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PROJECT REPORT ON:
“A STUDY ON ARTICLE 370”

SUBMITTED TO:

University of Mumbai



BY

GHADIGAONKAR ANKITA JAYANT

UNDER THE GUIDANCE OF

Prof. MANOJ K MISHRA

ACADEMIC

YEAR-

2019-2020



DECLARATION

I the undersigned **Miss. Ghadigaonkar Ankita Jayant** here by, declare that the work embodied in this project work titled, “**A Study on Article 370**” forms my own contribution to the research work carried out under the guidance of “**Prof. Manoj K Mishra**” and has not been previously submitted to any other University for any other Degree/Diploma to this or any other University.

Wherever reference has been made to previous works of others, it has been clearly indicated as such and included in the bibliography.

I, here by further declare that all information of this document has been obtained and presented in accordance with academic rules and ethical conduct.

GHADIGAONKAR ANKITA JAYANT

Certified By

Name and Signature of Guiding Teacher

Prof. Manoj K Mishra

DATE:



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CERTIFICATE

This is to certify that the project entitled is successfully done by **GHADIGAONKAR ANKITA JAYANT** during the Third year, Sixth Semester of through **THAKUR COLLEGE OF SCIENCE AND COMMERCE**, Kandivali (E), Mumbai- 400101.

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GANTT CHART

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1	Chapter No. 1: Introduction												
2	Chapter No. 2: Research Methodology												
3	Chapter No. 3: Literature Review												
4	Chapter No. 4: Data Analysis, Interpretation and Presentation												
5	Chapter No. 5: Conclusion and suggestions												
6	Bibliography and Appendix												
7	First Draft												
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9	Final Draft												
<p>Important: 1. Referencing style APA 6th 2. The project shall be bounded 3. The project report should be 80 to 100 pages 4. Gantt chart shall be filled by faculties only 5. The final draft shall be signed by guiding teacher 6. The faculties are allowed to link tasks in Gantt chart 7. Be sure to display start and end dates for each task 8. Account for time off, holidays and internal exams 9. To define the critical path, use lines to connect a task</p>					Students signature on No. of visits with date								

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ABSTRACT

Article 370 of Indian Constitution states the autonomy and power of Jammu and Kashmir to formulate laws for its citizens. The provisions of the Constitution to other states were not applicable to Jammu and Kashmir. According to this article, except for defence, foreign affair finance and communications, Parliament needs the state government's approval for applying certain laws. The residents of the state therefore had a separate and independent set of laws and rules. There were disagreements and controversies with regard to Article 370 from the beginning. Inequality in a democratic country like India has been a matter which led to conflicts. The initial drafting made with regard to the state was done by Gopaldaswami Ayyangar, who was a confidante of Prime Minister Jawaharlal Nehru. The draft was meant to be temporary and therefore was included in the Temporary and Transitional Provisions in Part XXI. There were several arguments based on the same and therefore, breaking the act and bringing the state of Jammu and Kashmir was seen to be important.

The Constituent Assembly of Kashmir however dissolved itself in 1957 without making any recommendation for amendment and therefore, the Indian Supreme Court has ruled on multiple occasions that Article 370 is now a permanent part of the Indian Constitution. The Presidential Order uses Article 370(1)(d) to apply all provisions of the Indian Constitution (other than Articles 1 and 370 – which are already applicable) to J&K. The government has sought to overcome the problem of the Constituent Assembly not having abrogated Article 370 by requiring that “Constituent Assembly” in Article 370(3) be read as the J&K Assembly. But since J&K is now a Union Territory and is under President's rule and has no legislative assembly at the moment, it fell upon Parliament to make this recommendation under the newly ‘modified’ Article 370(3). Accordingly, the recommendation to the President abrogate Article 370 was issued by the Home Minister through his Resolution.

Under Article 370(1)(d) the President's has the power to modify and apply other provisions of the Constitution to J&K i.e. provisions other than Article 370. Prime Minister Nehru himself agreed that Article 370 would be rendered obsolete by the passage of time. The abrogation move may bolster the government's ability to make the fruits of India's economic progress directly available to Kashmir. Yet, the manner in which this has been done is unlikely to inspire trust in the ordinary Kashmir and may well cause lasting damage to the tradition of constitutional propriety.

CHAPTER 1: INRODUCTION

NEED FOR RESEARCH ON ARTICLE 370 OF THE CONSTITUTION OF INDIA.

India became independent on 15th August 1947 and the framing of a Constitution for independent India became necessary. Amongst the various hurdles the Constituent Assembly had to face, possibly the most critical was the incorporation of the numerous Princely States, which were made independent by the Indian Independence Act 1947. The State of Jammu and Kashmir was one such Princely State. However, the Draft Constitution was completed and was discussed and criticized in most of the Provincial Assemblies. A remarkable trend to these discussions was the general consensus of opinion on the soundness of its fundamentals and the firm hope that the Constitution would prove a working document for a new India that was taking shape.'

Article 370 of the Constitution of India, 1950, deals with the temporary provisions with respect to the State of Jammu and Kashmir and it is under the provisions of this Article that the State of Jammu and Kashmir holds a peculiar position under the Constitution of India.² Article 370 was incorporated in the Constitution of India after the debates of the Constituent Assembly held mainly on 17th October 1949, where Mr. N. Gopaldaswamy Ayyangar enumerated the special conditions prevailing in Jammu and Kashmir for which its incorporation was necessary. ¹ The legislative prudence of the then Constituent Assembly accepted the existence of the special conditions enumerated by Mr. Ayyangar and consequential necessity of incorporation of the provisions of Article 370. The present Article 370 was included in the Draft Constitution as Article 306-A.

The Jammu and Kashmir issue has been one of the most baffling issues confronting the Government of India since independence. ³ There are several politico-legal and socio-economic factors responsible for the worst state of affairs now prevailing in Kashmir. This research is an in-depth study of Article 370 of the Indian Constitution and aims at finding a legally and constitutionally acceptable solution to all controversies arising from Article 370. This research, though deals with, is in no way concerned with any political, religious or any other vested interests. The legal issues revolving around the constitutional aspects of Article 370, unequivocally, tell that its deletion or retention

should no longer be the domain of any political gimmick or political ideology, but the political elites must now take a realistic or pragmatic or functional, and not escapist, vision of the whole gamut of the problem.' It is extremely essential that the politician is fully aware of the legal consequences of his acts and the aim of this research, which deals purely with the legal aspects of Article 370 of the Constitution of India, is to help and guide politicians and legislators in this mammoth task.

The next five chapters analyze the facts and attempts to draw an inference to the Kashmir issue. Chapter 6 investigates the working of the Constitution of India with special emphasis on the basic structure of the Constitution and its amendment, Centre-State relation under the Constitution of India, the various reports on Centre-State relations and the Supremacy of the Constitution of India. Chapter 7 dealing with judicial opinion and Chapter 8 dealing with public opinion are of utmost importance as the opinion of the people cannot be of any value until and unless it fits into the straight jacket of the law. For this reason it is necessary to understand the judicial view regarding the Kashmir issue. The demand of the people must have the sanction of law if it is to be implemented. Chapter 7 deals with the judicial view regarding change of sovereignty, Acts of State, cession of Indian Territory, Article 370 of the Constitution of India and citizenship. Chapter 7 also discusses the right to hold a plebiscite. Chapter 8 deals with public opinion, which has been collected and analyzed under two heads, public opinion of the State of Jammu and Kashmir and public opinion for the rest of India. Chapter 8 also makes a comparative analysis between the events going on between India and Kashmir; and the events going on between China and Tibet, Pakistan and Bangladesh, Sri Lanka and Jaffna. Chapter 9 is a summation of the research and chapter 10 provides the final conclusion and proposed solution to the Kashmir issue.

The unique position of the State of Jammu and Kashmir is the result of a series of complex legal and political events. These events need to be untangled and analyzed in order to reach an acceptable and reasonable solution to the Kashmir issue. It is hoped that this research, which is aimed at finding a legally acceptable solution to the Kashmir issue, is successful in its purpose.

1.1 A SHORT HISTORY OF THE STATE OF JAMMU & KASHMIR

▪ GEOGRAPHICAL LOCATION OF THE STATE

To understand the complex legal and political events that lead to the development of the Kashmir issue as we see it today, it is necessary to study the history of the State along with the geographical, social, economic, religious and also political developments that occurred within of the State of Jammu and Kashmir. India's Geographical conditions profoundly influenced her historical development. The geographical location of the State of Jammu and Kashmir is of utmost importance. The State is a mountainous region, renowned for its scenic beauty, snow clad mountains and lushful valleys, but more important than the scenic beauty of the State is its strategic position. The State situates at the apex of the Indian Sub- continent and shares common borders with China, Tibet, Pakistan and Afghanistan. The State of Jammu and Kashmir is located in a very strategic position which has made it the center of several intense international rivalries. The State being almost entirely a mountainous region it forms a natural barrier protecting India from foreign invasion. The occupation and control over the valley is therefore of great military importance.

Jammu and Kashmir lies between 30 degrees and 37 degrees North and 73 degrees and 80 degrees East and comprises of four natural regions being Kashmir, Jammu, Gilgit and Ladakh. The Districts included in Jammu and Kashmir are Anantnag, Astore, Baramulla, Chenani, Jammu, Kathua, Ladakh, Mirpur, Muzaffarabad, Poonch, Reasi, and Udhampur.' The State of Jammu and Kashmir comprises of an area of approximately 2,22,236 sq. Km, out of which 78,114 Sq Km has been under the occupation of Pakistan since 1948, out of which 5,180 sq Km of Gilgit and Baltistan has been illegally handed over to China by Pakistan in 1963 and is presently under the occupation of China. This includes 37,555 sq km, which has been under illegal occupation of China since 1962. The State of Jammu and Kashmir is the only State in the Indian Union whose borders are not yet settled.

The Princely States geographically formed a part of India.' Kashmir, one of the Princely States, is therefore, no doubt geographically a part of Indian Territory. Since time immemorial the State of Jammu and Kashmir been considered to be an integral part of India. It has been said that the "Country which lies to the South of the Himalayas and North to the Ocean is called Bharat and the Bharatiyas are the people of this country. It has further been stated, "The name Bharat Varsha is not a mere geographical expression

like the term 'India' having only a physical reference. It has a deep historical significance symbolizing a fundamental unity".¹ The geographical unity of the Indian sub-continent fostered the political unity of India.² The above facts indicate that anatomy of Kashmir is such that it is an integral part of the body of our Country, just as any part of a human body constitutes of an individual and it is inseparable .³ In spite of the fact Kashmir is an inseparable part of India, the history of Jammu and Kashmir shows that the State, during various periods, enjoyed its own sovereignty and/or autonomy.

▪ KASHMIR PRIOR TO THE REIGN OF GULAB SINGH

India is a country of people having diverse cultures and religions. The people of the State of Jammu and Kashmir, also known as Koshurs, are no exception and they have a distinct cultural heritage of their own. Though the people of the State were originally Hindus, religions such as Buddhism and Islam influenced the State and presently the State has a Muslim majority population. However it may be mentioned that even though the State has a Muslim majority population, maximum Muslims are residing in the Kashmir valley and in general it is found that Jammu has a predominant Hindu population and Ladakh has a predominant Buddhist population. All these three sections present three isolated peculiarities. Their ways of life and attitude towards life are totally different from one another. The ancient history relating to the Hindu period of Kashmir is not clear due to inadequate historical literature and texts. Kalhana's "Rajatarangini" is practically the only source of Kashmir's ancient history. According to Kalhana the history of Kashmir can be traced back to the reign of King Gonanda I. King Jalauka of Kashmir who reigned a few decades earlier to 1184 BC had organized his Government with eighteen departments: — "Having created eighteen traditional departments of State, the King inaugurated during his reign the same type of constitutional system of government that Yudhistira (of Mahabharata) had adopted". However, from the reign of King Ashoka, the historical material available is more authentic. During the 3rd Century B.C. Kashmir was a part of the kingdom of King Ashoka who was a powerful Hindu king who had expanded his kingdom considerably by conquests. After seeing the bloody aftermath of the Battle of Kalinga he underwent great change and embraced Buddhism and it was mainly during his reign that Buddhism was introduced in the State of Jammu and Kashmir. At the beginning of the Christian era Kashmir was invaded and plundered by the Tartars, and later, by the Huns. Powerful Hindu rulers like King Lalit Aditya also

ruled over the Kashmir Valley.

Muslim influence was felt in 712 AD when Muhammad Ibn Kasim invaded India. During the early 11^o Century AD Muhmud of Ghazi conquered the Punjab and eventually Punjab was converted- into a Muslim state. However, Muhmud of Ghazi was unsuccessful in conquering Kashmir. The Shah Mirs were the first Muslim Rulers of Kashmir who ruled from 1342 onwards. It was mainly during the reign of Sikander (1389-1413) that the Islamisation of the Kashmir valley occurred. Some of the main factors leading to the Islamisation of the State were the influx of immigrants, mainly Arabs, Turks, Pathans, Afghans and Persians; inter- marriages between the Muslim rulers and Army Commanders with the local Hindus; conversions of Hindus to Islam, both voluntary and forceful; etc. Sultan Zain-ul-Abidin ruled Kashmir for half a century, between 1420 and 1470 and was a popular ruler and had the favour of both the Muslims and the Hindus. Gazi Khan became the ruler of Kashmir in 1554 and the Mughal Emperor Akbar invaded the Kashmir valley in 1586. Kashmir remained under the control of the Mughals for more than more than one and a half centuries and was ruled by other great Mughal emperors like Jehangir and Shah Jehan.

In 1750 the Afghans under Ahmed Shah Abdali invaded the Kashmir valley. Afghan rule in Kashmir was a reign of terror and was so harsh that the people of Kashmir were left with no other alternative but to request Maharaja Ranjit Singh of Punjab to come and save them from the tyranny of the Afghan rulers. In 1819, Maharaja Ranjit Singh sent Raja Gulab Singh, a Dogra Rajput King, to the Kashmir valley who defeated the Afghan Governor and established the sovereignty of the Sikhs in the Kashmir valley. Kashmir remained under the control of the Sikh Durbar from 1819 till 1846, when the Sikhs were ultimately defeated at Sobraon by the British. Ladakh was an independent kingdom under the suzerainty of the grand Lamas of Tibet I until Raja Gulab Singh captured Ladakh in 1834.

▪ THE ADVENT OF MAHARAJA GULABSINGH

The Sikh Durbar proved to be a formidable force developing on the western flanks of British India and the British wanted to curtail the power of the Sikhs in order to secure and consolidate their position within India. War started at Sobraon between the Sikhs and the British in November 1845. The Sikhs wanted Raja Gulab Singh to lead them in the battle against the British. Raja Gulab Singh advised the Sikh Army not to

attack the British and to wait until he joined forces with them. But Raja Gulab Singh delayed his assistance and deliberately allowed the Sikhs to be defeated by the British. By doing so, Raja Gulab Singh successfully won the favour of the British and was immediately made the Prime Minister of the Punjab.

▪ THE REIGN OF MAHARAJA RANBIR SINGH

Maharaja Gulab Singh died on 25 Sawan 1914 (1858 AD). He was succeeded by his third son Maharaja Ranbir Singh, two years prior to his death, on 18th Phagan 1912 (1856 AD). During his short reign from 1846 till 1857, Maharaja Gulab Singh was unable to establish an effective administrative system within the State of Jammu and Kashmir and it became essential for Maharaja Ranbir Singh to thoroughly reorganize the State's administrative system. To improve the State's administrative system, he divided the Province of Jammu into seven 'wazarats' and divided Kashmir into six 'wazarats'. The Province of Jammu was under the direct administration of Maharaja Ranbir Singh, while the Maharaja through a Governor administered the Province of Kashmir. This may account for the feeling amongst the people of Kashmir province that the Maharaja did not regard them as "his own". Maharaja Ranbir Singh also made some major reforms in the State's revenue system. Previously revenue was collected in kind and not in cash. In 1860, Maharaja Ranbir Singh abolished the system of collection of revenue in kind in the province of Jammu, though the old system on collection of revenue in kind, continued in the province of Kashmir throughout his entire reign, and was later abolished by his successor, Maharaja Pratap Singh.

Various reforms were also introduced in the State's judicial system. Chief Courts known as Adalat Sadars were set up at Jammu and Kashmir, and in 1877 a High Court known as Adalat-I-Alia was set up, which was the highest court of appeal or revision, subject to the judicial powers of the Maharaja. 'Wazarat courts' were set up in each Wazarat. Maharaja Ranbir Singh took great personal interest in the State's judiciary and tried his best to improve the condition of the State's judicial system.

The armed forces under Maharaja Ranbir Singh were well trained and equipped and followed the fashion of the British drill and dress. The army comprised mainly of Dogras, Dards and Punjabis. Kashmiris in general were disqualified from joining the armed forces. Maharaja Ranbir Singh remained a friend of the British and played an important role in suppressing the Indian Mutiny, for which the British honoured

Maharaja Ranbir Singh with the title of Grand Commanded of the Star of India.

Even though the reign of Maharaja Ranbir Singh was full of turbulence he was able to prove himself as a strong and capable ruler. In spite of his friendship with the British, he strongly opposed all attempts made by the British Government to appoint a British Resident in Kashmir. He made it very clear to the British that under the Treaty of Amritsar, 1846 and the Queens Proclamation, 1958 the British Government had absolutely no right to interfere with the internal affairs of the State. During the reign of Maharaja Ranbir Singh the British were unable to and unsuccessful in appointing a British Resident in the State of Kashmir.

▪ THE REIGN OF MAHARAJA PRATAP SINGH

Maharaja Ranbir Singh after falling ill expired on 14 September 1885, and was succeeded by his eldest son Maharaja Pratap Singh who ascended the throne in the same year. During the reign of Maharaja Ranbir Singh the British, inspite of several attempts, were unable to appoint a British Resident in the State of Jammu and Kashmir. Taking advantage of the death of Maharaja Ranbir Singh, the British, who were still very much eager to get a British Resident posted in Kashmir, sent Mr T. C. Plowden, the Resident-Designate to Kashmir. Maharaja Pratap Singh, who was still in mourning after the death Maharaja Ranbir Singh, strongly opposed thls, but in vain, and ultimately a British Resident was appointed in the State of Jammu and Kashmir. Even though Maharaja Pratap Singh was unable to prevent the British from appointing a British Resident within the State, still he was a strong and capable ruler like his predecessors. He too was eager to improve the State's administrative, judicial and revenue systems. He took keen interest in the State's armed forces and like his father continued to exclude Kashmiris from both the Army and the civil services. This deliberate and continued exclusion of Kashmiris from serving in high posts of both the military and civil services lead to the growth of dissatisfaction in the minds of the Kashmiri people.

In 1888, Maharaja Pratap Singh proposed to introduce a new Constitution for the State, which the Viceroy and Governor-General of India did not accept. The plan of the new Constitution came into operation in 1889. The Council proposed under the said Constitution totally left out the Muslims. The object of establishing the Council was to reduce the powers of the British Resident and this caused much annoyance to the British who wanted the Resident to control the affairs of the State. Maharaja Pratap Singh's

attempt to curb the power of the British Resident in Kashmir caused so much dissatisfaction in the minds of the British Government that he was temporarily dispossessed of all powers between 1889 and 1905, and all powers were to be exercised by the Council of Regency, subject to the control of the Resident.

The reasons given by the British for dispossession of Maharaja Pratap Singh were that Maharaja Pratap Singh of having entered in “treasonable correspondence” with Czarist Russia and that the administration of the State had collapsed and that the State’s Treasury was empty resulting in over burdening of the subjects with high taxes. These reasons were however not acceptable. However, this was a common practice of the British Government meted out to friendly native States. The act of dispossessing Maharaja Pratap Singh by the British Government was in gross violation of the Treaty of Amritsar, 1846 and the Queen’s Proclamation, 1858. But such action on the part of the British Government was an ‘Act of State’ and the same could not be challenged in any court of law, as ‘Acts of State’ are not subject to the jurisdiction of the Municipal Courts. A similar view was taken in the case of the Secretary of State for India vs Kamachee Boye Sabha where it was stated that even if a wrong has been done, it is a wrong in which no Municipal Court of Justice can afford any remedy. The only course left open to the Maharaja was to wait for a change in his fortune.

Maharaja Pratap Singh was reinstated to his throne in 1905, though his powers were now largely curbed and were subject to the veto of the British resident. Matters such as finance, taxation granting of jagirs, foreign relations, etc, were no longer under the Maharaja’s control and remained under the control of the Government of British India. The annual budget and all expenditure of the State were to be made subject to the approval of the Resident. In short, the Maharaja in most administrative matters had to take the consent of the Resident.

▪ THE REIGN OF MAHARAJA HARI SINGH

Maharaja Pratap Singh died in 1925 without any heir and was succeeded by his brother Amar Singh’s only son, Hari Singh. Maharaja Hari Singh was already the Commander-in-Chief of the State Army and was also a senior member of the State Council. On ascending the throne Maharaja Hari Singh introduced a series of reforms in the State’s economic, social, judicial and education systems.

During the reign of Maharaja Hari Singh the Kashmiri Pundits had also started an

agitation within the State known as 'Kashmir for Kashmiris'. The demand of the leaders of the said movement was the recruitment of the educated sons of the soil in Government services, ban on the sale of land to outsiders, freedom of the press, freedom of association and assembly. On 31st January 1927, Maharaja Hari Singh issued an order defining the term 'Mulki', i.e. the State Subjects. The said order provided that the State Subjects would be preferred over outsiders in cases of employment in the Government services. The said order also provided that outsiders, from now onwards, would be unable to purchase immovable property within the State of Jammu and Kashmir. On 20 April 1927 the Maharaja issued a notification being No. I-L/84, defining the State Subjects. The said Notification states as follows:

The term State Subject means and includes-

Class I- All persons born and residing within the State before the commencement of the reign of His Highness the Late Maharaja Ghulab Singh Sahib Bahadur, and also persons who settled therein before the commencement of Samvat year 1942, and have since been permanently residing therein.

Class II- All persons other than those belonging to Class I who settled within the State before the close of Samvat year 1968, and have since permanently resided and acquired immovable property therein.

Class III- All persons other than those belonging to Classes I and II permanently residing within the State, who have acquired under a rayatnama any immovable property therein or who may hereafter acquire such property under an ijazatnama or rayatnama after ten years continuous residence therein.

This regulation was meant to protect the people of Jammu and Kashmir from outsiders coming from the neighbouring State's but discrimination within the State still continued, especially against the Muslim majority. All official high posts were still occupied mainly by Dogras and Rajputs and the State Army comprised only of Dogras and Dards and Kashmiris were intentionally excluded from the Armed Forces. On 14th August 1931, the All India Kashmir Muslim Conference of Lahore observed a Kashmir Day throughout India, including Kashmir.' By 1931, the protest by the Kashmiri Muslim population against communal discrimination became so vocal that the Maharaja had to use all means at his disposal in order to control the said agitations. Ultimately the Maharaja was compelled to make a proclamation announcing that any section of his subjects could submit their reasonable demands for consideration of the Maharaja and on the basis of the said proclamation Maharaja Hari Singh received several memorials for

consideration. The common demand made in the said memorials was a demand for representative government along with equal rights and equal treatment of all the State Subjects.

- THE GLANCY COMMISSION AND REGULATION NO. 1 OF 1934

Maharaja Hari Singh received the demands made in the said memorials and gave them his careful and sympathetic consideration. He set up a commission under the chairmanship of Mr. B. J. Glancy, referred to as the Glancy Commission' for the purpose of enquiring into the grievances of the people and to make its recommendations on the basis of such enquiry. The Glancy Commission submitted its report on 22^d March 1932 and made several recommendations mainly on the basis of religion, education and employment in the State services. On the basis of the recommendations made by the Glancy Commission, Maharaja Hari Singh signed a notification dated on 10th April 1932.

On 22^d April 1934, Maharaja Hari Singh, in order to establish a Legislative Assembly and in order to secure his legislative, executive and judicial powers enacted a Constitutional Act known as Regulation No. 1 of Samwat 1991 (1934 AD). Under the said regulation a Legislative Assembly for the State called the Praja Sabha consisting of a total of 75 members was constituted. Of the 75 members, 33 members were elected members of whom 21 members were Muslims, 10 members were Hindus and 2 members were Sikhs. But the right to vote was restricted to only 3% of the total population. Only literate persons having an annual income of Rs 400/- or more were permitted to vote. Women and illiterates were totally debarred from exercising any franchise. Though the said modifications were meant to give ventilation to the growing dissatisfaction amongst the Muslim population of Kashmir, the Maharaja continued to be the absolute Monarch exercising all his previous legislative, executive and judicial powers' without surrendering any of his previous powers. No rule made by the Praja Sabha would be deemed to be passed until and unless the Maharaja gives his assent thereto². The said regulation did not satisfy the peoples demand for representative government.

- THE MUSLIM CONFERENCE AND A DEMAND FOR 'RESPONSIBLE GOVERNMENT'

Another major event was the formation of the Muslim Conference under the President ship of Sk. Mohammed Abdullah in the year 1932. Due to the formation of the Muslim Conference the people were now able to ventilate and express their grievances in a more organized and effective manner. The people were totally dissatisfied with the Regulation No. 1 and regarded the Legislative Assembly formed under it as a 'mock' Assembly. Being totally dissatisfied with the said Regulation No. 1 the Muslim Conference made an immediate demand for 'Responsible Government', which was there and then rejected by Maharaja Hari Singh. In protest the Muslim Conference called upon the people to observe 'Responsible Government Day'. Sheikh Abdullah wanted all Muslim and Non-Muslim groups to participate in the said agitation, but the Hindus and other Non-Muslim groups refrained from participating in the said movement. However, Sheikh Abdullah's Muslim Conference was successful in winning the support of the oppressed Muslim majority population.

▪ BIRTH OF THE IDEA OF PAKISTAN AND THE INCLUSION OF KASHMIR WITHIN HER FOLD

It should be noted that during this period another interesting development was the birth of the idea of Pakistan that was to provide a separate homeland for the Muslims of North-Western India, including Kashmir as one of its primary regions. In 1930, one Muhammad Iqbal a Kashmiri Muslim suggested the formation of an Islamic State by the union of the Frontier Provinces, Baluchistan, Sindh and Kashmir forming a Federation of Muslim States. In 1933, a Cambridge student Choudhary Rehmat Ali informally floated the idea of Pakistan comprising Punjab, Afghaniya (North Western Frontier Province), Kashmir, Sindh and Baluchistan. The Muslim League rejected the idea, calling it "chimerical" and "impracticable". But later, in 1940, at the Lahore session of the Muslim League, Jinnah 'formally' proposes the idea of Pakistan.' This idea of Iqbal was further developed by Rehmat Ali to provide for a separate homeland for the Muslims. That is why Pakistan craves for inclusion of Kashmir in her fold, and so also Kashmiri Muslims.' The formation of the idea of Pakistan and the need for inclusion Kashmir in her fold is relevant as the birth of the idea of Pakistan added further complexity to the problem prevailing in Kashmir. It also throws light on the resentment that was prevailing in the minds of a section of Kashmiri Muslims at that time and to a certain extent explains why Pakistan has a special interest in Kashmir.

1.1 EVENTS LEADING TO THE DRAFTING OF THE CONSTITUTION OF JAMMU & KASHMIR

▪ THE BEGINNING OF A NEW ERA IN THE HISTORY OF THE STATE OF JAMMU & KASHMIR

A new era or saga in the history of the State of Jammu and Kashmir began with the accession of Maharaja Hari Singh (son of Raja Amar Singh) in September 1925 after his uncle's (Pratap Singh) death. The ascent of Maharaja Hari Singh to the throne of the State of Jammu and Kashmir in 1925 witnessed the beginning of certain events that were vital in the development of the constitutional history of Jammu and Kashmir. These various events ultimately lead to the accession of Kashmir with India and the drafting of the Constitution of Jammu and Kashmir. Discrimination against the Muslim population by the State's Administration resulted in dissatisfaction in the minds of the Muslim majority population. This was further aggravated by the British policy of divide and rule that instigated the Muslim masses against their Hindu ruler. British rule in India also brought with it Western education and the Western concept of freedom and liberty, which to a large extent motivated the leaders of Jammu and Kashmir in their struggle against the Maharaja. They were also motivated and inspired by the freedom struggle that was going on in India. Under these circumstances, the people of Jammu and Kashmir ultimately started an agitation with the slogan "State for State's People" that took shape of a national struggle, which shook the very foundation of Dogra Monarchy.

▪ THE BIRTH OF THE NATIONAL CONFERENCE AND THE PASSING OF THE JAMMU AND KASHMIR CONSTITUTION ACT 1939

The Muslim Conference had provided the people of Jammu and Kashmir with a platform from which they could ventilate their grievances and make their demands. In order to strengthen and broaden this platform the working committee of the Muslim Conference, on 28th June 1938, passed a resolution suggesting the change of name of the Muslim Conference to National Conference. Certain amendments were made to the Constitution of the Muslim Conference so that Non-Muslims, mainly, Hindus and Sikhs

may also participate in the National Struggle.

The newly born National Conference started its movement by observing 5th August 1938 as 'Responsible Government Day'. The said National Conference organized various meetings all over the State and by these various meetings passed resolutions to overthrow the present 'Irresponsible Government' of the Maharaja and establish a responsible government within the State. The said movement was so wide spread that the Maharaja was compelled to issue a proclamation on 11th February 1939 allowing even more constitutional rights to the people of Kashmir. The salient feature of this Proclamation was that the number of elected members of the Praja Sabha, which was previously 33, was increased to 40. The total number of members being 75, the Praja Sabha now had an elected majority over the previous official majority. However, this minor modification did not satisfy the leaders of the National Conference who demanded for a Constitution for the State that would fulfill all the demands of the people.

Maharaja Hari Singh ultimately had to give in to the demand of the National Conference. On 7th September 1939 the Jammu and Kashmir Constitution Act 1939 [Act XIV of Samvat 1996 (1939AD)] was enacted. This Act was of major importance as it made major alterations in the State's legislative, executive and judicial systems. The people were guaranteed further liberties and were given more opportunity to participate in the administration of the State. Although the said Constitutional Act of 1939 granted various rights and liberties to the people, the Maharaja did not even partially part with any of his sovereign rights in favour of the Praja Sabha,' and continued to be the absolute monarch of the State.² Under the said Act the position of the Maharaja was supreme and all powers of the State ultimately vested in him. His position could well be compared to that

of the King in Parliament in Great Britain.' He was the source of all laws and none of his actions could be questioned or judged by any one. His position continued to be supreme within and beyond the territories of the State.

It may be noted that though Maharaja Hari Singh continued to be the undisputed supreme power in Kashmir, he at least attempted to open the State's administration to the people of Kashmir. During his reign several bills were passed by the Praja Sabha and received Royal Assent and ultimately became law. But over all, these modifications in the State's administration did not satisfy the people of Kashmir, who were not interested

in participating in the State's administration under such conditions. The demand of the National Conference for a representative government and an elected legislature was not fulfilled by the Jammu and Kashmir Constitution Act 1939.

▪ GROWTH OF THE NATIONAL CONFERENCE AND TDE
'NEW KASHMIR' MOVEMENT.

The National Conference became a member of the All India Peoples Conference in 1941 and in 1946 Sheikh Abdullah was elected as the President of the All India Peoples Conference. The National Conference, under the leadership of Sheikh Abdullah, also maintained a close relationship with the leaders of the Indian National Congress. These relationships with the All India Peoples Conference and the Indian National Congress strengthened the National Conference in Kashmir in its movement against the Maharaja. On the other hand, in 1941, Ghulam Abbas revived the original Muslim Conference in Kashmir and started its own agitations. As a result of the joint agitations of the National Conference and the Muslim Conference, the political activity within the State remarkably increased. In 1944, Sir Bengal Narsingh Rao became the Prime Minister of Kashmir. He liberalized the freedom of press in Kashmir, which also had a great impact on the agitations going on in Kashmir.

On 29th and 30th September 1944, the National Conference held its Annual Session, where the delegates approved the 'New Kashmir' manifesto. The object of the said manifesto was primarily two fold. First, to frame a Constitution for the State dealing with various aspects, such as, Citizenship, National Assembly, the Ruler, Council of Ministers, Administration of Justice, Local Administration, National Language, etc. Second, to work out a National Economic Plan dealing with production, distribution, transportation, utility services, currency and finance. Under the said manifesto the Council of Ministers would now be responsible to the National Assembly and the Maharaja would be a mere Constitutional head, practically bereft of all his powers. The declaration to the Naya (new) Kashmir document states that:

"We the people of Jammu, Kashmir, Ladakh, Frontier Districts, illaqa of Poonch, Chinani in general terms called the subjects of Jammu and Kashmir, on complete equality and personal power do hereby unite to save succeeding generations from the deep pit of

oppression, poverty, dishonour, superstition and illiteracy and to put them on the path of scientific knowledge and honest labour, under a benevolent government towards a happy and peaceful valley . . . to fulfil the objective that we are destined to accomplish in our history so that our country sparkles like a jewel on the snow-white forehead of Asia. We give ourselves this constitution with this endorsement.”

Under pressure created by the combined agitations of the National Conference and the Muslim Conference, Maharaja Hari Singh, on 2^d October 1944 made a proposal of diarchy. Under the newly proposed plan, the Praja Sabha was to nominate a panel of six members, of whom two members were to be selected as Ministers by the Maharaja holding portfolios determinable by the Maharaja. The Maharaja appointed Mirza Afzal Beg and Captain Wazir Ganga Ram as ministers. The Prime Minister of the State continued to be a nominee of the Maharaja.

▪ THE ‘QUIT KASHMIR’ MOVEMENT

The said arrangement of diarchy announced by the Maharaja on 2^d October 1944 did not satisfy the people of Kashmir. Both the National Conference and the Muslim Conference strongly protested against the said proposal and ultimately by 1946, Mirza Afzal Beg resigned from the Cabinet. This resignation gave birth to the ‘Quit Kashmir’ Movement. The leaders of the National Conference were largely influenced by the freedom struggle going on in India and started the said movement in the same lines of the Quit India Movement. Though the Quit Kashmir Movement was started on the same lines of that of the Quit India Movement, both movements grossly differed. The aim of the Quit India Movement was to drive away the foreign ruler, while the aim of the Quit Kashmir Movement was to drive away the Maharaja of the State of Jammu and Kashmir. Quit Kashmir and Quit India seemed to be unrealistically equated and exploited. Quit Kashmir was against Hari Singh — a patriot par excellence — asking him to quit from his own soil whom he represented as a sovereign and an independent; who never went against his subjects and their welfare; who never was anti-India.'

For initiating the Quit Kashmir Movement against the Maharaja, on 20th May 1946, Sheikh Abdullah, along with the other leaders of the National Conference were arrested. The arrest and imprisonment of Sheikh Abdullah caught the attention of the people of both Kashmir and India. Maharaja Hari Singh had to face immense public

criticism for the arrest of Sheikh Abdullah. Ghulam Abbas, leader of the Muslim Conference, wanted to take political advantage of the fact, that most of the prominent leaders of the National Conference along with Sheikh Abdullah were behind bars and the National Conference was literally unable to operate. Ghulam Abbas approached the Maharaja for the release of Sheikh Abdullah but instead of releasing Sheikh Abdullah, the Maharaja now felt that Ghulam Abbas might now be a threat to him and on 25th October 1946, Ghulam Abbas along with other leaders of the Muslim Conference was also arrested. Though Maharaja Hari Singh tried to crush the Quit Kashmir Movement with an iron hand, the event was of major political importance and the arrests of the prominent leaders of both the National Conference and the Muslim Conference not only aggravated the situation in Kashmir but also caused immense public criticism in both Kashmir and India. The Hindustan Times wrote: whatever the situation, tyranny and repression are no cure for the problem. The State government should know that the times are over when oppression could seek obedience and faith from its subjects.'

- THE CABINET MISSION, 1946

One event that was going to have immense effect on the future of Kashmir was the independence of India. In September 1945 the National Congress passed resolution for creation of a free United India, who later under undisclosed circumstances conceded to partition of India. Lord Gavel was not in favour of the partition of India and had made efforts to transfer power to a united India under a constitution which would be just to the Hindus and to the Muslims....Had he been supported by the British Government in his effort to find a just solution, it is more than arguable that the partition of India might have been averted.² But this was not to be and in 1946 the Cabinet Mission arrived in India. On 19th February 1946 the British Government decided to send a delegation of three Cabinet Ministers to India to review the situation in British India and consider what would be the future relationship between the Great Britain and British India. The Cabinet Mission was also to consider what would be the future position of the numerous Princely States, collectively referred to as Indian India. The Cabinet Mission arrived in India on 23rd March 1946. Even though the object of the Cabinet Mission was to make recommendations, it was the duty of the Mission to be fair and just to both the main parties.' The Cabinet Mission considered the various claims made by the Indian National Congress and the Muslim League in British India, and refused to entertain any

representation made by any political group or leader, representing the people of any Princely State. On the arrival of the Cabinet Mission in India, Sheikh Abdullah approached the Cabinet Mission and submitted a Memorandum, requesting the Cabinet Mission to give special consideration to the circumstances in Kashmir, as the people there were trying to bring an end to Monarchy and were demanding Responsible Government in the State. But the Cabinet Mission stuck to its policy of not interfering with the internal affairs of the Princely States and accordingly refused to entertain the memorandum submitted by Sheikh Abdullah.

- PLAN FOR TRANSFER OF POWER

On 3rd June 1947 the British Government, on the basis of the Memorandum of the Cabinet Mission, announced a plan for the transfer of power. Under the said plan British India was divided into two dominions on the basis of religion, India for the Hindu majority areas and Pakistan for the Muslim majority areas. Over 560 odd Princely States of Indian India, which comprised one quarter of the population and nearly half the area of India, obtained sovereignty and became absolutely independent. On 17 June 1947 the Indian Independence Act was passed by the British Parliament providing the transfer of power to two newly created Dominions, viz., India and Pakistan; Section 7 of the said Act provided that the Indian Princely State could choose to have had accession with either of the Dominions.¹ The Princely States varied considerably in size, from a few square miles to great States like Baroda, Bhopal, Gwalior, Hyderabad, Indore, Kashmir, Mysore, Patiala Rajputana and Travancore.² Such a situation in the Sub-continent with such a large number of Sovereign States was likely to make the entire Sub-continent unstable, for which it was suggested that the Princely States if they so desired could accede to either of the dominions of India and Pakistan by signing an Instrument of Accession. As sovereignty was to revert back to the rulers of the Princely States, the right to accede with either of the dominions by signing the Instrument of Accession also vested in the ruler and no other. Signing the Instrument of Accession with either of the dominions meant accession of only of defence, communications and external affairs, and each Princely State was to enjoy total internal autonomy. On 29th January 1947, at a meeting of the Chamber of Princes a Resolution was adopted setting out their terms for co-operation.¹ However, to strengthen the Sub-continent, Lord Mountbatten, on 25 July

1947, while addressing a meeting of the Chamber of Princes, requested the Princes to come forward and sign the Instrument of Accession with either of the dominions of India and Pakistan. He advised the princes and their representatives that although legally they had become independent, they should accede to one or the other dominion, keeping in mind the geographical contiguity of their states. I

Accession to the Indian Dominion was governed by Section 6 of the Government of India Act, 1935. The said Act contemplated a Federal structure wherein the rulers of the Princely States had the sole right to determine the question of accession of their respective States to the Indian Federation and the State Subjects had absolutely no say in the matter. However, the Indian Federation as contemplated under the Government of India Act 1935 never came into existence. Under the Indian Independence Act, 1947, the right of accession with either of the Dominions of India and Pakistan vested solely in the ruler of the Princely State and the State subjects had no say in the matter of accession. Under the said Act there was no provision for conditional accession and that accession was to be voluntary and not under duress. Relevant Sections of the said Act are set out below: -

- Section 1. The New Dominions:

Sub-section 1: As from the fifteenth day of August' nineteen hundred and forty-seven, two independent Dominions shall be set up in India, to be known respectively as India and Pakistan.

Section 7. Consequences of setting up of the new Dominions: Sub-section 1(b): As from the appointed day the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to the Indian States, all obligations of His Majesty existing at that date towards the Indian States or the rules thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date or in relation to the Indian States by treaty, grant, usage, sufferance or otherwise;'

The said Acts of 1935 and 1947 are no more on the statutory books of India as they stand deleted and, hence, any argument under the proxy of them is an illegality.² However, the laws made under the Act of 1935, or the orders made under the Indian Independence Act 1947, shall continue to be in force by virtue of Article 372(1) of the Constitution of India 1950.

Under the plan for transfer of power the Muslim majority areas were to constitute Pakistan and the Hindu majority areas were to constitute India. As far as accession of the Princely States with either of the dominions were concerned, neither the interest of India or Pakistan, nor or the distribution of Hindu and Muslim population was of any relevance. Accession of the State was solely the decision of the Ruler of that particular State. On 15th August 1947 the Indian Sub-continent became independent from British rule and in accordance with the Cabinet Mission and the plan for transfer of Power the two new dominions of India and Pakistan were born. Kashmir, peculiarly placed, having common borders with both India and Pakistan and a Hindu ruler, ruling over a Muslim majority population, had three options open, they were, either to accede with India, or to accede with Pakistan, or to remain completely independent. The power to make such decision now vested in only the Ruler of the State and by exercise of such power, Maharaja Hari Singh opted not to accede with either of the dominions and accordingly the State of Jammu and Kashmir became absolutely independent

- ACCESSION OF THE STATE OF JAMMU AND KASHMIR

The people of Kashmir were so excited by the independence of India that even though most of the leaders of the National Conference and the Muslim Conference in Kashmir were still in prison, they regained their enthusiasm and made a fresh demand for responsible Government. Now, without the assistance of the British, Maharaja Hari Singh found it difficult to control the agitations that were going on all over the State. The agitations compelled Maharaja Hari Singh to reconsider three alternatives open before him regarding the future of the State and in order to secure the position of the State the Maharaja offered to sign Standstill Agreements with both India and Pakistan. However, a Standstill Agreement was not entered into between India and Kashmir.

Besides the political agitations going on within the State of Kashmir, the Maharaja had to face other obstacles, such as the 'Poonch Revolt', which was caused by Pakistani

infiltrators. Now without the support of the British, Maharaja Hari Singh found it difficult to tackle such situations and had to look elsewhere for military assistance. India and Pakistan were both eager to take any advantage that might arise from the problems faced by the Maharaja in keeping Kashmir independent. Pakistan, was trying its best to persuade the Maharaja to accede to Pakistan, for which both persuasive and coercive means were being used by Pakistan. For Kashmir this was a time of chaos and confusion and as a result of enormous political pressure, Maharaja Hari Singh, on the advice of his Prime Minister, released Sheikh Abdullah from prison on 29th September 1947.

The Maharaja faced further problems when thousands of Tribesmen backed by Pakistan entered Kashmir on 20th October 1947. The Dogra Army and the National Militia, set up by the National Conference, tried in vain to hold back the infiltrators who were both well equipped and well organized. On 25 October 1947 Maharaja Hari Singh appointed Sheikh Abdullah as the Emergency Administrator of Srinagar and for his own safety took refuge in Jammu. Under these circumstances, Sheikh Abdullah advised Maharaja Hari Singh to sign the Instrument of Accession with India in exchange for military assistance. On the advice of Sheikh Abdullah and left no other alternative, Maharaja Hari Singh reluctantly wrote to Lord Mountbatten, the Governor-General of India, expressing his eagerness to accede to India. The Maharaja wrote as follows — “With the conditions obtaining in my State and the great emergency of the situation as it exists, I have no option but to ask for help from the Indian Dominion. Naturally, they cannot send the help asked for by me without my State acceding to the Dominion of India. I have accordingly decided to do so, and I attach the Instrument of Accession for acceptance by your Government”.’

The instrument of Accession signed by Maharaja Hari Singh on 26^o October 1947, was identical to the Instruments of Accession signed by some 560 rulers of other Princely States. But in the case of Kashmir the

signing of the Instrument of Accession gave birth to several controversies. The main reason for controversy was Lord Mountbatten’s reply to Maharaja Hari Singh’s letter where he wrote to the Maharaja that, “In the maharaja’s authority while signing the Instrument of Accession with India. It has been pointed out in an article written by Pandit Deendayal Upadhyaya on September 12, 1960 as follows- “The question of accession has been long ago and finally settled. We cannot reopen it. If Pakistan wants to question the right of the Maharaja to sign the Instrument of Accession or of the Constituent Assembly of I & K State to ratify it, we can as well question the right of Pakistan as a separate

entity. Pakistan was created under the Indian Independence Act. The same Act put an end to the paramountcy of the then British Government and left the Maharaja of Jammu and Kashmir like any other prince sovereign in his own right to decide the future of the State .3 The signing of the instrument of Accession was a perfectly lawful and valid act. According to Dr. A. S. Anand, former Chief Justice of India, the accession of Jammu and Kashmir to the Union of India is legal and constitutional, which has been ‘ratified’ by the people of

the State. It is therefore complete, final, legal and irrevocable.’ The accession of the State was complete in law and in fact on the date when the Instrument of Accession was executed. 2 The legality of the accession was later confirmed by the Supreme Court in the Case of Virendra —vs- State of Uttar Pradesh where it held that- the act of acquisition by the Instrument of Accession by the Ruler and its acceptance by the Governor-General are both Acts of State and whose competency no court can enquire.

After the signing of the Instrument of Accession it fell upon the Indian Government to defend the State of Jammu and Kashmir from the Tribal invasions. Indian troops were deployed in Kashmir. The Indian army on entering Kashmir realized that the Tribal Invaders were not only well equipped and well organized, but were also receiving full support from Pakistan. India tried its level best to rid Kashmir of the infiltrators but when some portions were still under the control of the enemy, Pandit Jawaharlal Nehru, on the advice of Lord Mountbatten lodged a complaint against Pakistan to the Security Council under Article 35 of the Charter of Union.

▪ UNITED NATIONS ON THE ACCESSION OF KASHMIR

The United Nations Security Council passed four resolutions on Kashmir.¹ The first two resolutions were not of much importance. The first resolution of January 1948 simply directed the two Governments of India and Pakistan to take certain measures to improve the situation in the Kashmir valley. The second resolution passed on 17th April 1948 recommended the setting up of a five-member Commission “to proceed to the subcontinent and there place their good offices and mediation at the disposal of the Governments of India and Pakistan”. The said Commission consisted of representatives from Argentina, Belgium, Columbia, Czechoslovakia and the United States and visited India and Pakistan in July 1948. However, after approaching the Security Council there were prolonged deliberations

between India and Pakistan, which ultimately culminated in the next two resolutions: The United Nations Commission for India and Pakistan Resolution of August 13, 1948 (5/1100, Para 75) and The United Nations Commission for India and Pakistan Resolution of January 5, 1949 (S/1430, Para 143). Even though accession was not conditional and the legality of the Accession of Kashmir with India was not the issue before the Security Council the Indian representatives agreed to a plebiscite in Kashmir in order to determine the future status of the State. Hence the said two resolutions of the Security Council contained a provision for plebiscite as a legal solution for solving the Kashmir issue. Between 1947 and 1953 the conditional accession was kept alive in India, Pakistan, and in Jammu and Kashmir, as well as in the UN.

The United Nations Commission, consisting of representatives of Argentina, Belgium, Columbia, Czechoslovakia and the United States, visited India and Pakistan in July 1948 and put forward its proposals on August 13, 1948.² The United Nations Commission for India and Pakistan Resolution of August 13, 1948 consists of three parts; Part I, which proposes a Cease-fire, Part II, which proposes a Truce Agreement and Part III, which proposes a Plebiscite. Part III states that: “The Government of India and the Government of Pakistan re-affirm that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the truce agreement, both Governments agree to enter into consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured. The United Nations Commission for India and Pakistan Resolution of January 5, 1949 is supplementary to the Commissions resolution of August 13, 1948 and mainly deals with the method to be adopted for the implementation of the plebiscite. Article 1 of the Commissions resolution of January 5, 1949 states that: “The question of accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite.” The Commission’s resolution of January 5, 1949 further states that the plebiscite will be held when the cease-fire and truce arrangements set forth in Parts I and II of the Commission’s resolution of August 13, 1948 have been carried out and peaceful conditions have been restored in the State.

1.2 : ARTICLE 370 OF THE CONSTITUTION OF INDIA AND THE CONSTITUTION OF JAMMU AND KASHMIR.

▪ FRAMING OF THE CONSTITUTION OF INDIA 1950

British rule in India came to an end on and from 15th August 1947. The main object of the Indian Independence Act 1947 was to set up two independent Dominions in India known as India and Pakistan and after 15 August 1947, His Majesty's Government in the United Kingdom was to have no responsibility over the Government of India or Pakistan. From that date onwards, the paramountcy of the British Crown over the Indian States was to lapse also. The Indian Independence Act 1947, received Royal assent on 18th July 1947 and came into force on 15th August 1947. The Constituent Assembly set up in 1946 according to the Cabinet Mission Plan was not a Sovereign body. The Indian Independence Act 1947, established the sovereign character of the Constituent Assembly, which became free of all limitations.' It functioned as a sovereign body unfettered by any restrictions on its powers, for it had to frame a Constitution for India alone. After India became independent on 15 August 1947, it fell upon the Constituent Assembly to take up the tremendous task of drafting a Constitution for the country. On 29th August 1947 the Constituent Assembly appointed a Drafting Committee to prepare the Draft of the Constitution. The Draft Constitution as settled by the Drafting Committee was introduced in the Constituent Assembly on 4^t November 1948. B. R Ambedkar, the Chairman of the Drafting Committee, moved for its consideration on the same and in his speech stated that, -

“ No constitution is perfect and the Drafting Committee itself is suggesting certain amendments to improve the Draft Constitution. But the debates in the Provincial Assemblies give me courage to say that the constitution as settled by the Drafting Committee is good enough to make this country start with. I feel that it is workable, it is flexible and it is strong enough to hold the country together both in peace time and war time. Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is, that Man was vile”.¹

The Ministry of States suggested for consideration of the Drafting Committee the following approach to this Question:

- (1) Jammu and Kashmir State may be treated as a part of Indian territory and shown in States specified in Part III of Schedule I.
- (2) A special provision may be made in the Constltution to the effect that until Parliament provides by law that all the provisions of the Constitution applicable to the States specified in

Part III will apply to this State, the power of Parliament to make laws for the State will be limited to the items specified in the Schedule to the Instrument of Accession governing the accession of this State to the Dominion of India or to the corresponding entries in List 1 of the new Constitution.'

Not only in the announcement of the Honourable Minister for States, but also in the address of Lord Mountbatten to the Princes, it had been made clear that accession on three subjects did not imply any financial liability on the part of the States and that there was no intention either to encroach on the internal autonomy or the sovereignty of the States or to fetter their discretion in respect of the new Constitution. It was against these commitments that the State Ministry had to approach the Rulers for the integration of their States.¹ In the case of *Sayec vs Ameer Ruler Sadiq Mohammad Abbari Bhawalpur*² it has been held that the effect of the Instrument of Accession was not to make any State a part of the Dominion.

4.1 RELATIONSHIP OF THE STATE OF JAMMU AND KASHMIR WITH THE UNION OF INDIA

The relationship of the State of Jammu and Kashmir with India after the signing of the Instrument of Accession was determined by various provisions of the Constitution of India, which came into force on 26th January 1950. Article 1 of the Constitution of India 1950, which deals with the name and territory of the Union clearly includes the State of Jammu and Kashmir as a part of the Indian territory and the name of the State is also included in the First Schedule of the Constitution. Article 370 of the Constitution of India 1950, further clarifies the relationship of Kashmir with India by enumerating the heads in which the Indian Parliament would have power to make laws for the State of Jammu and Kashmir. As by the Instrument of Accession only Defense, External Affairs and Communications were acceded to India, Article 370 of the Constitution of India 1950, provided Parliament with power only to make laws for the State of Jammu and Kashmir with regards to Defense, External Affairs and Communications. Article 370 of the Constitution of India 1950 further

provided the State of Jammu and Kashmir with the right to form a Constituent Assembly to draft a Constitution for the State. On 26th January 1957 the Constitution of Jammu and Kashmir 1957, was enacted and under Section 3 of the said Constitution, the relationship of the State with the Union of India was further clarified wherein it is clearly stated that the

State of Jammu and Kashmir is an integral part of the Constitution of India.

Article 1 of the Constitution of India, 1950, deals with the name and territory of the Union'. It states as follows:

1. Name and territory of the Union. -

- (1) India that is Bharat, shall be a Union of States.
- (2) The States and territories thereof shall be specified in the First Schedule.
- (3) The territory of India shall comprise-
 - (a) the territories of the States;
 - (b) the Union territories specified in the First Schedule; and
 - (c) such other territories as may be acquired.

According to Article 1 of the Constitution of India the State of Jammu and Kashmir forms a part of the territory of India. Presently, the State of Jammu and Kashmir is the fifteenth State included in the First Schedule of the Constitution of India. Previously the State of Jammu and Kashmir was specified under the First Schedule as a Part B State but by the passing of the States Reorganisation Act 1956, Part B of the First Schedule was abolished and by the Constitution (7th Amendment) Act 1956, the State of Jammu and Kashmir was transferred with some other States of Part B to Part A of the First Schedule of the Constitution of India. Thereafter only one category of states was included in the First Schedule of the Constitution of India.

By virtue of Article 2 of the Constitution of India, 1950, Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.¹ The words "as it thinks fit" gives a discretion to the Parliament to confer a special status on a State² since there is no "theory of equality of status" in India. After the debates of the Constituent Assembly held mainly on 17 October 1949, where Mr. N. Gopalaswamy

Ayyangar enumerated the special conditions prevailing in Jammu and Kashmir⁴ special status was granted to the State.

By virtue of Article 3 of the Constitution of India, 1950, Parliament may by law form new States and alter the areas, boundaries or names of existing States.' Power of Parliament to diminish the area of any State under Article 3(c) means the power to take a part of a State and add it to another State but by no means includes the power to take a part of a State and add it to a foreign country. Parliament can even cut away the entire area of a State to form a new State or to increase the area of another State.² There is no Constitutional guarantee to continue a State existing at the commencement of the Constitution.³ It should be noted that under Article 3(c) Parliament has absolutely no power to make any law ceding Indian Territory to a foreign State. The area diminished from any State under Article 3(c) should and must continue to be a part of the territory of India.⁴ Hence no Indian State, including the State of Jammu and Kashmir, can be ceded to a foreign State. The State of Jammu and Kashmir is further safeguarded by a proviso to Article 3, which reads as follows: "Provided further that no bill providing for the 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."⁵

Under Article 370 of the Indian Constitution the State of Jammu and Kashmir enjoys a unique position. The said Article reads as follows:

370. Temporary provisions with respect to the State of Jammu and Kashmir.-

(1) Notwithstanding anything in this Constitution,-

(a) the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to-

- (i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for the State; and
- (ii) such other matters in the said list as, with the concurrence

of the Government of the State, the President may by order specify.

Explanation — For the purposes of this article, the Government of the State means the person for the time being recognized by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the 5th day of March, 1948

- (a) the provisions of article 1 and of this article shall apply in relation to that State;
- (b) such of the other provisions of this Constitution shall apply in relation to that State subject to the exceptions and modifications as the President may by order, specify;

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub- clause(b) shall be issued except in consultation with the Government of the State

Provided further that no such order which relates to the matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

- (2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of Clause (1) or in the proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.
- (3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify; Provided, that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the the President issues such a notification.

Under Article 370(1) of the Constitution of India the power of Parliament to make laws for the State of Jammu and Kashmir was limited only to matters in the Union List and the Concurrent List which, in consultation with the

Constitution is to “further define the existing relationship of the State with the Union of India as an integral part thereof.”¹ The relationship of the State with the Union of India is dealt with in Section 3 of the Constitution of Jammu and Kashmir 1957, which reads as follows: -

Section 3 - Relationship of the State with the Union of India - The State of Jammu and Kashmir is and shall be an integral part of the Union of India.

The area and territory of the State of Jammu and Kashmir that is now an Integral part of the Union of India is further defined in Section 4 of the Constitution of Jammu and Kashmir 1957, which reads as follows: **Section 4 — Territory of the State** — The territory of the State shall comprise of all the territories which on the 15th day of August, 1947, were under the sovereignty of suzerainty of the Ruler of the State.

Section 3 of the Constitution of Jammu and Kashmir, 1957 is a permanent provision and is protected by being kept beyond the amending powers of the State Legislature.² The object of Section 3 of the Constitution of Jammu and Kashmir, 1957, is to safeguard the sacred character of

national unity'. According to Section 4 of the Constitution of Jammu and Kashmir, 1957, the territory of the State shall comprise of all the territories, which on the 15th day of August 1947, were under the sovereignty of suzerainty of the Ruler of the State. This also includes the Pakistan- occupied area of Jammu and Kashmir² and for this reason the Constituent Assembly of the State thought it prudent that until the area of the State under the occupation of Pakistan ceases to be so occupied and the people residing in that area elect their representatives, twenty-four seats in the Legislative Assembly shall remain vacant and shall not be taken into account for reckoning the total membership of the assembly³. Even though the State of Jammu and Kashmir enjoys a unique and special position, the State is an integral and inseparable part of the Union of India. The relationship of the State with the Union as provided under Section 3 of the Constitution of Jammu and Kashmir 1957, is rigid and beyond the scope of amendment of the Legislative Assembly of the State.

From a study of the various statute books it is seen that the different definitions of 'India' are conflicting and confusing. Many of the Central Statutes start with the words that this Act 'extends to the whole of India except the State of Jammu and Kashmir'. Though such words are used for the purpose of jurisdiction, they are disturbing and such words are seldom used for any other State within the Union of India. The definition of India given in the General Clauses Act 1897 is quite comprehensive and does not create much anomaly. Section 3(5) of the General Clauses Act 1897, defines British India as follows:

"British India" shall mean, as respects the period before the commencement of Part III of the Government of India Act 1935, all territories and places within His Majesty's Dominions which for the time being governed by His Majesty through the

Governor General of India or through any Governor or officer subordinate to the Governor General of India, and as respects any period after that date and before the date of the establishment of the Dominion of India means all territories for the time being comprised within the Governors' provinces and the Chief Commissioners' provinces, except that a reference to British India in an Indian law passed or made before the commencement of Part III of the Government of India Act 1935, shall not include a reference to Berar.

Section 3(28) of the General Clauses Act 1897, goes on to define India as follows: "India" shall mean —

- (a) as respects any period before the establishment of the dominion of India, British India together with all territories of Indian Rulers then under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler, and the tribal areas;
- (b) as respects any period after the establishment of the Dominion of India and before the commencement of the Constitution, all territories for the time being included in that Dominion; and
- (c) as respects any period after the commencement of the Constitution, all territories for the time being comprised in the territory of India.

Section 2(1) of the Indian Independence Act 1947, describes the territories of the new Dominions as follows:

Section 2(1): Subject to the provisions of sub-sections (3) and (4) of this section, the territories of India shall be the territories under the sovereignty of His Majesty, which, immediately before the appointed day, were included in British India except the territories which, under sub-section (2) of this section, are to be territories of Pakistan.

Section 2(4) of the Indian Independence Act 1947 further adds that without prejudice to the generality of the provisions of sub-section (3) of this section, nothing in this section shall be construed as preventing the accession of Indian States to either of the new Dominions.¹

▪ MAJOR CONSTITUTIONAL ACTS AND ORDERS PRIOR TO THE FRAMING

OF THE CONSTITUTION OF JAMMU AND KASHMIR

Before dealing with the Constitution of Jammu and Kashmir 1957, it is necessary to go through the various Constitutional Acts and Orders, which were passed within the State, prior to the framing of the Constitution of 1957. Many of the provisions of these Constitutional Acts and Orders have had some effect on the present Constitution of Jammu and Kashmir, 1957. As most of the Constitutional Acts and Orders have already been dealt with in the preceding chapters only those of major significance have been dealt with in this chapter.

On 31st January 1927, Maharaja Hari Singh issued an order defining the term 'Mulki', i.e. the State Subjects. The said Order, inter alia, provided that State Subjects would be preferred over outsiders in cases of employment in the Government services and that outsiders would be unable to purchase immovable property within the State of Jammu and Kashmir. Later, on 20th April 1927 the Maharaja issued a Notification No. I-L/84, defining the State Subjects.' This Notification has been retained in Section 6 of the Constitution of Jammu and Kashmir, 1957.² On 22nd April 1934, Maharaja Hari Singh enacted the Regulation No 1 of Samvat 1991 (1934 AD) by which a Legislative Assembly called the Praja Sabha consisting of a total of 75 members was constituted. Of the 75 members, 33 members were elected members of whom 21 members were Muslims, 10 members were Hindus and 2 members were Sikhs. On 7th September 1939 the Jammu and Kashmir Constitution Act 1939 was enacted. This Act made major alterations in the State's legislative, executive and judicial systems. By virtue of Section 14 of the said Act the number of elected members of the Praja Sabha was increased from 33 to 40. The total number of members being 75, the Praja Sabha now had an elected majority over the previous official majority.' In 1944 the National Conference approved the New Kashmir Manifesto. On 2nd October 1944 Maharaja Hari Singh accepted the proposal of diarchy. Diarchy however did not satisfy the people of Kashmir.

Under the Government of India Act 1935, Section 6 governed Accession to the Indian Dominion. The said Act contemplated a Federal structure wherein the rulers of the Princely States had the sole right to determine the question of accession of their respective States to the Indian Federation and the State Subjects had absolutely no say in the matter. However, the Indian Federation as contemplated under the Government of India Act 1935 never came into existence. Under the Indian Independence Act, 1947, the right of accession with either of the Dominions of India

and Pakistan vested solely in the ruler of the Princely State and the State subjects had no say in the matter of accession. The criterion of accession of the State was solely the decision of the Ruler of that particular State. On 26th October 1947 Maharaja Hari Singh signed the Instrument of Accession. The circumstances that lead to the signing of the Instrument of accession 1947 have already been elaborated above. The Instrument of Accession states, 'I Shriman Mahandar Rajrareshwar Maharajadhiraj Shri Hari Singhji, Jammu and Kashmir Naresh Tatha Tibbet adi Deshahhipati, Ruler of Jammu and Kashmir State in exercise of my sovereignty in and over my said State do hereby execute this my Instrument of Accession'. Clause 1 of the said Instrument of Accession states as follows:
I hereby declare that I accede to the Dominion of India with the

intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purpose of the Dominion shall, by virtue of this Instrument of Accession, but subject always to the terms thereof, and for the purposes of the Dominion, exercise in relation to the State of **Jammu** and Kashmir (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935 as in force in the Dominion of India on the 15* day of August 1947 (which Act as so in force is hereinafter referred to as "the Act").

Clause 3 of the said Instrument of Accession further states:

I accept the matters specified in the schedule hereto as the matters specified in the schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.

As far as the internal administration of the State was concerned the Government of India had no power to make laws and the State internally was to continue under the sovereignty of the Ruler. This was guaranteed under Clause 8 of the Instrument of Accession which provides:

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

force in this State.

By virtue of the Instrument of Accession the Dominion of India now had jurisdiction only over three subjects, i.e. external affairs, defence and communications of the state of Jammu and Kashmir. However, for the internal administration of the State an Interim Constitution for the State of Jammu and Kashmir became necessary and on 5^o March 1948 a national Interim Government was formed. The task of adopting the New Kashmir Constitution fell upon the Praja Sabha. The first Amendment Act was enacted by Sri Yuvraj Karan, son of Maharaja Hari Singh for the purpose of delegating the power of legislation to the Constituent Assembly, which was duly elected in September 1951.'

The Jammu and Kashmir Constitution (Amendment) Act, 2008, (1951 AD) introduced, inter alia, the following amendments. Section 5 of the Jammu and Kashmir Constitution Act, 1939 [Act XIV of Samwat 1996 (1939AD)] dealing with the inherent powers of His Highness was omitted. The Council of Ministers was no longer responsible to His Highness and henceforth the Prime Minister and other Ministers were collectively responsible to the Legislative Assembly of the State. Power to make rules and standing orders was transferred to the Legislative Assembly. By virtue of this amendment the Legislative Assembly now had power to legislate on all matters concerning the State and the reserve matters under Section 24 of the Constitution Act of 1939 were omitted from the Act. This amendment was remarkable because it converted the absolute monarch into a constitutional head.

The Jammu and Kashmir Constitution (Amendment) Act, 2009. [Act XV of 2009, (1952 AD)] was the Second Amendment Act. This Amendment Act was passed by the Constituent Assembly for the purpose of putting an absolute end to monarchy in the State. The Maharaja henceforth would to cease to be a constitutional head or titular head of the State and the Amendment Act provided that the Head of the State shall be designated as the Sadar-I-Riyasat and shall be elected by the State Legislature and recognized by the President of India

The Jammu and Kashmir Constitution (Amendment) Act, 2011. [Act XLVIII of 2011 (1954 AD)] was the final amendment Act to The Jammu and Kashmir Constitution Act, 1996, (1939 AD). This Amendment Act and the Constitution (Application to Jammu and Kashmir) Order, 1954 both came into to effect on 14th May 1954. The major feature of this Amendment was that the term State Subject was omitted and new provisions for the Permanent Residents were introduced and all appeals and proceeding pending were now

transferred to the Supreme Court of India. The Constitution Act, 1939 with these various amendments served as the

In 1952 the representatives of the Kashmir Government and the Indian Government signed the Delhi Agreement.' The object of this agreement was to further clarify the subjects over which Parliament would have power to make laws with regards to Kashmir. It was agreed that the State of Jammu and Kashmir would have sovereignty in all matters except those specified in the Instrument of Accession and that residuary powers of legislation, which in case of other Indian States vested in the Center, in the case of Jammu and Kashmir would vest in the State. It was also agreed that persons who have their domicile in Jammu and Kashmir shall be regarded as citizens of India, but the State legislature was given power to make laws

for conferring special rights and privileges on the 'State Subjects'. It was also agreed that the State should also have its own flag in addition to the Union flag. However, the State flag was not a rival to the Indian flag and was recognized for its connection with the freedom movement of the State. Kashmir is the only State in the Union of India having a separate flag. It was agreed that the President of India would command the same respect in the State of Jammu and Kashmir as he does in the other States of India and Article 52 to 62 of the Constitution of India 1950 dealing with the President was made applicable to the State. With respect to the Sadar-I- Riyasat it was agreed that the Sadar-I-Riyasat was to be first elected by the State Legislature then recognized by the President of India before installation as such. In case of other Indian States the Head of the State was appointed by the President of India and as such was his nominee in contrast to the Sadar-I-Riyasat who was elected by the State Legislature. It was agreed the people were to have certain fundamental rights, but the entire chapter relating to fundamental rights of the Indian Constitution could not be made applicable to the State. With regards to the jurisdiction of the Supreme Court of India it was accepted for the time being the Supreme Court should have only appellate jurisdiction. With regards to the 'Emergency Powers' the State Government it was agreed that in event of war or external aggression the government of India would have full power to take steps and proclaim emergency but would have no power to proclaim general emergency on account of internal emergency.

▪ **FRAMING OF THE CONSTITUTION OF JAMMU AND KASHMIR**

The history of the State had developed in such a manner that the framing of a separate Constitution for the State had become almost inevitable. By virtue of the Instrument of Accession the Dominion of India now had jurisdiction only over three subjects, i.e. external affairs, defence and communications of the state of Jammu and Kashmir. However, for the internal administration of the State an Interim Constitution for the State of Jammu and Kashmir became necessary and on 5th March 1948 a national Interim Government was formed. Maharaja Hari Singh by a declaration dated 5th March 1948 also declared that as soon as normal conditions were restored in the State a National assembly would be duly elected for the purpose of framing a Constitution for the State. The task of adopting the New Kashmir Constitution fell upon the Praja Sabha. Yuvraj Karan Singh, son of Maharaja Hari Singh, delegated the power of legislation to the Constituent Assembly of Jammu and Kashmir, which was formed in September 1951 and took up the task of framing a Constitution for the State on 5th November 1951.

There can be no doubt regarding the legality of the framing of the Constitution of Jammu and Kashmir 1957. The right to frame a separate.

▪ **FEATURES OF THE CONSTITUTION OF JAMMU AND KASHMIR**

The State of Jammu and Kashmir is the only State within the Union of India having a separate Constitution and this gives rise to an apparently anomalous situation. Whether such a constitution can exist within the framework of the Indian Constitution is a debatable question and the validity of such a constitution would largely depend upon the interpretation of the various provisions of both the constitutions read in the light of one another. However, in order to understand the position of the Constitution of Jammu and Kashmir 1957, in relation to the Constitution of India 1950 it is essential to study the salient features of the Constitution of Jammu and Kashmir 1957.

A constitution may be defined as a body of fundamental rules, which regulate the activities of a State. Every State must have a constitution. James Bryce says, “The

constitution of a State or Nation consists of those of its rules or laws which determine the forms of government and the respective rights and duties of it towards its citizens and of citizens towards the government.¹ It may be described as a basic and supreme law and is distinct from a statute.³ In a pure Federal system the States or provinces are known to have their own constitutions. Even though it has been held by the Supreme Court of India that federalism envisaged in our Constitution is one of its basic features and is indestructible,¹ none of the States have their own separate Constitutions except the State of Jammu and Kashmir.

The salient features of the Constitution of Jammu and Kashmir 1957 are:

Written Constitution: Constitutions of the world are either written or unwritten. The classification of Constitutions as written and unwritten is unscientific and is now considered to be outdated. However, the Constitution of Jammu and Kashmir is a written Constitution having 158 Sections and 6 Schedules.

Partly rigid and partly flexible: A more scientific classification is to classify modern constitutions into Flexible and Rigid. The basis of this classification rests on whether the process of constitutional amendment is or is not the same as ordinary law-making process.² A flexible Constitution is one which is elastic and therefore can be changed easily. A rigid Constitution on the other hand, is one which is very difficult to change.³ The Kashmir Constitution is partly rigid and partly flexible.⁴ Matters relating to defence, external affairs and communications along with those features specified in the provision to section 147 of the Constitution of Jammu and Kashmir 1957, that is, sections 3 and 5 are considered to be rigid.¹ All other provisions of the Constitution of Jammu and Kashmir 1957 are considered to be flexible.

Not repugnant to the Constitution of India: the Constitution of Jammu and Kashmir is complementary to Indian Constitution and not repugnant to the Constitution of India. The Constitution of India provides for the framing of the Constitution of Jammu and Kashmir. It is in conformity with the Constitution of India and is so evolved that a clash seems unlikely.² However the Constitution of Jammu and Kashmir does create an anomaly as none of the other Indian States have a separate Constitution.

▪ INDO-PAKISTAN DIALOGUE ON KASHMIR

Though the Accession of Kashmir is a matter only concerning India, after the cease-fire and the intervention of the United Nations in 1949, Pakistan has somehow managed to have some say in the Kashmir issue and to this India has too often obliged. Having almost one-third of Kashmir under its occupation and some international support, India has often agreed to enter into dialogue with Pakistan, though there was no legal obligation to do so.

Simla Agreement 1972- after the defeat of Pakistan by India in December 1971, President Bhutto and Smt Indira Gandhi after a five day summit meeting at Simla, on 3rd July 1972 signed an agreement¹ wherein the Government of India and the Government of Pakistan resolved that the two countries put an end to the conflict and confrontation that have hitherto marred their relations and work for the promotion of friendly and harmonious relationship and the establishment of durable peace in the sub- continent, so that both countries may henceforth devote their resources and energies to the pressing task of advancing the welfare of their people. In the said agreement it was further agreed that in Jammu and Kashmir, the line of control resulting from the cease-fire of December 17, 1971 shall be respected by both sides without prejudice to the recognized position of either side. Neither side shall to alter it unilaterally, irrespective of mutual differences and legal interpretations. Both sides further undertake to refrain from the threat or the use of force in violation of this line. It was further agreed that the Heads of the two nations would again meet in the future to find, inter alia, a final settlement to the Kashmir issue. The Shimla Pact 1972 marked India's effort to confer legitimacy on the status quo.² However it has been said that the damage done by the Tashkent and Shimla Agreements to the basic and international status of the Kashmir issue is irreparable.³

Since the signing of Simla Agreement various summits have been held between India and Pakistan with hope of amicably resolving the differences between the two nations. The various summits briefly are as follows':

1972-Simla: Indira Gandhi and Z. A. Bhutto signed The Simla Pact. It was agreed to uphold the Line of Control and settle disputes by collateral negotiations. Bhutto gives private assurances of making the Line of Control the international border.

1987-New Delhi: General Zia-ul-Haq and Rajiv Gandhi agree to de-escalate tensions and withdraw troops from the border.

1989-Islamabad: Rajiv Gandhi and Benazir Bhutto agree not to attack each other's nuclear installations. An agreement on Sichen is stillborn.

1997-Male: I. K. Gujral and Nawaz Sharif agree to resume talks and establish a hot line between Delhi and Islamabad.

1999-Lahore: A. B. Vajpayee and Nawaz Sharif sign the Lahore Declaration to intensify efforts to resolve disputes, including Kashmir, and reduce risk of accidental or unauthorized use of nuclear weapons.

However the meeting at Agra in the year 2001 between A. B. Vajpayee and President Parvez Musharaf was a futile attempt between the two leaders to establish peace in the sub-continent. The India-Pakistan Summit failed because the two sides could not agree on the contents of a joint statement. ¹ According to foreign ministry spokesperson, “Although the commencement of the process and beginning of the journey has taken place, the destination of an agreed joint statement has not been reached.” Ultimately no agreement was signed.

4.1 POLITICAL TREND IN THE STATE OF JAMMU AND KASHMIR

The recent elections in Kashmir reflect the present political scenario in the State. After the elections the various political parties have found it difficult to form a Government for the State even by coalition. This is basically the picture all over the country both at the State and National level. The recently held elections in the State reflect the unstable position in the State and it appears that even after more than 50 years since accession none of the political parties have managed to cater to the hope and aspirations of the people of Kashmir. In Ladakh this election nobody voted. ¹ The results of the elections ² are set out below:

National	28
Conference	
Congress	20
PDP	16
B. J. P.	
	1
C. P. M.	2
B. S. P.	
	1

Independent	13
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Others	6
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TOTAL	87
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STATUS OF THE PERMANENT RESIDENTS OF KASHMIR

5.1 KOSHURS — THE PEOPLE OF KASHMIR

The people of Jammu and Kashmir, better known as Koshurs, are also referred to as Mulkis, State Subjects or Permanent Residents. They enjoy a special status within the Indian Union compared to the residents of the other States. This special status acts as a legal and social barrier between the people of the State of Jammu and Kashmir and the people of the rest of India. The special status of the Permanent Residents of Kashmir is one of the reasons for which the complete integration of Kashmir with India has not been possible and is one of the causes for resentment in the minds of the rest of the Indian population in general. Though this special status was guaranteed to the people of the State due to various socio-political factors embedded in the State's history, its existence somehow contradicts the observation made by the Supreme Court of India in *Indira Sawhney's* case, where a Constitution Bench of the Apex Court was pleased to observe that, 'India has one common citizenship and every citizen should feel that he is Indian first irrespective of any other basis'.¹ A similar view has also been expressed by the Supreme Court of India in *Raghunathrao Ganapatrao v. Union of India* where the Supreme Court was pleased to observe that in a country like ours with so many disruptive forces of regionalism, communalism and linguism, the unity and integrity of India can be preserved only by a spirit of brotherhood.

India has one common citizenship and every citizen should feel that he is Indian first irrespective of any other basis.

The division between the people of the State of Jammu and Kashmir and the rest of India is artificial and since time immemorial the State of Jammu and Kashmir been considered to be an integral part of India. It has been said that the “Country which lies to the South of the Himalayas and North to the Ocean is called Bharat and the Bharatiyas are the people of this country .3 According to this ancient definition of ‘Bharat’ and the ‘Bharatiyas’ there can be no doubt that the people of India and Kashmir are one and the same and share a common ancestry. It has also been pointed out that the people of Kashmir were originally Hindus like the rest of the Indian population and that the Princely States (of which Kashmir is one) geographically formed a part of India,4 In ancient times the territory of India stretched beyond the Indus valley and included parts of Tibet in the North. Presently the State is wedged between India and Pakistan, which prior to partition in 1947 was also a part of India.

5.2 HISTORY OF THE PEOPLE OF KASHMIR : A HISTORY OF OPPRESSION

The history of the people of Jammu and Kashmir is a history full of

oppression and exploitation. It was for this reason that certain rights and privileges were guaranteed to the Mulki or the Permanent Residents of the State. The Mulki or Permanent Residents of the State of Jammu and Kashmir enjoyed these rights and privileges both prior to independence and also after independence. The object of retaining these rights and privileges even after independence is to protect the people of the State of Jammu and Kashmir, from further oppression and exploitation. In 1750 started Afghan rule, which was a reign of terror. In order to relieve the people of Kashmir from the tyranny of the Afghan Rulers, Maharaja Ranjit Singh in 1819, sent Raja Gulab Singh to the Kashmir valley and defeated the Afghan Governor. Kashmir remained under the control of the Sikh Durbar from 1819 till 1846, when the British ultimately defeated the Sikhs. The Sikhs wanted Raja Gulab Singh to lead them in the battle against the British but Raja Gulab Singh delayed his assistance and deliberately allowed the Sikhs to

be defeated. By doing so, Raja Gulab Singh successfully won the favour of the British and on 16th March 1846, by the Treaty of Amritsar the British Government transferred the entire State of Jammu and Kashmir to Raja Gulab Singh. The said treaty nowhere mentioned what would be the rights and interests of the millions of people residing in the State. The said treaty established Dogra rule in the State, which was harsh and discriminatory against the Muslim majority population. Between 1889 and 1905, there was an onslaught of outsiders into the State. This, coupled with continued discrimination of the Muslim population, led to an agitation with a slogan, "State for State's People". This agitation later took the shape of a National Struggle and ultimately brought an end to Dogra rule in the State of Jammu and Kashmir.

A study of Kashmir's history clearly shows that the hopes and aspirations of the Kashmiri people have been throughout totally ignored. Events such as signing of the Treaty of Amritsar and signing of the Instrument of Accession are events that determined the future of the State without paying any heed to the wishes of the people of Jammu and Kashmir. Though these events were in accordance with the settled principles of law prevailing at that time, they definitely had a traumatic effect on the minds of the people of Jammu and Kashmir.

5.3 STATUS OF THE PERMANENT RESIDENT PRIOR TO ACCESSION

If Afghan rule in the Valley was a reign of terror, then Dogra rule was a reign of discrimination mainly perpetrated against the Muslim majority population of the State. The armed forces in the State are an example of such discrimination. The army consisted of mainly Dogras, Dards and Punjabi. Kashmiris in general were disqualified from military service. Maharaja Pratap Singh, like his father, Maharaja Ranbir Singh continued to exclude Kashmiris from both the Army and the civil services. This deliberate and continued exclusion of Kashmiris from serving in high posts of both the military and civil services led to the growth of dissatisfaction in the minds of the Kashmiri people. Discrimination against the Muslim majority continued during the reign of Maharaja Hari Singh. All official high posts were still occupied mainly by Dogras and Rajputs and the State Army comprised only of Dogras and Dards. Kashmiris were intentionally excluded from the Armed Forces and under the State's Arms Act only Rajputs and Dogras were permitted to own and use firearms.

Between 1889 and 1905 Maharaja Pratap Singh was temporarily dispossessed from the throne. During this period there was a great influx of outsiders from the neighbouring states into the State of Kashmir. Many of the outsiders were appointed in a large number of administrative posts. This onslaught of outsiders into the State led to an agitation with a slogan, "State for State's People" that took the shape of a National Struggle. These agitations compelled Maharaja Hari Singh to issue an order defining the term 'Mulki', i.e. the State Subjects. Under the said Order the State Subjects would be preferred over outsiders in cases of employment in the Government services. The said order also provided that outsiders, from now onwards, would be unable to purchase immovable property within the State of Jammu and Kashmir. On 20th April 1927 the Maharaja issued a notification being No. I-L/84, defining the State Subjects. This regulation was meant to protect the people of Jammu and Kashmir from outsiders coming from the neighbouring States, but discrimination within the State still continued, especially against the Muslim majority.

Another example of discrimination in the State was evident from the State's election laws. The people of the State hardly had any right to vote and the election laws were such that even during the reign of Maharaja Hari Singh voting rights were restricted to only 3% of the population. Only literate persons having an annual income of Rs.400/- or more were permitted to vote. Women and illiterates were totally debarred from exercising any franchise. By Regulation No. 1 of Samvat 1991 (1934 AD) a Legislative Assembly for the State called the Praja Sabha consisting of a total of 75 members was constituted of which 33 members were elected members. Of the elected 33 members 21 were Muslims, 10 were Hindus and 2 were Sikhs. However, Maharaja Hari Singh further issued a proclamation on 11 February 1939 increasing the number of elected members of the Praja Sabha from 33 to 40. The total number of members being 75, the Praja Sabha now had an elected majority over the previous official majority. On further demand of the National Conference, on 7th September 1939, Maharaja Hari Singh enacted the Jammu and Kashmir Constitution Act 1939 [Act XIV of Samvat 1996 (1939AD)], which made major alterations guaranteeing further opportunity to the people to participate in the administration of the State. However, the Jammu and Kashmir Constitution Act 1939 did not fulfill the demand for Representative Government with an elected legislature.

5.4 RIGHTS OF THE PERMANENT RESIDENTS AFTER ACCESSION

After accession the rights of the Permanent Residents of the State of Jammu and Kashmir continued to be protected to a large extent and they had many of the rights and privileges, which they were enjoying prior to independence. Prior to independence the State of Jammu and Kashmir was an independent State. Even after accession the permanent residents of the State of Jammu and Kashmir continued to enjoy various rights and privileges. The Constitution (Application to Jammu and Kashmir) Order, 1950¹, issued by the President of India, mainly dealt with the items specified in the Instrument of Accession. Under the said Order, Part III of the Constitution of India, 1950, dealing with Fundamental Rights was not made applicable to the Permanent Residents of the State of Jammu and Kashmir. Though the people of Kashmir were deprived of the fundamental rights, enjoyed by the citizens of India, the permanent residents of the State of Jammu and Kashmir continued to enjoy certain rights and privileges guaranteed to them under the State Subject Act 1927 read with Notification of 1932. The Constitution of Jammu and Kashmir Act 1939 (Act XIV of

1996) also did not provide for fundamental rights and legally speaking the people of the State virtually had no fundamental rights at all. Some provisions of Part III of the Constitution of India 1950 were made applicable to the State in 1952 by the signing of the Delhi Agreement. Ultimately, by the Constitution (Application to Jammu and Kashmir) Order 1954 dated 14th May 1954, Sections 2(3) and 2(4) of the Order of 1954¹ made Part II of the Constitution of India dealing with Citizenship and Part III of the Constitution of India dealing with Fundamental Rights applicable to the State of Jammu and Kashmir. Section 2(3) of the said Order made Part II of the Constitution applicable to the people of the State of Jammu and Kashmir from the date of commencement of the Constitution of India. The provisions of Part II of the Constitution of India came into force on 26.11.1949 all over India except the State of Jammu and Kashmir where it was made effective on and from 26.1.1950.

On 26th January 1957 the Constitution of Jammu and Kashmir 1957 came into force. The said Constitution does not contain any chapter dealing with fundamental rights of the permanent residents of the State. However

by virtue of the Order of 1954 the permanent residents of the State were already enjoying all the fundamental rights secured to the citizens of India under Part III of the Indian

Constitution, subject to certain modifications and exceptions. Sections 6 to 10 contained in Part III of the Constitution of Jammu and Kashmir, 1957' separately deals with the Permanent Residents. The Sections are set out below:

Section 6: Permanent Residents: (1) Every person who is, or is deemed to be, a citizen of India under the provisions of the Constitution of India shall be a permanent resident of the State, if on the fourteenth day of May 1954: -

- (a) he was a State Subject of Class I or the Class II; or
- (b) having lawfully acquired immovable In the State, he has been ordinarily resident in the State for not less than ten years prior to the date.

(2) Any person who, before the fourteenth day of May, 1954, was a State Subject of Class I or of Class II and who having migrated after the first day of March 1947, to the territory now included in Pakistan returns to the State under a permit for resettlement in the State or for permanent return issued by or under the authority of any law made by the State legislature shall on such return be a permanent resident of the State.

(3) in this section, the expression "State Subject of Class I or of Class II" shall have the same meaning as the [State Notification No. I-L/84 dated the twentieth April, 1927, read with State Notification No. 13L dated the twenty-seventh June, 1932}.

Section 7: Constitution of references to State Subjects in existing laws: Unless the context otherwise requires all references in existing law of hereditary State Subjects or to State Subject of Class I or of Class II or of Class III shall be construed as references to permanent residents of the State.

Section 8: Legislature to define permanent residents: Nothing in the foregoing provisions of this part shall derogate from the power of the State Legislature to make any law defining the classes of persons who are, or shall be, permanent residents of the State.

Section 9: Special provision for Bill relating to permanent residents: A bill making provisions for any of the following matters, namely: -

- (a) defining or altering the definition of the classes of persons who are or shall be, permanent residents of the State;
- (b) conferring on permanent residents any special rights or privileges;
- (c) regulating or modifying any special rights or privileges enjoyed by permanent residents, shall be deemed to be passed by either House of the Legislature only if it is passed by a

majority of not less than two-thirds of the total membership of that House.

Section 10: Rights of the permanent residents: The permanent residents of the State shall have all the rights guaranteed to them under the Constitution of India.

5.5 DUAL CITIZENSHIP IN CASE OF THE PERMANENT RESIDENTS

In a federal State there are normally two sets of Government — a national government and a regional government, and the citizens in a federal state hence normally enjoys a dual or double citizenship owing allegiance to both the national and the regional governments. In the United States of America, in addition to State citizenship, which is determined solely by residence, every person has a federal citizenship, which can neither be denied nor minimized.' The 14* Amendment of the Constitution of United States of America clearly lays down that all inhabitants of the U.

S. A. are primarily federal citizens and are state citizens only secondarily.* On the contrary citizenship in the Swiss Federal Republic depends primarily on citizenship of a Canton. Any person acquiring citizenship of a Canton automatically becomes a citizen of the Swiss Republic. Here Cantonal citizenship is primary and federal citizenship is secondary. In Germany federal citizenship was given priority over state citizenship and in the Soviet Union citizens are primarily Soviet citizens and were local citizens only for the purpose of elections. But the Indian Constitution, like the Canadian, does not introduce any dual citizenship, viz, - the Citizenship of India (Article 5), and birth or residence in a particular State does not confer any separate status as a citizen of that State. ¹ Every citizen has the same rights, privileges and immunities of citizenship, no matter in what State he resides.

Part II of the Constitution of India 1950, deals with citizenship. ³ Citizenship in India is extremely unitary and centralized. In India, no other Citizenship except Indian citizenship is recognized by the constitution. ⁴ For this reason under Article 11 of the Constitution of India 1950, only Parliament has power to regulate the right of citizenship by law. ⁵ The concept of dual citizenship is neither honoured under the Articles of the Constitution, nor under the Citizenship Act 1955 nor under any of the provisions of the Indian Laws. ⁶ It has been held in *K. L. Modi v. Union of India* ⁷ that dual citizenship does not seem possible under Indian laws. The system of single citizenship has been adopted in

the Indian Constitution in order to avoid any scope of discrimination between the residents of the various states of the Indian Union. In countries having double citizenship each state may discriminate against the citizens of other states.¹ However in the case of the permanent residents of the State of Jammu and Kashmir an exception to India's concept of single citizenship has been created. Part II of the Constitution of India dealing with Citizenship was not made applicable to Jammu and Kashmir State.² The Union Parliament had no power to make laws for the State on citizenship.³ The provisions of the State's Constitution read with the Constitution of India 1950, would imply that the permanent resident of the State of Jammu and Kashmir enjoy a type of double citizenship. On one hand, Part III of the Constitution of Jammu and Kashmir 1957, dealing with the Permanent Residents of the State, guarantees various rights and privileges to the permanent residents of the State. On the other hand the permanent residents of the State enjoy all the rights conferred by the Constitution of India 1950, on the citizens of the Indian Union. By this unique position, an important but very controversial exception has been made through the Constitution of India for the permanent residents of the State of Jammu and Kashmir.⁴ It has been pointed out that the citizens of India are not ipso-facto the citizen of Jammu and Kashmir. This has been a matter of irritation among the people of the country in general.⁶ The theory that the permanent residents of the State of Jammu and Kashmir enjoy dual citizenship has been refuted with the logic that Part III of the Constitution of Jammu and Kashmir 1957 abolishes the separate citizenship of the State¹ and no longer have the residents of Jammu and Kashmir a separate citizenship distinct from Indian Citizenship.

5.6 APPLICABILITY OF FUNDAMENTAL RIGHTS TO THE PERMANENT RESIDENTS

Under the Constitution (Application to Jammu and Kashmir) Order, 1950, Part III of the Constitution of India 1950 dealing with Fundamental Rights and Part IV of the Constitution of India 1950 dealing with Directive Principles, were not applicable to the State and Supreme Court of India obviously had no jurisdiction within the State in matters relating to such rights. For some time of course there was no such thing as "fundamental

rights” in Kashmir.’ The Constitution of Jammu and Kashmir Act 1939 (Act XIV of 1996) did not provide for Fundamental Rights to the State Subjects. Some provisions of Part III of the Constitution of India 1950 were made applicable to the State in 1952 by virtue of the Delhi Agreement. The Constitution (Application to Jammu and Kashmir) Order 1954 came into force on 14th May 1954. Sections 2(3) and 2(4) of the Order of 1954 made Part II of the Constitution of India dealing with Citizenship and Part III of the Constitution of India dealing with Fundamental Rights applicable to the State of Jammu and Kashmir. However, the State legislature would have power to make special provisions for the permanent residents of the State and for that purpose Section 2(4)(j) of the Order of 1954 inserted Article 35A in the Constitution of India 1950.³ Discriminatory and special rights as regards employment, acquisition of property and settlement have been conferred on permanent residents of the State by inserting new Article 35A in the Constitution. Article 35A reads as follows: -

ARTICLE 35A: Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and

Kashmir, and no law hereafter enacted by the Legislature of the State, -

- (a) defining the classes of persons who are, or shall be permanent residents of the State of Jammu and Kashmir; or
 - (b) conferring on such permanent residents any special rights and privileges, or imposing upon other persons any restrictions, as respects: -
 - (i) employment under the State Government;
 - (ii) acquisition of immoveable property in the State;
 - (iii) settlement in the State; or
 - (iv) right to scholarships and such other forms of aid as the State Government may provide;
- shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens on India by any provisions of this part.

Though fundamental rights were made applicable to the permanent residents of the State there are some exceptions and variations to their applicability. Right to Equality is enshrined in Articles 14 to 18 of the Constitution of India 1950. Article 14, dealing with equality before law and Article 15,² dealing with prohibition of discrimination on grounds

of

religion, race, caste, sex or place of birth both apply to the State of Jammu and Kashmir. However, as there are no Schedule Tribes in the State of Jammu and Kashmir, Article 15(4), to that extent has no application in the State of Jammu and Kashmir. Article 16,' dealing with equality of opportunity in matters of public employment also applies to the State of Jammu and Kashmir with the exception of clause(3), which provides that Parliament shall also have power to make laws prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union Territory, any requirement as to residence within that State or Union Territory prior to such employment or appointment. In the case of Jammu and Kashmir this power has been vested in the in the State Legislature by virtue of Article 35A of the Constitution of India.² Again Articles 17³ and 18⁴ dealing with abolition of untouchability and abolition of titles apply to the State of Jammu and Kashmir without any modification. Right to Freedom is enshrined in Articles 19 to 22 of the Constitution of India 1950. In 1950, under Article 19⁵ of the Constitution of India 1950, the citizens of India enjoyed the following seven freedoms:

- (a) Right to freedom of speech and expression

- (b) Right to assemble peaceably and without arms
- (c) Right to form associations or unions

- (d) Right to move freely throughout the territory of India

- (e) Right to reside and settle in any part of the territory of India

- (f) Right to property

- (g) Right to practice any profession, or to carry on any occupation, trade or business.

However, by virtue of the Constitution (44 Amendment) Act 1978,' the right to property ceased to be a fundamental right with effect from 20th June 1979. These rights are not available to a person who is not a "citizen of India ." ² The Legislature has the right to impose restrictions on the freedoms guaranteed under Article 19 under certain conditions. The 'sovereignty and integrity of India' was inserted as a ground of restriction by the

Constitution (16^o Amendment) Act 1963,³ with effect from 6^o October 1963. The object was to enable the State to combat cries for secession and the like from organizations such as the Dravida Kazhagam in the South and the Plebiscite Front in Kashmir.⁴ Article 19 of the Constitution of India 1950, applies to the permanent residents of the State of Jammu and Kashmir with the primary difference that in the case of the permanent residents, the freedoms of assembly, association, movement, residence and property shall be subject to an additional ground of restriction, being the 'Security of State'. This special provision was made in view of the peculiar circumstance in which the State is placed.¹ Article 20, dealing with protection in respect of conviction for offences are available to persons residing in any part of India irrespective of his nationality. Article 21, dealing with protection of life and personal liberty also applies to the people of the State of Jammu and Kashmir without any modification or variations. Article 22, dealing with protection against detention in certain cases applies to the State of Jammu and Kashmir with the exception that the power of legislation with regards to preventive detention shall belong to the State Legislature and not Parliament. Right against exploitation is enshrined in Articles 23 and 24 of the Constitution of India 1950. The protection of Article 23 is available to both citizens as well as non-citizens. The Supreme Court while dealing with Article 24, in the case of Labours Working on Salal Hydro Project v. State of Jammu and Kashmir , stated that construction work is a hazardous employment and children below the age of 14 cannot be employed in the work. Right to freedom of religion and cultural and educational rights enshrined in

Articles 25 to 30 of the Constitution of India 1950 apply to the State of Jammu and Kashmir without any additions or alterations.

The right to property guaranteed under Articles 19(1)(f) and 31 of the Constitution, ceased to be a fundamental right by virtue of the Constitution (44th Amendment) Act 1978, with effect from 20th June 1979. However the Constitution (44th Amendment) Act 1978, did not totally erase the said right from the Indian Constitution and inserted the right to property as a constitutional or legal right guaranteed under Article 300A³ of the Constitution of India. This Article is an exact reproduction of the repealed Article 31(1). However all the other Clauses of Article 31 stand repealed. Article 300A applies to both to natural and juristic persons, as well as, to aliens.

However it is interesting to note that the fundamental rights guaranteed under

Part III of the Constitution of India 1950, are further subject to Article 35A of the Constitution of India 1950. By virtue of Article 35A, legislation of the State that is inconsistent with the fundamental rights guaranteed under the Indian Constitution shall be valid, in case of discrimination on grounds of place of birth, equality of opportunity for employment, right to acquire, hold and dispose of property, and the right to reside and settle in any part of the territory of India. This special treatment for Kashmiris seems to be a violation of the generally accepted principle of 'equality before oflaw, as permanent residents of Kashmir and citizens of India in the same sense as any person belonging to any other State of India.

5.7 NEED FOR PROTECTION OF THE RIGHTS OF THE PERMANENT RESIDENTS

The special status enjoyed by the permanent residents of the State of Jammu and Kashmir has caused great controversy and even though various Central Governments, over the years, have accepted the special status enjoyed by the permanent residents, they have done so, sometimes reluctantly and with protest. But for various social and political reasons there has been no rash attempt to abrogate this special status of the permanent residents. Indian government has been honouring both in letter and spirit this aspect of the Constitution of Jammu and Kashmir. 2 The logic for retaining this special status has been to protect the people of the State of Jammu and Kashmir from further exploitation. But the relevant question here would be, protection from whom? By virtue of Notification No. I-L/84 of 1927, the State Subjects would be preferred over outsiders in cases of employment in the Government services and outsiders would be unable to purchase immoveable property within the State of Jammu and Kashmir. At that time the State of Jammu and Kashmir was an independent State and in the circumstances then prevailing such a restriction was quite reasonable. However, now that the State of Jammu and Kashmir is an integral part of India and the permanent residents are Indian citizens, the proposition of enjoying a special status truly seems unfair and unreasonable. To consider fellow Indians outsiders is not only painstaking but also hits at the very roots of the concept of fraternity as envisaged in the Constitution of India, which is the basis of integrity of this diverse

nation. These special provisions are a threat to Gandhiji's dream of "an India in which all communities shall live in perfect harmony."

It has been reasoned that: "The special treatment has been accorded to the 'permanent residents' to safe guard them from exploitation from outside. As compared with other parts of India, Kashmir is backward in the educational and economical fields; Kashmiris have long been exploited by their well-to-do neighbors. It was necessary to make special provisions to enable them to develop so that they could deal with other Indian citizens on equal terms.

POSITION OF THE CONSTITUTION OF INDIA 1950

6.1 SALIENT FEATURES OF THE CONSTITUTION OF INDIA 1950

The Constitution of a country is considered to be the supreme law of the land. The term Constitution may be defined as the body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised. ¹ As in the U.S.A., the Indian Constitution provides for the supremacy of the constitution, which is the supreme law of the land.² It has been held that in India the Constitution is supreme and Parliament

and State Legislature must act only within the limits of their respective legislative spheres as demarcated in three legislative lists occurring in Schedule VII to the Constitution but they must observe all other limitations on their powers such as the fundamental rights which they on no account transgress. ³ The Supreme Court of India in the Case of *Kesavananda Bharati v. State of Kerala* has held that the Supremacy of the Constitution part of the basic structure of the Constitution and hence is not amendable. It has also been held that the federal nature of the Constitution is also a part of the basic structure of the Constitution and therefore outside the scope of

the amending power.¹ The Constitution of India is also the mother of all laws and any law inconsistent with or in derogation of the Constitution of India shall be void to that extent. The circumstances under which the Constitution of India 1950 was drafted has already been discussed above. The present chapter aims at analyzing how the Constitution of Jammu and Kashmir 1957, exists within the framework of the Indian Constitution. The Constitution of Jammu and Kashmir 1957, is complementary and not repugnant to the provisions of the Indian Constitution, though it creates an apparent anomaly to the doctrine of Constitutional

Supremacy.

The Constitution of India has been described as a federal Constitution. However there is some confusion as whether the Constitution is Federal or Unitary or Quasi-Federal. A federal Constitution normally has the following characteristics: -

- a) There should be a distribution of Powers between the Central and State Governments.
- b) The Constitution should be Supreme and neither the Central nor State Government should override its provisions.
- c) There should be a written Constitution, without which, Supremacy of the Constitution cannot be maintained.
- d) The Constitution should be a rigid Constitution, which cannot be easily amended.
- e) There must be an independent judiciary having authority to prevent the Central and State Governments from usurping each other's powers.

The Indian Constitution provides for a Distinctive Federation. It differs from other Federal Constitutions in the following manner: -

- a) In India there is only one Constitution, i.e., the Constitution of India 1950. The States (except the State of Jammu and Kashmir) have no right to frame their own Constitutions. Dr. Ambedkar stated, "The Constitution of the Union and of the States is a single frame from which neither can get out and within which they must work."
- b) The Constitution of India provides for only one citizenship, i.e.

Indian Citizenship, unlike other Federal Constitutions that provide for a system of dual citizenship. The Supreme Court has held that India has one common citizenship and every citizen should feel that he is Indian first irrespective of any other basis.'

- c) In Federal systems there is normally a dual polity. The Constitution of India maintains a **unity** in basic matters. There is, a single judiciary, uniformity in fundamental laws and a common All-India Service.
- d) Under the Indian Constitution the State and Union are not rivals.

Each is intended to work harmoniously in its own sphere without impediment by the other, with an overriding power of the Union where it is necessary in the public interest.³ Though under normal conditions the Indian Constitution is federal, in times of emergency it can become unitary.

6.2 BASIC STRUCTURE OF THE CONSTITUTION AND ITS AMENDMENT

Part XX of the Constitution of India 1950 deals with Amendment of the Constitution. Under this Part there is only one Article, that is, Article 368, which deals with the power of Parliament to amend the Constitution and procedure therefore.' By virtue of this Article Parliament has power to amend each and every Article of the Constitution, however, without destroying the 'basic structure' of the Constitution. Provision for amendment of the Constitution is made with the view to overcome the difficulties, which may encounter in future in the working of the Constitution.* If no provisions were made for amendment of the Constitution, the people would have recourse to extra constitutional method like revolution to change the Constitution. ³ The Indian Constitution is federal in structure and unitary in spirit. The process of amendment of the Constitution of India is partly rigid and partly flexible, i.e., it stands midway between the extreme rigidity of the U.S.A. Constitution and extreme flexibility of the British Constitution.⁴

In the case of *Sankari Prasad v. Union of India*,² the Supreme Court of India held that the power of amendment, including the amendment of fundamental rights was contained in Article 368 of the Constitution. After this landmark decision, several amendments of Part III of the Constitution of India 1950, dealing with fundamental rights, were made by the Constitution (4th Amendment) Act 1955 and the Constitution (7th Amendment) Act 1956.³ The Supreme Court in the case of *Sajjan Singh v. State of Rajasthan*⁴ further upheld the decision of *Sankari Prasad's* case. However in the case of *Golaknath v. State of Punjab*⁵ an 11-Judges bench of the Supreme Court held by a majority of 6:5 that the fundamental rights guaranteed under the Constitution of India 1950 were outside the amendatory process as laid down under Article 368, hence reversing the previous view taken by the Supreme Court. In order to remove the difficulties created by the Supreme Court in *Golaknath's* case Parliament enacted the Constitution (24th Amendment) Act 1971,' which not only restored the amending power of the Parliament but also extended its scope by adding the words "to amend by way of addition or variation or repeal any provision of this constitution in accordance with the procedure laid down in this Article."²

Article 368 deals with amendment of the Constitution of India 1950. However, Article

368 is limited by a proviso, which is essential in order to

maintain the federal structure of the Constitution. The Proviso states as follows: -

Provided that if such amendment seeks to make any change in —

- (a) Article 54, article 55, article 73, article 162 or article 241, or
- (b) Chapter IV of Part V, Chapter V of Part VI or Chapter 1 of Part XI, or
- (c) Any of the Lists in the Seventh Schedule, or
- (d) The representation of States in Parliament, or
- (e) The provisions of this article,

The amendment shall also require to be ratified by the legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

Article 368 of the Constitution of India applies to the State of Jammu and Kashmir, but is subject to a further limitation inserted by a second Proviso' and is applicable solely to the State of Jammu and Kashmir. It states as follows:

Provided further that no such amendment shall have effect in relation to the State of Jammu and Kashmir unless applied by order of the President under clause (1) of Article 370.

This ~~Proviso~~ to Article 368 is in conformity with the Constitutional position of the State of Jammu and Kashmir within the framework of the Indian Constitution and is designed to protect that position.' Regarding Article 370 the Supreme Court has pointed out that Article 370 is a special provision for amending the Constitution in its application to the State of Jammu and Kashmir and Article 368 does not curtail the power of the President under Article 370.* The Constitution of Jammu and Kashmir 1957 provides for its own amendment in the procedure laid down under Section 147 of the Constitution of Jammu and Kashmir 1957.'

6.3 CENTRE-STATE RELATION UNDER THE CONSTITUTION OF INDIA

Part XI of the Constitution of India 1950 dealing with relations between the Union and the States is divided into two chapters. Chapter I, deals with Legislative Relations and Chapter II, deals with Administrative Relations.⁴

Chapter I of Part XI dealing with legislative relations consists of Articles 245 to 255. Article 245 deals with the extent of laws made by Parliament and by the Legislatures of the States and Article 246 deals with the subject matter of laws made by Parliament and by the Legislatures of the States. Article 245 defines the ambit or territorial limits of the legislative powers vested in Parliament and the Legislatures of the States; Article 246 defines the respective jurisdiction of the Union and the State Legislatures as regards subjects or topics of legislation.' The Seventh Schedule of the Constitution of India provides three list: List I or the Union List containing 97 items over which the Union Parliament has exclusive powers of legislation; List II or the State List containing 66 items over which the State Legislatures have exclusive powers of legislation and List III or the Concurrent List containing 47 items over which both the Union and the State Legislatures can make laws. However, in case of any conflict on a matter in the Concurrent List the Union Act shall override the State Act. Article 248 deals with residuary powers of legislation. Article 248(1) states that Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List. This power has been further reiterated in Item 97 of List I. Under Section 104 of the Government of India Act 1935,² residuary power of legislation was given neither to Federal Legislature nor to the Provincial Legislature. It was left to the discretion of the Governor General to assign these powers to either Legislature.¹ Under Article 249 Parliament shall have power to legislate with respect to a matter in the State List in the national interest. Under this Article the Union Parliament may make laws for any item of List II (State List), if it has become a matter of national interest, without amending the Constitution of India. In August 1986 the Union Government extended the operation of this Article to Jammu and Kashmir by amending the Presidential Order of 1954 and the Rajya Sabha also passed a resolution under clause (1) authorizing Parliament to make laws on the State List in order to control infiltration of extremists from across the border with Pakistan. The matter was, however, not pursued further.² Article 250 provides that Parliament shall have power to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation. Article 254 provides that in case of any inconsistency between laws made by Parliament and laws made by the Legislatures of

States or if any provision of a law made by a Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, then the law made by the Legislature of the State shall to the extent of the repugnancy be void.

Part XI dealing with Centre-State relations does not apply to the State of Jammu and Kashmir and to other Indian States equally. The Constitution of India also does not guarantee equal treatment of the all the States and the Constitution provides for several instances where the States have been dealt with differently.² Some of the exceptions enjoyed by the State of Jammu and Kashmir regarding the legislative relation between the Centre and the State are discussed below.

Article 246 dealing with Subject matter of laws made by Parliament and by the Legislatures of the State applies to the State of Jammu and Kashmir with several exceptions. Article 248 dealing with residuary powers of legislation provides that residuary power of legislation shall vest solely in Parliament and not the States. In the case of Jammu and Kashmir the residuary power of legislation shall vest in the State and not in Parliament. The only real limitation to the legislative power of the State of Jammu and Kashmir is that the matter must not be within the exclusive jurisdiction of Parliament.' The Jammu and Kashmir Legislature had the legislative competence to enact laws on any subjects which comes within List II, Schedule VII by virtue of the residuary power it had been given by the Presidential Order viz. Constitution (Application to Jammu and Kashmir) Order 1954.^o By virtue of Article 253, dealing with legislation giving effect to international agreements, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. This power of Parliament is restricted in the case of the State of Jammu and Kashmir by a proviso, which states —

Provided that after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1948, no decision affecting the disposition of the State of Jammu and Kashmir shall be made by the Government of India without the consent of the State.³

Regarding Administrative relations the State of Jammu and Kashmir also enjoys certain extra privileges over the other Indian States. Article 256 dealing with Control of States and the Union applies to the State of Jammu and Kashmir subject to the following proviso: -

The State of Jammu and Kashmir shall so exercise the executive power as to facilitate the discharge by the Union of its duties and responsibilities under the Constitution in relation to that State, and in particular, the said State shall, if so required by the Union, acquire or requisition property on behalf and at the expense of the Union, or if the property belongs to the State, transfer it to the Union on such terms as may be agreed, or on default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India.

Article 261 dealing with Public acts, records and judicial proceedings applies to the State of Jammu and Kashmir. However, in the case of the State of Jammu and Kashmir, the State and not the Union, shall have power to lay down the manner in which the acts, records and proceedings shall be proved. Article 262 dealing with adjudication of disputes relating to waters of inter-State rivers or river valleys and Article 263 dealing with provisions with respect to an inter-State Council both apply to the State of Jammu and Kashmir. The State of Jammu and Kashmir is a member of the North Zone Council. ¹

6.4 REPORTS ON CENTER—STATE RELATIONSHIP

The Constitution of India 1950 is a comprehensive statute catering to the needs of the world's second largest population. It not only acts as a Constitution for the Union but also acts as a Constitution for the States of the Union. It also clearly demarcates those areas in which both the Union and the States shall have jurisdiction. In case of any dispute between the Union and the States or between the States inter se the Constitution of India also provides the remedy. However, often the States have not been satisfied with the powers entrusted to them and have made demands for more power and autonomy. One of the major causes for such demands would be the change in the political scenario of the Country caused by the growth of regional parties and the erosion of national parties leading to fragile coalition Governments at the Centre. In many States the demand for further autonomy has led to terrorism and insurgency.

The Government of Tamil Nadu set up the Rajamannar Committee to review Centre-State relationship under the Federal System, and to recommend necessary changes to the present Centre-State Relationship as

embodied in the Constitution of India. The object of the Committee headed by P. V. Rajamannar, a retired Chief Justice of the Madras High Court, was to “secure utmost autonomy to the State.” On 27^o May 1971, the Committee submitted a report making several recommendations enhancing the autonomy of the States.¹ However, as the State Government appointed the Committee, the Centre fejected the recommendations with an observation that further autonomy, as recommended could lead to National disintegration. It is interesting to note that the Rajamannar Committee also recommended the retention of the special status of the State of Jammu and Kashmlr Within the Union of India.

The Working Committee of the Shiromani Akali Dal also recommended more autonomy to the States. On 17th October 1973, the Working Committee of the Shiromani Akali Dal passed the Anandpur Resolution. The main suggestions of the Anandpur Resolution was the right to frame a separate Constitution for the State² and to make the Constitution of India federal in the real sense and to ensure that the authority and the representation of all the States are equal at the Centre.³

6.5 EMERGENCY PROVISIONS UNDER THE CONSTITUTION OF INDIA

Part XVIII' of the Constitution of India 1950 deals with the Emergency Provisions. One of the most unique characteristics of the Indian Constitution is that in normal times, the Constitution is framed to work as a federal system, but in times of war and other national emergencies it is designed to work as though is were unitary. ² The Constitution of India provides for 3 types of emergency :-

- a) National Emergency: due to war, external aggression or armed rebellion(Article 352)
- b) State Emergency: due to failure of Constitutional machinery in the States (Article 356)
- c) Financial Emergency: (Article 360)

Article 352 of the Constitution of India 1950, dealing with Proclamation of Emergency states that if the President is satisfied that a grave emergency exists whereby the security of India or any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, he may, by Proclamation make a declaration to that effect

may be specified in the Proclamation. However, such a Proclamation will cease to operate after one month. Such Proclamation is to be laid before each House of Parliament, which may approve, reject or take no action. If approved by both Houses then the Proclamation shall continue to operate for six months. Article 353 deals with the effect of Proclamation of Emergency, both executive and legislative and Articles 354 deals with the application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation. Article 355 dealing with the duty of the Union to protect States against external aggression and internal disturbance states that it shall be the duty of the Union to protect every State against external aggression or internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of the Indian Constitution. Article 356 dealing with the provisions in case of failure of constitutional machinery states that if the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Indian Constitution, the President may declare a State Emergency. Article 357 deals with the exercise of legislative powers under Proclamation issued under article 356. Under this Article the federal distribution of legislative powers shall give way to the extent provided in Article 357(1).¹

6.6 SUPREMACY OF THE CONSTITUTION OF INDIA

The demand for responsible government and the right to frame a constitution for the Jammu and Kashmir State was the demand of the people of Kashmir much prior to the Indian independence. The convening of the Constituent Assembly in 1951 is a natural outcome of the desire of the people of the State to have a democratic government responsible to the legislature, elected by the people.¹ The Jammu and Kashmir Constituent Assembly was established in September 1951 and started its work on 5th November 1951. The State of Jammu and Kashmir is the one State within the Indian Union to have a separate Constitution. However the right to have a separate Constitution is been guaranteed by the Constitution of India 1950 itself. The question is, whether the existence of a separate Constitution for the State of Jammu and Kashmir is repugnant to the Constitution of India in any manner whatsoever and whether the separate

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Constitution of the State has usurped any of the powers of the Union as provided under the Indian Constitution.

The above discussion has pointed out some of the modifications made in the Constitution of India in areas such as Union and State Relations and emergency provisions. The Constitution of Jammu and Kashmir 1957 has been drafted in such a manner so as to avoid the possibility of any repugnancy with the Constitution of India. It has been pointed out that 'the Constitution of Kashmir is in no way repugnant to the Constitution of India but is complementary to it. It is to be read with that Constitution insofar as that is applicable to the State. It is in conformity with the Constitution of India and is so evolved that a clash seems unlikely.'" In order to avoid any confusion Section 3 of the Constitution of Jammu and Kashmir 1957 makes it absolutely clear that 'The State of Jammu and Kashmir is and shall be an integral part of the Union of India. Section 5 of the Constitution of Jammu and Kashmir deals with the extent of Executive and Legislative Power of the State and states 'the executive and legislative power of the State extends to all matters except those with respect to which Parliament has power to make laws for the State under the provisions of the Constitution of India. In order to avoid any future conflict between the Centre and the State, both Sections 3 and 5 of the Constitution

of Jammu and Kashmir 1957 have been kept beyond the scope of Section 147¹ of the Constitution of Jammu and Kashmir 1957, which deals with the amendment of the Constitution. List III in the Seventh Schedule of the Constitution of India, referred to, as the Concurrent List was not made applicable to the State of Jammu and Kashmir in order to avoid any conflict between the Centre and the State. However, by virtue of the Constitution (Application to Jammu and Kashmir) Amendment Order 1963, List III dealing with concurrent powers of legislation has been made applicable to the State of Jammu and Kashmir with certain modifications.

The two Constitutions have been framed in such a manner that both may co-exist harmoniously with the minimum possibility of any conflict. Both the Constitutions exist in the true spirit of a federal system where there are separate Constitutions for the Central and State Governments. There is little scope for the Constitution of Jammu and Kashmir to

offend any of the provisions of the Indian Constitution. However, since the State of Jammu and Kashmir is the only State in the Indian Union having a separate Constitution, it creates an anomaly compared to the other Indian States. The existence of a separate Constitution for the State of Jammu and Kashmir, does not threaten the Constitution of India and the doctrine of Supremacy of the Constitution applies to the Indian Constitution without any exception. The Constitution of India 1950 is beyond doubt supreme and the existence of a separate Constitution for the State of Jammu and Kashmir does not in any manner effect such supremacy.

6.1 BASIC STRUCTURE OF THE CONSTITUTION AND ITS AMENDMENT

Part XX of the Constitution of India 1950 deals with Amendment of the Constitution. Under this Part there is only one Article, that is, Article 368, which deals with the power of Parliament to amend the Constitution and procedure therefore.' By virtue of this Article Parliament has power to amend each and every Article of the Constitution, however, without destroying the 'basic structure' of the Constitution. Provision for amendment of the Constitution is made with the view to overcome the difficulties, which may encounter in future in the working of the Constitution.* If no provisions were made for amendment of the Constitution, the people would have recourse to extra constitutional method like revolution to change the Constitution.³ The Indian Constitution is federal in structure and unitary in spirit. The process of amendment of the Constitution of India is partly rigid and partly flexible, i.e., it stands midway between the extreme rigidity of the U.S.A. Constitution and extreme flexibility of the British Constitution.

Changes due to Scrapping of Article 370

This article made Jammu and Kashmir near autonomous. Now revoking of this article will make Jammu and Kashmir ordinary from extraordinary. Which means all the laws which were exempted for it will be applicable as per the Constitution Order, 2019. Which means the state is now allowed to declare emergency in the state. Jammu and Kashmir assembly will not be able to clear any bills within the state. The aspects which are affected by the repealing of Article 370 are observed below:

- Constitution of Jammu and Kashmir: As for a fact, we know about the separate

constitution of Jammu and Kashmir, but with the scrapping of Article 370, it will no longer have a separate constitution. It has to abide by the supreme law of India, Constitution of India.

- Citizenship to its people: Article 370 promised dual citizenship to the people of Jammu and Kashmir but after scrapping it, all the people of J&K will be the citizens of India only. They will come under the purview of Indian Citizens and will be recognized as the same by the other nations of the world.
- Fundamental rights of its citizen: Prior to the scrapping of the article, the people of J&K did not enjoy all the rights ensured by the Indian Constitution. It could not enjoy completely due to the special status and dual citizenship provided to it.
- Flag of J&K: Hereafter, the privilege of having a separate flag for the state is withdrawn. J&K will be having only the Indian flag of India. And it will be on par with the entire Country.
- National Anthem: Jammu and Kashmir have to forgo their state Anthem and adopt the National Anthem of India. And are hereafter demanded to respect and honour the same.
- Working of the legislature: The legislature of the J&K will be no different from the other state legislatures. The Jammu and Kashmir legislature will no longer be able to clear bills with respect to the state.
- Application of Indian Laws: Earlier, only state laws were applicable to the state of Jammu and Kashmir but not now. All the central laws will be applicable to this state. Also earlier, except for defense, foreign affairs, finance and communications, Parliament needed the state government's approval but with the removal of Article 370, the parliament need not ask state's approval for applying laws and is also at liberty to change state's name and its boundaries.
- Geographical changes: Jammu and Kashmir which was a state of India with the exclusive special provision with Ladakh being part of it is now Bifurcated as two union territories with J&K as one and Ladakh as another. Where J&K is a union territory with legislature and Ladakh is the one without legislature.
- Ownership of Property: Before, only the citizens of Jammu and Kashmir were able to buy and sell property in Jammu and Kashmir will not be restricted only to Jammu and Kashmir citizens but also is extended to all the citizens of India.

CHAPTER 2 : RESEARCH METHODOLOGY

2.1 OBJECTIVES

- To study the Article 370.
- To study the recent developments in Jammu and Kashmir due to Article 370.
- To study the issues faced by residents of Jammu and Kashmir due to Article 370.

2.2 HYPOTHESIS

- Article 370 of Indian Constitution is favorable for Jammu and Kashmir.
- Article 370 of Indian Constitution is not favorable for Jammu and Kashmir.

2.3 COLLECTION OF DATA

Since the objective of research is to study the Article 370, to study the recent developments in Jammu and Kashmir due to Article 370 and to study the issues faced by residents of Jammu and Kashmir. It is very important to know the view of Citizens. For this purpose, the best source is by issuing questionnaire to public.

- PRIMARY DATA

A questionnaire was used to conduct the whole survey. To control the response bias and to increase the reliability of data, a structured pattern of question was also used in the questionnaire. The advantages of using this specified construction of the questionnaire are being administrative simplicity and easy in data processing analysis, and its interpretation.

- SECONDARY DATA

Secondary data refers to data that was collected by someone other than the user. Common sources of secondary data for social science include censuses, information collected by government departments, organizational records and data that was originally collected for other research purposes. Primary data, by contrast, are collected by the investigator conducting the research.

Secondary data analysis can save time that would otherwise be spent collecting data and, particularly in the case of quantitative data, can provide larger and higher-quality databases that would be unfeasible for any individual researcher to collect on their own. In addition, analysts of social and economic change consider secondary data essential, since it is impossible to conduct a new survey that can adequately capture past change and/or developments. However, secondary data analysis can be less useful in marketing research, as data may be outdated or inaccurate.

The secondary data can be both qualitative and quantitative. The qualitative data can be obtained through newspapers, diaries, interviews, transcripts, etc., while the quantitative data can be obtained through a survey, financial statements and statistics.

- SAMPLING DESIGN

Sampling is that part of statistical practices concerned with the selection of a subset of

individual observations within a population of individual intended to yield some knowledge about the population of concern, especially for the purpose of making predictions based on statistical inference. Random sampling method is adopted in this study. Survey method has been followed for gathering the information from the respondents. A sample is called a random sample for each unit of the population has an equal chance a being selected for the sample. The research was done on the basis of a structured questionnaire 100 respondents were interviewed in and around Mumbai. Questionnaire was distributed to people of various classes and standards.

- SAMPLING AREA

A method in which an area to be sampled is sub-divided into smaller blocks that are then selected at random and then again sub-sampled or fully surveyed. This method is typically used when a complete frame of reference is not available to be used. The sample size for this study is 100 samples. The sampling area covers the city. Data has been collected from residents of India.

- SAMPLING METHOD

The basic type of random sample is known as a simple random sample, one in which each person or item has an equal chance of being chosen. Often a population contains various distinct groups that differ on the attribute that is being researched. Random sampling is the best method for ensuring that a sample is representative of the larger population

- SAMPLING TECHNIQUE

In this study 100 samples have been selected by convenience sampling method from the population of Mumbai. This means collection of information from members of population who conveniently available to prove it. Convenience sampling is most often used during the exploratory phases of research project and its perhaps the best way of getting basic information quickly and efficiently.

- LIMITATIONS OF THE STUDY

1. The data was collected only from States like Maharashtra, Gujarat, Kerala and Rajasthan.
2. The results of the analysis are solely dependent on the information provided by the respondents.
3. The sample size is limited to 100 respondents.
4. The selection of area/geographic location and the size of the sample is a limitation of the study in terms of generalization of the results to another region.

CHAPTER 3: REVIEW OF LITERATURE

Anand (2014), article 370 of the Indian Constitution, granted the special status of Jammu and Kashmir, an area developed in the north of the Indian subcontinent that was limited by India as a state from 1954 until October 31, 2019 and a little more than Kashmir since 1947. There are ongoing talks between India, Pakistan and China, with the possibility of having an alternative constitution, a state standard and an autonomous government through the internal state association.

Bakshi (2013), PM The article was written in part XXI of the Constitution, temporary, temporary and special. The constituent assembly of Jammu and Kashmir, after its

establishment, was authorized to recommend the article of the Indian constitution, which should apply to the state, or completely article 370. Cancel after a speech with the state constituent assembly, the presidential order of 1954, he demonstrated the articles of the Indian Constitution that applied to the state. Since the constituent assembly was divided without proposing to reject section 370, the section was considered a permanent segment of the Indian constitution.

Maharaja Gulab Singh (2014) This article, which approximates article 35A, describes that the occupants of the state of Jammu and Kashmir live in an alternative legal system that incorporates fundamental rights, such as citizenship, obligation and related laws., if they are going to differentiate themselves from the residents of other Indian states. [8] Given this plan, Indian occupants came from several states, no country or property in Jammu and Kashmir for sale.

Samvatyear (2014) On August 5, 2019, the Government of India has issued a call sacred to replace the so - called 1954 and addressed to all agreements of the Constitution of India Jammu and Kashmir in the office. The doors went to two places in the Indian parliament with 2/3 of the majority. After the objectives have been achieved in both the offices of the Parliament, which has launched a new call on August 6 in which it says all the provisions of article 370, with the exception of the coupling creek 1.

Basu, DD (2013) Similarly, Parliament passed the Jammu and Kashmir Reorganization Law, which approved the division of the Jammu and Kashmir region into two association zones, the territories of Jammu and Kashmir, Jammu and Kashmir and the territory of the Ladakh Union. The recovery took place on October 31, 2019.

Bansi Patel and Urvi Amin (2012)in their research paper “Section 370 : Road may Towards Safety” discussed that now days in any transaction Plastic money becomes inevitable part of the transaction and with it life becomes more easy and development would take better place and alongwith the plastic money it becomes possible that control the money laundry and effective utilization of financial system would become possible which would also helpful for tax legislation.

Shekar Dravid (2015) This article, which approximates article 35A, describes that the occupants of the state of Jammu and Kashmir live in an alternative legal system that

incorporates fundamental rights, such as citizenship, obligation and related laws., if they are going to differentiate themselves from the residents of other Indian states. [8] Given this plan, Indian occupants came from several states, no country or property in Jammu and Kashmir for sale.

Himanshu Singh (2012) On August 5, 2019, the Government of India has issued a call sacred to replace the so - called 1954 and addressed to all agreements of the Constitution of India Jammu and Kashmir in the office. The doors went to two places in the Indian parliament with 2/3 of the majority. After the objectives have been achieved in both the offices of the Parliament, which has launched a new call on August 6 in which it says all the provisions of article 370, with the exception of the coupling creek 1.

Sheikh Mohammed Abdullah Charismatic Kashmiri leader who never let go of his dream of ruling an independent Kashmir even while masquerading as a secularist — architect of Article 370 along with Nehru. He must share with Nehru the grave consequences. Lion of Kashmir brought Nehru under his spell from 1938 onwards to the extent that in May 1947 when he was arrested by the Maharaja for sedition, Nehru represented Sheikh as his lawyer and was even arrested in Jun 1947 by the Maharaj.

“Gopaldaswamy Ayyangar has been especially asked to help in Kashmir matters. Both for this reason and because of his intimate knowledge and experience of Kashmir, he had to be given full latitude. I really do not know where the States Ministry (Sardar Patel’s ministry) comes into the picture except that it should be kept informed for the steps taken. All this was done at my instance and I do not propose to abdicate my functions in regard to matters for which I consider myself responsible. May I say that the manner of approach to Gopaldaswamy was hardly in keeping with the courtesy due to a colleague.”

The Economic and Political Weekly, published from Mumbai, is an Indian institution which enjoys a global reputation for excellence in independent scholarship and critical inquiry. First published in 1949 as the Economic Weekly and since 1966 as the Economic and Political Weekly, EPW, as the journal is popularly known, occupies a special place in the intellectual history of independent India. For more than five decades EPW has remained a unique forum that week after week has brought together academics, researchers, policy makers, independent thinkers, members of non-

governmental organisations and political activists for debates straddling economics, politics, sociology, culture, the environment and numerous other disciplines.

Rajesh (2014), article 370 of the Indian Constitution, granted the special status of Jammu and Kashmir, an area developed in the north of the Indian subcontinent that was limited by India as a state from 1954 until October 31, 2019 and a little more than Kashmir since 1947. There are ongoing talks between India, Pakistan and China, with the possibility of having an alternative constitution, a state standard and an autonomous government through the internal state association.

Vijay Chauhan (2013) This article, which approximates article 35A, describes that the occupants of the state of Jammu and Kashmir live in an alternative legal system that incorporates fundamental rights, such as citizenship, obligation and related laws., if they are going to differentiate themselves from the residents of other Indian states. [8] Given this plan, Indian occupants came from several states, no country or property in Jammu and Kashmir for sale.

In this Project, we revisit the contents and method of Keynes's Indian Currency and Finance(1971a). By focusing on the rationale of his proposal for a new international monetary system combining cheapness with stability, we argue that Keynes's analysis of monetary developments in Asia in the first years of the twentieth century may provide useful hints for an overall rethinking of the major faults of today's Bretton Woods II system. (2010–11)

Mandeep Kaur and Kamalpreet Kaur(2008), in their article, "Development of Jammu and Kashmir: Past, Present and Future Scenario in India" conclude that Indian banking sector is accepting the challenge of information technology as all the groups of bankers have now recognized it as essential requirement for their survival and growth in future. Despite the strong advances in e-payments, an estimated 90 percent of personal consumption expenditure in India is still made with cash which indicates the tremendous growth potential of this business. So this can be considered as mere beginning which indicates the bright future prospects of plastic card market in India.

Manasvi Singh (2014) This article, which approximates article 35A, describes that the occupants of the state of Jammu and Kashmir live in an alternative legal system that

incorporates fundamental rights, such as citizenship, obligation and related laws., if they are going to differentiate themselves from the residents of other Indian states. [8] Given this plan, Indian occupants came from several states, no country or property in Jammu and Kashmir for sale.

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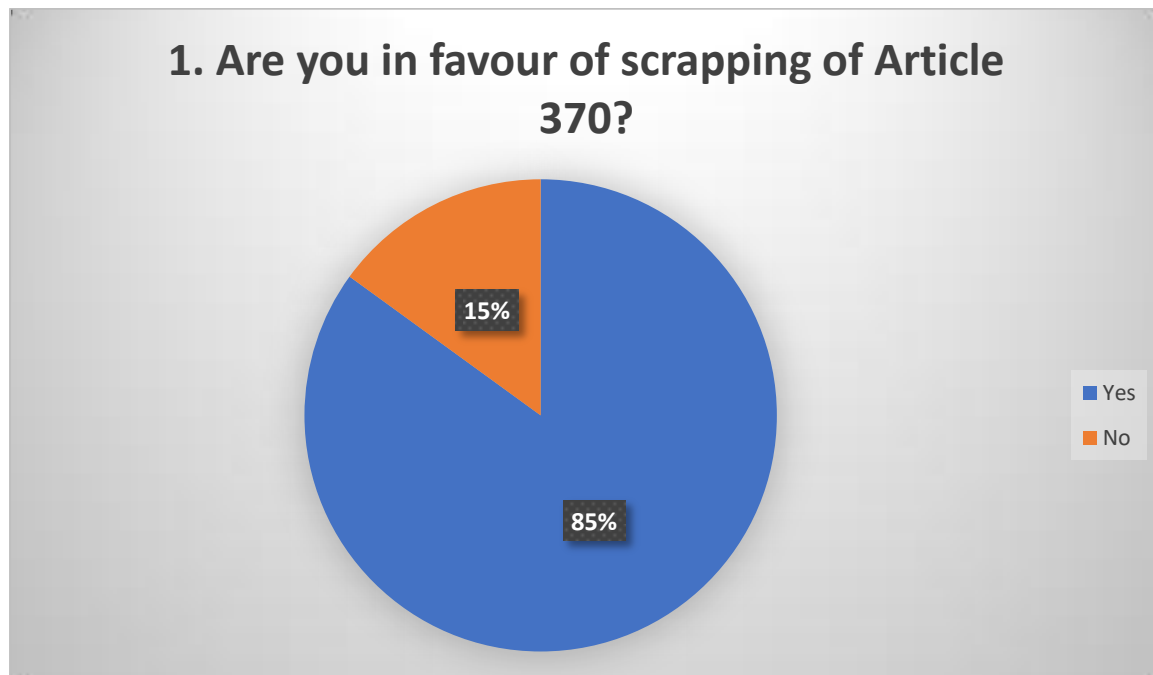
Telyukova and Wright (2005) and Zinman (2007) show that section 370 maintains balances in their Jammu and Kashmir for liquidity reasons, even while carrying high-interest credit card debt. The authors suggest that a rational consumer may pay interest on credit card debt to avoid some of the expected costs associated with not holding precautionary or transactions balances.

Jayant Mitra (2014), article 370 of the Indian Constitution, granted the special status of Jammu and Kashmir, an area developed in the north of the Indian subcontinent that was limited by India as a state from 1954 until October 31, 2019 and a little more than Kashmir since 1947 There are ongoing talks between India, Pakistan and China, with the possibility of having an alternative constitution, a state standard and an autonomous government through the internal state association.

CHAPTER 4: DATA ANALYSIS AND INTERPRETATION

The previous chapter provided an overview of the design and research method used in the study. The procedure followed to collect, capture, process and analyse the data that was duly presented. This chapter concentrates on the findings of the empirical study through analysis of the result. The results of the main survey and findings are subsequently discussed.

DEMOGRAPHIC VARIABLES OF THE STUDY :

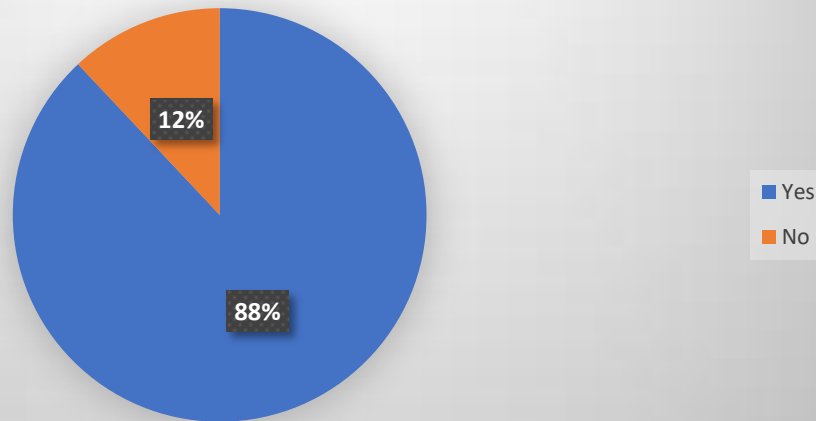


CHOICE	PERCENTAGE
YES	85%
NO	15%

○ INTERPRETATION :-

Out of the total respondents, who took the survey on Study on Article 370. It was observed that 85% were favouring the decisions of scrapping the article 370 and thereby 15% were not in the favour.

Do you think the residents of Jammu and Kashmir are satisfied with the decision made?

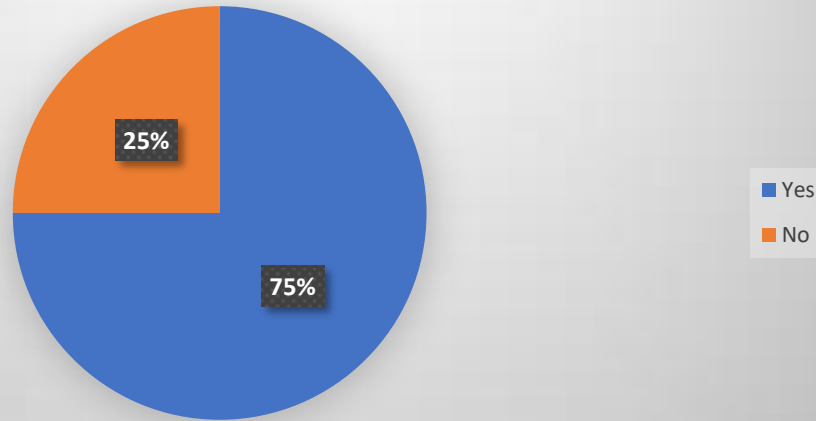


CHOICE	PERCENTAGE
YES	88%
NO	12%

○ INTERPRETATION :-

Out of the total respondents, who took the survey on Study on Article 370. It was observed that 88% were favouring the decision and thereby 12% were not in the favour.

Do you think the decision has made any benefits to the state with regard to industrialization, and economy?

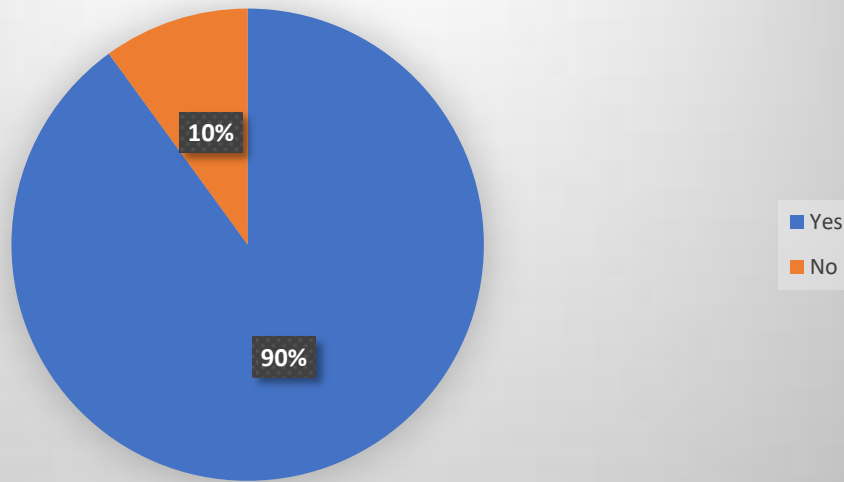


CHOICE	PERCENTAGE
YES	75%
NO	25%

○ INTERPRETATION :-

Out of the total respondents, who took the survey on Study on Article 370. It was observed that 75% were favouring the decision and thereby 25% were not in the favour.

According to you, does this decision made by the government promote equality?



CHOICE	PERCENTAGE
YES	90%
NO	10%

○ INTERPRETATION :-

Out of the total respondents, who took the survey on Study on Article 370. It was observed that 90% were favouring the decision and thereby 10% were not in the favour.

CHAPTER 4: CONCLUSION AND SUGGESTIONS

RIGHT TO INDEPENDENCE AND RIGHT TO HOLD A PLEBISCITE. The object of this research is to provide the Government of India with a legally acceptable solution to the Kashmir issue. The right to independence and/or the right to hold a plebiscite for the purpose of independence are both accepted rights under the provisions of international law but are repugnant to the provisions of the Indian Constitution. Hence neither of these rights can be given consent to by the Government of India or the Indian Parliament, even if public opinion demands so. The reasons for which the right to independence or the right to conduct a plebiscite for that purpose cannot be granted has been discussed below.

The State of Jammu and Kashmir is broadly divided into three geographic regions, Ladakh, having a predominant Buddhist population, Kashmir, having a predominant Muslim population and Jammu, having a predominant Hindu population. Besides this, there is a large number of displaced Kasl niri Hindu Pundits who form a part of the State's population. Another part of the State's population is residing in Pakistan Occupied Kashmir and the territories under the possession of China since 1963. Kashmir also has a part of its population residing abroad. The divided nature of the State's territory and population makes it impossible to hold a plebiscite within the State. Another aspect that stands in the way of conducting a plebiscite in the State is the insurgency prevailing within the State. Unless the State can be restored into a single unit as it was prior to accession and until peace is restored to the State, a plebiscite will not be possible. The public opinions collected in the State of Jammu and Kashmir reflect that a large percentage of the population, which has opted for independence have opted for pre-1953 status as a second option. Though there was no provision in the questionnaire for giving second options, this most unexpected event has thrown light on the only possible and reasonable solution to the Kashmir issue.

The demand for independence is out of dissatisfaction, which has been nurturing in the minds of the people for a very long time. If the dissatisfaction can be removed, then automatically the demand for independence would disappear. In order to remove this dissatisfaction, certain rights and privileges need to be given to the people of the State. The questionnaire shows that Pre-1953 status is their alternative demand. However, blindly reverting back to pre-1953 status would not solve the Kashmir issue as prior to 1953 the people of the State were dissatisfied and there was chaos and turmoil in the State. The Government of India has to find out and implement a special status that will satisfy the people of the State. This new status may differ from Pre- 1953 status or the special status presently enjoyed by the people of the State. members specialized in various fields, shall be appointed for the purpose of collecting and analyzing various recommendations in the manner suggested below. On the basis of these recommendations, the Central Commission shall submit its report making certain recommendations regarding the future status of the State. On the basis of the recommendations of the Central Commission, Parliament shall enact necessary laws for proper implementation of the recommendations made by the Central Commission.

There has been a school of thought that has evolved an approach that attaches paramount significance to constitution and legal bonds and satisfaction of aspirations of the local people. The movement for full application of the Indian Constitution to the state has

gained significant momentum in Jammu and the rest of nation. By now, it has been established that no provision in the Indian Constitution has been subjected to such heated controversy within states and India as Article 370. The passion aroused for and against the present issue is responsible for disrupting the emotional unity of the state. The loss caused by Article 370 has been huge. Governance and administration have failed in maintaining the requisite level of law and order in the state of Jammu and Kashmir. With the non-applicability of centralized acts, corruption has been rampant in the state. Militancy and sectarian violence have together amounted to plethora of deaths and human rights abuses. The time has come to rethink on the continuation of Article 370.

Article 370 is part of the Indian Constitution and the Parliament being the highest legislative body in the country has the power to amend it. Using Article 368, it can amend or repeal any of the provisions of Indian Constitution. Even the President of India can amend or abrogate Article 370. The only condition is that the Union Cabinet has to send a proposal to this effect to him. It is important to note that the President of India can keep Jammu & Kashmir under his direct rule for any number of years by invoking Article 370, as it gives absolute executive powers to the constitutional head. Take for example, the Governor/President rule in the State between January 19, 1990 and October 9, 1996. Jammu & Kashmir was under the President rule for almost seven years without amending the Indian Constitution even once because Article 356 is not applicable to this State. The case of Jammu & Kashmir was not taken to the Parliament even once during this period. Congress always bypassed it for their vote bank politics and Narendra Modi, Prime Minister of India is the first person to call for a parliamentary debate on Article 370 of the Constitution of India Narendra Modi said "If we do not have debate and discussion how would you be able to tell those who have been unable to understand what they have been deprived of on account of Article 370." His (Modi's) intention and that of the Government is that we have a debate so that we can convince the unconvinced about the disadvantages of Article 370.

On May 7, the day Omar Abdullah gave an interview to The Hindu and the subject was the same: Article 370 and implications of its abrogation. There was absolutely nothing that was new in the interview that he gave. It was just an iteration of his old irritating and untenable and. It is a different story that his interviewer, who was obviously blissfully ignorant about the history of Article 370 and the hostile attitude of the people Jammu province and Ladakh region, internally displaced Kashmiri Hindus, refugees from West Pakistan, the SCs, the OBCs, the STs and daughters of J&K towards this Article, didn't counter his pernicious and misleading formulations. Remember, an overwhelming majority of population in J&K is bitterly opposed to Article 370 on the ground that it has only empowered the Kashmiri ruling elite to exercise unbridled legislative and executive power, subvert the institutions, promote fissiparous tendencies in the Valley. It has further jeopardised the national interest as well as the general civil, political and economic rights of the people and further the Pakistani anti-India cause in J&K. Article 370 is not sacrosanct and infallible.

It has caused immense damage to Jammu & Kashmir and its people, as also to the national cause in the State, as it has been exploited to the hilt by the communal forces represented by Abdullah's and his ilk in the Valley to hamper the process of the State's political and constitutional integration with India and promote fissiparous tendencies to

further their selfish interests. The demand that there should be a comprehensive debate on Article 370 to find if it has benefited or harmed the State and its people is as democratic as it is imperative and those who oppose the demand are those who consider the State a disputed territory, believe in the two-nation concept, want to keep the people of the State aloof from the mainstream politics and wish to convert democracy into a local oligarchy under which the ruling elite exercises unbridled and extraordinary legislative, executive and judicial powers and the common masses have no say whatever in the governance of the State. Remember, an overwhelming majority of the population in Jammu & Kashmiris vehemently opposed to the atrocious Article 370. In nation's interest, Article 370 demands rigorous debate.. Prime Minister, Narendra Modi wants a debate on Article 370 of the Constitution of India for better understanding of the Article and for real development of Kashmir so that it can be transformed to a "super state from special state". Article 370 of the Constitution is putting the Kashmiris in the permanent darkness and security threat, Pakistan is getting benefit of the same and they are continuing their activities in the valley and many soldiers, civilians are being killed in their hands every day.

Article 370 was envisaged as an instrument for a vulnerable populace, unsure of protection of their identity and culture. In the same instance it was meant to assure anatomy to create space in governance and empower people to decide their future. As can be seen from the arguments above, the delegation of power has remained mired in the clutches of only a few. The very basis of the autonomy granted is challenged due to lack of accountability in public life. In the larger context of India, whether it is refugee from Poonch, Mirpur and Muzaffarabad, of the case of Kashmiri Pandits in exile, the state has failed to provide a mechanism for redress. The extreme case of discrimination cannot be justified in terms of any reasoning. Indian government has recently revoked the special status that was given to Jammu and Kashmir and made them into two Union territories. This may turn into both good and bad. This is one of the good and brave moves to resolve the land dispute between India and Pakistan. At the same time this is one of the bad moves when everyone across the country are fearing about Hindu extremism. Some consider that this move of revoking Article 375 may backfire at any movement.

This decision has garnered a lot of criticism by a large section of general population and the opposition. There have been mass protests organized in different cities in India in the last few months. Some have been in support of it and some opposing it. The current Modi government has been criticized at a national and global level on the way the changes were implemented. It is considered as a hazard to the human rights. Major leaders of the popular political parties were house arrested. Internet and telephone services were revoked. Heavy troops were deployed all across the streets to curb any unrest or protests. Public movements were banned and schools and offices were shut. Such steps are considered an outright threat to the democracy. With no direct communication with the local residents of the Valley, the Government clearly denies any protests took place. However, certain media outlets have confirmed that there have been protests. Also, forceful arrests are being taken to infuse fear in the locals so that no unrest outbreak. For almost four months Kashmir was completely cut off with the rest of the world. Gradually schools, shops and offices have opened. The internet services still remain suspended in the Valley.

Though there is an apparent bar to proceed with a plebiscite for the purpose of determining the independence of the State of Jammu and Kashmir there is no bar in collecting recommendations from various groups and organizations. These recommendations shall contain the proposals from various comers regarding what rights and privileges should be granted to the State of Jammu and Kashmir. These proposals should be collected primarily from the Ruling party of the State, the opposition parties, leaders of various parties and groups such as the regional leaders of Jammu, Ladakh, leaders of the displaced Kashmiri Pundits, representatives of various religious groups and social work organizations, NGO's working in Kashmir or on the Kashmir issue, etc. Recommendations should also be accepted from the leaders of the so-called extremist groups and leaders of Pakistan Occupied Kashmir.'

Recommendations regarding the status of Kashmir should also be accepted from the various State Governments and the various opposition parties of the States, so that the rights and privileges ultimately sanctioned to the State of Jammu and Kashmir will have the sanction of both the Centre and the other States. If the recommendations are collected in the manner mentioned hereinabove, then the decision regarding the future status of Kashmir shall be determined, if not by the people directly, but at least by their elected representatives. The advantage of collecting these recommendations is twofold. First, views from various sections can be collected in writing without entering into complicated dialogue and second, views can be taken from all sections be they recognized, unrecognized or even banned. However, the groups will have to be organized in to a pyramid on the basis of priority. The recommendations will be only for the purpose of making certain proposals as to on what terms and conditions the people are willing to be an integral part of the Indian Union. Recommendations containing any proposal with regards to independence should be rejected immediately as such a proposition would be an impossibility.

It is to be noted that there is a clamour for special status amongst many of the other Indian States. It is also to be noted that the Kashmir issue has been dealt with in this research as an Indo-Kashmir issue and that resolve the Kashmir issue public opinion from all over India has been collected and analysed. The conclusion of this research also recommends that the Central Commission referred to above shall also accept and analyse recommendations from the various State Governments and the various opposition parties of the States, so that the rights and privileges ultimately sanctioned to the State of Jammu and Kashmir will have the sanction of the States. In order to maintain equilibrium between the states, the Central Government may have to consider whether the special status as recommended above can also be evenly distributed to the other Indian States. However, if this were to be done, then the possible end result would be the framing of a new Constitution of India that would be strictly federal in structure like the Constitution of the United State of America. This would probably solve problems similar to the Kashmir issue, though not so vocal, existing in other parts of India. This proposal however opens a totally different field of study that lies totally outside the ambit of this research. However, the possibility of such an event should at least be in the minds of the members of the Central Commission and the Members of Parliament while following the procedure recommended above.

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CHAPTER 7: APPENDIX

Name:

Age:

Occupation:

Gender:

(1) Female

(2) Male

(3) Prefer not to say

Q.1 Are you in favour of scrapping of Article 370?

Yes

No

Q.2 Do you think the residents of Jammu and Kashmir are satisfied with the decision made?

Yes

No

Q.3 According to you, does this decision made by the government promote equality?

Yes

No

Q.4 Do you think the decision has made any benefits to the state with regard to industrialization, and economy?

Yes

No

Q.5 What are your thoughts on scrapping of Article 370 from the Indian constitution?