

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
IA No. _____ of 2019
IN
WRIT PETITION (C) NO. 1031 OF 2019
(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF
Manohar Lal Sharma ...Petitioner
Versus
Union Of India & Ors. ...Respondents

AND

1. Mr. Tej Kumar Moza
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
2. Mrs. Karishma Tej Kumar Moza
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]Applicants /Interveners

INTERVENER APPLICATION ON BEHLAF OF
THEAPPLICANTS/INTERVENERS

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUDGES OF

THE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF THE

APPLICANTS ABOVE NAMED

MOST RESPECTFULLY SHEWETH:

Introduction To The Applicants/Intervenors:

1. The Applicants/Intervenors are citizens of India and the permanent residents of state of Jammu and Kashmir.

The Applicant No. 1 is a Kashmiri Pandit [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The Applicant No. 1 had to forcefully leave the valley in and around 1990. Applicant No. 2 is also a Kashmiri Pandit appearing in her individual capacity she is a qualified law graduate and she has pursued BBA, LLB and LLM.

2. It is stated that the Petitioner above named has filed the above Writ Petition under Article 32 of the Constitution of India in the nature of Public Interest Litigation for issuance of a Writ in a nature for Mandamus or any other appropriate Writ against the Respondents above named for quashing the *impugned Notification G.S.D. R. 551 (E) C. O. 272 of 2019 dated 05.08.2019 for amending Article 367 of the Constitution of India.*
3. It is stated that the Applicants/Intervenors are the permanent residents of the State of Jammu & Kashmir.

They are presently residing in Jammu and are Kashmiri Pandits who have been exiled from their homeland during the 1990 crisis. It is submitted that during the 1990 exodus the applicants much like the other members of their community have left their belongingness and possessions behind due to immanent danger and threat to their life and well-being. Being internally displaced they have sought forced shelter in other parts of India while constantly attempting to get back to their permanent homes in Kashmir.

4. The Applicants have been active members of the society and have consistently been parts of people's movements who have worked towards the cause of displaced Kashmiri Pandits and sought to find ways to return back to their homeland.

The Challenge In The Above Writ:

5. It is submitted that on 05 August 2019 The Union of India through the Ministry of Law and Justice notified the Constitution (Application To Jammu and Kashmir) Order, 2019 **(hereinafter referred to as the 2019 Order)** whereby the 1954 Order was suppressed and amendments were made to Article 367 vis-à-vis the State of Jammu & Kashmir.
6. Pursuant to formulation of the 2019 Order the Jammu and Kashmir Reorganisation Bill was introduced and passed by the Parliament and subsequently it received

Presidential assent and published in the Gazette on 09 August 2019 as the Jammu and Kashmir Reorganisation Act, 2019 Act No. 34 of 2019 (hereinafter referred to as the 2019 Act). By way of the Act, the State of Jammu and Kashmir is re-casted into two distinct Union Territories of Jammu & Kashmir and Union Territory of Ladakh consisting of Leh & Kargil. The Interveners crave to rely upon a copy of the said act at the time of the hearing

7. Subsequent to formulation of the 2019 and the 2019 Act. a number of writ Petitions have been filed in the Hon'ble Supreme Court challenging the legislative competence and vires of the 2019 Order and the 2019 Act. one such petition is of the present Petitioner. The Applicant No. 1 is seeking the leave of this Court to intervene in this present case as an association of Kashmiri Pandits and Applicant Nos. 2 & 3 in their individual in his capacity as a Kashmiri Pandit. The Applicants state that it is crucial to hear the stands of the various stake-holders in order to be able to holistically decide upon the present issue.

Brief History and Development of the Jammu & Kashmir Region:

8. Before specifying the grounds on which the Applicants would like to intervene it is absolutely necessary that the facts leading to the formulation of the present 2019 Order and subsequent Act are brought on record.

Accession Treaty& Adoption of the Indian

&J&K Constitution

1846	Maharaja Gulab Singh, a Dogra ruler, buys the region of Jammu & Kashmir from the East India Company after signing the Treaty of Amritsar.
August 1947	India gains independence from the British empire, Pakistan is created as a Muslim-majority country. India’s princely states, those not officially with India or Pakistan, are given three choices—stay independent or join either India or Pakistan. Three such states are undecided—Junagadh, Hyderabad, and J&K. Indian home minister Sardar Vallabhbhai Patel works to convince the undecided princely states to join India; Maharaja Hari Singh signs a standstill agreement with Pakistan, effectively opting for status quo.
October 1947	Armed tribesmen from Pakistan infiltrate J&K, Hari Singh reaches out to Prime Minister Jawaharlal

	<p>Nehru and Home Minister Sardar Patel who agree to send troops on the condition that the Maharaja signs an Instrument of Accession/ Treaty of Accession (IoA) in favour of India, handing over control of defence, foreign affairs, and communication. Hari Singh signs the IoA, Indian troops move in. The armed conflict continues.</p>
<p>January 1948</p>	<p>India takes the Kashmir issue to the United Nations (UN), raising concerns over Pakistan’s forced occupation of parts of Kashmir. The UN suggests a plebiscite, but India and Pakistan can’t agree on how to demilitarise the region. The conflict continues through 1948.</p>
<p>March 1948</p>	<p>Hari Singh appoints an interim government in J&K. Sheikh Abdullah named the Prime Minister.</p>
<p>January 1949</p>	<p>The UN mediates a ceasefire between Indian and Pakistan—also known as the Karachi Agreement—allowing the two countries to retain control over territories held at the</p>

time. No agreement on referendum yet.

July 1949

Hari Singh abdicates in favour of his son Karan Singh. Sheikh Abdullah and three colleagues join the Indian constituent assembly to discuss provisions of Article 370 under the Indian constitution that is still being drafted.

1950

The Indian constitution comes into force. Under this, Article 1 defines J&K as a state of India, Article 370 a temporary and a transitory provision accords special status to J&K.

1951

The Constituent Assembly of J&K, the body responsible for creating the state's constitution, convenes. All members belong to Sheikh Abdullah's NC.

1952

Kashmiri leaders discuss their relationship with the Union of India in the J&K Constituent Assembly. This leads to a comprehensive Delhi Agreement that defines the relationship of the state with the union keeping in

light the view that Article 370 is nothing more than a temporary provision.

1953 Sheikh Abdullah is dismissed as Prime Minister allegedly because he had lost the support of his cabinet. Bakshi Ghulam Mohammad takes his place.

1954 A presidential order extends several provisions of the Indian constitution to J&K's constitution Article 35A is inserted by way of a Presidential Order defining permanent residents.

1956 J&K adopts its Constitution and defines itself as an integral part of India.

November
1956 Constituent Assembly adopts Mir Qasim's resolution to dissolve itself on 17 November 1956.

1957 J&K holds its first legislative elections. J&K Constituent Assembly dissolved, replaced by a Legislative Assembly. Indian Home Minister Govind Ballabh Pant visits Srinagar, the capital city of J&K, and says the state is now fully a

part of India. This leaves no possibility of a plebiscite.

Subsequent Constitutional and Political

Developments

1960	Both the Supreme Court and Election Commission of India extend jurisdiction over J&K through an amendment in its constitution.
May 1965	Titles of Prime Minister and Sadr-i-Riyasat officially changed to chief minister and governor, respectively.
August 1965	War between India and Pakistan.
-January 1966	Indian Prime Minister Lal Bahadur Shastri and Pakistani President Ayub Khan sign the Tashkent Declaration marking the end of war.
1966	There is a revival of demand for a referendum in J&K and several armed outfits spring up in the region. These include the Plebiscite Front and the Jammu & Kashmir National Liberation Front (JKLF).

1971	A third war erupts between India and Pakistan.
1972	India and Pakistan sign the Shimla Agreement, which ratifies the ceasefire line as the Line of Control.
1975	Prime minister Indira Gandhi and Sheikh Abdullah sign Kashmir Accord reemphasising J&K as an integral part of India. Gandhi says the “clock cannot be put back in this manner” to pre-1953 relations between the Indian Union and J&K, suggesting that a referendum is not possible. Sheikh Abdullah drops the demands for a plebiscite and resumes power as chief minister of J&K with Congress support.
1977	Congress-JKNC split; Congress withdraws support for Sheikh Abdullah’s government, paves way for central rule.
July 1977	Elections held in J&K, Sheikh Abdullah re-elected.

Rise in Militancy, The 1990 Exodus&

Subsequent Developments

1977 to J&K sees a steady rise of militant outfits, several unstable governments, and arrests and killings of militant youth.

1989

1990 Kashmiri youth protest against Indian administration and hundreds of them die in clashes with Indian troops. Presidential rule declared just as outfits like JKLF gain strength. Kashmiri Pandits (Hindu Brahmins) flee their hometowns in Kashmir valley in the face of rising militancy and religious persecution. The Union government imposes the Armed Forces Special Powers Act, 1955 giving armed forces unprecedented powers to counter armed militancy. JKLF Kills a number of prominent Kashmiri Pandits and widespread protests break out. JKLF tries to show it was not communal killings. By the end of January 1990, Yasin Malik and his JKLF had ensured that the Valley was bereft of

Kashmiri Pandits. Newspapers carried advertisements by terrorists, threatening the Hindus of the Valley to leave in 72 hours or face the consequences. Posters were pasted outside homes of Pandit families with threats that their womenfolk would be kidnapped, raped and converted if they did not leave. As a part of this agenda, Sarla Bhat, a nurse at Kashmir's premier medical institution SKIMS, was gang-raped and cut to pieces, political leader Tikkalal Taploo, Justice Ganjoo, and the then Doordarshan Kendra director Lassa Kaul — all of them were murdered in broad daylight. The list of killing and rapes runs into hundreds. It is estimated that approximately 95% of the 1,50,000 to 1,60,00,000 Kashmiri Pandits living in the valley fled on account of militancy, violence and persecution.

1990s

Militant insurgency continues to be on the rise. Several separatists,

including Yasin Malik, arrested. The Government of India tries to hold talks with various leaders in J&K. All Parties Hurriyat Conference, an alliance of 26 social and political movements, is established in 1993. A large number of civilians, armed personnel, and militants die in incessant violent clashes. Applicant and his family also had to flee the valley and were internally displaced and sought shelter and eventually settled in Jammu.

February	India bans JKLF.
1996	
September	Legislative Assembly elections held
1996	in J&K. JKNC's Farooq Abdullah forms government.
November	The Union government appoints a
1996	committee to study the issue of autonomy to J&K.
1997	The National Human Rights Commission sets up a J&K chapter to investigate human rights violations there.

25 January
1998

23 Kashmiri Pandit Hindus were murdered in in the town of Wandhama in Jammu and Kashmir. The victims included four children, nine women and 10 men. The attackers also demolished a Hindu temple and a house. The Lashkar-e-Taiba was blamed for perpetrating the massacre. According to the testimony of one of the survivors of the incident, a 14-year-old Hindu boy named Vinod Kuman Dhar, the gunmen came to their house dressed like Indian Army soldiers, had tea with them, waiting for a radio message indicating that all Pandit families in the village had been covered. After a brief conversation they rounded up all the members of the Hindu households and then summarily gunned them down with Kalashnikov rifles. The day after the incident, agitating Kashmiri Pandits clashed with police in the Capital, New Delhi, when they broke barricades and tried to force

their way to the National Human Rights Commission. At least 11 Kashmiri Pandits were injured when they were hit by water cannon.

February 1999-	Indian Prime Minister Atal Bihari Vajpayee visits Pakistan. India and
June 1999	Pakistan go to war over Pakistan's infiltration in Kargil.
24 – 31	AIR India flight hijacked- India had
December 1999	to release three terrorists viz. Mushtaq Ahmed Zargar, Ahmed Omar Saeed Sheikh, and Mulana Masood Azhar to secure the release of passengers
October –	The Legislative Assembly in
December 2001	Srinagar is attacked. Armed militants attack Indian Parliament in New Delhi.
2011	J&K Chief Minister Omar Abdullah pardons 1,200 people convicted of stone pelting.

State Assembly Elections & Subsequent

Various International Crisis

March 2015	The BJP forms a government in J&K with People's Democratic
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	Party for the first time.
2015	China Pakistan Economic Corridor (CPEC) initiated. The said infrastructure project passes through the Gilgit-Balistan region of the PoK and is touted as an economic infrastructure project. India has strongly opposed the same.
April 2016	Mehbooba Mufti becomes Chief Minister after the death of Mufti Mohammad Sayeed, her father.
July 2016	Burhan Wani, another militant, killed in shootout with armed forces. Several protests erupt in J&K. Curfew imposed for several months.
August 2016.	During the 2016 Kashmir unrest, transit camps housing Kashmir Pandits in Kashmir were attacked by mobs. About 200–300 Kashmiri Pandit employees fled the transit camps in Kashmir during night time on 12 July due to the attacks by protesters on the camps and have held protests against the government for attacks on their

	<p>camp and demanded that all Kashmiri Pandit employees in Kashmir valley be evacuated immediately. Over 1300 government employees belonging to the community have fled the region during the unrest. Posters threatening the Pandits to leave Kashmir or be killed were put up near transit camps in Pulwama allegedly by the militant organisation Lashkar-e-Islam.</p>
<p>September 2016</p>	<p>Armed militants attack Indian Army base in Uri, J&K. The army retaliates with surgical strikes across the LoC.</p>
<p>July 2017</p>	<p>Residents of J&K take to the streets to commemorate Burhan Wani's death. Militants attack pilgrims on their way to the revered Hindu shrine of Amarnath.</p>
<p>2017</p>	<p>One Belt One Road Initiative/ The Belt and Road Initiative adopted by the Peoples Republic of China, touting it to be the new 21st Century Maritime Silk Route. It is proposed for being completed in</p>

	2049.it is proposed to pass through PoK India boycotted the meet as mark of protest.
2017	India China military stand off at Doklam as the Chinese commenced construction of the highway on a tri-junction border area known as Donglang. Chinese. This is jus among the many instances of Beijing’s decision to consolidate its hold on the disputed region even if it amounts to violating India’s territorial sovereignty.

The Constitutional Breakdown, the Emergency and the 2019 Ordinance and Act

June 2018	BJP government pull withdraws from the alliance with PDP.
November 2018	Governor Satya Pal Malik dissolves Legislative Assembly paving for proclamation of the President’s rule in the state to breakdown of the constitutional machinery.
December 2018	Presidential rule declared in the state.
January	Constitution Bench of the Pakistan

2019	Supreme delivers a judgement on administration of the Gilgit Balistan Region of PoK.
19.01.2019	Kashmiri Pandits stage a protest outside Raj Bhavan blaming the successive governments for their "failure" to punish the militants who killed hundreds of their community members in the Valley in the 1990s. A joint protest was staged by various Kashmiri Pandits' organisations in front of Raj Bhawan here on a call of the All State Kashmiri Pandit Conference (ASKPC). Apart from the ASKPC, the All Party Migrant Coordination Committee (APMCC), Panun Kashmir, All Displaced KP United Forum, JK Democratic Front, Sampuran Kashmiri Sangathan, Jagti Coordination Committee, NC minority cell, BJP minority cell, Sharika Peeth Sansthan, Jammu Kashmir Vichar Manch and other social organisations took part in the protest. ASKPC chief Ravinder

Raina, in his address, demanded a white paper from the government on the reasons that had led to the forced exodus of Pandits from the Valley.

22.03.2019

Yasin Malik led faction of the JKLF (JKLF-Y) banned by the Union Government- for the first time the Genocide of the Kashmiri Pandits has been acknowledged.

Union Home Secretary Rajiv Gauba in a press conference stated, "Central govt has today declared Jammu Kashmir Liberation Front (Yasin Malik faction) as unlawful association under Unlawful Activities (Prevention) Act, 1967. This is in accordance with the policy of zero tolerance against terrorism followed by govt." "Jammu Kashmir Liberation Front led by Yasin Malik has spearheaded the separatist ideology in the valley and it has been at the forefront of separatist activities & violence since 1988," he added.

The Home secretary said that,

"Jammu & Kashmir Liberation Front led by Md. Yasin Malik has spearheaded the separatist ideology in the valley and has been at the forefront of separatist activities and violence since 1988. Murders of Kashmiri Pandits by JKLF in 1989 triggered their exodus from the valley. Md. Yasin Malik was the mastermind behind the purging of Kashmiri Pandits from the Kashmir valley and is responsible for their genocide".

14.05.2019

Global Kashmiri Pandit Diaspora makes a statement that it will approach the UN and other world forums re: the genocide and ethnic cleansing of Pandits strongly at the UN and other important world fora as well as reputed human rights organisations in different countries of the world to build consensus of opinion on the issue.

August 5- 9
2019

Proposal made for a new presidential order to repeal Article 370 and 35A. J&K to be bifurcated as two union territories of Ladakh

(centrally administered) and J&K (with its legislative assembly). Subsequently The Jammu & Kashmir Reorganisation Act, 2019 receives Presidential Assent and its published in the Gazette.

2019 As per the J& K official state portal it is estimated that about 3,00,000 Kashmiri Pandits from the entire state of Jammu and Kashmir have been internally displaced due to the on-going violence

30.09.2019 Yasin Malik led faction of the JKLF (JKLF-Y) is declared as “Unlawful Association” but the UAPA Tribunal under the Unlawful Activities (Prevention) Act, 1967. The Home Ministry to sanction prosecution u/s 45 of the Act.

Grounds To Support The Validity Of The 2019 Order And Act:

9. The Applicants seek to intervene in the aforesaid Writ Petition filed in the nature of the Public Interest Litigation by the Petitioner above named on the ground as mentioned herein below:

The Historical Perspective:

- a. At the outset it is pertinent to note that the Article 370 begins with “*Temporary provisions with respect to the state of Jammu and Kashmir*”. It is essentially a transitory provisions which was enacted/ formulated keeping in mind the situation peculiar to Jammu & Kashmir to aid and enable in it being completely integrated with the Republic of India. The Article categorically provides a power to the President of India to cease the operation of this Article by way if a public notification. It is therefore submitted that the formulation and notification of the 2019 Order is in consonance with the provisions of Article 370 and the 2019 amendment act is a consequential legislative action that flows from it.
- b. It is submitted that the Treaty of Accession to the Republic of India is an unconditional one and it was always the intention of the State of Jammu & Kashmir to accede and be completely integrated with the Republic of India.
- c. It is submitted that during the formulation of the Indian Constitution in the draft Article 306A (present Article 370) the temporary provision was only to establish an interim system to restore peace, security law and order in the state of Jammu & Kashmir due to the geo-political conditions then prevalent at that point of time.

- d. It is submitted that once the Constituent Assembly of Jammu & Kashmir upon acceding to India recognised the Indian Constitution and itself an integral part of India. It concluded the Kashmir transitioned as a separate sovereign state and integrated with the Republic of India. Upon such integration the purpose of the temporary and transitory provision concluded and no special status was required to be conferred.
- e. It is categorically submitted that Sections 3 of the Jammu & Kashmir Constitution has also recognised it is an integral part of India and not a separate distinct sovereign entity having relations akin to two sovereign states or under suzerainty of India under International Law. They are first governed by the provisions of the Constitution of India first and then by the Constitution of Jammu & Kashmir.
- f. It is submitted that Instrument of Accession has merged with the subsequent actions of formulation of *Article 370 – a temporary provision in the Indian Constitution* and subsequent declarations in the Constitution of Jammu & Kashmir. It has always been the intention for complete integration of the state of Jammu & Kashmir.

- g. It is submitted that the provision for a separate constitution was provided and derived and devolves from a temporary provision as an interim arrangement to mitigate the then prevalent geo-political conditions. Once the operation of Article 370 ceases the same would mean that Jammu & Kashmir are to be subjected to the provisions of the Indian Constitution as all other states thus signifying a complete integration of the States of Jammu & Kashmir. In other words it is submitted that there can be no devolution of permanent rights by operation of a temporary provision.
- h. It is submitted that no substantive- permanent rights can flow from a temporary and a transitory provision formulated purely as an interim mitigation measure and a stop gap mechanism to mitigate the then crisis prevalent in Jammu & Kashmir.

**Administrative & Geo-Political/International
Perspective:**

- i. It is submitted that the 2019 Order and the 2019 Act suffer from no legal infirmities and are not violating any provision of the Constitution of India. It is submitted that there is no illegality in the above taken action and there has been no parliamentary over reach.

- j. Upon a careful analysis of the Statements of Objects and Reason it will be seen that one of the key reasons for introduction of the 2019 Act is the plaguing of Kashmir by cross border terrorism and having an internal security crisis. On a number of occasions internationally it has been admitted by the Islamic Republic of Pakistan that the Terrorism fuelled is state sponsored and state controlled therefore attributing the responsibility for wrongful international acts of terrorism to itself.
- k. It is submitted that the this reorganisation of the State of Jammu & Kashmir into two distinct Union Territories of Jammu & Kashmir and Ladakh is imperative and a critical move considering the ground realities of security, and actions being undertaken in the Pakistan-occupied-Kashmir (PoK) Territory of Jammu & Kashmir.
- l. It is submitted that in light of the 2019 Judgement of the Constitution Bench of Pakistan Supreme Court, pertaining to administration of the Gilgit Balistan regions of PoK it is further imperative for taking actions for better administration of the Now UT of Jammu & Kashmir by directly by the Union Government through the office of the Lieutenant Governor.

- m. It is submitted that the fact that the region has been consistently threatened by constant infiltration from the neighbouring states of Islamic Republic of Pakistan and the People's Republic of China. There have been constant incidents and occurrences of cross border radicalism and terrorism to destabilise the region. Furthermore in light of the recent constitution bench judgement of the Supreme Court of Pakistan regarding the regions of Gilgit Balistan it is imperative that the region is governed as a Union Territory for better administration for the purpose of defence, security, law and order.
- n. It is submitted that the State Government has been unable and unwilling to mitigate and commit itself to resolving the security issues prevalent in the State of Kashmir. Every inaction or act of omission on part of the State Government which has led to aggravation of the security and the law and order situation of the region of Jammu & Kashmir is attributable to the political leaders who have governed and administered Kashmir under the garb of a democratic process.
- o. It is submitted the present 2019 Order and Act is a step towards restoring normalcy to the fragile political and security conditions in Kashmir to counter the various infractions, incidents of

violence and radical groups persisting in the state today. The incidents of various terrorist attacks are a proof to the instability and the Jammu & Kashmir being administered poorly to a point of it being a failed state.

- p. It is submitted that by enactment of the 2019 Order and the subsequent the 2019 Reconstitution Act, is an important and critical step to reorganise and reinstate a safe environment to facilitate the return of the exiled Kashmiri Pandits to the valley and the region and creates a base for setting up further course of action towards effective repatriation of the Pandits to the valley.
- q. It is submitted by banning the JKLF-Y and acknowledging the genocide of the Kashmiri Pandits in March 2019, the government has set up the platform for implementation of transitional justice. By implementing the 2019 Order and Act it further supplements the acknowledgement of the genocide and allows a justice mechanism to be established to redress the human rights issues prevalent in Kashmir.
- r. By applicability of the General Laws of India, there will now be a consistent and a uniform application of laws such as Right to Information Act to ensure

effective disclosure of information regarding crucial and critical state actions taken in the past.

- s. By coming directly under the purview of administration of the Union Territory by the President of India shall lead to a more effective and transparent channel for devolution of funds for infrastructure and development of the Union Territories of Jammu & Kashmir.
- t. In formulating the Region of Jammu & Kashmir and Ladakh as two distinct union territories it shall lead to further effective management not just of law and order, security and defence situation but it provides effective devolution of power for the benefit of the citizens who have been marginalised and have been indoctrinated to be part of terrorist movements due to constant mal administration of successive state governments in the region.

Grounds Re: Basic Structure & Constitutionality:

- u. It is submitted that in light of the fact that Article 370 is merely a temporary or a transitory provision- it cannot be considered as a basic part of Constitution of India. It is submitted that a catena of Supreme Court judgements have laid down the Test for identifying whether a particular provision is part of the basic structure or not. If a particular does not meet the test, it cannot be

considered as basic structure. The Hon'ble Supreme Court has decided on the issue of Basic Structure in a Number of cases including the 9-judge bench judgement in *IR Coelho v. State of TN* (2007) 2 SCC 1- whereby a test for determination of basic structure has been laid down.

- v. It is submitted that the Governor is recognised as the titular head of the State. In *BP Singhal v. Union of India* [(2010) 6 SCC 331] the dual role of the Governor as a. the titular head of the state and b. the vital link between the State Government and the Union Government has been recognised. In the present case by way of the 2019 order, the Governor of Jammu and Kashmir has been duly referred to as the person recognised by the President as the recognised person and this recognition flows from the concept that the governor is the head of the state and therefore a recognised person.
- w. Additionally the amendment or modification in respect of the said Article is not illegal or arbitrary or unconstitutional. By virtue of the said order dated 5.8.2019, passed by the Honourable President of India, abrogating the Article 370. Furthermore there is a presumption of constitutionality of amendments and statutory

acts and the same would have to follow in this case.

- x. It is submitted that the amendment by way of a Presidential Order is legitimate and valid and constitutional. In 1954 Article 35A was introduced by way of a Presidential Order defining permanent residents.
- y. It is submitted that the region of Jammu & Kashmir under no circumstances qualify for the self determination- upon passing of the Constitution of Jammu & Kashmir in 1956 it has been categorically held that Jammu & Kashmir is an integral part of India under Section 3. Unlike in the position in international law, subsequent state practise does not trump the written word in Municipal law. Once a constitutional declaration of such nature is made any contrary action claiming rights of self-determination do not stand.
- z. Additionally it is submitted that the very claim for self-determination is fundamentally flawed when tested on the principles of self-determination as envisaged in International Law. *The Supreme Court of Canada in Re Secession of Quebec, [1998] 2 SCR 217* has categorically held on the question of concerned Quebec's right under international law to secede, gave the opinion that the international law on secession was not applicable to the

situation of Quebec. The Court pointed out that international law "*does not specifically grant component parts of sovereign states the legal right to secede unilaterally from their 'parent' state.*" Furthermore, the court stated in its opinion that, under international law, the right to secede was meant for peoples under a colonial rule or foreign occupation.

- aa. It is submitted that in the present case that if a referendum ought to take place it would be only of the PoK region. Even if a reference has to be made to the *United Nations Security Council Resolution on Kashmir* [UN Security Council, Security Council resolution 47 (1948) [The India-Pakistan Question], 21 April 1948, S/RES/47 (1948)] it would have to be holistically read with the subsequent development of Article 370 of the Indian Constitution and Section 3 of the Constitution of Jammu & Kashmir declaring itself to be an integral part of the Republic of India it negates any future claim that would arise regarding any self determination or cessation movement. By virtue of the Treaty of Accession of October 1947 and subsequent constitutional developments this claim is fallacious and does not stand to be sustained when tested on principles of National and International Law.

Re: Federalism:

- bb. Under the Treaty of accession and the Constitution of India, the Union has a duty to of taking all such actions for the “*defence of India and every part thereof including preparations for defence and all such acts as maybe conducive in times of war to its prosecution and after its termination to effective demobilisation*” (Schedule VII List- I).
- cc. It is submitted that the purview of this defence is not just limited to instances of external aggression but also internal security threats and conditions attributable to external aggression by way of effective control in hands of another State.
- dd. It is submitted that the Constitution of India is quasi Federal and Quasi Unitary in nature/ or quasi federal with a strong tilt to the centre (*State of West Bengal v. Union of India (1964) 1 SCR 371*). By not being a pure federal state the overall control of the centre is generally accepted, as it is one of the foundations of the Indian Constitution. By ratifying and declaring itself to be an integral part of India the Constituent Assembly has accepted and acceded to this quasi- unitary and quasi-federal structure envisaged in the Indian Constitution. This is all the more apparent by

proclamation of the President's Rule in Jammu & Kashmir elucidates the strong tilt towards the Centre feature of the Constitution.

- ee. It has been aptly held by the Supreme Court of India in *SBI v. Santosh Gupta (2017) 2 SCC 538* that the Constitution of India and Jammu & Kashmir do not have equal status and the Constitution of India is placed on a higher pedestal and the State of Jammu & Kashmir is and shall be an integral part of India.
- ff. Furthermore the Supreme Court of India has duly recognised the conditions under which this special status was provided. It is submitted that for any provision of the Constitution to be implemented in the then State of Jammu & Kashmir, the State Government needs to give its concurrence before the Constituent Assembly is convened. However by the President's Order of 2019 the devolution of power of the Constituent Assembly is transferred to the Legislative Assembly, as there is no constituent assembly in existence. Therefore it is not only the repository of power of concurrence given by the Government of the State but also the repository of power of ratification.
- gg. It is submitted when a state is placed under the President's Rule by a proclamation under Article 356, the President takes over the administration of

the State. By taking over such administration, the Parliament usually and generally performs the legislative functions of the State Assembly and any such legislative decision taken cannot be presumed unconstitutional as in times of President's rule, the Parliament is a repository of legislative power.

hh. Now admittedly Jammu & Kashmir has been placed under the President's Rule. Therefore it is no longer the federal lens but the unitary lens that applies and the Parliament has to perform functions under List-I, List-II and List-III of the Seventh Schedule.

ii. Therefore while performing its functions of a Legislative Assembly when a State is placed under the President's Rule there is a dual mandate placed on the Parliament one to perform its functions under Article 246 and List I and III of the seventh Schedule, but also functions under List-II of the Seventh Schedule which is the functions of the state.

jj. By stepping into the shoes of the State Legislature, any such decision taken by the Union legislature has to be presumed to be intra vires and in conformity with the Treaty of Accession, the Constitution of India and the Constitution of Jammu & Kashmir.

kk. It is submitted that there is no Constituent Assembly existing in Jammu & Kashmir. It is submitted that The Constituent Assembly adopted and ratified Mir Qasim resolution to dissolve itself on November 17 1956. According to this resolution, the Constituent Assembly of Jammu and Kashmir ceased to exist on January 26 1957.

Re: Interpretation On Article 370:

ll. It is submitted that a Constitution Bench of the Supreme Court in *Puranlal Lakhanpal v. President of India* (1962) 1 SCR 688 has interpreted the scope and width of the term “modification” used Article 370 (1) to include any such modification that would include any amendment that could make any “radical transformation”. It is submitted that the decision of this Hon’ble Court in *Puranlal Lakhanpal v. President of India* is reiterated in a subsequent judgement passed by a Constitution Bench of this Hon’ble Court in *Sampat Prakash v. State of Jammu & Kashmir* in 1969 2 SCR 365. It is submitted that the same is good law and if there is any divergence on the scope and ambit of Article 370 (1) the same would have to be referred to a larger bench.

mm. The Petitioner craves leave to rely on any other ground at the time of the hearing of the Writ and the present application.

10. Hence the Applicants / Intervenors wish to intervene the present Writ Petition i.e. filed in the form of Public Interest Litigation to oppose the said writ Petition as they are important stake holders in the determination of the Kashmir issue.
11. The Applicants/Intervenors state that they reserve their right to raise any additional/ supplementary grounds re: the validity 2019 Order & Act or any other ground that would be relevant to the case at hand by way of counter affidavits/ replies assailing the writ petition in question.
12. In the view of above, the Applicants/ Intervenors humbly prays that as under:
 - a. That this Honourable Court may be pleased to allow the Intervening Application of the Applicants / Intervenors.
 - b. Be pleased to dismiss the Writ Petition challenging the constitutional validity of the 2019 Order and the 2019 Act.
 - c. Any other or further order this Honourable Court may deem fit and proper in the interest of justice.

DRAWN BY:

FILED BY:

Mr. Rahul G Tanwani

Mr. Anantha Narayana MG.

Mr. Manan Sanghai

Advocate-on-Record

Mr. VC Shukla

Mr. Prashant Singh

Advocates

Place: New Delhi

Date:

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
IA No. _____ of 2019
IN
WRIT PETITION (C) NO. 1031 OF 2019
(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF
Manohar Lal Sharma ...Petitioner
Versus
Union Of India & Ors. ...Respondents

AND

1. Mr. Tej Kumar Moza
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
2. Mrs. Karishma Tejkumar Moza
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]Applicants/Interveners

AFFIDAVIT

I, Tej Kumar Moza [Redacted]
do hereby solemnly affirm and state as follows:

1. I am the Applicant No.1 in the aforesaid case and as such I am fully conversant with the facts and circumstances of the case.

2. I have read the contents of the accompanying intervention/impleadment application [Paragraphs 01 to 12 in Pagesto.....] and after having understood the contents thereof, I say that the facts stated therein are true and correct to the best of my knowledge & belief.
3. The Annexures attached are the true copies of their respective originals.
4. All this is true; No part of the same is false and nothing material has been concealed there from.

DEPONENT

VERIFICATION

I, Tej Kumar Moza, the above named deponent do hereby verify that the contents of paragraphs 1 to 12 of the aforesaid affidavit are true and correct; no part of it is false and nothing material has been concealed therefrom.

Verified [REDACTED] day of
.....2019.

DEPONENT