is clearly in violation of Article 14 read with Article 21 of the Constitution of India.

FFFF. BECAUSE in light of the above, the Impugned Orders are clearly in violation of the principles and the nature of federalism and federal democracy which is a basic feature of the constitution of India as applied to Jammu and Kashmir and are liable to be struck down as unconstitutional, therefore.

GGGG.BECAUSE, the impugned notification dated 05.08.2019 is ultra vires to the extent that it was passed in an arbitrary and whimsical manner without following the due course of Law as laid down by the Constitution of India and without the mandate of the both the people of the State of Jammu and Kashmir as well as their elected representatives.

HHHH. BECAUSE the amendatory powers have not been validly exercised while issuing the impugned Notification dated August 5, 2019 and the present day Government by use of misinformation has justified an act, that has far reaching consequence on the very fabric of democracy, enshrined in the very fundamentals on which India stands as proud democratic Nation.

14. The Petitioners crave liberty to urge other grounds in addition to the grounds above at a later stage of the proceedings as appropriate

15. The Petitioners have not filed any other petition before this Hon'ble Court or any other Court within the territory of India on the subject matter of the instant Petition and for the reliefs prayed for herein.

16. In the aforesaid premises and in the interests of justice, it is most respectfully prayed that this Hon'ble Court may be graciously pleased to:-

PRAYER

(a) 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; and/or

- (b) 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; and/or
- (c) 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 August 5, 2019 as ultra vires Articles 14, 19 and 21 of the Constitution, unconstitutional, void and inoperative void ab initio and inoperative; and/or
- (d) 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 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 an initio and inoperative; and/or
- (e) 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 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; and/or

- (f) 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 Articles 14, 19 and 21 of the read with Articles 3, 370 and 356 of the Constitution, unconstitutional, void and inoperative; and/or
- (g) pass such other/further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

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

FILED BY:-

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