

In re Article 370

Essence of the judgment

1. There are three judgments of this Court – one authored by the CJI for himself, for Justice Gavai and Justice Surya Kant. There is a concurring opinion authored by Justice Kaul. Justice Sanjiv Khanna has concurred with both the judgments.

2. The reference before the Constitution Bench raises the following questions for determination:
 - a. Whether the provisions of Article 370 were temporary in nature or whether they acquired a status of permanence in the Constitution;

 - b. Whether the amendment to Article 367 in exercise of the power under Article 370(1)(d) so as to substitute the reference to the “Constituent Assembly of the State referred to in clause (3) of Article 370 by the words “Legislative Assembly of the State” is constitutionally valid;

 - c. Whether the entire Constitution of India could have been applied to the State of Jammu and Kashmir in exercise of the power under Article 370(1)(d);

 - d. Whether the abrogation of Article 370 by the President in exercise of the power under Article 370(3) is constitutionally invalid in the absence of a recommendation of the Constituent Assembly of the State of Jammu and Kashmir as mandated by the proviso to clause (3);

- e. Whether the proclamation of the Governor dated 20 June 2018 in exercise of power conferred by Section 92 of the Constitution of Jammu and Kashmir and the subsequent exercise of power on 21 November 2018, under Section 53(2) of the Constitution of Jammu and Kashmir to dissolve the Legislative Assembly are constitutionally valid;
- f. Whether the Proclamation which was issued by the President under Article 356 of the Constitution on 19 December 2018 and the subsequent extensions are constitutionally valid;
- g. Whether the Jammu and Kashmir Reorganisation Act 2019 by which the State of Jammu and Kashmir was bifurcated into two Union Territories (Union Territory of Jammu and Kashmir and Union Territory of Ladakh) is constitutionally valid bearing in mind:
 - i. The first proviso to Article 3 which requires that a Bill affecting the area, boundaries or name of a State has to be referred to the legislature of the State for its views; and
 - ii. The second proviso to Article 3 which requires the consent of the State legislature for increasing or diminishing the area of the State of Jammu and Kashmir or altering the name of boundary of the State before the introduction of the Bill in Parliament;
- h. Whether during the tenure of a Proclamation under Article 356, and when the Legislative Assembly of the State is either dissolved or is in

suspended animation the status of the State of Jammu and Kashmir as a State under Article 1(3)(a) of the Constitution and its conversion into a Union Territory under Article 1(3)(b) constitutes a valid exercise of power.

3. Whether the Proclamation issued under Article 356 of the Constitution of India and Section 92 of the Constitution of Jammu and Kashmir is constitutionally valid:

- a. We have held that this Court need not adjudicate on the validity of the Proclamations because:
 - i. the pleadings of the petitioners in the writ petitions indicate that their principal challenge is to the abrogation of Article 370 and whether such an action could have been taken during President's rule; and
 - ii. even if this Court holds that the Proclamation could not have been issued under Article 356, there would be no material relief which can be given in view of the fact that President's Rule was revoked in the State of Jammu and Kashmir on 31 October 2019. Further, the petitioners have assailed the specific actions which were taken when the Proclamation was in force on the ground that those actions breach the constitutional limitations on the exercise of power **after** a Proclamation under Article 356 is issued. These substantive challenges which form the fulcrum of the case of the petitioners have been considered.

4. Whether there are limitations on the exercise of power by President or Parliament under Article 356

We have held that there are limitations on the power which can be exercised by the Union Government in the State when a Proclamation under Article 356. We have reached the conclusion on the following grounds:

- a. The majority in **SR Bommai** (supra) held that the actions taken by the President *after* issuing a Proclamation are subject to judicial review. However, the learned Judges adopted slight variations on the standard needed to be applied by the Court to test the validity of exercise of power by the President *after* the issuance of the Proclamation. Justice Sawant applied the standard of whether the exercise of power was *mala fide* or palpably irrational. Justice Reddy observed that the advisability and necessity of the action must be borne in mind by the President;
- b. This Bench sitting in a combination of five judges is bound by the decision of the majority in **SR Bommai** (supra) on the issue. We also undertook a textual and purposive reading of Article 356 in particular and Part XVIII as a whole. We hold that there are limitations on the power exercisable after a Proclamation under Article 356 is issued. The following are our reasons:
 - i. The thread that runs through Part XVIII of the Constitution when read as a whole is that differing levels of executive and legislative power are required to handle an emergency under Articles 352 and 356. This principle applies to the exercise of power when a Proclamation under Article 356 is in force;

- ii. Article 356(1) states that the President **may** by a Proclamation assume or declare the powers stipulated in clauses (a), (b), and (c) of Article 356(1). The powers stipulated in clauses (a), (b), and (c) of Article 356(1) are not automatically invoked when a Proclamation is issued under Article 356;
- iii. Article 356(1)(a) does not opt for an all or none formula. The phrase “all or any” does not indicate that the Union Government can exercise a part of the functions of the State Government and the State Government can exercise the remaining because the suspension of the State Government is an automatic consequence of the Proclamation under Article 356. It rather indicates that the scope of power exercised by the Union Government must depend on the circumstances for issuing the Proclamation;
- iv. Clauses (a), (b), and (c) of Article 356(1) grant the President independent powers. However, the power provided under Clause (c) is broad enough to encapsulate the power of the President to assume functions under clause (a) and declare under clause (b) that the powers of the Legislature of the State shall be exercisable by Parliament;
- v. The principle underlying Article 356(1)(c) is that the exercise of power by the President must be “desirable or necessary” to give effect to the objects of the Proclamation. The commonality in both the “necessity” and “desirability” standard is that the exercise of power must have a reasonable nexus with the object of the Proclamation. Thus, the

principle which runs through Article 356(1)(c) and which also guides the exercise of power under Article 356(1)(a) is that the exercise of power must have a reasonable nexus with the object of the Proclamation; and

- vi. When a Proclamation under Article 356 is in force, there are innumerable decisions which are taken by the Union Government on behalf of the State Government for the purpose of day to day administration. Every decision and action taken by the Union Executive on behalf of the State is not subject to challenge. Opening up challenge to every decision would lead to chaos and uncertainty. It would in effect put the administration in the State at a standstill.
- c. The following standard is laid down to assess actions under Article 356 *after* the Proclamation has been issued:
 - i. The exercise of power by the President under Article 356 must have a reasonable nexus to the object of the Proclamation;
 - ii. The person challenging the exercise of power must *prima facie* establish that it is a *mala fide* or *extraneous* exercise of power. After a *prima facie* case is made, the onus shifts to the Union to justify that the exercise of power had a reasonable nexus with the object of the Proclamation; and
 - iii. The exercise of power by the President for everyday administration of the State is not ordinarily subject to judicial review.
- d. The argument of the petitioners that the Union Government cannot take actions which have irreversible consequences when a Proclamation under

Article 356 is in force is not accepted. The power of the Legislature of the State under Article 357 to repeal or alter or amend a law enacted by Parliament in exercise of the power of the Legislature of the State must be read in the context of the amendment introduced by the Constitution (forty-second Amendment) Act 1976. Before the amendment, the law to the extent of incompetency would automatically cease to exist after a buffer period and actions done were expressly saved. However, an express repeal by the competent legislature is required for the law to cease to exist after the amendment. The repealing statute would in such a case make provisions for actions taken during the subsistence of the legislation. The observations in **Krishna Kumar Singh** (supra) on whether the consequence of an Ordinance can subsist even after the Ordinance ceases to exist cannot be transposed to interpret the limits of Article 356 because an Ordinance which has the effect of a law by its very nature has a limited life; and

- e. The argument of the petitioner that Parliament can only assume the law-making powers of the Legislature of the State when the Proclamation under Article 356 is issued is not accepted. The purpose of Article 357 is to ensure that while exercising the powers of the legislature of the State pursuant to a declaration under Article 356(1), Parliament, or as the case may be, the President are not impeded by an absence of competence which would have impeded the exercise of a similar power in the absence of a Proclamation under Article 356. Further, Article 357 does not contain a non-obstante provision which overrides Article 356. To interpret Article 357(1) as a restriction on Article 356(1)(b) would be to read in a restriction which the

plain terms of the Constitution do not provide. As held above, the exercise of power after a Proclamation under Article 356 is issued is subject to judicial review. An immunity from judicial scrutiny does not attach to the exercise of constitutional powers of the Legislature of the State. The Court while judicially reviewing the exercise of power can determine if the exercise of the constitutional power of the Legislature of the State by Parliament has a reasonable nexus with the object sought to be achieved by the Proclamation.

5. *Whether Jammu and Kashmir retained an element of sovereignty or internal sovereignty when it joined the Union of India:*

We have held that the State of Jammu and Kashmir did not retain an element of sovereignty when it joined the Union of India. We have arrived at this conclusion for the following reasons:

- a. Paragraph 8 of the Instrument of Accession executed by Maharaja Hari Singh provided that nothing in the Instrument would affect the continuance of the sovereignty of the Maharaja in and over the State;
- b. On 25 November 1949, a Proclamation was issued for the State of Jammu and Kashmir by Yuvraj Karan Singh. The declaration in this Proclamation that the Constitution of India would not only supersede all other constitutional provisions in the State which were inconsistent with it but also abrogate them achieves what would have been attained by an agreement of merger. With the issuance of the Proclamation, paragraph 8 of the Instrument of Accession ceased to be of legal consequence. The

Proclamation reflects the full and final surrender of sovereignty by Jammu and Kashmir, through its sovereign ruler, to India – to her people who are sovereign;

- c. Neither the constitutional setup nor any other factors indicate that the State of Jammu and Kashmir retained an element of sovereignty. The Constitution of Jammu and Kashmir was only to **further** define the relationship between the Union of India and the State of Jammu and Kashmir. The relationship was already defined by the IoA, the Proclamation issued by Yuvraj Karan Singh in November 1949 and more importantly, by the Constitution of India;
- d. There is a clear absence in the Constitution of Jammu and Kashmir of a reference to sovereignty. In contrast, the Constitution of India emphasises in its Preamble that the people of India resolved to constitute India into a sovereign, socialistic, secular, democratic, republic;
- e. That the State of Jammu and Kashmir became an integral part of the Union of India is evident from Articles 1 and 370 of the Indian Constitution. It is reiterated in Section 3 of the Constitution of Jammu and Kashmir, which is unamendable;
- f. The Preamble of the Constitution of Jammu and Kashmir, Sections 3, 5 and 147 of the State Constitution, coupled with Article 1 of the Constitution of India read with the First Schedule as well as Article 370 indicate in no uncertain terms that a system of subordination (as understood by the definition of sovereignty) exists by which the State is subordinate to the Indian Constitution first and only then to its own Constitution;

- g. All States in the country have legislative and executive power albeit to differing degrees. The Constitution accommodates concerns specific to a particular State by providing for arrangements which are specific to that State. Articles 371A to 371J are examples of special arrangements for different States. This is a feature of asymmetric federalism, like Article 370 which became applicable to Jammu and Kashmir on the adoption of the Constitution. The State of Jammu and Kashmir does not have 'internal sovereignty' which is distinguishable from the powers and privileges enjoyed by other States in the country; and
- h. The limited question before the Constitution Bench in **Prem Nath Kaul** (supra) was whether the Monarch held plenary legislative powers after the Constitution of India as it applied to Jammu and Kashmir was adopted in the State but before the Constitution of Jammu and Kashmir was adopted. A decision is an authority for the proposition which it decides. The question of whether the State of Jammu and Kashmir retained sovereignty upon integration with the Dominion of India did not arise in that case.

6. *The challenge to CO 273*

- a. To answer this issue we had to decide on two issues. One, whether Article 370 is a temporary provision and two, the effect of dissolution of the Constituent Assembly of Jammu and Kashmir on the scope of powers under Article 370(3);
- b. We have held that Article 370 is a temporary provision on a reading of the historical context in which it was included. Article 370 was introduced to serve two purposes. *First*, the transitional purpose: to provide for an interim

- arrangement until the Constituent Assembly of the State was formed and could take a decision on the legislative competence of the Union on matters other than the ones stipulated in the Instrument of Accession, and ratify the Constitution; and *second*, a temporary purpose: an interim arrangement in view of the special circumstances because of the war conditions in the State;
- c. We have held that a textual reading of Article 370 also indicates that it is a temporary provision. For this purpose, we have referred to the placement of the provision in Part XXI of the Constitution which deals with temporary and transitional provisions, the marginal note of the provision which states “temporary provisions with respect to the State of Jammu and Kashmir”, and a reading of Articles 370 and 1 by which the State became an integral part of India upon the adoption of the Constitution; and
- d. On the second question of the effect of the dissolution of the Constituent Assembly of Jammu and Kashmir on the scope of powers under Article 370(3): we have held that the power of the President under Article 370(3) to issue a notification declaring that Article 370 ceases to exist subsists even after the dissolution of the Constituent Assembly of Jammu and Kashmir for the following reasons:
- i. The proviso to Article 370(3) encapsulates the process by which the Indian States could ratify the Constitution of India. The Ruler of each Indian State had to issue a Proclamation ratifying the Constitution on the recommendation of the Constituent Assembly, where such body existed. In States where the Constituent Assembly was not convened by then, the Ruler of the State had to issue a Proclamation accepting

the Constitution. When a Constituent Assembly was convened in those States, the Constituent Assembly could make a recommendation for the modification of the Constitution as it applied to the State and such a recommendation would be “earnestly considered” by the Union. The words “**recommendation** of the Constituent Assembly referred to in Clause (2) shall be **necessary before** the President issues such a notification” as it appears in the proviso to Article 370(3) must be read in this context. Thus, the recommendation of the Constituent Assembly to begin with was not binding on the President;

- ii. At the time of the framing of the Constitution of India, it was obviously within the contemplation that the Constituent Assembly of Jammu and Kashmir was formed for framing the Constitution for the State. It was not intended to be a permanent body but a body with a specific remit and purpose. The power conferred by the proviso to Article 370(3) was hence something which would operate in a period of transition when the Constituent Assembly of Jammu and Kashmir was formed and was in existence, pending the drafting of the State Constitution;
- iii. When the Constituent Assembly of Jammu and Kashmir ceased to exist, only one of the special circumstances for which the provision was introduced ceased. However, the other circumstance (that is, special circumstance because of the situation in the State) for which Article 370 was introduced subsisted even after the Constituent

Assembly ceased to exist. This is recognised by the judgment of the Constitution Bench in **Sampath Prakash** (supra);

- iv. The effect of the President declaring under Clause 370(3) that Article 370 ceases to exist is that provisions of the Constitution which apply to every other State in the First Schedule would equally apply to the State of Jammu and Kashmir. Articles 370(1)(d) and 370(3) were introduced with the purpose of enhancing constitutional integration and not disintegration. So, the power under Article 370(1)(d) and Article 370(3) even when exercised to its fullest extent does not freeze the system of integration contemplated by Article 370 but is rather intended to enhance constitutional integration between the Union and the State of Jammu and Kashmir. Holding that the power under Article 370(3) cannot be exercised after the dissolution of the Constituent Assembly would lead to the freezing of the process of integration contrary to the purpose of introducing the provision; and
 - v. If the contention of the petitioners on the interpretation of Article 370 vis-à-vis the dissolution of the Constituent Assembly is accepted then Article 370(3) would become redundant and would lose its temporary character.
- e. The President while deciding if the power under Article 370(3) must be exercised determines if the special circumstances which warranted a special solution in the form of Article 370 have ceased to exist. This is a policy decision which completely falls within the realm of the executive. The Court cannot sit in appeal over the decision of the President on whether the special

circumstances which led to the arrangement under Article 370 have ceased to exist. However, the decision is not beyond the scope of judicial review. It is settled law that the exercise of executive power can be challenged on the ground of *mala fides*. The slew of Constitutional orders issued by the President under Article 370(1)(d) applying various provisions of the Constitution and applying provisions with modification indicate that over the course of the last seventy years, the Union and the State have through a collaborative exercise constitutionally integrated the State with the Union. This is not a case where only Articles 1 and 370 of the Constitution were applied to the State of Jammu and Kashmir and suddenly after seventy years the entire Constitution was being made applicable. The continuous exercise of power under Article 370(1) by the President indicates that the gradual process of constitutional integration was ongoing. The declaration issued by the President in exercise of the power under Article 370(3) is a culmination of the process of integration. Thus, we do not find that the President's exercise of power under Article 370(3) was *mala fide*. Having concluded that the power under Article 370(3) subsisted even after the dissolution of the Constituent Assembly we have held that the exercise of power by the President to issue CO 273 is valid.

7. *The challenge to CO 272 on the ground that the power under Article 370(1)(d) cannot be used to apply all provisions of the Constitution to the State of Jammu and Kashmir*

We have held that all provisions of the Constitution can be applied to Jammu and Kashmir through the exercise of power under Article 370(1)(d). The power under Article 370(1)(d) can be used to apply one provision, more than one provision, an entire Part of the Constitution, or all the provisions of the Constitution (that is, the entire Constitution). The provision does not make a distinction between one or all provisions of the Constitution. Non-application of mind cannot be claimed merely because the CO 272 applies all provisions of the Constitution to Jammu and Kashmir in one go.

8. *The challenge to CO 272 on the ground that the President could not have secured the concurrence of the Union Government under the second proviso to Article 370(1)(d)*

a. We have held that the President seeking the concurrence of the Union Government instead of the Government of the State to issue CO 272 is not invalid because:

- i. The effect of applying all the provisions of the Constitution to the State of Jammu and Kashmir through the exercise of power under Article 370(1)(d) is the same as an exercise of power under Article 370(3) notifying that Article 370 shall cease to exist. That is, all provisions of the Constitution of India will apply to the State of Jammu and Kashmir, except for the fact that the former can be reversed while the latter cannot;
- ii. Consultation and collaboration between both the units will only be necessary where the application of the provisions of the Indian

Constitution to the State would require amendments to the State Constitution because the purpose of the requirements of consultation and collaboration is for the smooth functioning of governance in the State and to ensure that the provisions of the Constitution of Jammu and Kashmir are not inconsistent with the provisions of the Constitution of India;

- iii. Since the effect of applying all the provisions of the Constitution to Jammu and Kashmir through the exercise of power under Article 370(1)(d) is the same as issuing a notification under Article 370(3) (which the President has the power to unilaterally issue), the principle of consultation and collaboration are not required to be followed;
- iv. The exercise of power is *mala fide* only if power was exercised with an intent to deceive. Deception can only be proved if the power which is otherwise unavailable to the authority or body is exercised or if the power that is available is improperly exercised. Since the concurrence of the State Government was not required for the exercise of power under Article 370(1)(d) to apply **all** provisions of the Constitution to the State, the President securing the concurrence of the Union of India (on behalf of the State Government) is not *mala fide*.

9. The challenge to CO 272 on the ground that it is ultra vires Article 370(1)(d) because it modifies Article 370:

- a. We have held that the modification by CO 272 to Article 367 as it applies to Jammu and Kashmir had the effect of amending Article 370 and is

thus *ultra vires* Article 370(1)(d). We have reached this conclusion for the following reasons:

- i. Recourse must be had to the procedure contemplated by Article 370(3) if Article 370 is to cease to operate or is to be amended or modified in its application to the State of Jammu and Kashmir. No other procedure may be utilised to amend Article 370.
- ii. The rule of interpretation that a power under a statute must be exercised in accordance with the provisions of that statute and in no other manner is undoubtedly applicable to the Constitution;
- iii. From precedent, including **Shankari Prasad Singh Deo**, **Sajjan Singh**, **Kihoto Hollohan**, and **Rajendra N. Shah**, it emerges that the following aspects are of significance when assessing whether a change has been made to a provision of the Constitution:
 - i. A change may be either in terms of or in its effect;
 - ii. A change can be said to have been made even if the language of the concerned provision is not directly amended, by adding, subtracting or modifying the language. This is a change in effect;
 - iii. If the effect of an amendment is to change a provision, such effect must be significant or appreciable; and
 - iv. The substance of a change is more important than its form.

- b. An assessment of whether a Constitutional Order amounts to a 'modification' and consequently, whether the procedure under Article 370(1) or under Article 370(3) ought to have been followed depends on this standard.
- c. The effect of a provision of law is as important as its form. While the change sought to be made by paragraph 2 of CO 272 may appear to be a 'modification' or amendment of Article 367 at first blush, its **effect** is to amend Article 370 itself. CO 272 changes the language to the proviso to Article 370(3) in two ways. First, it changes the recommending body from the Constituent Assembly to the Legislative Assembly; and second, it makes a new arrangement at variance with that specific Constituent Assembly. Both these changes are not insignificant because they modify the essential character of the proviso by substituting a particular type or kind of body with another type or kind entirely.
- d. While the 'interpretation' clause can be used to define or give meaning to particular terms, it cannot be deployed to amend a provision by bypassing the specific procedure laid down for its amendment. This would defeat the purpose of having a procedure for making an amendment.
- e. The consequence of permitting amendments through the circuitous manner would be disastrous. Many provisions of the Constitution would be susceptible to amendments which evade the procedure stipulated by Article 368 or other provisions.
- f. The previous Constitutional Orders which modified Article 370 through Article 367 were clarificatory and consequential. They did not have the effect of amending Article 370.

10. The status of the Constitution of Jammu and Kashmir:

- a. The gaps left by the non-application of some parts of the Constitution of India were filled by the Constitution of the State. After the abrogation of Article 370 (as it stood before the issuance of CO 272 and CO 273) and the application of the entirety of the Constitution of India to the State, the Constitution of the State does not fulfil any purpose or serve any function. Hence, the implicit but necessary consequence of the application of the Constitution of India in its entirety to the State of Jammu and Kashmir is that the Constitution of the State is inoperative.

11. On the validity of Parliament's exercise of power under the first proviso to Article 3

A five-Judge Bench of this Court in **Babulal Parate** held that the views expressed by the State Legislature under the proviso to Article 3 are not binding on Parliament. If the views of the State Legislature were binding on Parliament (which is not the case), there would be scope for debate on whether Parliament in exercise of powers under Article 356(1)(b) could have substituted its views for the views of the Legislative Assembly of the State. However, the views of the Legislature of the State are not binding on Parliament in terms of the first proviso to Article 3. The views of the Legislature of the State under the first proviso to Article 3 are recommendatory to begin with. Thus, Parliament's exercise of power under the first proviso to Article 3 is valid and not *mala fide*.

12. On the validity of the Suspension of the second proviso to Article 3 as applicable to Jammu and Kashmir

When the Reorganisation Bill was introduced, that is 5 August 2019, the second proviso to Article 3 as it applied to the State of Jammu and Kashmir ceased to exist because of CO 272. Thus, the issue of whether the second proviso to Article 3 could have been suspended in exercise of the power under Article 356(1)(c) does not survive.

13. The validity of the Jammu and Kashmir Reorganisation Act 2019:

- a. The Solicitor General (for the Union of India) submitted that statehood will be restored to Jammu and Kashmir and that its status as a Union territory is temporary. The Solicitor General submitted that the status of the Union Territory of Ladakh will not be affected by the restoration of statehood to Jammu and Kashmir. In view of the submission made by the Solicitor General that statehood would be restored of Jammu and Kashmir, we do not find it necessary to determine whether the reorganisation of the State of Jammu and Kashmir into two Union Territories of Ladakh and Jammu and Kashmir is permissible under Article 3. The status of Ladakh as a Union Territory is upheld because Article 3(a) read with Explanation I permits forming a Union Territory by separation of a territory from any State. This Court is alive to the security concerns in the territory. Direct elections to the Legislative Assemblies which is one of the paramount features of representative democracy in India cannot be put on hold until statehood is restored. We direct that

steps shall be taken by the Election Commission of India to conduct elections to the Legislative Assembly of Jammu and Kashmir constituted under Section 14 of the Reorganisation Act by 30 September 2024. Restoration of statehood shall take place at the earliest and as soon as possible.

- b. The question of whether Parliament can extinguish the character of statehood by converting a State into one or more Union Territories in exercise of power under Article 3 is left open. In an appropriate case, this Court must construe the scope of powers under Article 3 in light of the necessary effect of converting a State to Union Territories which is that autonomy would be diminished, the historical context for the creation of federating units, and its impact on the principles of federalism and representative democracy.

14. In view of the above discussion, the following are the conclusions:

- a. The State of Jammu and Kashmir does not retain any element of sovereignty after the execution of the IoA and the issuance of the Proclamation dated 25 November 1949 by which the Constitution of India was adopted. The State of Jammu and Kashmir does not have 'internal sovereignty' which is distinguishable from the powers and privileges enjoyed by other States in the country. Article 370 was a feature of asymmetric federalism and not sovereignty;
- b. The petitioners did not challenge the issuance of the Proclamations under Section 92 of the Jammu and Kashmir Constitution and Article 356

of the Indian Constitution until the special status of Jammu and Kashmir was abrogated. The challenge to the Proclamations does not merit adjudication because the principal challenge is to the actions which were taken **after** the Proclamation was issued;

c. The exercise of power by the President **after** the Proclamation under Article 356 is issued is subject to judicial review. The exercise of power by the President must have a reasonable nexus with the object of the Proclamation. The person challenging the exercise of power must *prima facie* establish that it is a *mala fide* or *extraneous* exercise of power. Once a *prima facie* case is made, the onus shifts to the Union to justify the exercise of such power;

d. The power of Parliament under Article 356(1)(b) to exercise the powers of the Legislature of the State cannot be restricted to law-making power thereby excluding non-law making power of the Legislature of the State. Such an interpretation would amount to reading in a limitation into the provision contrary to the text of the Article;

e. It can be garnered from the historical context for the inclusion of Article 370 and the placement of Article 370 in Part XXI of the Constitution that it is a temporary provision;

f. The power under Article 370(3) did not cease to exist upon the dissolution of the Constituent Assembly of Jammu and Kashmir. When the Constituent Assembly was dissolved, only the transitional power recognised in the proviso to Article 370(3) which empowered the

Constituent Assembly to make its recommendations ceased to exist. It did not affect the power held by the President under Article 370(3);

g. Article 370 cannot be amended by exercise of power under Article 370(1)(d). Recourse must have been taken to the procedure contemplated by Article 370(3) if Article 370 is to cease to operate or is to be amended or modified in its application to the State of Jammu and Kashmir. Paragraph 2 of CO 272 by which Article 370 was amended through Article 367 is *ultra vires* Article 370(1)(d) because it modifies Article 370, in effect, without following the procedure prescribed to modify Article 370. An interpretation clause cannot be used to bypass the procedure laid down for amendment;

h. The exercise of power by the President under Article 370(1)(d) to issue CO 272 is not *mala fide*. The President in exercise of power under Article 370(3) can unilaterally issue a notification that Article 370 ceases to exist. The President did not have to secure the concurrence of the Government of the State or Union Government acting on behalf of the State Government under the second proviso to Article 370(1)(d) while applying all the provisions of the Constitution to Jammu and Kashmir because such an exercise of power has the same effect as an exercise of power under Article 370(3) for which the concurrence or collaboration with the State Government was not required;

i. Paragraph 2 of CO 272 issued by the President in exercise of power under Article 370(1)(d) applying all the provisions of the Constitution of

India to the State of Jammu and Kashmir is valid. Such an exercise of power is not *mala fide* merely because all the provisions were applied together without following a piece-meal approach;

j. The President had the power to issue a notification declaring that Article 370(3) ceases to operate without the recommendation of the Constituent Assembly. The continuous exercise of power under Article 370(1) by the President indicates that the gradual process of constitutional integration was ongoing. The declaration issued by the President under Article 370(3) is a culmination of the process of integration and as such is a valid exercise of power. Thus, CO 273 is valid;

k. The Constitution of India is a complete code for constitutional governance. Following the application of the Constitution of India in its entirety to the State of Jammu and Kashmir by CO 273, the Constitution of the State of Jammu and Kashmir is inoperative and is declared to have become redundant; and\

l. The views of the Legislature of the State under the first proviso to Article 3 are recommendatory. Thus, Parliament's exercise of power under the first proviso to Article 3 under the Proclamation was valid and not *mala fide*.

m. The Solicitor General stated that the statehood of Jammu and Kashmir will be restored (except for the carving out of the Union Territory of Ladakh). In view of the statement we do not find it necessary to determine whether the reorganisation of the State of Jammu and Kashmir

into two Union Territories of Ladakh and Jammu and Kashmir is permissible under Article 3. However, we uphold the validity of the decision to carve out the Union Territory of Ladakh in view of Article 3(a) read with Explanation I which permits forming a Union Territory by separation of a territory from any State.

n. We direct that steps shall be taken by the Election Commission of India to conduct elections to the Legislative Assembly of Jammu and Kashmir constituted under Section 14 of the Reorganisation Act by 30 September 2024. Restoration of statehood shall take place at the earliest and as soon as possible.