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December 4, 2002

Petition to the President of India

TITLE OF THE PETITION:

A PETITION TO
THE PRESIDENT OF INDIA
TO USE
POWERS VESTED IN HIM BY ARTICLE 370
and
TO TAKE COMPREHENSIVE MEASURES TOWARD
ABROGATION OF ARTICLE 370
TOWARD REMOVING
ANOMALIES IN THE INDIAN CONSTITUTION
THAT ARE AT THE ROOT OF
THE JAMMU AND KASHMIR IMBROGLIO

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3. GRIEVANCES:

- [G1] Article 370 of the Indian Constitution, applicable to the State of Jammu and Kashmir ALONE, has enabled the Presidential Order of 14-May-1954 which renders the Indian Parliament ineffective in implementing Article 368 of the Constitution of India, which is applicable to the WHOLE of India (Appendix AG1).

It is therefore anomalous that the Procedure for invoking Constitutional Amendment prescribed in Article 368, which essentially requires the submission and approval of a Bill seeking the amendment to be passed by the Parliament of India, is outmoded by the essentially Extra-Constitutional Presidential Order of 14-May-1954, which makes reference to the Parliament irrelevant with regard to application in Jammu and Kashmir.

As such, in view of the fact that there is a conflict, introduced without a reference to the Indian Parliament, between an Article that is applicable to just one State alone and another that is applicable to the whole nation, this anomaly in the Constitution of India needs to be corrected.

- [G2] Furthermore, the Extra-Constitutional Presidential Order of 14-May-1954, enabled only by Article 370, immobilizes the Indian Parliament to implement in Jammu and Kashmir the provisions of Article 3 which otherwise empowers the Indian Parliament to reconfigure and/or rename Indian States (Appendix AG2).

Article 370 thus renders the Indian Parliament powerless to reconfigure and/or rename Jammu and Kashmir and is therefore a hindrance to the wishes of the people of Jammu, Valley (Panun Kashmir) and Ladakh who wish and need this to be done. In our secular nation, this crying need of the region cannot be ignored merely because some organizations that have the reputation of supporting the Hindu cause seem to favor this.

- [G3] Article 370 is the root cause of secessionist activities in Jammu and Kashmir (Appendix AG3).

- [G4] Article 370 was specifically designed to be 'Temporary' and has outlived its purpose (Appendix AG4).

- [G5] Government of India and the Indian Media have failed to use evidence from International Agreements to expose the fact that Pakistan does not support freedom to Jammu and Kashmir, but in fact wants to gobble it (Appendix AG5).

- [G6] Government of India has failed to implement the Unanimous Resolution of the Indian Parliament of 22-February-1994 and address the crying need for development of the Indian Region beyond the LoC by retaking PoK and provide relief to the people of the region from Pakistan's misrule (Appendix AG6).

THE PETITION:

Having placed before the President the grievances [G1]-[G6], this Petition is humbly submitted to the Honorable President of India in an attempt to persuade him to kindly consider using his Good Office and specific Constitutional Powers vested in him, *as pointed out below*, to make a Historic contribution toward the return of peace and prosperity in the Indian Sub-Continent by taking effective Constitutional steps to resolve the Jammu and Kashmir imbroglio.

The Grievances enlisted above explain why Abrogation of Article 370 is essential. This anachronistic and ‘temporary’ provision made in the Indian Constitution to address tentative factors, which prevailed only in the early years of Independent India, must be repealed. Notwithstanding the politicizing of the issue pertaining Article 370 of the Constitution of India, it is the Petitioner’s prayer that:

[P1] The President of India may please initiate the process to Abrogate Article 370.

[Article 370: http://www.cifjkindia.org/main/legal_docs_003.html]

An important clause in the Article 370 itself suggests a way to the President of India of repealing it: The said Clause is: “.....*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 President issues such a notification....”

The Constituent Assembly mentioned above was dissolved in 1957 prior to the first State Assembly elections and after it had framed the State's Constitution that was adopted on 17th November 1956, coming in full force with effect from 26th January 1957. Therefore, the consent of the ‘Constituent Assembly’ becomes irrelevant. Twice Governor of J&K, Jagmohan on record has stated: "The question of a dead body or a non-existent body has no meaning" and suggests that the Constitution of India can be amended under Article 368 by the Union Parliament, which represents also the people of the state also, to delete the requirement regarding recommendation of the ‘dead’ or ‘defunct’ Constituent Assembly. Subsequently, the President of India can declare that Article 370 stands abrogated.

[Reference: Jagmohan: ‘My Frozen Turbulence in Kashmir’, Allied Publishers, Delhi, Second Edition, April 1992]

Many constitutional experts have recommended this procedure.

[P2] Some Prerequisites for Abrogation of Article 370:

Even as the above Petition P1 seeks the Abrogation of Article 370, it admits that many political parties seem opposed to it, consider it untimely and/or irrelevant, and involves the undesirable possibility of alienation of some people of Jammu and Kashmir.

As a pre-requisite to Abrogation of Article 370, therefore, this Petition submits a prayer to the President of India to instruct his Government to **Educate the People** of our Great Nation and especially of Jammu and Kashmir in particular about:

(P2-a) -how Article 370 does not benefit Indian Muslims across the country - it- does no good, for example, to Muslims in Mumbai or Hyderabad and in essence, Article 370 has no religious overtone.

(P2-b) -how Article 370 has in fact fuelled secessionist tendencies in Jammu and Kashmir, and has been directly responsible for the creation of an atmosphere conducive for terrorism that threatens to spread across the country.

(P2-c) -how Article 370 inhibits material and human investment in Jammu and Kashmir due to which the State has not attracted Scientific, Technological, Medical talent that has prospered in the rest of the country.

(P2-d) - Article 370 has nothing to do with so-called 'Kashmiriyat', the culture of each region in India is preserved by its people without any recourse to Article-370-like provision, and more importantly, the so-called 'Kashmiriyat' is not even the dominant culture of the vast and ancient State of Jammu and Kashmir, which - *in some sense* - is at the very fountainhead of India's culture.

[http://www.cifjkindia.org/main/pcd_002.html]

(P2-e) Politicization of Article 370 is most unfortunate and absurd. Article 370 cannot be defended on any religious ground, since it has absolutely nothing to do with Islam. It is often argued that a two-third Parliamentary majority cannot be found to recommend its abrogation because of the politics of appeasement of the Muslim votes, but can anyone explain what good Article 370 does to the Muslims of India? Likewise, can one find one-third of the Parliament that can defend Article 370 on any ground in the best interest of the security and integrity of our country and its people - *including* very much the Muslims? Clearly, the Multi-Cultural and Multi-Religious People of our Great Nation need to be educated about these issues.

[P3] Clear Vision about the Emerging Scenario:

In order to reap the benefits of Abrogation of Article 370, this Petition prays that the President of India leads the nation in developing a far-sighted vision toward an emerging scenario in the State of Jammu and Kashmir toward lasting Peace and Prosperity. **In particular, this Petition submits that a clear vision for the emerging scenario may please include the following considerations:**

(P3-a) Demographic Rationalization of the State of Jammu and Kashmir:

The Non-Muslim: Muslim population ratio in the State of Jammu and Kashmir at the time of Independence was approximately 3:7.

As a result of Pakistan sponsored Cross Border Terrorism, this ratio has been coercively altered. Special economic packages and incentives therefore need to be developed for comfortable return of Kashmiri Hindus to their native State as also other displaced Buddhists, Sikhs, Muslims and other Hindus to relocate to Jammu and Kashmir and engage in promising enterprises. The aim of this exercise must be to restore the population ratio mentioned above to the value it had at the time of Independence. Furthermore, in order to preserve the secular fabric of India, this ratio may be attained to achieve more-or-less uniformity and homogeneity across the State of Jammu and Kashmir.

(P3-b) Rational reconfiguration of the State of Jammu and Kashmir in smaller States:

It has become clear that the aspirations of the people of the different regions of the State of Jammu and Kashmir can be best pursued and achieved by reconfiguring the State into smaller States. While the people of the region have clearly expressed their different aspirations, including in the recently concluded elections in the State of Jammu and Kashmir, the proposals for reconfiguration of the State of Jammu and Kashmir have not been made along rational lines due to the following reasons:

(i) None of the proposal includes an explicit plan for the Indian region of Jammu and Kashmir that is occupied by Pakistan, West-North of the LoC. This is most unfortunate in view of the Unanimous Resolution of the Indian Parliament of 22-February-1994 to retake PoK (See Appendix AG6) *and* also in view of the Fact that the Jammu and Kashmir State Assembly makes a provision of 25-Assembly-Seats for this region.

(ii) Even as people of different regions of Jammu and Kashmir have made demands for reconfiguration of the State, the reconfiguration proposals are mutually incompatible:

- The proposal by the Rashtriya Swayamsewak Sangh (RSS) for 'Trifurcation of J&K' is clearly incompatible with the 'Quadrification of J&K' proposed by the Vishwa Hindu Parishad (VHP).

[http://www.rediff.com/news/2002/jun/30rss1.h](http://www.rediff.com/news/2002/jun/30rss1.htm)

tm

- The 'Trifurcation' plan of the RSS does not address the demand made by Kashmiri Hindus for 'Panun Kashmir' (<http://www.panunkashmir.org/>).

- The 'Quadrification' plan of the VHP does not clearly define its proposal for 'Panun Kashmir', 'Kashmir', 'Valley', and the region beyond the LoC.

- The demand for 'Panun Kashmir' by the Kashmiri Hindus and for 'Ladakh' by the Ladakhis does not include a clear definition on proposals for the rest of the region of Jammu and Kashmir.

- None of the above proposals addresses the Grievance [G2], above, wherein it is pointed out that the Presidential Order of 14-May-1954 enabled by Article 370 inhibits the Power of the Indian Parliament to make use of Article 3 of the Indian Constitution to reconfigure Jammu and Kashmir into smaller States (or Union Territories).

- Also, none of the above proposals clearly addresses the Unanimous Resolution of the Indian Parliament of 22 February 1994 (Appendix AG6). Also, in this context, it needs to be added, that Bharatiya Janata Party's rejection of 'autonomy' to J&K is understandable, but not its consideration of 'greater devolution of power' to J&K which already has extensive powers under Article 370 which are not serving the State's people well.

This Petition therefore prays that the President of India leads the Nation in developing a rational proposal for the much needed reconfiguration of the State of Jammu and Kashmir. A rational restructuring of Jammu and Kashmir may perhaps proceed along the following lines: In keeping with the Resolution of the Indian Parliament dated February 22, 1994 (Appendix AG6), on the recovery of the Indian region beyond the LoC which is occupied by Pakistan, the present provision of 25 Seats in the J&K Assembly currently reserved for the Indian region occupied by Pakistan be translated into the Constitution of a new Indian State with a Government tentatively in exile located in Srinagar. This new Indian State may be given the name 'Takshashila' after the historic University in that region. The remaining regions of Jammu and Kashmir may be reconfigured into the fully Indian States of 'Panun Kashmir', 'Jammu' and 'Ladakh' thus rationalizing the restructuring of the State into four States fully integrated into the Union of India.

A reconfiguration of the State into the four new Indian States of Takshashila, Panun Kashmir, Jammu and Ladakh, on essentially secular lines providing for peoples of all faiths to choose freely to relocate to any of the four States (as per [P3-a], above) that would be constituted under this proposal would provide lean States for efficient Governance and help their integration into the secular fabric of our Great Democracy.

Is this the best time for Abrogation of Article 370?

Given the facts that Article 370 is an anomaly in the Indian Constitution as pointed out in Grievance [G1] (and Appendix AG1) and that the Constitutional provisions of Article 370 (a) limit the comprehensive consolidation of integration of J&K in India and furthermore (b) impose constraints detailed in Grievance [G2] (and Appendix AG2) on any reconfiguration of the State of Jammu and Kashmir, it is clear that the inconsistency in the Constitution of India pointed out in Grievance [G1] and [G2] and detailed in Appendix [AG1] and [AG2] simply has to be remedied. The Petitions [P1] and [P2] above spell out the plea for the Abrogation of Article 370 and also suggest essential prerequisites as well as a prospective procedure. The fear that this is not the best time to consider Abrogation of Article 370 has enabled the 'Temporary' Article outlive itself, now for fifty years! Can any one forecast a 'good time' for Abrogation of Article 370, or alternatively say that the Grievances [G1] and [G2] are to be lived with – only to perhaps see the State of Jammu and Kashmir secede from India and become a victim of Cross Border Terrorism in the absence of India's failure to integrate the State in the Indian Union comprehensively?

The people of our Great Nation must know that Article 370 has been used to proclaim the Presidential Order of May 14, 1954 – application to Jammu and Kashmir –, which is NOT a part of the Constitution of India and has never been passed by the Parliament of India. Article 370 is therefore a serious anomaly in the Indian Constitution, it inhibits Jammu and Kashmir's reconfiguration, promotes secessionist activities in the State, and that it does absolutely no good to Muslims of Jammu and Kashmir, let alone for those in rest of India. Article 370 is not a religious issue and has nothing to do with the bogey of 'Kashmiriyat'. Furthermore, the people of this country must know that Pakistan does not support 'freedom' to Kashmiri Muslims against whom it has committed horrendous atrocities, including ignominious treatment of Kashmiri Muslim women, as reported [AG6-2] by distinguished Muslims in honorable positions.

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Attached: Appendix AG1, AG2, AG3, AG4, AG5, AG6.

Appendix AG1

Article 370 has enabled the Extra-Constitutional Presidential Order of 14-May-1954 that amends the Indian Constitution in a manner that is NOT permissible by the Constitution of India, Article 368.

Article 368 of the Indian Constitution:

Power of Parliament to amend the Constitution and procedure therefor.- (1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House present and voting, [it shall be presented to the President who shall give his assent to the Bill and thereupon] the Constitution shall stand amended in accordance with the terms of the Bill:.....

The Extra-Constitutional Presidential Order of 14-May-1954 that amends the Article 368 itself without observing the prescription made in Article 368 that must be observed to amend the Indian Constitution:

In Part XX of the Presidential Order of 14-May-1954 that was in fact not ever passed by the Parliament of India as would be required by the Constitution of India, Article 368, it is stated that an Extra-Constitutional proviso be added to Article 368, namely:-

"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." Etc.

Article 370 is therefore a serious anomaly in the Constitution of India since it has been used to amend the Constitution of India with regard to Jammu and Kashmir using a procedure that is in fact not enabled by Article 368 of the Constitution which essentially requires that any amendment of the Constitution may be initiated only by the introduction of a bill for the purpose in either House of Parliament.

Key Reference for Appendix AG1:

<http://www.rediff.com/news/2002/jun/05arvind.htm>

Appendix AG2

Article 370 has enabled the Extra-Constitutional Presidential Order of 14-May-1954 that amends the Indian Constitution with regard to Article 3 of the Indian Constitution in a manner that is NOT permissible by the Constitution of India, Article 368.

With regard to the State of Jammu and Kashmir, Article 370 inhibits the Indian Parliament from its powers under Article 3 to reconfigure/rename an Indian State.

Article 3 of the Indian Constitution:

Formation of new States and alteration of areas, boundaries or names of existing States:

Parliament may by law- (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

- (b) Increase the area of any State;
- (c) Diminish the area of any State;
- (d) Alter the boundaries of any State;
- (e) Alter the name of any State:

[Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.]

Explanation I.-In this article, in clauses (a) to (e), "State" includes a Union territory, but in the proviso, "State" does not include a Union territory.

Explanation II.- The power conferred on Parliament by clause (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory.

Extra-Constitutional Presidential Order of 14-May-1954 with regard to Article 3 – application to Jammu and Kashmir:

“To article 3, there shall be added the following further proviso, namely:-

“Provided further that no Bill providing for increasing or diminishing the area of the State of Jammu and Kashmir or altering the name or boundary of that State shall be introduced in Parliament without the consent of the Legislature of that State.”

Appendix AG3

Article 370 is the root cause of secessionist activities in Jammu and Kashmir

Indian Laws those are not applicable in J&K

– Article 370 is responsible for this!

- AG3-1. Article 370 undermines the entire Constitution of India and hence the Parliament and the People of India since it makes it possible for the Jammu and Kashmir State Government to enact any and every such law that it may deem fit except any that has direct relationship with regard to Defense, Foreign Affairs and Communications.
- AG3-2. As pointed out by eminent Kashmiri Hindus, Article 370 has had a negative effect on the well being of the Kashmiri Hindu community, as well as on the socio-economic development of the entire State and on its entire population. Article 370 has resulted in the deterioration of the situation in J&K from the combination of segregation of the state from India due to Article 370, and due to import of fundamentalism from POK and hence Abrogation of Article 370 will be a positive step.
- AG3-3. The State of J&K has a Flag of its own. The Indian National Flag can be flown only along with the State Flag.
- AG3-4. Jammu and Kashmir is the only State that has dual citizenship, one of the State and the other of India. Even the voters lists for State elections and for Parliament elections are not common.
- AG3-5. If a girl belonging to Jammu and Kashmir marries a boy from outside the state, who is not a state subject, she loses all her rights as a 'State Subject'. Even if her children are then born in the state, those children have no rights as state subjects!
- AG3-6. The wealth tax cannot be imposed in the state.
- AG3-7. The Urban Land Act, 1976, which is in force in the entire country, is not applicable to Jammu and Kashmir. Therefore, rich landlords, belonging to the majority community in the Valley, indulge in economic exploitation of the poor and the Indian citizens, who are non-state subjects and living in the valley, cannot even secure loans from the financial institutions.
- AG3-8. The State Government of Jammu and Kashmir did not accept the Anti-defection law adopted in the country; it made several amendments. The decision on defection is not taken by the Speaker of the Assembly but by the leader of the connected political party, giving unbridled authority to the leader of the party.
- AG3-9. The Governor of the State is usually not a citizen of the state, and hence he has no right to vote.
- AG3-10. Burning of the national flag is not a cognizable offence in

CIFJKINDIA Petition to the President of India

Jammu and Kashmir.

AG3-11. Under Article 370 the Indian Parliament cannot increase or reduce the borders of the state.

AG3-12. International agreements entered into by the Union Government under Article 253 of the Constitution cannot be extended automatically to Jammu and Kashmir.

AG3-13. Constitutional protections for minorities are not applicable in J&K.

AG3-14. In J&K, residential pockets of Hindu majority were combined with Muslim majority districts so that no Kashmiri Hindu could get elected to the assembly. Out of the J&K assembly's total strength of 86 (excluding 25 seats reserved for areas of the state currently under Pakistan's occupation), 41 are earmarked for the districts of Jammu and Ladakh together, while 45 are earmarked for the much smaller Kashmir valley which is only sparsely populated compared to the two other regions.

AG3-15. The admissions of Kashmiri Hindus to various academic institutions were restricted to a negligible 2-8 percent of the total admissions made every year, when they were amongst the most meritorious ones.

AG3-16. The Union Government enacted the Religious Institutions (Prevention of Misuse) Act, 1988. It was made applicable to all the States of the Union except J and K. Because of Article 370, concurrence of the State Government was needed for extension of this law to the State, but the same was not given. Says Jagmohan: "Nowhere was this law needed more than in the State of J and K. Nowhere were religious places misused more than here." This is a classic example of how Article 370 has influenced Jammu and Kashmir State laws on issues that the Article does not itself address explicitly! Restrictions imposed by Article 370 have empowered the J&K State to enact absurd State Constitution laws in later years, fully exploiting the irrational continuation of the 'Temporary Provisions' of Article 370.

AG3-17. The Constitution of India contemplates three types of emergencies:

- Emergency arising out of (i) war or (ii) internal disturbance (Article 352)
- Breakdown of constitutional machinery in the States (Article 356)
- Financial emergency (Article 360)

As per the Constitution (Application to J&K) Order 1976 issued by the President of India under Article 370, there is a modification of Article 352 in its application to J&K. This modification says "No Proclamation of Emergency made on grounds only of internal disturbance or imminent danger thereof shall have effect in relation to the State of Jammu and Kashmir unless--(a) It is made at the request of or with the concurrence of the Government of that State, or (b) Where it

has not been so made, it is applied subsequently by the President to that State at the request or with the concurrence Government of that State." (The modification (a) was introduced by a similar Order of 1974.)

AG3-18. Two Presidential Orders, respectively of 1964 and of 1993, modified article 356 for J&K.

The position today is as follows: In clause (1) article 356, references to provisions or provision of this Constitution shall, in relation to the State of J&K, be construed as reference to provisions or provision of the Constitution of J&K Article 360 is not applicable to J&K. ”

Key References for Appendix AG3:

<http://www.kashmiri-pandit.org/elibrary/pressreleases/knn/03042002.html>

<http://www.kashmiri-pandit.org/elibrary/articles/whynotoptionfour.html>

<http://www.rediff.com/news/2002/jun/05arvind.htm>

Shri Arvind Lavakare (Personal Correspondence)

Appendix AG4

Article 370 was designated ‘Temporary’ – it has outlived its purpose.

The origin of Article 370 must be understood in the context of those early years of our nationhood when the Constitution of India was being framed, so we must recreate the then scenario for us. Jammu and Kashmir had acceded to India. The accession was legal, complete, and irrevocable. In his enthusiasm to demonstrate that the accession was in accordance with the wishes of the people of Jammu and Kashmir, Nehru had offered a plebiscite, when it was adequate to justify India’s title to Jammu and Kashmir on the basis of the terms of the Independence Act of India which was in fact the only and complete legal document to refer to. India had no worry about the result of the plebiscite if one were to be held then, but Pakistan prevented it for reasons discussed above. An instrument had to be devised that would make a Constitutional provision for the State of Jammu and Kashmir in the Union of India. This needed a ‘Temporary Provision’ that would express Jammu and Kashmir’s constitutional place in the Union of India, a provision that would then anticipate a comprehensive consolidation of Jammu and Kashmir’s integration in the Union of India.

It is clear that this provision would be essentially temporary, as it was positively envisaged that Jammu and Kashmir would be fully integrated just as the remaining 561 Princely States, which did not have or need any such special provision of the Constitution. Article 370 was thus essentially a ‘Temporary Provision’, defined as such in its very title.

It is sometimes made out that Article 370 is the device that provides for legal inclusion of Jammu and Kashmir in India. No, that is not correct. The Instrument of Accession that never was challenged by anybody anytime already confirms the integral nature of the State as part of India. The State had become a part of India on October 26, 1947 when the Maharaja signed the Instrument of Accession; the legal status of the accession of Jammu and Kashmir to India stood unchallenged between this date and November 17, 1952 when the Article 370 came into force. Article 370 was needed not to prove the legality of the accession, but only to have a Temporary way to express the integral nature of the State of Jammu and Kashmir in the Indian Constitution.

The then Lawmakers therefore designed Article 370 essentially to be phased out as the full Indian Constitution would be made applicable to Jammu and Kashmir in due course. Finally, it may be noted that comparison of Article 370 with some other Articles like Article 371 etc. is inappropriate, the latter being ‘Special Provisions’ as opposed to the ‘Temporary Provision’ that Article 370 is.

Appendix AG5

Government of India and Indian Media has not used International Documents to Expose the Fact that Pakistan does NOT support Freedom of the Kashmiris, but only desires to Gobble up the State of Jammu and Kashmir.

[AG5-1] **UNCIP Resolutions indict Pakistan.**

The major resolutions passed in UNO with regard to J&K conflict are : [UNCIP resolution of Aug-13-1948](#) and [UNCIP resolution of Jan-5-1949](#)

[UNCIP resolution of Aug-13-1948](#)

- Provided for the " *future status of the State of Kashmir shall be determined in accordance with the will of the people* ", and thereby included the possibility of Jammu and Kashmir becoming independent of both India and Pakistan.

Part I : Cease Fire

Part II : Withdrawal of all illegal Pakistani entrants from J&K.

Part III : On fulfillment of part I & II, plebiscite to determine 'future status' of J&K (***allows accession to India, or to Pakistan, or remain independent***)

Pakistan had the provision of Part III, above, reduced in the UNCIP resolution of Jan-5-1949 (see below) to "the question of the accession of the State of Jammu and Kashmir to India or Pakistan ", thereby excluding the possibility of an independent Jammu and Kashmir.

[UNCIP resolution of Jan-5-1949](#)

Part I : Same as combination of above I & II.

(Essential Preconditions).

Part II : Same as Part III of the UNCIP Resolution of 13th August 1948, but **EXCLUDES** independence to J&K.

This Resolution, which supercedes that of 13th August 1948 would enable the plebiscite to result only in either accession to India or to Pakistan; the third possibility of 'independence to Jammu and Kashmir' is ruled out by this. Pakistan is a signatory to this UNCIP Resolution, yet, it allowed to carry on with its propaganda that it champions the cause of freedom of the people of J&K!

*It must be emphasized that the UNCIP resolutions require plebiscite **ON FULFILLMENT OF PRECONDITIONS** stated in Aug-1948 and Jan-1949 UNCIP Resolutions. UN has never issued a letter or communication to India stating that the conditions have been fulfilled and therefore UN has **NEVER** asked India to actually conduct plebiscite. The UNCIP Resolutions are thus not applicable and stand defunct, but they do establish that Pakistan does **NOT** support freedom to Kashmiris.*

*For more details on UN resolutions, please visit
http://www.cifjkindia.org/main/uno_docs_002.html
http://www.cifjkindia.org/main/uno_docs_009.html*

[AG5-2]

How and Why did Pakistan avoid Plebiscite?

Pakistan NEVER was in favor of 'self-determination' of the Kashmiris. The Pakistani Army regulars under the disguise of guerilla fighters had committed huge atrocities against the inhabitants of the region.

Pakistan also committed atrocities against the Hindus and Muslims of East Pakistan which led to the break-up of the country in 1971 conflict with India .

Pakistan has incessantly attempted to coerce the Kashmiris. - " The invasion of kashmir is meant to coerce and compel the kashmiris to act in a particular way, namely, to accede to Pakistan. Every kashmiri resents this compulsion on his will ". - Sheikh Abdullah, Times of India, Oct-28-1947.

Pakistan had to avoid the plebiscite because it realized that Kashmiris, having suffered an enormous loss of human dignity at the hands of Pakistan, would not vote to accede to it. It repeatedly raised problems regarding demilitarization of the region required as a pre-condition to the plebiscite by the UN resolution, so that it could actually stall the plebiscite even as it kept demanding it, to buy time for demographic changes in the region.

Excerpts from "How Pakistan avoided Plebiscite" by B. L. Sharma are available at http://www.cifjkindia.org/main/jk_pok_002.html.

[AG5-3]

Present Status of the UN Resolutions

The United Nations Security Council President's statement of May-18-1964 states that J&K issue must be resolved bilaterally. UN observed that pre-conditions to referendum were not fulfilled by Pakistan, and thus resolutions could not be implemented. UN never issued a letter or any official communiqué that plebiscite should be held NOW. The UN resolutions stand null/void in present context as there has been a sea-change in demography of the region since the day they were passed.

Even the Secretary General of United Nations, Mr. Kofi Annan, has said that the UN resolutions with regards to J&K are not enforceable and that the basis for dialogue on Jammu and Kashmir must be 'Lahore Declaration' and not 'UN resolutions'. Of course, as noted above, The UNCIP Resolutions are not applicable and stand defunct, but they do establish that Pakistan does NOT support freedom to Kashmiris.

<http://www.rediff.com/news/2001/mar/11ann.htm>

[AG5-4]

What does the Jammu and Kashmir Constitution say about the WILL of the PEOPLE?

The elected people of Jammu and Kashmir, representing the WILL of the PEOPLE of the State of Jammu and Kashmir, adopted the 'Jammu and Kashmir Constitution.

Refer: http://www.cifjkindia.org/main/legal_docs_004.html

Some important extracts from the J&K Constitution:

“We, the people of the State of Jammu and Kashmir, having solemnly resolved, in pursuance of accession of this State to India which took place on the twenty-sixth day of October, 1947, to further define the existing relationship of the State with the Union of India as an integral part thereof, and to secure to ourselves JUSTICE, social, economic and political; ...

Section 3 (non-amendable, as per Section 147):

“The State of Jammu and Kashmir is and shall be an integral part of the Union of India.”

[AG5-5]

Legal Opinion about WILL of the PEOPLE of J&K

India's Ex - Chief Justice Dr.A.S.Anand has opined that this (above mentioned Section 3 of the J&K Constitution) represents the supreme will of the People of the State, as has also been opined by several world leaders India has failed to make this known to the civilized democracies that the Wishes of the People of J&K have already been expressed in favor of India.

*A.S.Anand 'The Constitution of Jammu & Kashmir – Its Development & Comments'
(Universal Law Publishing Co Pvt Ltd, New Delhi, third edition, 1998)*

[AG5-6]

What the World leaders said about the WILL of the PEOPLE:

“J&K is an integral part of India”

“People of J&K have opted for union with India”

➤Dec-10-1955 Soviet leaders Bulganin and Kruschev arrived in Srinagar and declared that the Kashmir question has been settled by people of Kashmir as one of states of India

➤Mar-16-1956 China's Chou En Lai said that the people of Kashmir have already expressed their will regarding accession to India

➤Nov-17-1956 J&K state constituent assembly adopted constitution, interalia, declaring State as inseparable part of India

➤Nov-20-1956 Former British Prime Minister Attlee says "Kashmir has definitely opted for Union with India."

➤Apr-27-1962 Soviet delegates to Security Council said "Question of Kashmir as integral part of India has been decided by the people of Kashmir."

➤Nov-29-2001 Kashmir an integral part of India:
Israel

References: http://www.cifkindia.org/main/wlop_001.html

http://timesofindia.indiatimes.com/cms.dll/html/comp/articleshow?art_id=46686379

Appendix AG6

Government of India has failed to implement the Indian Parliament Resolution of February 22, 1994

and

Government of India has failed to address the crying need for development of the region beyond the LoC.

AG6-1: *The Unanimous Resolution of the Indian Parliament, dated 22-February-1994:*

“On behalf of the People of India,

Firmly declares that-

"The state of Jammu & Kashmir has been, is and shall be an integral part of India and any attempts to separate it from the rest of the country will be resisted by all necessary means;

India has the will and capacity to firmly counter all designs against its unity, sovereignty and territorial integrity; and demands that -

Pakistan must vacate the areas of the Indian State of Jammu and Kashmir, which they have occupied through aggression; and resolves that -

all attempts to interfere in the internal affairs of India will be met resolutely."

The Resolution was unanimously adopted. Mr. Speaker.

http://www.cifjkindia.org/main/legal_docs_006.html

AG6-2: *Pakistan’s claim that it is the guardian of Muslims is hypocritical. In Pakistan, Punjabi/Sindhi rulers ill-treat their own people from other parts of Pakistan, including in PoK.*

Muslim Scholars have lamented against the brutalities done by Pakistan against the Kashmiri Muslims as in following terms:

"It is a strange commentary on political beliefs that the same Muslims of Pakistan who like the Muslims of Kashmir to join them invaded the state, in October 1947, killing and plundering Muslims in the state and dishonoring Muslim women, all in the interest of what they described as the liberation of Muslims of the State."

The full Text of the above memorandum submitted by Muslim leaders of India, including Dr. Zakir Hussain, then

Vice Chancellor of Aligarh Muslim University, to Dr. Frank P. Graham, United Nations Representative dated Aug-14-1951 is available at

http://www.cifjkindia.org/main/legal_docs_008.html

http://www.cifjkindia.org/main/jk_pok_000.html

AG6-3: *The Muslims of the PoK region remain backward, and have started demanding to secede from Pakistan.*

Ishtiaq Ali Mehkri, journalist with 'Dawn' reports from Karachi, (December 1, 2000) that for the last many years, August 14, the Pakistani Independence Day, has been marked as 'Deprivation Day' by the people of Gilgit-Baltistan. Pakistan's flag has been set on fire at several places.

<http://news.india->

[today.com/ntoday/newsarchives/100/12/1/n29.shtml#](http://news.india-today.com/ntoday/newsarchives/100/12/1/n29.shtml#)

AG6-4: *In May 1999, the Pakistani Supreme Court ruled: "Northern Areas are a disputed territory and the Government of Pakistan has no claim whatsoever over it.*

Major (retd.) Hussain Shah of the Muttahida Qaumi Party says, "Pakistan can no more exploit our patriotism". Unless Pakistan recognizes their fundamental rights, he says the people will have to "explore new avenues." Malika Baltistani of the 'Gilgit-Baltistan National Alliance' says, "My political party is seriously thinking of armed and political assistance from whoever it may be, to get rid of Pakistan's unjust rule". She openly says that if their demand for autonomy and fundamental rights were denied, the people of the area "would not mind calling it a day with Pakistan." At a recent press conference in Karachi, she went to the extent of saying that they would "go with any nation or country that ensured them their basic rights."

AG6-5: *PTI report (Times of India, December 4, 2000) gives us further evidence about Pakistan's neglect and exploitation of the Muslims in Pakistan-occupied-Kashmir.*

A senior leader of PoK from the Rawalakote area Mohammed Mumtaz Khan, says about PoK "The area lags by ages behind Jammu and Kashmir, where development had moved at almost the same pace as that of other cities in India." Khan says that even the medical facilities in PoK were "pitiabile and god forbid, if an epidemic broke in there, it could prove to be a catastrophe."

AG6-6: *Founding father of the Jammu and Kashmir Liberation Front, Nazir- ul-Haq, has said that Pakistan has neglected the northern area and has only used the region for its own vested interests.*

Nazir-ul-Haq complains about the slow development pace in PoK and said Pakistan has even illegally annexed the northern areas including Gilgit and Baltistan. Disputing the claims of militant groups like Lashker-e-Toiba (LeT) and Harkat-ul-Mujahideen, Haq Said "These groups are

determined neither to allow peace to return to Jammu and Kashmir nor to PoK as they would be jobless... But has anyone asked them why you are spreading terror. Islam disapproves of it." He said that in the name of jehad no one could continue to harm the interests of the people since "This is the most heinous crime even as per Islam, whose warriors they claim to be."

AG6-7: *PoK leader, Mumtaz Khan flays Pakistan for gross violation of human rights in PoK and northern areas.*

Khan has been raising his voice against these violations in the United Nations Human Rights Conference. Khan draws attention to the fact that compared to the rest of Jammu and Kashmir, PoK lags decades behind. Mumtaz Khan laments that "for so many years, Pakistan has not even implemented its own Supreme Court order (referred above) which said northern areas including Gilgit and Baltistan were a part of disputed Jammu and Kashmir and should be restored back...Pakistan had completely spoiled the area by setting up training camps for militants."

AG6-8: *Residents of PoK Disillusioned:*

Abdul Rouf Ganai, Co-convener of the Jammu-Kashmir Nationalists Front lamented recently (PTI report in 'The Asian Age', Nov.27, 2000) that "Gujjars, Bakerwals and Pahari speaking Muslims living in the Poonch, Rajouri and Doda districts are disillusioned with the ideas of 'Azadi' and 'merger with Pakistan'. They feel 'cheated' and 'used' as cannon fodder in the name of Islam".

AG6-9: *'India's inexplicable silence on dissent in PoK'*

- V K Shashikumar

<http://www.tehelka.com/channels/currentaffairs/2001/nov/27/ca112701balwar.htm>

http://www.cifjkindia.org/main/jk_pok_006.html

AG6-10: *PoK group asks UN to book Musharraf as war criminal*

http://timesofindia.indiatimes.com/articleshow.asp?art_id=1326811688

http://www.cifjkindia.org/main/jk_pok_007.html

AG6-11: *'Pakistan wants to annex Kashmir as slave colony like PoK' - Wilson John*

http://www.cifjkindia.org/main/jk_pok_003.html

AG6-12: *Northern Areas demand independence from Pakistan*

<http://in.news.yahoo.com/020313/43/1inm2.html>

http://www.cifjkindia.org/main/jk_pok_010.html

AG6-13: *PoK Area ceded by Pakistan to China in 1963 against the Will of the People*

<http://asia.cnn.com/2002/WORLD/asiapcf/east/05/24/aksai.chin/>

Pakistan, which keeps talking about 'wishes of the people' even as it has been a military dictatorship for most of its

existence now for five-and-half decades, never consulted the 'wishes of the people' when it gave away 5,180 sq km (2,000 sq miles) of northern PoK to China under a 1963 pact! Can there be a greater mockery of the 'wishes of the people' than Pakistan asking now for a plebiscite in Jammu and Kashmir?
http://www.cifjkindia.org/main/jk_cok_000.html

4. TELEPHONE NUMBER, FAX NUMBER OR E-MAIL ID. ETC IF ANY OF THE PETITIONER:

E-MAIL: pcdeshmukh@yahoo.com

*This petition is sent by email to petition@rb.nic.in,
and copy sent by Courier to:*

*Dr. A.P.J.Kalam
President of India
Rashtrapati Bhawan
New Delhi*