

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)

I.A. NO. OF 2022

IN

WRIT PETITION(CIVIL)NO. 1070 OF 2019

IN THE MATTER OF:

Radha Kumar & Others ... Petitioners

Versus

Union of India & Another ... Respondents

AND IN THE MATTER OF:

THE APPLICATION FOR IMPLEADMENT AS RESPONDENT-3

ON BEHALF OF:

NIKHIL UPADHYAY

RES: _____..APPLICANT

THE HON'BLE CHIEF JUSTICE

AND LORDSHIP'S COMPANION JUSTICES

OF THE HON'BLE SUPREME COURT OF INDIA

HUMBLE PETITION OF ABOVE-NAMED APPLICANT

THE MOST RESPECTFULLY SHOWETH AS THE UNDER:

1. Applicants is pursuing Law from Symbiosis Law School Noida.

Applicants AADHAAR No: _____, PAN No:_____, Mob:

_____. Applicant is sincerely and seriously interested in the unity

and national integrity and firmly believes that J&K is integral part of

India. Itbelieves that Article 370 was intended to be a temporary,

transitional and special provision and was not meant to be permanent.

Infact, Article 370 contains within itself the mechanism of its erosion. It

provides the route for the full and complete integration of J&K with India and its own redundancy.

2. During Lok Sabha Debates on 27.11.1963 in the context of Presidential Order, 1965 under Article 370, [changed Sadar-i-Riyasat to Governor & Prime Minister of J&K to CM] MoS, MHA said: *“since Article 370 was incorporated in the Constitution many changes have been made which bring State of J&K in line with the rest of India. The State is fully integrated with India. The State is fully integrated with India”*. Nehru Ji said: *“Article 370, as the House will remember, is a part of certain transitional provisional arrangements. It is not a permanent part of the Constitution. It is a part so long as it remains so. As a matter of fact, as the HM has pointed out, it has been eroded, ... I repeat that it is fully integrated.....So, we feel that this process of gradual erosion of Article 370 is going on.... We should allow it to go on That process is continuing”*. [Pg. 303-305]. G.L.Nanda, H.M. said in Lok Sabha on 04.12.1964 *“It is Article 370 which provides for progressive application of the provisions of the Constitution to J & K.... Article 370 is neither a wall nor a mountain, but that it is a tunnel. It is through this tunnel that a good deal of traffic has already passed and more will”* [309] He also said *“This article has not remained static. It is through a dynamic process,*

year after year, that the provision in J & K has been assimilated in these matters with the rest of India, and this policy, the policy of steady, gradual, progressive erosion, has been reiterated here several times. (By the late Prime Minister)". Nanda made this statement in the backdrop of the white paper issued by the Plebiscite front on 23.06.1964. Evidently, Repeal of Article 370 has no impact on applicability of Article 1 as well as IOA and J&K would remain integral to India.

3. By notification dated 6.8.2019 the President on the recommendation of the Parliament declared that Article 370 shall cease to be operative with the stated exception. The exception provides for a new Article 370 which mentions that all provisions of the Constitution shall apply to the State of J&K. Earlier on 5.8.2019, the President notified an order with the concurrence of the Government of J & K in exercise of power under Article 370(i) of the Constitution. This applied all provisions of the Constitution to the State of J&K and it modified Article 367(4) in relation to J & K.
4. Subsequently, Parliament enacted the J&K re-organization Act, 2019 by which it created two Union Territories in place of the erstwhile State of J&K. Section 3 & 4 read: "**3.***On and from the appointed day, there shall be formed a new Union territory to be known as the Union territory of*

Ladakh comprising the following territories of the existing State of Jammu and Kashmir, namely: – "Kargil and Leh districts", and thereupon the said territories shall cease to form part of the existing State of Jammu and Kashmir. 4. On and from the appointed day, there shall be formed a new Union territory to be known as the Union territory of Jammu and Kashmir comprising the territories of the existing State of Jammu and Kashmir other than those specified in section 3."

5. There is a difference between "accession" and "full integration". The Instrument of Accession (I.O.A.) which signed by the ruler of J&K was no different from similar instruments executed by the rulers of over 500 princely states. The IOA was unconditional voluntary and absolute. In fact it enjoyed the full acceptance of the then most popular political party i.e. National Conference. The State of J&K stood legally and constitutionally bound to India. However, in view of the prevailing conditions the Constituent Assembly incorporated a temporary and transitional provision in the Constitution of India in the shape of Article 370. However, importantly, J&K was included as item 14 in the 1st Schedule which mentioned the States with their territories. This aspect is expressly mentioned in Article 1. This leaves no doubt that J&K is part of India. Even, Article 370(1)(c) mentions that Article 1 and Article 370 shall apply

in relation to J&K. Thus, with the advent of the Constitution of India. J&K became an integral part of India like other states that the only difference was in relation to autonomy or distribution of powers. Article 370 is merely a provision relating to distribution of powers.

6. The distribution of powers contemplated by Article 370 is not intended to be permanent. There is clear indication in Article 370 itself that steadily powers and matters which were not available to the Parliament would be brought within its fold and State of J&K would be subjected to all the provisions of the Constitution in manner applicable to other states/U.T.
7. J&K,CA on 05.11.1951, Sheikh Abdullah said “we are proud to have our bonds with India,.... The Constitution of India has provided for a federal union and in the distribution of sovereign powers has treated us differently from other Constitutional units”. “He goes on to say that when state was invaded from the side of Pakistan IOA was signed and “Legally the IOA had to be signed by the Ruler of the State. This the Maharaja did”. This was followed upon by the Delhi Agreement, 1952. White Paper of 1952 records “This arrangement involved a division of sovereignty which is the normal feature of a Federation”. The Working Committee of NC, with participation of Sheikh Abdullah endorsed the Delhi Agreement. On 14.08.1952 Sheikh Abdullah asked the J&K,CA to endorse the Delhi

Agreement. It unanimously passed a resolution confirming the Accession of the State of J & K to the Republic of India on 06.02.1954. Therefore, popular will supported Accession and Integration. This was a veritable plebiscite in J&K (two thirds of original J&K).

8. That it is preposterous to suggest that the J&K Constitution, 1957 stands independent and parallel to the Constitution of India, and that after the cessation of J&K constituent Assembly in 1957 (26.01.1957) Article 370 stood frozen and its autonomy as on 1957 became permanent. It is also incorrect to say that Article 370 is a permanent feature of the Constitution.
9. That Section 3 of Constitution of J & K itself states that the State of J & K is and shall be an integral part of the Union of India. Section 2(a) also defines Constitution mean the Constitution of India as applicable in relation to India, Section 5, significantly, states that the Executive and legislative power of the state extends to all matters except those with respect to which Parliament has powers to make laws for the state under the provisions of the Constitution of India. This provision is not frozen with respect to the year 1957. It is dynamic and the State's power is to be assessed with respect to the point of time when the issue regarding its power arises and Parliament's power at that time is to be ascertained.

Section 10, mentions that the permanent residents shall have allrights under the Constitution of India. S. 6 makes them a citizen of India. These and other provisions clearly show that the Constitution of J&K is subservient to the Constitution of India and that it cannot operate apart from and in contradiction to the Constitution of India. It is definitely not a parallel Constitution.

10. Applicant respectfully submits that all the instruments of accessions were executed qua India under the India (Provisional Constitution) Order, 1947 which was issued as per Section 8 of the Indian Independence Act, 1947 read with the Government of India Act, 1935. These Instruments enable the execution of an Instrument of Accession by the Ruler of an Indian State. The Government of India Act, 1935, vide Section 5 and 6 thereof, contemplated the joining of Indian Federation (Pre-Partition) comprising the Governors Provinces and Indian States. The Rulers were to execute an Instrument of Accession. Proviso to Section 6(1) envisaged conditional Accession. However, this Proviso was dropped in the India (Provisional Constitution) Order, 1947 [IPC Order]. Hence, post-independence there could not be a conditional execution of Accession Instrument.
11. Applicant respectfully submits that both- the Government of India Act, 1935 and the IPC Order, 1947 contemplated specification of matters

which the Ruler accepted as matters with respect to which the Federal or Dominion Legislature may make laws for the State and limitations in that regard, and also as regards exercise of executive authority in relation to that state. It is necessary to state that Specification of matters in the instrument of Accession does not make Accession conditional. That is an issue of federal distribution of powers.

12. Vide Presidential order, 1965 issued under Article 370, the Sadar-e-Riyasat was changed to Governor and Prime Minister of J&K was changed to Chief Minister by making modifications in Article 367(4). The residential Order, 1915 (2nd Amendment) take away the power of Legislature of State of J&K with respect to the appointment, functions etc. of Governor and control of Elections by Election Commission unless the law receives the assent of President. Article 256 applies with modification by virtue of Presidential Order, 1954. Article 356 is also applicable by virtue of the order of 1954.
13. Article 356 applies to J&K, so it has to be read along with Article 370 advisedly Article 370(1)(b) uses the expression 'Government of the State'. In a situation where Article 356 has been invoked and President's rules has been established in J&K. The Government of the State moved main and include the Governor of the State. Further, the House of Parliament

would effectively and constitutionally exercise the power of the State. Therefore, there is no infirmity in the Presidential Orders which have been compound in the writ petitions. The judgments in *P.N. Kaul (AIR 1959 SC 749)*, *R. Shagoo (AIR 1960 SC 1)*; *Sampad Prakash [(1969) 2 SCR 365]*; and *P. Lakhan Pal [(1962) 1 SCR 688]* are consistent with each other and involve no conflict, they were considered in a recent judgment in *SBI Vs. Santosh Gupta (2017) 2 SCC 538*. It has been held that President's power must be considered in its modest possible amplitude and once a matter is either in the Union List or concurrent list as specified by a Presidential order no further concurrence is needed. It has also been held that the President's power can be exercised from time to time and there is no freeze. Significantly, several Presidential Orders have been issued under Article 370 for enforcement of the J&K constitution, 1957. The various Presidential Orders are not under challenge. This is an eminently fit case where the doctrine of stare decisis should apply.

14. Section 26 & 27 of J&K Constitution which deals with the appointment of Governor and his power and Section 35 & 36 which deal with appointment of Council of Ministers with the Chief Minister at the head to were amended by the Constitution of J&K (6th Amendment Act, 1965. This

Amendment was made in the light of the Presidential Order issued under Article 370. It does not mean that the Presidential Order would not apply unless the Constitution of J&K is amended. It has been so held in Santosh Gupta's case (Pr. 19). It would follow that Constitution of J&K is subservient to the Constitution of India and it cannot prevent the operation of the Constitution of India and Article 370 in relation to J&K. That so far as the re-organization Act of 2019 is concerned, it is consistent with Article 3 r/w Article 367 of the Constitution of India.

15. It is most respectfully submitted that it is beyond any pale of doubt that at the time of its drafting, the intent behind incorporating a special provision for the State of Jammu and Kashmir was necessitated in light of the then prevailing social political conditions, and more relevantly the Instrument of Accession as entered into between the Union of India and the then Ruler of the State. Clause 7 of the said Instrument of Accession dated 26.10.1947, pertinently reads: *"7. Nothing in this Instrument shall be deemed to be a commitment in any way as to acceptance of any future Constitution of India or to fetter my discretion to enter into arrangement with the Governments of India under any such future Constitution."*

Therefore, it was imperative to find a legal solution for the true integration of the State and its people with the Union of

India. Chronologically, after the execution of the Instrument of Accession, the next subsequent event in the course of the chequered relationship between the State and the Union of India, came to be the adoption of the Constitution of India along with Article 370. Pertinently at the time of adoption of the Constitution of India, there existed no Constituent Assembly for the State of Jammu and Kashmir which was only to be set up more than a year later by a Proclamation which also indicated that the Constituent Assembly was to be on the basis of adult franchise.

16. It is in this background it had become important to entrench the applicability of the Constitution of India to the State of Jammu and Kashmir, through Article 370, since its application was not a direct sequitur of the Instrument of Accession. The exercise of Presidential powers in the manner provided in Article 370 was thus the available route through which the centrality of the Constitution of India could be preserved. It is in pursuance of this that various Constitution Orders (C.O.) came to be promulgated from time to time, of which, the final one being C.O. 48 (as amended from time to time) vide which practically the entirety of the Constitution of India (as it stood on 20-06-1964), with certain modifications and amendments, has been extended to the J&K.

17. As matters stood thus, *de hors* the applicant's humble submission that the above has thus rendered a Special Constitution for the State of Jammu and Kashmir redundant and expendable, a curious anomaly has arisen which potentially shakes the foundational principle of Article 370 being a 'temporary provision'. The smooth extension of the Constitution of India to all its federal units being the intent of the framers of the Constitution behind enacting this particular Article, which per necessity is a temporary and transitional mandate, the provision was thus provided with a sunset clause/condition in Article 370(3). Thereby the President of India was empowered to *inter alia* declare the particular provision i.e., Article 370 to cease to be operative. However, the said power was hedged by the proviso to the Article, where under, the President could exercise the said power granted in the principal provision of Article 370(3) only upon a recommendation to that effect by the Constituent Assembly of J&K.
18. Crucially, Article 370 commences with a non-obstante clause, thereby paving the path to make wide ranging modifications (plausibly also in derogation of provisions of the Constitution of India) in the provisions of the Constitution in its application to the State of Jammu and Kashmir. Further, Article 370(3) commences with a second non-obstante clause

which is a rider on everything that may be provided under the other provisions of Article 370 itself. Therefore, a cumulative reading of the two non-obstante clauses leads to the inescapable conclusion that Article 370(3) would be governing in the scenario of a conflict between an exercise of powers by the President under that clause, as posited against the Presidential powers under the remaining provisions of Article 370.

19. The careful positioning and phrasing of Article 370 with its deployment of twin non-obstante clauses, therefore amplifies the full extent of the powers of the President, in connection with the application of the Constitution of India including the provision of Article 370 to the Jammu and Kashmir, geared towards the gradual and appropriate integration of the erstwhile kingdom of Jammu and Kashmir with the Union of India. This cherished objective of softly handling the process of integration of the State shall be dealt a death blow in the circumstance it is to be caused that the special provision of Article 370 shall continue in perpetuity, which in any case was never the intention of the framers of the Constitution as is plainly evident from the structure, positioning and phraseology of the Article in question.
20. A further structural sequitur of Article 370 is that the said provision was never intended to outlive the duration and life of a constituent assembly

which may be framed for the State of Jammu and Kashmir. The above is borne by the fact and the specific wording of the proviso to Article 370(3). While the proviso hedges the exercise of power by the President of India with regard to Article 370, it specifies that the presidential power under clause (3) could only be used upon a “recommendation of the Constituent Assembly of the State referred to in clause (2)”. Referring back to clause (2) of Article 370 it is clear that the Constituent Assembly of the State mentioned in the proviso to clause (3) is one which is for the purpose of the ‘framing the Constitution of the State’. Therefore, once such a Constitution has been framed, a constituent assembly within the meaning of proviso to clause (3) cannot be further instituted for any other purpose.

21. Although an amending body (a legislature whether of the Union or a State) is reposed with constituent powers to effect amendment to Constitution, a constituent assembly, which has the primary power to frame a constitution cannot be reconvened after the dissolution of the body which possesses the said primary power. The power to amend a constitution under the procedure provided in any such instrument is only a derivative power and no constituent assembly is required for the same. Therefore, a rigid constitution (like the Constitution of India - with its

inherent mechanism of amendment) does not envisage a circumstance of reconvening of a constituent assembly once its mandate is fulfilled. Further, that the Constituent Assembly of Jammu and Kashmir has been dissolved, there is no other such constituent assembly which can be even convened because of the phraseology of Clause (2) and proviso to Clause (3) read cumulatively. The Constituent Assembly envisaged under the proviso to Clause (3) is only one which is 'for the purpose of framing the Constitution of the State', which now once framed, there is no foreseeable circumstance in which the same can be reconstituted for any purpose whatsoever.

- 22.** It is respectfully submitted that the direct effect of the above is that through this backhanded sleight, an attempt is sought to be made to evergreen the provision of Article 370, which is anomalous for the many reasons:**(i)**.It curtails the wide powers of the President to exercise her powers under Clause (3) of Article 370;**(ii)**.The proviso is thus made to govern the principle provision, that is to say, it creates the anomalous circumstance whereby, by rendering the proviso otiose, the substantive power under main clause i.e., Article 370(3) has been put in cold storage in perpetuity; and**(iii)**.Eternal perpetuation of a provision through a sleight, when the said provision was *ex facie* intended to be temporary is

a massive fraud on the Constitution of India. (refer *D.C. Wadhwa v. Union of India*, AIR 1987 SC 579)

- 23.** It is respectfully submitted that each of the above-mentioned grounds shakes the structural sanctity of the Constitution of India, in connection with the relationship that the Centre shares with the constituent States of the Union. That having done away with Article 238 of the Constitution of India, there is no discernable rationale *sans* any other textual indication in the Constitution itself for having different categories of the States within the Union. Of course, it is admitted, that the decision to exercise the powers under Clause (3) to Article 370 shall rest upon the executive wisdom which in turn shall be predicated on social and political necessities, the power however, must remain reposed with the President and the same cannot be denuded through the medium of the proviso to that provision.
- 24.** It is most respectfully submitted that in its present form, Part XXI of the Constitution of India contains three types of provisions, (i) temporary ones – e.g., Articles 369, 370 and 373; (ii) transitional ones – e.g., Articles 369, 372, 373, 374, 375, 376, 377, 378 and 392; and (iii) special ones – e.g., Articles 371, 371A-J and 378A. It is noteworthy, that the Part as was adopted in 1950 only contained temporary and transitional provisions. It

is in this matrix, the legislative history of the provision elucidates that Article 370, as originally promulgated was only a temporary provision and was never meant to be an everlasting and eternal special provision. It cannot be countenanced that while multiple amendments have been effected to the Part by the Parliament, the provision of Article 370 has been retained without material alteration and therefore, there cannot be an implicit interpretation that Article 370 has now converted itself into a 'Special Provision'. The provision itself with its nuances and the history of Constitutional Orders issued under it, undermines any such interpretation and the same necessarily has to be eschewed.

25. It is most respectfully submitted that the constitutional structure is so envisioned that all its provisions are intended to play in a symphony of the individual notes that independent provisions strike. When a limb of the government in exercising its powers, seeks to use any provision in a manner which is designed to circumvent constitutional safeguards and when it seeks to operate the constitution in a manner, which is contrary to and in direct collision of the original course, the same has to be regarded as a fraud on Constitution of India.
26. That it is a truism in law that what cannot be done directly may not be attained indirectly either. The evergreen-ing of the provision of Article

370, contrary to the explicit intent of the original Constitution and that too without bringing about any amendment to the provision itself, is a massive subterfuge of the sanctity of constitutional structure.

27. A direct correlation may be drawn to the twin cases of *Krishna Kumar Singh v. State of Bihar*, (2017) 3 SCC 1 and that in *DC Wadhwa v. State of Bihar*, (supra.) wherein it has been held that “*an edifice of rights and obligations cannot be built in a constitutional order on acts which amount to a fraud on power. This will be destructive of the rule of law*”. What is possibly the most crucial is that, as in those cases, in the present as well, constitutional silences are sought to be utilized in a manner to further narrow political gains, quite contrary to the intent manifest in the text. In the present matter, while the constitutional text clearly envisaged a power in the President to cause a cessation of the provision of Article 370 (of course, upon the recommendation of the Constituent Assembly of the State), its continuance in perpetuity, denuding the President of her powers, by rendering otiose the proviso to Clause (3) of Article 370 is a colourable exercise of power and is a gross abuse of the process and amounts to a fraud on the Constitution of India.
28. What is crucial in the instant matter is that the Constitution had envisaged that the President would have to take into account the

situation existing in the State when applying a provision of the Constitution and such situations could arise from time to time. There was clearly the possibility that, when applying a particular provision, the situation might demand an exception or modification of the provision applied; but subsequent changes in situation might justify the rescinding of those modifications or exceptions. Such power of the President extended through the non-obstante clause to Article 370(3) to the entirety of that Article. However, present manner of short circuiting the amplitude of the President's powers under the said clause of Article 370 is illegal and cannot be countenanced by the Court.

29. It is respectfully submitted that under the provisions of the Constitution of India, the power of the President i.e., the Executive powers are widely bestowed. In fact, our judicial precedents have repeatedly clarified that it is impossible to frame an exhaustive definition of what executive function means and implies. In fact in *Ram Jawaya Kapur v. State of Punjab*, (1955) 2 SCR 225, this Hon'ble Court had opined that "*executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away*". In fact it shall be instructive to refer to Halsbury's Vol. 7, 3rd Edn., to highlight the plenitude of the powers available to the Executive which are sought to be exercised through its

fountainhead i.e., the President of India: *“In the performance of these functions, public authorities are bound to issue orders which are not far removed from legislation and to make decisions affecting the personal and proprietary rights of individuals which, while not strictly judicial, are quasi-judicial in character. Discretionary action of both these types must now be considered normal on the part of the executive. [...] In view of the complexity of modern government and the congestion of parliamentary business, it is probably necessary that executive should exercise powers of subordinate legislation.*

- 30.** From the above, it can be crystallized that the extent of the executive power cannot be easily curtailed and that any grant of power ought to be interpreted broadly to take within its sweep the widest extent of subjects. In the performance of its functions, the Executive, this Hon’ble Court has held that, public officials are bound to issue orders, which are not far removed from legislation, and to make decisions affecting the personal and proprietary rights of individuals, which, while not strictly judicial, are quasi-judicial in character. That discretionary action of both types must now, therefore, to be considered normal on the part of Executive.
- (Amritlal v. F.N. Rana, (1964) 5 SCR 294)**

31. The above demonstrates the breadth of the power, which is wielded by the Executive, and therefore, the President of India. Any artificial curtailment of the same shall amount to an arbitrary restriction, which cannot be countenanced by this Hon'ble Court. In the context of Article 370, therefore, it is demonstrable that the Constitution makers in its wisdom had reposed the responsibility of working the nuances of integrating the State of Jammu and Kashmir into the Union of India vide the powers, which are expressly granted to the President.
32. Therefore, an abridgement of the powers of the President under the principal clause of Article 370(3) is a direct affront to the amplitude of powers of President / Executive as available under the Constitution of India. The backhanded sleight of denuding powers of the President by causing the proviso to clause (3) of Article 370 be rendered inoperable is therefore, anathema to constitutional scheme of distribution of powers and also does not advance the purpose of incorporating special provisions for transitioning the nation to its true independence.
33. The continuance of two parallel constitutions one for the State and one for the Union, reeks of a weird dichotomy inasmuch as narrated above most of the provisions of the Constitution of India has already been extended to the State of Jammu and Kashmir vide C.O. 48 as amended till

date. To further exacerbate the complexity of the situation the Union of India had entered into an agreement, popularly referred to as the Delhi Agreement of 1952, which sought to settle certain issues between the Union and the State of Jammu and Kashmir through an ad-hoc mechanism. However, what is noteworthy is that the Delhi Agreement, 1952, does not find any mention in the Constitution of India or the Constitution Orders passed by the President of India under the powers of Article 370 of the Constitution. Therefore, this particular instrument i.e., Delhi Agreement 1952 is an entirely extra-constitutional and does not inspire any confidence in terms of legal matrix of the relationship between the State of Jammu and Kashmir and the Union of India.

34. Furthermore, it is respectfully submitted that certain clauses of the Delhi Agreement 1952 are not in consonance with the Instrument of Accession or the Constitution of India and therefore, must be declared to be unconstitutional being ultra vires the basic structure of the Constitution of India and Part-III of the Constitution.
35. Article 370 is arbitrary and contrary to the fundamental rights viz. equality before the Law, equal protection of law, equal opportunity in public employment, right to form association, right to establish educational institution, right to trade /business, right to own property,

right to know etc. guaranteed under Articles 14, 15, 16, 19 and 21 of the Constitution.

36. The maximum life span of Article 370 was only till the existence of Constituent Assembly. It can be clarified from perusal of the Constituent Assembly debates and Article 370 clause (3) itself. Hence, as on today, it is illegal and unconstitutional. The Constitution of Jammu & Kashmir is invalid mainly for the reason that the same has not yet got the assent of the President, which is mandatory as per provisions of the Constitution.
37. From the perusal of Article 370 as a whole i.e., Clauses 1, 2 and 3, it becomes clear that the said provision was valid only till constituent Assembly, ratified the instrument of accession and/or in alternative till framing the Constitution of Jammu & Kashmir, inconformity with / in consonance with Indian Constitution, with approval of the President. The Constituent Assembly was not in operation on the day of coming into force of the Indian Constitution i.e. 26.01.1950. So, Article 370 deems to be lapsed in 1954, when it ratified accession or maximum in 1957, when Constituent Assembly of Jammu & Kashmir dissolved.
38. It is also pertinent to mention that as per provision of Article 370(3) read with Schedule I of the Constitution of India and even as per provision of the Constitution of Jammu & Kashmir, the State of Jammu & Kashmir, is

integral part of Union of India. This Hon'ble Court has held that Constitution of India is Supreme and India is a sovereign Country not the State of Jammu & Kashmir.

39. It is pertinent to mention that interpretation of Constitution must be purposive to achieve the object sought. It is needless to reiterate that from the perusal of heading / title of Article 370 itself, it is amply clear that the said provision is temporary / interim arrangement only. So, this Hon'ble Court can declare the said provision manifestly arbitrary.
40. It is further submitted that the President cannot declare the Article 370 operative, because it can be done only with the consent of the Constituent Assembly. It is pertinent to mention that "temporary Provisions means a provision made for short prescribed period or in absence of prescribed period, the same exist/continue till happening of certain event / finishing of some known job, which is bound to happen in near future. So, in present case, harmonious and purposive interpretation of Article 370 may satisfy the requirements to achieve avowed object, would be to keep the same temporary not to make the same perpetual / permanent.
41. **THE IMPORTANT LEGAL AND CONSTITUTIONAL QUESTION ARISES(i)** *Whether Article 370 of the Constitution of India is a temporary provision, lapsed automatically with the dissolution of Constituent*

Assembly of J & K, which was dissolved on 26.01.1957 mainly in view of Constituent Assembly debate and Article 370 (3) itself? (ii) Whether the Article 370 can be made permanent / perpetual even after dissolution of the Constituent Assembly as has been done impliedly in Sampat Kumar Case? [(1969) 2 SCR 365] (iii) Whether the second proviso of clause 3 of Article 370 of the Constitution of India lapsed with the dissolution of the Constituent Assembly which was dissolved / lapsed in 1957 even assuming that the whole Article 370 didn't lapse? (iv) Whether even assuming that the second proviso of clause 3 of the Article 370 of the Constitution still exists, even then, the same can be said mandatory in character/nature, in absence of Constituent Assembly of Jammu & Kashmir which was dissolved in 1957, or the same has been restricted/limited to optional/directory in nature only?(v) Whether the Constitution of Jammu & Kashmir, which came into force/ in operation on 26.01.1957, several provisions of which are completely inconsistent with / against the provisions of the Constitution of India, are constitutionally valid, especially in view of the facts that the said Constitution of Jammu & Kashmir has never been ratified by the President nor has been ratified by the Parliament nor satisfies the requirement of Article 1, Preamble of the Constitution, which can't be eroded/even remotely, as, is clear from

perusal of Article 370 itself.(vi) Whether the Government of India has rightly delegated the matter related to citizenship etc. to the State Government especially in view of the provisions of Article 1, 11, 246 and Seventh Schedule of the Constitution of India and its Preamble, by agreement entered on 24.07.1952? Whether the Central Government has such power?(vii) Whether even after ratifying the J & K accession unconditionally in 1954, itself by the Constituent Assembly, the same could further proceed to frame separate Constitution?

- 42.** It is necessary to mention / clarify that applicant is not questioning / challenging the agreement / instrument of accession dated 26.10.1947, signed by the Ruler of Jammu & Kashmir and Union of India nor any order passed by the Hon'ble President under Article 370. Therefore, Article 363 is not applicable in the present matter. It is also pertinent to mention that the Constitution of Jammu & Kashmir was adopted on 26.01.1957, much after coming the Constitution of India in force. Therefore, the Article 372 is also not applicable in the present matter. Furthermore, the instrument of accession dated 26.10.1947 does not talk, even remotely about Constituent Assembly or about separate Constitution of J & K.

43. Therefore, it is respectfully submitted that the Hon'ble Court may graciously be pleased to issue a writ, order or direction including a writ of mandamus to declare that proviso of Article 370(3) lapsed with the dissolution of J & K Constituent Assembly, dissolved on 26.01.1957 and/has been restricted to directory only / not mandatory.
44. It is also prayed to issue a order or direction or writ mandamus to declare that (a) the Constitution of J & K dated 26.01.1957 is void, inoperative, illegal and ultra-vires of the Constitution of India or (b) such provisions of J & K Constitution like Article 144, 6, 7, 8 etc., of the same, which are inconsistent with/in derogation of Indian constitution void, inoperative, illegal and ultra-vires of the Constitution of India.
45. It is also respectfully prayed to declare all such provisions of "Delhi Agreement - 1952" viz. clause II etc. which are inconsistent with/in derogation of the provisions of the Constitution of India, void, illegal inoperative, unconstitutional and quash the same.
46. It is necessary to state that due to vote bank politics, the successive Central Governments did nothing to repeal Article 370 or proviso of the Article 370(3) and the Constitution of J& K. Hence, this Hon'ble Court is the only hope of Citizens of India to secure their fundamental rights and supremacy of the Constitution of India.

47. By the Presidential Order, Article 35A which was applied in relation to J&K by Presidential Order, 1954 was repealed. This repeal is Constitutional and was required as Article 35A stood in breach of the doctrine of basic feature. The fundamental Rights, particularly Article 14/19/21 are basic features of Constitution (2007) 2 SCC-1, I.R. Coleho Vs. UOI, Article 35A was inserted by a Presidential Order issued under Article 370. It amounted to wholesale denial of fundamental Rights to the citizens of India who are not permanent residents of J&K. The issue involved in this matter of public importance and have an impact on all the citizens of India as it pertains to National Integrity of India. Therefore, it is in the interest of justice that the applicant be permitted to intervene in connected matters to oppose them.
48. It would be in the interest of justice if this Hon'ble Court is pleased to allow the applicants to intervene in the above-mentioned petition.

PRAYER

Keeping in view the above stated facts and circumstance, it is respectfully prayed that the Court may graciously be pleased to:

- a) implead the Applicant as Respondent No-3 in above stated petition;
- b) pass such order(s) as Court deems fit in the interest of justice.

09.06.2022

ASHWANI KUMAR DUBEY