

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

WP(C) PIL no. 4/2020
(Through Video Conferencing
from Srinagar Wing)

Azra Ismail

.....Petitioner(s)

Through:- Mr. Z. A. Quereshi, Sr. Advocate with
Mr. Mian Tuffail, Advocate.
(on Video Conference from residence in
Srinagar)

Mr. Faisal Qadri, Advocate
(on Voice Call from residence in Srinagar)

Mr. Shafqat Nazir, Advocate.
(on Voice Call from residence in Srinagar)

v/s

Union Territory of Jammu and Kashmir

.... Respondent(s)

Through:- Mr. B. A. Dar, Sr. AAG
(on Voice Call from his residence at
Srinagar).

WP(C) PIL no. 5/2020
(Through Video Conferencing
in Jammu)

Court on its Own Motion

Ms. Monika Kohli, Amicus (on Video
Conference from her office at Jammu)

v/s

Union Territory of Jammu and Kashmir

.... Respondent(s)

Through:- Mr. Amit Gupta, AAG (on Video
Conference from his residence at Jammu)
for Govt. of UT of Jammu & Kashmir

Mr. Adarsh Sharma, Advocate
M. No. 9419135512 (on Video Conference
from his residence at Jammu).

Re: Issue of the impending Darbar Move

Coram:

HON'BLE THE CHIEF JUSTICE (on Video Conference from High Court at Jammu)

HON'BLE MR RAJNESH OSWAL (on Video Conference from High Court at Jammu)

Judgment

05.05.2020

GITA MITTAL, CJ

*“16. Governance, according to the United Nations, is the exercise of political, economic, and administrative authority to manage a nation's affairs. It involves complex mechanisms, processes, relationships, and institutions through which citizens and groups articulate their interests, exercise their rights and obligations, and mediate their differences. Governance encompasses every institution and every organization in the society, from the family to the State; it embraces all methods--good and bad--that societies use to distribute power and manage public resources and problems. **Good governance, a subset of governance, manages the public resources effectively, efficiently to cater to critical needs of society. True, effective democratic forms of governance rely on public participation, accountability, and transparency**”*

(Ref: 2017 SCC OnLine Ker 60 Anoop M.S. Manelil House, Valayanchirangara PO, Perumbavoor v. State of Kerala)

1. Can any Government afford the annual expenditure of atleast Rs.200 crores (as disclosed and many more hundreds of crores of rupees of undisclosed costs) to sustain and perpetuate an arrangement of bi-annual shifting of its Capital two times a year, which originated in 1872 from the discomfort of the then Ruler of Jammu and Kashmir with the harshness of the winter in Kashmir? More so is this acceptable in a hopelessly fiscally deprived UT with severe underdevelopment and people deprived of bare basics which are essential part of their fundamental right of life guaranteed under Article 21 of the Constitution of India. The origin of this arrangement; its perpetuation; the manner of implementation thereof; the expenditure thereon; its impact on the judiciary; on the people, administration and governance; government employees; the human and social cost thereof amongst other critical issues, is what which we are called upon and propose to examine in

this judgment. We are also required to examine as to whether emotional rhetoric of groups of people can override public interest, imperative considerations of efficiency in governance, continuity in administration, concerns of access to justice, the entitlement to the guaranteed rights under Part III of the Constitution. We are called upon to examine the bindingness of the arrangement given the fact that it did not originate from considerations of public welfare, good governance or any needs of efficiency in administration. We are required to examine the propriety of the perpetuation of the arrangement which cannot be sourced to any Constitutional or legal provisions. We conduct this examination, conscious of and within the limitations on our power of judicial review.

2. Before considering the various issues which arise for consideration, we may for expediency and convenience set out hereunder the headings under which we consider the issues; the para numbers and the page where they stand discussed in this judgment:

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I. Factual Narration

3. The months of Feb/March 2020 have brought an unexpected and unprecedented crisis to our doorsteps. Spread of the COVID-19 infection and essentiality of its containment brought enforcement of the lockdown to Jammu and Kashmir with effect from 24th March 2020.

4. A representation dated 1st March 2020 was received in the Chief Justice's Secretariat from one Dr. Zahoor Hussain Mir, resident of Budgam in Kashmir complaining that his ward Heena Sugra Shabnum was a student of high studies in medicine at the Tehran University of Medical Sciences, Iran, who was supposed to return to Kashmir on 26th February 2020 on vacation. However, on account of the sudden outbreak of the COVID-19 infection in Iran and its identification as a second epicenter in the world, all air traffic stood suspended from Iran towards India. A submission was made that, as a result many pilgrims, labourers and students, stranded in Iran facing shortages of masks, medicines and other essential commodities due to the closure/shut down announced by the Iranian Government. A prayer was made for evacuation of the stranded persons/students on priority.

5. This representation was directed to be registered as a writ petition in public interest and came to be registered in the Jammu Wing as *WP(C)PIL No. 5/2020* titled '*Court on its own motion v. Nemo*'. Before any order could be passed in the writ petition, a further e-mail dated 2nd March 2020 was received from Mr. Mir pointing out grave urgency in the matter.

6. In this background, an order dated 3rd March 2020 was recorded by us issuing notice to the Government of India represented by Secretaries, Ministry of External Affairs, Ministry of Health and Family Welfare, Ministry of Civil Aviation and also the Governments of the Union Territories of Jammu and Kashmir as well as Ladakh through their Commissioner/Secretary, Health and Medical Education Department. Directions were issued to the Government of India to examine the prayer for evacuation, and, pending that, to ensure availability of requisite material to all Indians stranded in Iran through the Indian Embassy in Tehran. Further directions were issued to the respondents to identify protocols to be followed and the mode of implementation. The authorities of the Union Territories were directed to create proper facilities for isolation and quarantine in the Government and private sector, testing laboratories as well as availability of the health care and medication in the Union Territories of Jammu and Kashmir and Ladakh for containment of the COVID-19 infection. Several issues relating to the COVID-19 stand addressed in this writ petition.

7. In the meantime, a writ petition bearing WP(C)PIL No.4/2020 titled '*Azra Ismail v. Union Territory of Jammu and Kashmir*' on the same issues came to be filed in Srinagar.

This petition was clubbed for hearing with the writ petition in Jammu.

II. Apprehensions expressed on the impending Darbar Move-Order dated 10th April 2020

8. During the hearing in these cases on the 10th April 2020, Mr. Faisal Qadri, Id counsel for the petitioner in WP(C)PIL No. 4/2020 had expressed deep concern with regard to advisability of the impending bi-annual Darbar Move which, as per practice, would have taken place in the last week of April/1st week of May, 2020. It was submitted by Mr. Qadri that the Darbar Move into Srinagar would entail movement of thousands of Government personnel at all levels, shifting the complete administrative machinery and equipment. The COVID-19 infection was stated to be fast spreading in the Kashmir Valley, especially in Srinagar. Mr. Qadri had urged that available medical facilities in Jammu and Kashmir were woefully inadequate even at the best of times when the Union Territory was not grappling with the COVID-19 infection. It was submitted that even without the Darbar Move, these facilities would certainly be insufficient and would be grossly deficient to meet the needs of current epidemic. It was pointed out that in the current state of affairs, the Darbar Move would put an unbearable strain on all facilities in the valley of Kashmir endangering lives of the locals.

9. Mr. Shafqat Nazir, Advocate had pointed out that such Darbar Move would have entailed thousands of government personnel at all levels moving from Jammu and Srinagar and shifting of the complete administrative machinery, records etc. It was urged that the movement of the persons who would be required to move from Jammu by itself violates the requirements of the social distancing and conditions of the lockdown.

10. It was pointed out that resources of every kind –human and financial- were needed for the huge effort; that the influx of thousands of Government

employees from Jammu to Srinagar; movement of truckloads which usually number over 150; requirement of thousands of police and security personnel for the Darbar Move, would detract from the resources which were already in short supply in the Kashmir Valley. It was urged that lakhs of people in the Union Territory are facing loss of employment, displacement, denial of wages and needing assistance for meeting their bare needs of food and nutrition.

11. Counsels had drawn attention of the court to the fact of the spread of COVID-19 infection in the Kashmir Valley; resultant mortality; the lockdown which was in force; limitations on health facilities as were available in Srinagar as also consequential impact on security personnel who would require to be shifted from COVID-19 related duties, to security assignments with the persons in position who were shifted to Srinagar and, importantly, the diversion of scarce resources, financial and otherwise, from COVID-19 needs to meeting the requirements of the impending Darbar Move. The submission on 10th April 2020 was that, in this background, the Darbar Move and the expenditure thereon was an unwarranted diversion of badly needed resources from very important services.

12. Counsels had requested this court to examine the feasibility of the Darbar Move and its postponement till COVID-19 infection issues had been addressed and the matter brought under full control with mobility restored after removal of the lockdown.

13. The issues raised certainly impacted Constitutional and basic human rights of the residents of Jammu and Kashmir. The matter therefore required an examination for which proper information was needed.

14. In order to enable this Court to take a view on the implication of the Darbar Move in these times when the entire country was fighting the spread of the

COVID-19 infection, the impact of the Darbar Move on the necessary resources at this stage, on the personnel involved (positions and number), financial implications, the arrangements (transport, accommodation, security etc) involved and other relevant matters, data was essential. It also appeared reasonable, that the past experience would lend guidance to our consideration.

15. In order to take a considered view to be taken on the implications of the Darbar Move and its impact, by our order dated 10th April 2020 we had accordingly called for relevant information from the concerned departments including the General Administration, Finance; Estate and Transport Departments of the UT of Jammu and Kashmir; the Director General of Police; J&K, ADG, Security as also the Officiating Registrar General of this Court.

16. In the meantime, Mr. Amit Gupta, AAG placed the Government Order No. 464-JK(GAD) of 2020 dated 10th April 2020 before us. By this order, sanction stood accorded to the “*formal*” opening of the Annual Darbar Move offices for the Summer Session at Srinagar on 4th May 2020 at 9:30 A.M. The order noted that “*in view of the extraordinary circumstances due to COVID-19 Pandemic*”, special arrangements were ordered to be made to ensure transaction of the Government business effectively. The order directed that the Civil Secretariat at Jammu shall continue to remain functional and the move employees shall work on “*as is where is*” basis i.e. Kashmir based staff shall work from Srinagar and Jammu based staff shall work from Jammu. The Move offices outside the Civil Secretariat were also directed to continue to remain functional at Jammu/Srinagar on the same basis.

17. The order directed that move based employees of Kashmir Division, who were required to move Srinagar on account of Darbar Move, on 25th/26th April 2020, shall be provided transport facility by the JKRTC. The Estates Department

was directed to provide accommodation to the Officers/officials, as per requirements. It was stated that this arrangement would be reviewed after assessing the extent and spread of COVID-19 after 15th June 2020.

18. On 16th April 2020, it was contended by Mr. Faisal Qadri that the Move would violate the requirement of advised social distancing and the conditions of the lockdown which stood enforced. Mr. Shafqat Nazir, Advocate has pointed out that public funds were in dire necessity for treatment of patients suffering from COVID-19 and related issues. Our attention was drawn to the requirement of financial resources also for supporting those who stood deprived of livelihoods and were on the road. It was submitted by Mr. Shafqat Nazir, Advocate that even the partial Darbar Move at this stage would be a huge and unwarranted expense resulting in unnecessary squandering of financial resources.

19. Before the above order dated 10th April 2020 could be implemented, an order dated 14th April 2020 was issued by the Union Home Secretary/NDMA extending the lockdown period in the country up to 3rd May 2020. In view of this order and the spike in the number of COVID-19 cases as well as the need for effective control of the same, the Government of the Union Territory of Jammu and Kashmir undertook a review of the Annual Darbar Move arrangements. This review resulted in issuance of the following **Government Order** No. 474-JK(GAD) of 2020 dated **17th April 2020**:

*“Pursuant to **Order** No. 40-3/2020-DM-1(A) dated 14.04.2020, issued by the Union Home Secretary/NDMA **extending** t hereby the*

Lockdown period in the country upto 3rd May, 2020, and in view of the recent spike in number of COVID-19 cases and the need for effective control of the same, the Annual Darbar Move arrangements have been reviewed. It has been observed that the formal opening of the Darbar on

04.05.2020, as ordered vide Government Order No.464-JK(GAD) of 2020 dated 10.04.2020, **may affect the COVID-19 control efforts in the Union Territory.**

In view of the above and in partial modification of the Government Order No. 464-JK(GAD) of 2020 dated 10.04.2020, it is, hereby, ordered as under:

- i) *The formal opening of the Darbar at Srinagar will take place on 15.06.2020;*
- ii) *All officers assigned specific COVID-19 control tasks shall continue to function from their present location till further orders, so as to ensure that COVID-19 control effects are not hampered on account of physical dislocation of officers/offices;*
- iii) *The Civil Secretariat at Srinagar shall start partial functioning on 04.05.2020 with the staff/officers on 'as is where is' basis i.e. those who have already been or likely to get relocated before that date;*
- iv) *All Administrative Secretaries shall furnish list of officers/staff who shall work from Srinagar and Jammu respectively to the General Administration Department by 21.04.2020;*
- v) *The concerned Administrative Secretaries/Head of Departments shall assign work to Officers/Staff stationed at Srinagar, and Jammu accordingly for obtaining maximum efficiency and minimum disruption; and*
- vi) *All Administrative Secretaries will put in place a robust online/electronic/video conferencing/other communication mode at Jammu/Srinagar to ensure a virtual office at both the places.*

The above arrangement shall be further reviewed on 15.06.2020, or earlier, when a clear picture on extent and spread of COVID-19 emerges."

(Emphasis by us)

20. The order dated 10th April 2020 was thus modified and the formal opening of the Darbar at Srinagar has been postponed to 15th June 2020. This order also notes that officers assigned specific COVID-19 control tasks shall continue to function from their present location till further orders, so as to ensure that COVID-

19 control efforts are not hampered on account of physical dislocation of officers/offices.

21. So far as the Civil Secretariat at Srinagar is concerned, it was directed that this shall start '*partial functioning*' on 4th May 2020 with the staff/officers on '*as is where is*' basis i.e. those who have already been or likely to get relocated before that date.

22. The order stated that the arrangement shall be further reviewed on 15th June 2020 or earlier, when a clear picture on extent and spread of COVID-19 emerges.

23. The order dated 17th April 2020 clearly establishes that the Darbar Move if implemented, would have had a material impact on the COVID-19 control efforts. This order also manifests that the apprehensions expressed before us and our examination herein is fully justified.

24. The COVID-19 crisis and the impending Darbar Move thus, admittedly raised valid concerns, about the adverse impact of the Move on the efforts of the authorities for containment of the COVID-19 infection which were underway in Srinagar, which required examination.

25. However, the matter cannot rest here. Counsels have contended that entire issue of the Darbar Move is still pending, that it has merely been postponed and it requires an all round closer scrutiny from the impact on the constitutional entitlements of the people of Jammu and Kashmir; its efficacy; the basis of this practice; its impact on the stakeholders and society; its cost-financial, economic, social, psychological; the resultant non-functioning of the administration to enable the Move as well as the impact on governance in the region from which the Darbar moves.

26. Pursuant to our order dated 10th April 2020, the Government Departments have submitted detailed reports giving information which was sought.

27. We have therefore heard Id. Counsels on the above and record our observations thereon.

III. What is the 'Darbar Move' - Reasons for

28. The current COVID-19 crisis has brought to the fore difficulties relating to an arrangement implemented in Jammu and Kashmir which was started in 1872 by Maharaja Ranbir Singh (after whom the '*Ranbir Penal Code*', which earlier applied to Jammu and Kashmir, was named). This arrangement was called the '*Darbar Move*' and involved shifting of his government from Srinagar in the Winter to Jammu. Maharaja Ranbir Singh, had reportedly started the construction of the '*Banihal Cart Road*' on which the Darbar travelled.

29. No historical treatise is available giving details of the origin of the Darbar Move. However, the explanation tendered for this shifting of the Capital was to enable the Maharaja to escape the harsh winters of the Kashmir Valley which, in the 19th century, used to result in the valley being cut off from the outside the world.

30. Some sources have claimed that it was started by Maharaja Pratap Singh around 1925 again for the sole reason because winter in Srinagar was severe and would cut off the valley from the rest of the world.

31. Clearly, public interest, lending efficiency to administration or facility of governance was no part of the reason of the decision for shifting of the Capital.

32. At the time of its commencement in 1872, this move of the administration from Srinagar to Jammu, involved a small number of employees and infrastructure in a few cart loads. It appears that the Banihal Cart Road acquired this name because of this practice.

33. The expression '*Darbar*' is a Persian term which means the King's or the Ruler's noble court or a formal meeting where the King held all discussions regarding the State. The expression was used in India while referring to the Ruler's court or a feudal levy as the latter came to be ruled and later administered by foreigners. During the period of the British Raj, the expression '*Darbar*' came to be applied to ceremonial gatherings held as demonstrations of loyalty to the Crown. The Darbars are thus relatable to ancient emperors and kings. Even though, the concept of a '*Darbar*' in the Indian polity has long come to an end, however, not only the practice of shifting the government from one city to another continues to be called the '*Darbar Move*' even in the Union Territory of Jammu and Kashmir.

34. This arrangement has continued ever since.

35. The Darbar Move thus involves the shifting of the entire Government from Srinagar (known as the '*Summer Capital*') in October/ November to Jammu (known as '*Winter Capital*') and the move back to Srinagar in April/May.

IV. Documentation regarding the Darbar Move: Newspaper articles

36. While no official documentation or empirical evidence could be traced out regarding the Darbar Move despite best efforts, however, some newspaper publications are available which do shed some light thereon. These include the following:

37. (i) An article captioned "**Darbar Move: Expensive Move**" in the 5th May 2015 edition by the Online Editor of OnlyKashmir (<https://web.archive.org/web/20150507123244/http://onlykashmir.in/>).

In this article it stands reported that "*Today it is a mass exodus of around one lakh government employees that puts an additional burden of Rs. 5 crore on the state exchequer – the major item of expense being the move travel allowance,*

ranging from Rs. 500 to Rs. 650 paid to each employee twice a year. Time-wise, eight weeks are wasted yearly, which mean a further loss of Rs. 40 lakh.”

But the On-Line Editor has completely missed the real figures. To our utter dismay, the above expenditure is but the proverbial tip of the ice-berg.

(ii) An article dated 16th April 2020 captioned **“J and K bears the burden of Darbar Move”** in the New Indian Express (<https://kashmirlife.net/darbar-move-old-practices-new-realities-173703>).

(iii) An article dated 8th May 2017 (updated on 4th November 2019) published by India Today titled **“Kashmir’s Darbar Move: The 145 year old political ritual with costs Rs.100 crore”**.

(iv) An other Article authored by Nazeer Ganai published on 30th September 2019 in Outlook, captioned ***‘Waste of Money but Dogra tradition of moving capital twice a year set to stay in J&K’***.

(v) An article captioned ***“Darbar Move: Old practices, New Realities”*** published by the Kashmir Life on 4th May 2018 authored by Dr. Sirfaraz Ahmed. ([Kashmirlife.net/darbar-move-old-practices-new-realities-173703](https://kashmirlife.net/darbar-move-old-practices-new-realities-173703)).

38. The article by Mr. Nazeer Ganai adverts to suggestions by a politician to the effect that two Secretariats, one in Srinagar and one in Jammu, should function simultaneously for the reason that people of both Jammu and Kashmir need governance in all seasons. It has been commented that the present arrangement is *‘bereft of logic’*. Another suggestion is given that only the Governor’s office and his advisors should move, which practice would save lot of money.

39. A State Government official, though unidentified in the article in the Outlook, has referred to the internet age when the shifting of the government from

one place to another with files, documents, records, desktops as looking bizarre. This official has stated that the documents could be digitally transferred instead.

40. In his article published in the '*Kashmir Life*', after referring to the history behind the Darbar Move, Dr. Sirfaraz Ahmed has drawn attention to the decision to review the practice in the year 1987 by the then Chief Minister who had appointed a Committee headed by Sheikh Ghulam Rasool, the then Finance Commissioner, as its Chairman and two experienced bureaucrats-Mohammad Shafi Pandit and Ms. Shushma Chowdhary as its Members. This Committee had submitted a report known as the "*Darbar Move the reality*". Efforts were made to bifurcate some State level officers who were functioning smoothly at their respective divisions when opposition to the same had arisen and the suggestions of the Committee were not implemented further.

41. This article refers to rationalisation of the Darbar Move so that the employees should not be moved; that full time Civil Secretariat offices throughout the year should be opened in both the regions without any break round the year and that there should be ceremonial move of the Governor and the Chief Minister of the State. The author points out to the benefits of this change including creation of opportunities for the officers of promotion when proper functional Secretariat offices with full staff strength are created in both Jammu and Srinagar.

V. *Other instances of shifting of Capital in Colonial India*

42. The first instance of a ruler adopting the practice of shifting capital from one place to another is that of Sultan Mohammad Tuglaq who started this practice during his rule between 1325-1351 when he attempted to shift the capital from Delhi to Daulatabad, which practice failed.

43. The second instance was the practice of temporary shifting of the capital by Emperor Jahangir who shifted the capital from Agra to Kashmir for the summer season to escape the heat of the plains and to enable the Emperor to enjoy the scenic beauty of Kashmir.

44. It is reported in the publication by Dr. Sirfaraz Ahmad that the only consideration for this move was the “*Emperor’s pleasure*” and that the expenditure, administrative requirements or the time taken did not matter to him.

45. Some instances are available of the similar moving of capital in Colonial India. The British had initiated the practice of shifting from the plains to the hills their capital in the summer months, for the sole reason of their inability to cope with heat of the plains.

46. Initially, Calcutta was the capital of British India. In the year 1864, the Colonial establishment started a yearly shift of the capital in the summer from Calcutta to Darjeeling. This practice continued till 1911 when the capital of British India was shifted to Delhi.

47. In 1849, Punjab was annexed by the British. In 1901, it became part of the North West Provinces. In 1858, Delhi became part of Punjab. Delhi was separated from Punjab in 1912 when it became the capital of India.

48. Agra was the capital of one of the provinces of British India which was variously called North West Provinces; North West Provinces of Agra and Oudh; United Provinces of Agra & Oudh or the United Provinces over the period of time.

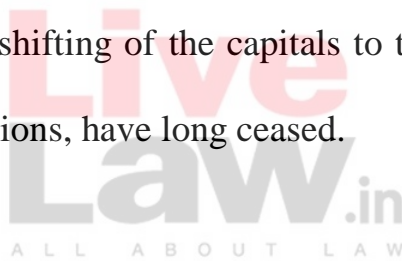
49. Interestingly, it was in 1864, that a practice of moving of the capital of the North West Provinces in the summer from its capital in Allahabad (later Agra) to the hills of Shimla had also commenced.

50. It is reported that in Colonial India, Ooty was the summer capital of the Madras Presidency; Shillong, the summer capital of Eastern Bengal and Assam while Shivpuri was the summer capital of Gwalior.

51. The Bombay Presidency had its winter capital at Bombay, the summer capital at Poona, monsoon at Nagpur.

52. It is reported that even then, the Secretary of State for India had questioned necessity for shifting of the capitals because of heavy economic expenditure involved in the moves.

53. The British were foreign rulers on Indian soil unused to Indian summers. These practices of shifting of the capitals to the hills in the summer on account of climatic considerations, have long ceased.



VI. Darbar Move - What it entails

54. So far as Jammu and Kashmir is concerned, despite changed circumstances, the biannual practice continues. From almost one week prior to the Darbar Move, the staff is engaged in packaging of the entire records of the Government, several statutory functionaries and public sector undertakings, which have to be shifted in trunks. The Darbar Move thus entails a crippling disruption of working for several weeks.

55. Transportation of this record takes about one week. The Transportation is effected using vehicles (trucks etc) hired for the purpose.

56. The record of the Government of Union Territory of Jammu and Kashmir requires hundreds of trucks for its shifting. It is reported that not only files

but office furniture, computers and other records are also shifted. Thus tremendous pressure is put on the security forces to ensure the safe movement of the record.

57. And then we come to the unpackaging of the record. It reportedly takes almost one week for opening the trunks and settling the records.

58. The convoy carrying the records and employees leave separately. Each convoy has a heavy security escort. Apparently, empty trucks, buses and cranes travel with the convoy during each Darbar Move to ensure smooth transition of the records.

59. Movement of the vehicles carrying important government records has to be secured by adequate security measures. Extensive deployment of police and security personnel is made.

60. On each occasion, therefore, of the Darbar Move, three vital working weeks are lost. Annually, no official work can be conducted for the six working weeks i.e. one and a half month required for the shifting and settling of the record in the two Darbar Moves.

61. The public exchequer has to additionally bear the expenses of accommodation of all officers/officials who move from one city to another. If they do not have such accommodation allotted to them, the administration bears the expenditure of their lodgings arranged by hiring rooms in hotels and guest houses.

62. The public exchequer also has to bear the cost of the allowances paid to the Move employees, as also the intangible cost of food subsidies, property repairs etc.

63. Perhaps but for the emergency measures to contain COVID-19 spread in Jammu and Kashmir, anxiety of Id. Counsels before us with regard to the impact of implementing the Darbar Move, this practice would probably have continued

indiscriminately; the factual realities, its impact on the Constitutionally guaranteed rights of the people of Jammu and Kashmir, the adverse impact on public interest, access to justice, justice dispensation and the incredible financial consequences thereof would never have come into the public domain or been subjected to any kind of scrutiny, judicial or by the executive, as at present.

64. The matter, however, is not so simple. We first have to examine and define the limits of what the courts can, and, what they cannot do. Before embarking on our detailed examination, therefore, we first lay down the parameters, the intendment and the purpose of this order.

VII. Judicial review - Scope thereof

65. It is trite that courts must maintain judicial self restraint while exercising the powers of judicial review of administrative or legislative decisions (Ref: (2011) 2 SCC 575, Transport and Dock Workers Union v. Mumbai Port Trust).

66. As back as in (2001) 3 SCC 635 *Ugar Sugar Works Ltd vs. Delhi Admn.*, the Supreme Court had laid the parameters of the courts power of judicial review thus:

“18. The challenge, thus, in effect, is to the executive policy regulating trade in liquor in Delhi. It is well settled that the courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The courts are not expected to express their opinion as to whether at a particular point of time or in a

particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.”

(Emphasis supplied)

67. We find that in (2008) 1 SCC 683, *Aravali Golf Club v. Chander Hass*, the Supreme Court has emphasized the scheme of separation of powers under the Constitution of India in the following terms:

“18. Judges must exercise judicial restraint and must not encroach into the executive or legislative domain, vide Indian Drugs & Pharmaceuticals Ltd. v. Workmen [(2007) 1 SCC 408 : (2007) 1 SCC (L&S) 270] and S.C. Chandra v. State of Jharkhand [(2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : JT (2007) 10 SC 272] (see concurring judgment of M. Katju, J.).

19. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There is broad separation of powers under the Constitution and each organ of the State—the legislature, the executive and the judiciary—must have respect for the other and must not encroach into each other’s domains.”

(Emphasis supplied)

68. Several instances of judicial deviations from the Constitutional Scheme stand noted in *Aravali Golf Club* and finally the applicable principles are summed up thus:

“38. The moral of this story is that if the judiciary does not exercise restraint and overstretches its limits there is bound to be a reaction from politicians and others. The politicians will then step in and curtail the powers, or even the independence, of the judiciary (in fact the mere threat may do, as the above example demonstrates). The judiciary should, therefore, confine itself to its proper sphere, realising that in a democracy many

matters and controversies are best resolved in non-judicial setting.

*39. We hasten to add that it is not our opinion that judges should never be “activist”. Sometimes judicial activism is a useful adjunct to democracy such as in the School Segregation and Human Rights decisions of the US Supreme Court vide *Brown v. Board of Education* [347 US 483:98 L Ed 873 (1954)], *Miranda v. Arizona* [384 US 436 : 16 L Ed 2d 694 (1966)], *Roe v. Wade* [410 US 113 : 35 L Ed 2d 147 (1973)] , etc. or the decisions of our own Supreme Court which expanded the scope of Articles 14 and 21 of the Constitution. This, however, should be resorted to only in exceptional circumstances when the situation forcefully demands it in the interest of the nation or the poorer and weaker sections of society but always keeping in mind that ordinarily the task of legislation or administrative decisions is for the legislature and the executive and not the judiciary.*

*40. In *Dennis v. United States* [341 US 494-592 : 95 L Ed 1137 (1951)] Mr Frankfurter, J. observed: (US p. 525)*

“... Courts are not representative bodies. They are not designed to be a good reflex of a democratic society. Their judgment is best informed, and therefore, most dependable, within narrow limits. Their essential quality is detachment, founded on independence. History teaches that the independence of the judiciary is jeopardised when courts become embroiled in the passions of the day and assume primary responsibility in choosing between competing political, economic and social pressures.”

(Emphasis supplied)

69. We may also note the caution drawn by the Supreme Court of India in the judgment reported at **(2011) 2 SCC 575 Transport & Dock Workers Union v. Mumbai Port Trust**, placing reliance on the valuable observations of Lord Denning (in para 40) and Justice Felix Frankfurter (in Para 41) whence it has been held thus:

“40. As Lord Denning observed:

“This power to overturn executive decision must be exercised very carefully, because you have got to remember that the executive and the local authorities have their very own

responsibilities and they have the right to make decisions. The courts should be very wary about interfering and only interfere in extreme cases, that is, cases where the court is sure they have gone wrong in law or they have been utterly unreasonable. Otherwise you would get a conflict between the courts and the Government and the authorities, which would be most undesirable. The courts must act very warily in this matter.” (See *Judging the World* by Garry Sturgess Philip Chubb.)

41. In our opinion Judges must maintain judicial self-restraint while exercising the powers of judicial review of administrative or legislative decisions. “In view of the complexities of modern society”, wrote Justice Frankfurter, while Professor of Law at Harvard University, “and the restricted scope of any man's experience, tolerance and humility in passing judgment on the worth of the experience and beliefs of others become crucial faculties in the disposition of cases. The successful exercise of such judicial power calls for rare intellectual disinterestedness and penetration, lest limitation in personal experience and imagination operate as limitations of the Constitution. These insights Mr Justice Holmes applied in hundreds of cases and expressed in memorable language: It is misfortune if a Judge reads his conscious or unconscious sympathy with one side or the other prematurely into the law, and forgets that what seem to him to be first principles are believed by half his fellow men to be wrong.”

42. In writing a biographical essay on the celebrated Justice Holmes of the US Supreme Court in *Dictionary of American Biography*, Justice Frankfurter wrote:

“It was not for him (Holmes) to prescribe for society or to deny it the right of experimentation within very wide limits. That was to be left for contest by the political forces in the State. The duty of the Court was to keep the ring free. He reached the democratic result by the philosophic route of scepticism by his disbelief in ultimate answers to social questions. Thereby he exhibited the judicial function at its purest.” (See *Essays on Legal History in Honour of Felix Frankfurter* edited by Morris D. Forkosch.)

70. We are conscious of the limitations on our power to rule on executive decision making or passing judgments on issues which are within the domain of the executive. We shall desist from doing so.

71. Shri Harish Salve, Id. Senior Counsel, has recently published an editorial titled “Corona and the Court: COVID-19 Crisis is like wartime. Courts must not restrict executive from taking decision” in the Times of India, page on 21st April 2020 wherein Shri Salve has observed that “The courts sometime “ring the bell” to attract the attention of the government towards issues forgotten or overlooked.”

72. The similar practice of shifting its capital on consideration of weather was initiated by the British in India in the 19th Century in different provinces in India for the same reasons as the reason for which the Darbar Move was initiated in Jammu and Kashmir. Those practices in British India, however stand long abandoned, atleast for over seventy years of independence.

73. From the facts placed before us regarding the Darbar Move (as detailed later herein), the disregard of public interest in its origins and implementation, its adverse effects, the huge fiscal, social and economic costs, amply manifest that its propriety, feasibility and efficacy of the arrangement is one such matter “*overlooked and forgotten*”. It is evident from the facts revealed that the issue, its objective, need, efficiency, feasibility, desirability, impact on administration, governance and public interest have never engaged the attention of the concerned and competent authorities. It appears that an “*arrangement*” commenced by the Maharaja because of physical discomfort with the Kashmir winters, has simply continued without consideration of the needs of the people of Jammu and Kashmir. The material placed before us manifests that there has been no application of mind to the changed circumstances

because of technological and scientific advances. Our judicial conscience compels us to “*ring the bell*” else we would fail in discharging our judicial duty or to perform our Constitutional function as demanded in the interest of the Nation and the people of Jammu and Kashmir especially its common woman and man, the poor and the weak. We hasten to add that conscious of the limitations of our jurisdiction, we shall confine ourselves to “*ringing the bell*” without anything more.

VIII. *The judiciary - implication of the Darbar Move - if any*

74. It is noteworthy that surprisingly, and inexplicably, the Darbar Move is not confined to the shifting of the Secretariat and other government offices alone. The practice includes shifting of the Chief Justice’s Secretariat, the first Puisne Judge and the Main Wing, which includes the complete administrative machinery of the judiciary as well, from Srinagar to Jammu and vice-versa.

75. It is necessary to briefly examine as to what is entailed in this move. As part of the Darbar Move, apart from shifting of the Chief Justice’s Secretariat and the first Puisne Judge, the following officers of the Main Wing are required to move as well:

- (i) Registrar General;
- (ii) Registrar Vigilance;
- (iii) Principal Secretary to the Chief Justice;
- (iv) Registrar (IT);
- (v) Registrar Rules;
- (vi) Member Secretary, J&K SLISA;
- (vii) Director, Judicial Academy;
- (viii) Secretary, High Court Legal Services Committee.

Thus, eight Judicial officers who stand appointed to various positions in the Registry are required to move twice a year as well.

76. So far as the staff of the Chief Justice, the first Puisne Judge and the Registry of the High Court is concerned, a total of 105 to 110 employees at all levels of the Registry are involved in the Darbar Move.

In addition, since the Main Wing has to move, administrative records of the entire judiciary of Jammu and Kashmir including personal records of the judges and administrative records have to be carted along with the Darbar Move from one city to another.

We shall examine the implications of this in a little detail further down in this order.

IX. **The Status Reports from the Government Departments**

77. Status reports have been received from the Finance, General Administration Department and Estate Department as also the Director General of Police. For expediency, we may extract hereunder the issues on which information was sought and a summary of the the information which has been received.

X. **Number of personnel involved in the Darbar Move: Report from the Government Departments**

78. We had issued directions to the Secretary, General Administration Department to provide details of Government officials at all levels (position/category-wise) who were involved in the four Darbar Moves in the year 2018, 2019. For the year 2019, we are informed that in **April-May 2019**, a total of **10112** (including 112 of the judiciary) **employees** and in **Oct-Nov. 2019**, a total of **9695** (including 123 of the judiciary) **employees** were involved in the Darbar Moves.

79. The shifting does not rest at a simple physical movement of the personnel. It is done at a huge cost.

80. On each move, *move allowance* equivalent to **Rs. 25,000/-** (therefore, an amount of **Rs. 50,000/- is paid per annum**) to the persons who are involved in the Darbar Move. It may be noted the move allowance has increased periodically from Rs.6,000/- in 2011; Rs.10,000/- in 2015; and Rs.15,000/- in 2018 and Rs.25,000/- thereafter.

81. The payment does not end with the above lumpsum amount. A **Temporary Move Allowance** of **Rs. 2,000/- per month** (bringing the amount of this allowance to a total of **Rs. 24,000/- annually** to each person) is also paid to each moving employee, bringing the annual expenditure to Rs.75000/- per employee.

XI. **Financial Outlay on the Darbar Move: Report of the Finance Department**

82. As per the order dated 10th April 2020, following information was sought from the Secretary, Finance Department, Union Territory of Jammu and Kashmir:

“(i) *Tabulation, setting out Move-wise categories/ heads, figures of the finances incurred on the four Darbar Moves for the years 2018 and 2019. The various heads on which expenses has been incurred shall be provided in the tabulation.*

(ii) *The Secretary, Finance Department, Union Territory of J&K, shall provide details of the financial benefits (as Move Allowance; Temporary Move Allowance and any other) admissible to the employees, the Move-wise total financial expenditure on these counts in the four Moves for the years 2018, 2019 and the Move-wise total liability.”*

83. Pursuant to the above, a Report dated 15th April 2020 was filed by the **Financial Commissioner, Finance Department** disclosing the above:

Statement showing Number of employees moved alongwith Expenditure incurred on Annual Darbar Move April 2019											
S.No.	Department	No. of Employees Moved				Expenditure incurred (Rs. In lacs)					
		Gaz	N. Gaz	Class-IV	Total	Moving TA	Loading/unloading	Carriage	Ref.	Other	Total
1.	Civil Secretariat	430	1059	538	2027	235.66	22.27	74.77	5.70	18.93	357.43

2.	Head of Deptt's	465	5174	823	6452	963.60	15.35	27.01	0.78	6.20	1012.94
3.	Orgs/Boards/Corps	221	578	322	1121	152.70	6.47	11.53	1.13	2.77	184.60
4.	Judiciary	24	48	51	123	18.00	0.6	1.60	0.07	1.19	21.46
5.	Legislature	39	251	89	379	56.85	0.62	1.64	0.00	0.50	59.61
	Total	1179	7110	1823	10112	1436.81	45.41	116.55	7.68	29.59	1636.04
In addition, an expenditure of Rs.1213.44 lacs has been incurred on account of TMA @ Rs.2000 per employee for 10112 employees for six months.											

Statement showing Number of employees moved alongwith Expenditure incurred on Annual Darbar Move April 2018											
S.No.	Department	No. of Employees Moved				Expenditure incurred (Rs. In lacs)					
		Gaz	N. Gaz	Class-IV	Total	Moving TA	Loading/unloading	Carriage	Ref.	Other	Total
1.	Civil Secretariat	416	1075	567	2058	308.04	24.34	19.13	3.95	15.53	370.99
2.	Head of Deptt's	451	5533	871	6855	1024.31	14.09	22.00	1.01	4.94	1066.35
3.	Orgs/Boards/Corps	211	621	330	1162	168.52	5.34	12.72	0.44	4.73	191.75
4.	Judiciary	22	55	50	127	19.05	0.59	1.58	0.05	1.24	22.51
5.	Legislature	37	231	110	378	56.70	0.70	1.63	0.00	0.34	59.37
	Total	1137	7515	1928	10580	1576.62	45.06	57.06	5.45	26.78	1710.97
In addition, an expenditure of Rs.1269.60 lacs has been incurred on account of TMA @ Rs.2000 per employee for 10580 employees for six months.											

Statement showing Number of employees moved alongwith Expenditure incurred on Annual Darbar Move Oct-2019											
S.No.	Department	No. of Employees Moved				Expenditure incurred (Rs. In lacs)					
		Gaz	N. Gaz	Class-IV	Total	Moving TA	Loading/unloading	Carriage	Ref.	Other	Total
1.	Civil Secretariat	430	1113	484	2027	492.35	23.895	21.394	5.976	19.099	565.714
2.	Head of Deptt's	453	4772	671	5896	1455.25	19.294	22.83	2.10	9.66	1505.14
3.	Orgs/Boards/Corps	227	749	334	1310	322.18	6.51	13.25	0.98	4.454	347.38
4.	Judiciary	24	49	50	123	29.10	0.52	1.60	0.07	1.08	32.37
5.	Legislature	29	245	65	339	84.50	0.39	1.01	0.00	0.00	85.90
	Total	1163	6928	1604	9695	2386.38	50.607	60.0918	9.126	30.295	2536.4998
In addition, an expenditure of Rs.1163.40 lacs has been incurred on account of TMA @ Rs.2000 per employee for 9695 employees for six months.											

XII. Accommodation for employees: Report of the Directorate of Estates

84. By the order dated 10th April 2020, the Directorate of Estates was asked to provide the following information:

- “42(vi) *The Secretary, Estates Department shall provide details of the accommodation belonging to it as well as that which was hired houses, hotels, guest houses etc for providing accommodation to personal involved in Darbar moves in 2018 as well as 2019. The information be provided category wise.*
- (vi) *The Secretary, Estates Department of the Union territory of Jammu and Kashmir shall also provide information of the rate wise and total expenses which were incurred in hiring facilities for making available accommodation to the personnel who had to make the four moves between Jammu and Srinagar (and vice versa) in 2018 and 2019...*
- (x) *The Secretary, Estates Department shall submit a report with regard to the current status of the hotel/guest houses/residential facilities which are used for housing personnel on the Darbar move.*

85. In response, a report dated 14th April 2020 was submitted by the Directorate of Estates wherein we stand informed as follows:

1.“The total no. of accommodation (category wise) belonging to Estates Department involved in darbar move at Srinagar/Jammu is provided in Table I and the information related to total no. of hired houses, hotels, guest houses etc. for providing accommodation to personnel involved in the darbar moves in 2018 as well as 2019 is provided in Table II:-

Table I

S. No.	Category	Total No. of Residential units of Estates Department allotted to persons involved in darbar move at <u>Jammu.</u>	Total No. of Residential units of Estates Department allotted to persons involved in darbar move at <u>Srinagar.</u>
1.	Category-I	1011	192
2.	Category-II	822	346
3.	Category-III	75	4
4.	Category-IV	134	230
5.	Category-V	49	30
6.	Category-VI	27	18
7.	Category-VII	16	15

Table II

Nature of accommodation hired	Jammu		Srinagar	
	2018	2019	2018	2019
Private Houses	307	151	80	69
JKTDC	132	125	238	253
Hotels	1425	1457	2390	2387

2. That so far as direction No. VII is concerned the information with respect to total expenses which were incurred in hiring facilities for making available accommodation to the personnel who had to make the four moves between Jammu and Srinagar (and vice versa) in 2018 and 2019 at Jammu/Srinagar, the same is provided in table III and IV respectively:-

Table III

Expenditure On account of	2018-19		2019-20	
	Summer Srinagar (May 2018 to October 2018) Amount in lakhs.	Winter Jammu (November 2018 to April 2019) Amount in lakhs	Summer Srinagar (May 2019 to October 2019) Amount in lakhs	Winter Jammu (November 2019 to April 2020) Amount in lakhs
Hotels	2902.05	983.14	3004.00	1016.63
JKTDC	821.00	410.47	771.00	410.49
Private Houses	136.00	589.44	168.00	289.92
Transport	201.81	-	150.0	-
Maintenance Charges	56.00	215.12	52.27	232.95
Hiring of Seasonal Laborer	16.04	158.98	16.43	104
Total	4132.9	2357.15	4161.7	2053.99

3. That so far as direction No. X is concerned it is humbly submitted that due to COVID-19 the process/arrangements which were initiated by the Estates Department for Darbar Move from Jammu to Srinagar has also been hampered, despite such impediments the efforts are being made by the Department for arrangements for Darbar Move from Jammu to Srinagar (May-October). Furthermore 130 Hotel Owners have expressed their interest for allotment of their Hotels in favor of Darbar Move 2020 (may-October), however, some of the hotels have been taken by District Administration for quarantine facilities for which alternative arrangements are being explored."

(Emphasis supplied)

XIII. Transportation required: Report of Transport Department

86. The records are voluminous and the number of Moving personnel huge. So, the Secretary, Transport Department/concerned Department was directed to provide details of the transportation which was required for effecting the Darbar Moves in the nature of trucks for transporting records etc and transportation which was hired for transporting officials in the Moves as well as expenditure incurred thereon in the four Darbar Moves in 2018-2019.

87. In response, a Report dated 18th April 2020 has been filed by Dr. Asgar Hassan Samoon, Principal Secretary to the Government, **Transport Department** informing this court with regard to the number of vehicles engaged by the J&K SRTC; Transport Department; Transport Commissioner; State Motor Garages in the Darbar Moves for transportation of records and employees as well as the expenses incurred thereon.

88. So far as transportation is concerned; **152 trucks and 56 buses** were provided in **April 2019** by J&K SRTC for transportation of records and employees and **148 trucks and 34 buses were provided by J&K SRTC in October 2019,** for transportation of records and employees.

89. The ***total revenue*** generated by ***J&K SRTC*** for ***transportation*** of employees and records in ***April 2019*** is ***Rs.51,82,286/-*** and in ***Oct. 2019*** is ***Rs.48,22,990/-***.

90. We are informed about the additional expenses incurred by the Transport Department, Transport Commissioner, State Motor Garages and the J&K SRTC on account of transportation, loading, unloading etc of records in the following terms:

“2. That in pursuance to above mentioned directions of Hon’ble court, it is respectfully submitted that the details of expenditure incurred on account of Annual Darbar Moves of Administrative secretary Transport for October 2019 as expenditure on a/c of transportation, loading, unloading etc of records is Rs.1,08,043/= and on account of Travel expenses (move TA) is Rs-6,00,000/= Details are given as under.

Detailed Head	Year & Month of Move	Expenditure in Rs.
002 Travel Expenses (Move TA)	April-2018	510000
	October-2018	390000
	April-2019	375000
	October-2019	600000
Total		1875000

Detailed Head	Year & Month of Move	Expenditure in Rs.
007- Office Expenses (Expenditure on a/c of Transportation, loading, unloading etc of Records)	April-2018	120400
	October-2018	91000
	April-2019	98000
	October-2019	108043
Total		417443

3. That it is further submitted that the expenditure incurred in October 2019 by Transport Commissioner, J&K on account of transportation, loading unloading etc of records is Rs- 1,15,478/= and Move TA is Rs- 1465000/= for Annual Darbar Moves for the year 2018 and 2019. Details are given below.

Detailed Head	Year & Month of Move	Expenditure in Rs.
002 Travel Expenses (Move TA)	April-2018	375000
	October-2018	360000
	April-2019	255000
	October-2019	475000
Total		1465000

Detailed Head	Year & Month of Move	Expenditure in Rs.
007- Office Expenses (Expenditure on a/c of Transportation, loading, unloading etc of Records)	April-2018	90082
	October-2018	101608
	April-2019	117538
	October-2019	115478
Total		424706

4. That it is further more submitted that the expenditure incurred in **Oct 2019** by Director of State Motor Garages, J&K on account of

transportation , loading, unloading etc of records is **Rs.62,000/=** and **Move TA Rs.17340000/=** for Annual Darbar Moves for the year 2018 and 2019. Details are given below.

Detailed Head	Year & Month of Move	Expenditure in Rs.
002 Travel Expenses (Move TA)	April-2018	3840000
	October-2018	3780000
	April-2019	3670000
	October-2019	6050000
Total		17340000

Detailed Head	Year & Month of Move	Expenditure in Rs.
007- Office Expenses (Expenditure on a/c of Transportation, loading, unloading etc of Records)	April-2018	82000
	October-2018	63000
	April-2019	58000
	October-2019	62000
Total		265000

91. Again both vehicle arrangements and the expenditure are elaborate. The information provided to us has not been examined in any policy making decisions.

XIV. Security cover for Darbar Move: Report of Director General of Police, J&K

92. By the order dated 10th April 2020, the Director General of Police was directed to provide the following:

(i) *The category wise details of the **police personnel** who were involved in providing security cover to personnel involved in the Darbar Moves in 2018 as well as 2019.*

(ii) *The **police personnel** who have been detailed on COVID-19 related issues and duties in Srinagar.”*

93. In response to these directions made by us, Director General of Police has filed a report through Mr. Bashir Ahmed Dar, Sr.AAG, giving the details of the police as well as the Central Armed Police Force (CAPF) personnel involved in providing security cover to the Government employees involved in the Durbar Moves of 2018 and 2019.

We are informed that **1557 personnel** from **J&K Armed Police**; J&K Security; police in Kashmir and Jammu Zone were engaged in providing security in

the Darbar Move in *April 2019* while *1081 personnel provided security* in the Move in *October 2019*.

Additionally *28 Companies 1 Section of Central Armed Police Force* (CAPF for brevity) provided security in the April 2019 Move while *15 Companies 3 Sections were involved in October 2019*. So far as composition of a Company of CAPF is concerned, it varies from 60 to 80 personnel and 10 to 13 personnel per Section for field duties.

94. With regard to the directions at point (ii) above, it has been submitted and stated that a total number of 10103 Police personnel have been detailed on COVID-19 related issues and duties in Srinagar/Kashmir, details whereof have been tabulated as under:-

Zone/Wing	SSP/SP	DySP	Inspr	SI	ASI	HC	SgCt	Foll	SPO	VHG	Total
Kashmir Zone	28	71	102	243	521	963	4934	105	2456	29	9452
Armed Zone	08	10	05	04	11	53	360	27	0	0	478
Security	0	01	01	02	0	08	42	08	0	0	62
Home Guards/ Civil Defense & UT Disaster Response Force (UTDRF)	0	09	0	0	01	31	70	0	0	0	111
Total	36	91	108	249	533	1055	5406	140	2456	29	10103

The huge cost to the Government of the above deployments can very well be imagined.

XV. Security arrangements for convoy movement: Report of ADG (Security)

95. As noticed above, the Darbar Move entails shifting of the entire Government records, computers and furniture as well. This cannot be unprotected. Therefore, the AGP, Security, J&K was directed to furnish the following information:

“42(ix) *ADG (Security) shall provide details of security arrangements which were effected on the National Highway,*

Jammu and Srinagar for the four Darbar Moves in the years 2018, 2019.”

96. In response to directions made by us in Para 42(ix) of our order dated 10th April 2020, we have received a report dated 15th April 2020 in sealed cover which has been placed by Mr. Laeeq Ahmad, CPO for IGP, Security, J&K. We have been requested to keep the information in this regard confidential.

97. The sealed envelope has been opened by us and perused. The IGP Security, J&K has elaborately detailed the security arrangements which were effected for the Darbar Move giving point-wise details of the deployments which were effected.

98. Given the nature of the information which has been furnished, we accepted the prayer for this report to be kept confidential. The original report stands returned to the office of the IGP (Security), J&K. However, we have noted that surveillance and security for the Darbar Move are given from the point of loading of the records; en-route the National Highway; upto the destination by deploying Police/CAPF nafri for ROP and meticulous anti-sabotage checks at each of these points and along the route to ensure proper area domination for secured moment of Darbar Move Convoy. Additionally, the Zonal Police deploys the Police Convoy Commander (of SP rank) assisted by DSP and others & CAPF, escort the convoy all along NHW within their respective territorial jurisdiction.

99. Prior to its loading also, an anti-sabotage check of all official records and vehicles is conducted. Before movement in the convoy is secured, the vehicles are parked in the Civil Secretariat for a night halt. Senior police officials escort the convoy up to the destination. Before downloading the records at destination of the

Dabar, anti-sabotage checking of the Civil Secretariat, other offices and of the records is also undertaken.

100. An elaborate security drill involving extensive man power is undertaken at the point of commencement of the convoy and at its destination. Elaborate arrangements are maintained all along the route taken by the Darbar convoy. The minute and meticulous detailing of the security arrangement have amazed us. The magnitude of the task does not need much imagination, as not only the points of embarkation and disembarkation have to be secured, but the complete distance of 300 Kms between the Jammu and Srinagar as well.

101. We have not been provided with the financial implication of this exercise.



XVI. Whether any Special Traffic arrangements for Darbar Move: Report from the IGP Traffic:

102. The Darbar Move is no ordinary movement. Nor is the material which has to be shifted, run of the mill. The entire administrative records, even machinery has to be transported along with highway vulnerable from every angle - a very public national highway, prone to landslides at certain points, road blockage because of snowfall and has to be protected from pilferage, damage of any kind. We had therefore directed the IGP (Traffic) to provide details of special arrangements, if any, for the four Darbar Moves in 2018-2019 and the dates thereof.

103. In response, we have also received a report dated 13th April 2020 from the *IGP (Traffic)* informing this court about “*Special arrangements (one way traffic)*” for movement of the Darbar Move convoys during the years 2018 and 2019. Special Guidelines for the traffic arrangements issued on 17th April 2018, 16th

October 2018, 15th April 2019 and 11th October 2019 for the movement of the Darbar Move convoy have been enclosed.

104. We find that the directions notified in the Guidelines on 17th April 2018, 16th October 2018; 15th April 2019 and 11th October 2019 laying down the arrangements in the Darbar Move are similar. For expediency, we may usefully extract some of the arrangements as directed in the **Guidelines** issued on **11th October 2019** which are self explanatory and are to the following effect:

- (i) *The Traffic police is directed to ensure there shall be **one way traffic** (Srinagar-Jammu) on NHW-1A on **26th and 27th October 2019**, as well as on **02nd and 03rd of November, 2019**.*
- (ii) *Directions have been issued to all concerned to ensure **hassle free movement of traffic and uninterrupted movement of the employees and vehicles carrying the departmental records**.*
- (iii) *SSP Traffic City Srinagar/SSP Traffic Rural Kashmir was directed to ensure that **vehicles travel in convoy** shape.*
- (iv) ***Dy.SPs Traffic** at all points on the route were directed to **accompany the convoy from point to point**.*
- (v) ***SSP Traffic** at all points en route were directed to **monitor the movement of vehicles** carrying the employees and departmental records and to intimate hourly movement to IGP Traffic, J&K.*
- (vi) *SSP Traffic was directed to ensure **“no civilian/non-civilian vehicles interrupts or sabotages the convoy enroute and at the places of halt”***
- (vii) *SSPs and SP Traffic were directed to liaise with other sister agencies involved in the safe passage of employees/convoy.*
- (viii) *SSP Traffic, Rural Kashmir was directed to stop **all trucks towards Jammu** at TCP Qazigund **till Darbar Move Convoy passes through** and after Darbar Move convoy passes TCP Qazigund, the trucks be allowed after 01 hour, to proceed towards Jammu.*

(ix) **Deployment** of sufficient number of **traffic officers/officials** in the area of responsibility to ensure smooth flow of Darbar Move vehicles.

(x) Constitution of a joint squad by SSP Traffic Srinagar to ensure that no overcharging take place.

(xi) Deployment of “**sufficient number of recovery vans, mobile workshop on the route** and also making **available of excavators, dozers, men and other equipments** on all the **vulnerable land slide prone areas** for timely evaluation of debris etc for uninterrupted traffic movement on the pattern of QRT placed during SANJY-2019”.

(xii) Directions were issued to the SSP Traffic, Rural Kashmir to coordinate with **GRF Engineers** as well as **Mechanical Division officials** to **keep men, machinery and material** available for **timely clearance of snow from road** in the area of Jawahar Tunnel and Qazigund areas for smooth movement of Darbar Move convoy.

105. The above Guidelines set out the elaborate arrangements necessitated for the movement of the personnel, records and material in the Darbar Move. It would seem as if the entire Highway stands dedicated to the State machinery for four days on each Darbar Move and the entire Traffic police gets diverted into ensuring smooth passage for the convoy.

106. The authorities are required to anticipate vehicle breakdowns, inclement weather and road blocks on account of landslides and snow. We notice that empty trucks, buses, cranes, recovery vans, workshops, excavators, bull dozers, other equipment and man power accompany the convoy in anticipation of all these events to ensure smooth movement.

107. A herculean task indeed – ensuring seamless, uninterrupted and safe movement of the Government personnel and official records during the Darbar

Move between Jammu and Srinagar. We have not been given the expenditure incurred on the manpower and machinery deployments.

XVII. Preparations for the Darbar Move: Results in no governance in the entire Union Territory for almost six weeks annually

108. The above narration would show that the entire government machinery remains shut for almost seven days for the Darbar Move. However, this period is beyond the period spent in getting the record ready for the shift. It does not need much imagination that packing of records would commence long before the actual move. It would take considerable, if not equal, time for its unpacking. Additionally, settling of the government offices at the new location and to commence regular functioning would itself require time.

109. We are informed that, for the above purposes of packing and unpacking and arranging records and equipment, Government departments are dysfunctional for almost a week before the Move. And for the same period while unloading and unpacking at the place to which the Darbar moves. These periods are beyond the one week transit period involved (given to the Move employees) during which all offices involved in the Move are closed.

It can therefore reasonably be expected that for each Darbar Move, Government offices would be non-functional for this period of three weeks at the minimum.

110. The task involved in the shifting of the entire government machinery and setting up offices at a different location twice a year thus actually ensures that annually there is no administration or governance in Jammu and Kashmir for a period of almost six weeks. We wonder if such a break in governance exists

anywhere else in the world; that whether it can be tolerated, especially given the sensitive nature of issues which require constant attention in the region.

111. It is trite that there has to be predominance of public interest in Governance and public administration. In *(2014) 1 SCC 161, Central Electricity Supply Utility of Odisha v. Dhobei Sahoo*, it was held thus:

*“22. While dealing with the writ of quo warranto another aspect has to be kept in view. Sometimes a contention is raised pertaining to doctrine of delay and laches in filing a writ of quo warranto. There is a difference pertaining to personal interest or individual interest on the one hand and an interest by a citizen as a relator to the Court on the other. The principle of doctrine of delay and laches should not be allowed any play because the person holds the public office as a usurper and such continuance is to be prevented by the Court. **The Court is required to see that the larger public interest and the basic concept pertaining to good governance are not thrown to the winds.**”*

ALL ABOUT LAW

(Emphasis supplied)

The above narration manifests that in Jammu and Kashmir, public interest has to take a back seat as the authorities get themselves ready for the Darbar Move.

112. It is equally well settled that public interest has to override all private interests so far as governance is concerned. On this aspect, *in (2009) 15 SCC 351, A. Abdul Farook v. Municipal Council, Perambalur* emphasizing this very principle held thus:

*“37. However, there cannot be any doubt or dispute whatsoever that the authorities in the interest of general public and pedestrians and others, in particular, may grant permission to construct such buildings even if it be permanent in character as it may seem fit or carry out such construction itself as it may seem necessary. What is, however, important is public interest in carrying out such construction and not any private interest or interest of a political party. **The doctrine of good governance,***

in our opinion, requires the Government to rise above their political interest and act only in public interest and for the welfare of its people.”

113. Governance in the Union Territory would thus be severely impeded during the period of six weeks every year only because of the Darbar Move to the huge detriment of public interest. It does not need any elaboration that such a situation works to the complete detriment of the citizens of Jammu and Kashmir.

XVIII. **Monetary value of the man-days lost in packing, loading, transportation, unpacking and settling the offices upon a Darbar Move.**

114. A period of these six weeks is spent on the completely non-professional activity of packing, loading, transporting, unpacking records and settling Government records. This is not without a cost. Can the Union Territory of Jammu and Kashmir afford the luxury of making monetary disbursements against unproductive activity? More so, when no identifiable good reason or purpose for the same is forthcoming?

115. For evaluation of the cost thereof, it is necessary to undertake an examination of what is the cost to the public exchequer of the salaries paid to the employees involved in the Move for the period of six weeks. To enable us to do so, we had asked for the Commissioner/Secretary, Finance Department to place before us an estimation of the salary bill for one week of the staff which is involved in the Darbar Move.

116. A report dated 21st April 2020 has been filed by the **Financial Commissioner, Finance Department** placing the list of **151 Government departments** including **Public Sector Undertakings** and **Statutory Corporations** which are involved in the Darbar Move. The **tentative seven days salary department**

wise expenditure incurred by all these Government Departments of the Annual Darbar Move towards the salary of the Move employees for one week has also been placed which totals a whopping amount of **Rs.1158.723 lakhs**. For the three wasteful weeks as above, the tentative salary expenditure for the Darbar Move employees would come to **Rs.3476.169 lakhs**.

117. And if we look at the salary bill for the period of six weeks for both the Darbar Moves, this comes to an amount of **Rs. 6952.338 lakhs** annually.

118. We may point out that the above amount is for one year only. Seventy three years have gone since India gained Independence. 73 years have gone since accession of Jammu and Kashmir to India. We hesitate to quantify the amount that has been paid to Move employees for the period that they performed no duties, were engaged in such productive tasks as packing, loading, transporting records and then reversing the process.

119. On a rough estimate, even if we assume that the six weeks wage bill of a Move employees, on the average, is an amount equivalent to one third of the above figure i.e. Rs.2317.44 lakhs annually, then for the past 73 years, an amount of Rs.169173.558 lakhs stands spent out of public funds on payments to employees for packing and unpacking records and moving from one city to another – all tax payers contributions.

120. The fact that the Darbar Move results in there being no governance of the State for almost six weeks or, if at all, little governance in the State for this duration, is by itself sufficient reason to revisit this practice. The “*cost*” of these six weeks is simply added grist to the mill.

XIX. Whether the Darbar Move impacts functioning of the Judiciary and expenses entailed thereon?

121. As noted above, the Darbar Move impacts the functioning of the courts as well. A report in this regard was called for from the Registry. We extract the report dated 15th April 2020 which has been submitted by the Officiating Registrar General of this Court informing us as follows:

“1. In the above titled matter Hon’ble Division Bench vide Order dated 10.04.2020 has been pleased to direct the undersigned to place a report on relevant aspects of Darbar Move concerning the Court. Pursuant to the said direction, report is submitted as under:

2. In the erstwhile State of Jammu and Kashmir, the summer capital of the State from May to October used to be at Srinagar and the winter capital from November to April at Jammu. Accordingly, with the movement of the offices of Civil Secretariat and Raj Bhawan, the **office of Hon’ble the Chief Justice and first Puisne Judge of the High Court alongwith Main Wing of the High Court comprising Chief Justice’s Secretariat, offices of Registrar General, Registrar Vigilance, Registrar Rules, Registrar Computers, Director, Judicial Academy, Member Secretary JKSLSA, Secretary HCLSC, Chairman, Sales Tax Appellate Tribunal, One Man Forest Authority and Labour Court and Industrial Tribunal also move for the months of May to October to Srinagar and for November to April to Jammu. This practice of Darbar Move is in place from Maharaja’s time.**

3. After the **bifurcation of the erstwhile State of Jammu and Kashmir into the two Union Territories on 31st of October, 2019** by virtue of the Jammu and Kashmir Reorganisation Act, 2019, the **Darbar Move practice in the Union Territory of Jammu and Kashmir continued.**

Impact of Darbar Move concerning the Courts :

4. The Darbar Move has huge impact on the administrative functioning of the High Court as the **whole administrative record is required to be packed, transported and then un-packed. The packing of the record takes atleast one week, transportation of the record takes another week and one week for un-packing and settling the record.** Thus, atleast for **three weeks administrative work on one Darbar Move gets hampered.**

5. In a calendar year, **Darbar Moves twice** – first in the last week of April from Jammu to Srinagar and then the second time in the last week of October from Srinagar to Jammu – with the result, **annually administrative work gets hampered for six weeks.**”

“6. **Officially, the administrative wing of the High Court, remains closed for one week in last week of April and for another one week in last week of October** so as to allow shifting of record and movement of officers and officials from Jammu to Srinagar and vice-versa.

122. It is amply clear from this report that the administrative work of the entire judiciary of Jammu and Kashmir, which is in “*Main Wing*” of the High Court, just as the working in the Secretariat, also gets disrupted for six weeks every year.

123. We have also been given the details of the financial impact of the Darbar Move in the report of the Officiating Registrar General. We extract the same hereafter:

“7. As per report of Accounts Section, move *officials salary bill for one week approximately comes at Rs. 2150000/- and for the six weeks comes at Rs. 4,30,000/-*”

124. From the above, it is manifest that the *six week period* of the *administrative machinery* in the *High Court* doing no work, costs the public exchequer approximately *Rs. 4,30,000/-* in terms of *expenditure on the salaries of the High Court employees who are involved in the Darbar Move*.

125. The annual cost of the two Darbar Moves on this count would therefore come to *Rs. 4,30,000/-*

XX. *Packing, transportation of court record: expenses thereof:*

126. The packing and transportation of the court records is also not without a cost. The report of the Officiating Registrar General has placed details thereof as well before us in the following terms:

“8. As per record maintained by Accounts Section of the Main Wing of the High Court, *whole record of the Main Wing* (comprising offices of Registrar General, Principal Secretary to Hon’ble the Chief Justice, Registrar Vigilance, Registrar Rules, Registrar Computers and Director, Judicial Academy) is packed *in 200 trunks and 250 gunny bags*. *The packed record is loaded in four trucks of the State Road Transport Corporation (SRTC)*. *Computers and other electronic items are loaded in a mini bus provided by the SRTC*. *The transportation charges are paid to the SRTC by the High Court.*”

9. Apart from transportation charges, other miscellaneous expenses are also incurred on purchase of trunks; gunny bags; packing, un-packing, loading and un-loading of record, etc.

10. The detail of these expenses for the last two years is given as under:

Transportation Charges:

a) Oct. /Nov. 2019 (Srinagar to Jammu)	=	Rs. 1,30,732/-
b) April/May 2019 (Jammu to Srinagar)	=	<u>Rs. 1,29,957/-</u>
Total	=	Rs. 2,60,689/-
c) Oct. /Nov. 2018 (Srinagar to Jammu)	=	Rs. 1,29,967/-
d) April/May 2018 (Jammu to Srinagar)	=	<u>Rs. 1,29,967/-</u>
Total	=	<u>Rs. 2,59,934</u>

Miscellaneous Charges:

a) Oct. /Nov. 2019 (Srinagar to Jammu)	=	Rs. 1,54,090/-
b) April/May 2019 (Jammu to Srinagar)	=	Rs, 1,68,336/-
c) Oct. /Nov. 2018 (Srinagar to Jammu)	=	Rs. 1,69,030/-
d) April/May 2018 (Jammu to Srinagar)	=	Rs, 1,72,500/-

11. Official vehicles of Hon'ble the Chief Justice, first Puisne Judge and other officers also move from Jammu to Srinagar and vice versa.

Huge fuel expenses are incurred on their movement besides expenses incurred the wear tear. xxx”

127. So far as the details of the court officials involved in the Darbar Move, payment of *Move Allowance and Temporary Move Allowance*, *accommodation* and subsidized food is concerned, we have been provided the following details:

“Movement of officers and officials connected with Darbar Move and extra allowance paid thereof:

12. As per record, 110 to 120 officers and officials of the administrative wing of the High Court move with the Darbar from Jammu to Srinagar and vice and versa. Till first Darbar Move in Apr/May, 2019 on each Darbar Move every officer and official, irrespective of their ranks were being paid Rs. 15,000/- as Move Allowance. Last year this Move Allowance has been enhanced to Rs. 25,000/- which is being paid in lieu of travelling expenses.

This Move Allowance is paid to Darbar officers/officials twice in a calendar year – once at the time of moving from Jammu to Srinagar in April/May and the other at the time of moving from Srinagar to Jammu in October/November.

13. This apart, each officer/official connected with Darbar Move is paid Temporary Move Allowance (TMA) @ Rs. 2,000/- per month.

14. As a result, every officer/official connected with Darbar Move is annually paid extra Rs 74000/- on account of aforesaid allowances.

15. The details of Move Allowance and Temporary Move Allowance paid by the High Court to officers/officials connected with the Darbar Move in the last two years is given as under:

Detail of Move Allowance:

a) Oct. /Nov. 2019 (Srinagar to Jammu)	=	Rs. 26,60,000/-
b) April/May 2019 (Jammu to Srinagar)	=	<u>Rs. 16,35,000/-</u>
<u>Total</u>	=	<u>Rs. 42,95,000/-</u>

c) Oct. /Nov. 2018 (Srinagar to Jammu)	=	Rs. 16,50,000/-
d) April/May 2018 (Jammu to Srinagar)	=	<u>Rs. 17,10,000/-</u>
<u>Total</u>	=	<u>Rs. 33,60,000</u>

Detail of Temporary Move Allowance:

a) In the calendar year 2019	=	Rs. 25,20,000/-
b) In the calendar year 2018	=	Rs. 26,40,000/-

16. The Jammu based officers and officials connected with Darbar Move are provided free hotel/house accommodation at Srinagar. In hotel accommodation the officials are also provided food at minimal charges of Rs 400 per month to non-gazetted employees and Rs 1000/- per month to gazette employees. The expenses on their lodging and extra expenses on their boarding are borne by the Estates Department. The details of these expenses are not available in the High Court. Kashmir based officers and officials are also provided accommodation at Jammu.

17. At the time of each Darbar Move, huge expenses are incurred by the Government on house keeping of the Government accommodations for officers/officials at both places as all such accommodations remain shut for six months period and require complete renovation for making them habitable again after six months.”

128. Apart from free accommodation, food of the employees is also highly subsidized and the burden foisted on the Government. Only a token monthly amount of Rs.400/- from non-gazetted and Rs.1,000/- from gazette employees is charged for food.

129. It is apparent from the above that there is a huge impact-financial resources- of the Darbar Move on this court as well.

XXI. Reason for the Darbar Move-Harsh Winter Conditions- Irrelevant today- Old paradigms needs to be urgently revisited

130. Ms. Monika Kohli, learned Amicus Curiae has submitted that Maharja Ranbir Singh made the arrangement of shifting the Darbar from Srinagar to Jammu in the year 1872 to escape the severe winter in the Kashmir Valley. In the summer, the process was reversed for the reason that the Valley, which is nearly 5,000 feet above sea level, has pleasant weather, unlike the heat of Jammu.

131. However, since 1872 when the arrangement of the Darbar Move was effectuated, much has changed. The discomfort on account of change of weather in either city, is, today compensated by efficient and modern environment control mechanism as air conditioning, heaters etc in both Jammu as well as Srinagar.

132. It could also very well be urged that in 1872, the journey of 300 Kms between Jammu and Srinagar, used to be long and arduous. This has also changed. Today Jammu and Srinagar are connected to each other and the rest of the country by a well used National Highway which is kept in good repair around the year. Disruption of traffic on the Highway for any reason or any barriers thereon, are expeditiously removed.

133. There is even a railway line between Banihal and Baramulla. It appears that the ongoing expansion of the railway network shall soon expand the railway facility from Jammu all the way to Baramulla.

134. Both Jammu and Srinagar are also extremely well connected by air service with each other as well as with remote corners of the country. Over 36 daily flights in the summer and around 25 in winter fly into and from Srinagar. So far as

Jammu is concerned, there are between 15 to 20 daily flights everyday round the year.

The distance of about 300 kms from Jammu is today is covered in half an hour by flight.

135. Experience shows that even if a mode of transportation is temporarily disrupted for any reason, its resumption is after a brief period.

136. Therefore, though the original rationale remains in principle- winters in Srinagar continue to be cold and summers remain hot in Jammu, however, the circumstances have completely changed and there is little weight in that principle any more. It is clearly logical that the consideration of extreme weather in support of the Darbar Move does not hold weight today.

Clearly the reasons for introduction of Darbar Move are completely irrelevant today.

XXII. The shifting entailed in the Darbar Move: Endangers the safety and security of the Government records, many irreplaceable, priceless and even of very sensitive nature, imperiling security of the region as well as National safety

137. It is necessary to bear in mind that the Darbar Move requires moving Government records out of the safe spaces of offices where they are maintained, packing in fragile trunks, loaded into vulnerable hired transportation and exposed to the risk of theft, pilferage, destruction and damage, as they are ferried on the public roads and the National Highway for over 300 kms in all kinds of weather conditions.

138. These records would be including sensitive documents and old archives which cannot tolerate exposure of any kind.

139. Such documents may be on matters of security of the country as well as of the Union Territory. This security ought not be compromised for any reason whatsoever.

140. There would also be old and fragile records which would be endangered by the repeated manual handling during packing and unpacking four times in the two Darbar Moves every year. Delicate electronic equipments, computers and gadgets which are involved in the Darbar Move must be getting damaged.

141. It needs borne in mind that there will be several occasions when records contains material inconvenient to one or the other unscrupulous party. The kind of shifting which is entailed in the Darbar Move, provides a perfect opportunity for inconvenient records to be conveniently '*misplaced*'. This, without any doubt, is something which needs to be seriously prevented.

142. It needs no elaboration that there have been tremendous technological advances enabling extensive e-governance; remote working; video-conferencing; working on e-office apart from several other remote working devices and techniques which are today available. These were not in existence in 1872 or so freely available in the last century.

143. Ms. Monika Kohli has drawn our attention to a report dated 25th December 2018 published in the English daily '*Kashmir Monitor*' to the effect that the Government of India has released around Rs.24 Crore for purchase of hardware and software for the Civil Secretariat and also released funds for digitisation of official records. This is a huge financial outlay. Just like much else, it is left to speculation as to what is the fate of this program.

144. However, it cannot be denied that each of the above reasons requires that Government records ought not be taken out of its safe holdings and that it should be properly secured and preserved at a proper place.

145. Clearly, an examination by the authorities and decision makers of the permissibility of physical shifting and movement of personnel, record and material which is entailed in the Darbar Moves, if for no other, then for the reasons noted above, is both urgent and imperative.

XXIII. The Darbar Move deprives both the regions six monthly of the administrative machinery

146. As a result of the shifting of the complete Secretariat with all records from one city to the other as part of the Darbar Move, there is no mechanism of relief or redressal left in the region from where the Darbar moves.

147. As a result of the Darbar moving in the summer to Srinagar, people living in some areas of the Jammu province would have to travel long distances for solution of petty problems. The residents of the village Dachhan, Paddar, Marwah in the Kishtwar District have to travel more than 400 kms, someone from Basohli, Bani in Kathua District to travel between 450-500 kms in seeking resolution of their problems from the administration located in Srinagar.

148. Similarly in the winter months, a person from Gorez in the Bandipora District, having an issue with the administration, would have to travel some 500 kms over difficult terrain to reach Jammu. A resident of Tangdhar and Teetwar in Kupwara District would similarly travel 400 kms.

149. This would only add to the distress of the people who are completely deprived of access to the administration for six months at a time, further contributing to segregation. The hardship which is caused for the continuous duration of six

months at a time to the region from where the Darbar has shifted needs no elaboration and must be a source of tremendous distress to the people of the region. It cannot be disputed that both regions needs continuity of administration round the year and without a break as is available in all other parts of the country. Such deprivations also cannot be countenanced and need to be addressed urgently.

XXIV. Impact of the Jammu and Kashmir State Reorganisation Act, 2019

150. Another important factor which has intervened necessitating a meaningful examination of the existing system is the fact that on 5th August 2019, pursuant to the enactment of the J&K State Reorganisation Act, 2019, upon re-organization of the erstwhile State of Jammu and Kashmir, two Union Territories have come into existence. The Union Territories of Jammu and Kashmir as well as Ladakh has been constituted out of erstwhile State. The Union Territory of Ladakh covers an area of 59,146 sq. kms with its capital in the city of Leh. The area covered by the Union Territory of Jammu and Kashmir is smaller than the area of the erstwhile State. This is another important reason militating against the shifting of the entire administrative machinery twice a year from one place to another.

XXV. Whether the Darbar Move contributes to the economic growth of the region?

151. It has been argued that the Darbar Move contributes to the economic growth of Jammu and Kashmir in turn. Our consideration shows that this argument can be advocated only by persons owning hotels and guest houses which are hired by the government to house Move officials or the owners of businesses which cater or service those involved in the Move.

152. Even the benefit to these enterprises and persons in either place is for only six months as the Darbar moves bi-annually, and the Darbar Move employees would also move out of the city.

153. The Darbar Moves have the effect of disruption of the scheduled completions of important administrative assignments. It definitely impedes monitoring of Government projects as Government records get packed and sealed in trunks. A cursory examination of the report card of the several projects, including mega infrastructure and construction projects makes out consequential delays in decision making and resultant increase in costs. This is the direct outcome of the disruption of the administration.

154. Several public infrastructure projects in Jammu and Kashmir are languishing, not for years, but for several decades together without they being efficiently monitored. These encompass projects in road construction, public health, education as well as administrative systems. No time lines are adhered to. Public systems suffer from opacity and lack of accountability in functioning. In the litigation before us, it is a constant refrain that government systems are steeped in inefficiency and lacking in dedication and commitment. The visible delays underline an urgent need for building the capacity for meritorious, fearless, independent, fair and strong decision makers; those who would apply themselves selflessly and with dedication and commitment to the common good of the people; those who would spurn nepotism, favouritism and dishonesty.

155. What constitutes the '*economy*' of the Union Territory? Industrial enterprise is extremely deficient. For instance, while Kashmir is the major apple producer of the country, even basic cold-storage facilities in the Valley are insufficient, let alone any industry which could manufacture apple products. Milk,

yet another product which is extensively produced by diary owners in the Valley, depends largely on the security forces for its consumption with hardly any major commercial usage thereof. The internationally renowned Kashmir saffron, almonds, walnuts similarly remain largely unsung without any substantial organized commercialization of their cultivation, usage or trade.

The traditional handicrafts in wood, embroidery, carpet weaving, papier mache etc also do not seem to have received the commercial impetus which they ought to have done, despite the acclaim that they have earned at an international level. The bakery and cuisine of Kashmir is unparalleled and has a tremendous potential for commercial exploitation. Instead of devotion of finances, initiative and enterprise to the commercial and economic development of each of the above, each of which has so much tremendous potential, the Union Territory is persisting with a practice which has no element of public interest but only adverse costs of every kind.

156. The traditional Basohli paintings and the miniature Pahari paintings from Jammu; the famous Bhaderwah '*rajmash*' (kidney beans) or excellent R. S. Pura rice produce (the excellent of which the rest of the country does not even know) does not appear to have seen commercial entrepreneurship. Local sweet brands in Jammu manufacturing locally renowned products (and popularly carried by fliers out of the Jammu airport), do not travel otherwise even beyond the borders of Jammu, it is unfortunate that no brands, say, like Haldirams or Palcos or Bikanos or BTW which have attained national and international fame for their products, have been developed in Jammu and Kashmir for their products.

157. Restrictive laws have discouraged large private investments.

158. Undeniably, there is severe lack of employment opportunities in the entire Union Territory. Public employment appears to be the only major source of employment.

159. As a result, we are given to understand that reportedly there is a workforce of almost over 1,50,000 daily wagers in government departments who have been so engaged for several decades together, and are living lives of extreme job in-security. For lack of any other source of livelihood, many unfortunately continue on wages as low as around Rs.5,000/- a month, way below subsistence in many other States and Union Territories.

160. The Darbar Move may be making a temporary impact of six months at a time to the earnings of a few hoteliers/ guest house owners/ shopkeepers of the cities of Jammu and Srinagar - but it does not even the two districts as a whole, let alone the two regions. The Darbar Move certainly does not have any impact or contribution to the larger interest of the economic growth and development of the Union Territory of Jammu and Kashmir as a whole. It does not even impact the economy of the entire Jammu and Kashmir region. The above narration therefore shows that the Move makes neither any contribution to the general welfare of the common man nor to public interest, as a whole.

XXVI. *The Darbar Move is an entrenched tradition vis-à-vis guaranteed fundamental rights*

161. It has been urged before us that the Darbar Move is an entrenched 'tradition' of the region. We are informed that both the regions are emotional about the continuance of this practice.

162. Can it be said that continuance of an arrangement which is really status quo regarding a '*practice*', is tradition or part of culture of a society? It requires to be borne in mind that the Darbar Move was not implemented because of any traditional, social or political reasons. There was no structural necessity also for implementing the same.

163. A tradition is a practice that has been passed down over generations and observed by '*most*' people of a society or culture. It is embedded in the '*collective ethos*' of that society as a whole. Culture, tradition and custom play an important role for a civilization and character of its citizens and society. The ultimate goal being to shape values, aspirations, developing a sense of belonging and promoting societal cohesion and development. The Darbar Move is not such a practice but, as noted above, was an arrangement evolved by the then ruler on account of distress with the climatic conditions unrelated to social values or aspirations of the people. It had no relation to development of the sense of belongings or promote cohesion and development in the society.

164. An 'arrangement' effected by a ruler at one point of time (on account of harsh weather conditions), cannot be the basis for continuance with the same arrangement, even though the circumstances for which the practice had commenced stand addressed and have been rendered irrelevant on account of technological advancements.

165. Jammu and Kashmir has traditionally had an inclusive diverse and secular culture which included various castes and tribes, many beliefs and customs, where people of different religions and faith lived in brotherhood and harmony. We have doubts that there is any other region in India where the calendar is devoted to so many varied festivals dedicated to numerous prophets, deities, saints and even

seasons. The linguistic diversity in the Union Territory is manifested in the dress and jewellery forms.

In Jammu, folk music, folk dances (*Bhagtan, Raas, Chandrauli etc Dheku, Phummani, Jagarana, Ckauki, Chhajja, Kuddha, Hirana etc*), folk drama were extremely popular. Music traditions as the '*Kaarak*' (sung with an instrument called '*King*') and the '*Bhaakh*' traditions used to abound.

Dogri folk literature also has a rich tradition of prose and verse forms. Jammu also has prominent handicrafts including those in weaving, wood work and block printing. '*Dogriyat*' is the essence of regional culture which follows the motto of "*live and let live*". It has characteristics which includes patience, secularity and unity. The distinct Jammu cuisine (*Mitha Madra, Shree Pulao, Auria, Khatta Meat*) is a popular regional specialty of the Union Territory.

166. '*Kashmiryat*', the cultural heritage of Kashmir amalgamates Hindu, Sikh, Muslim and Buddhist philosophies and takes into its fold Christian values. It emphasizes humanism, tolerance, harmony and warm hospitality. It is the '*Kehwa*' (traditional green tea) and the '*Noon Chai*' (salted tea) cooked in the '*Samovar*' (the Kashmiri tea pot) which is part of the culture of Kashmir. We have noted elsewhere that '*Kashmiri Wazwan*' holds a unique place in the cuisine of the Union Territory. Folk music (*Chakri, Sufiana music, Hafiz Nagma*), dance (*Rouf*), art (*Paper mache, embroidery, wood carving etc*) and instruments (*Santoor, Tumbaknaari, Rabab, Noot, Surnai, Sitar*) amongst others were popular not only in Kashmir but reached Bollywood even.

167. What has happened to the high traditions of the fabled Dogri and Kashmiri art, culture, the renowned and diverse music and dance forms? Ought not

government enterprise and public funds be expended towards revival and nurturing of these several aspects of Jammu and Kashmir's rich tradition and culture rather than their divergence towards purposeless expenditure which makes no contribution to the same?

168. We have discussed above the difficulties which are staring in the face of the people of Jammu and Kashmir; the detriment to the public interest; the arrangements for the Move lending inefficiency and ineptness in government administration; the slowing down of decision making; delays in completion of infrastructure and Government projects and the risk to which the entire Government records are exposed; the huge financial outlays involved in continuing with the practice. Each one these factors by itself supports a re-examination of the practice, or, in any case, the manner of its implementation.

169. The Constitution of India promises very precious fundamental rights in Part-III. Article 21 ensuring right to life has been interpreted widely by the Supreme Court and takes into its ambit guarantees of shelter (Ref: *(1996) 2 SCC 549, Chameli Singh v. State of U.P.*), right to education to the extent that it has been held that every child up to the age of 14 years is entitled to free education (Ref: *(1993) 1 SCC 645, J. P. Unnikrishnan v. State of Andhra Pradesh*); right to free legal aid (Ref: *(1981) 1 SCC 627; (1986) 2 SCC 401, Khatri (II) v. State of Bihar; AIR 1986 SC 991, Suk Das v. Union Territory of Arunachal Pradesh; AIR 1978 SC 1548, M. H. Hoskot v. State of Maharashtra; AIR 1996 SC 1, State of Maharashtra v. M. P. Washi*); right to health (Ref: *AIR 1989 SC 2039, Parmanand Katara v. Union of India; AIR 1996 SC 2426 (Paras-9,15 & 16), Pachim Bengal Khet Mazdoor Society v. State of West Bengal; (2014) 1 SCC 384, Balram Prasad v. Kunal Shah*), right to clean and healthy environment (*AIR 1996 SC 1446 (Paras-55 & 56), Indian*

Council for Enviro-legal Action v. Union of India; M.C. Mehta v. Union of India, AIR 1987 SC 1086; Bandhua Mukti Morcha v. Union of India, AIR 1996 SC 1446 (paragraphs 55, 65); right to livelihood (Ref: (1996) 5 SCC 125, Madhu Kishwar v. State of Bihar) amongst a host of other essentials. Judicial notice can be taken of the fact that none of these rights have been ensured to all the people in Jammu and Kashmir.

170. It is common knowledge that the Union Territory of Jammu and Kashmir is grossly lacking in road access, drinking water, availability of essential healthcare services. Education and even judicial infrastructure is way behind the facilities which are routinely available in the neighbouring States and the Union Territories. Alongside the roads traversed by us to reach the High Court in Jammu, we see open drains and heaps of garbage. No efficient systems of solid or liquid waster management appear to exist anywhere in the Union Territory. The extent of encroachments on public lands and forests and unplanned constructions surpass. We are sure, in the rest of the country, issues regarding financial scams all of unimaginable proportions are pending in the courts. While on the other end of the spectrum, there is abject poverty and unbearable unemployment.

171. Before us, it has been argued that there are no institutions, residential or otherwise, for those with mental health issues. No de-addiction centers or shelter homes for women and child victims of violence are available. There are hardly any orphanages or homes for the aged in the entire Union Territory of Jammu and Kashmir. Even with regard to children in conflict with law, only two Observation Homes (one in R.S. Pura, Jammu and other in Srinagar) are available infracting their fundamental rights to expeditious inquiries. Hardly any action taken to ensure equality and other rights to the disabled.

172. It has been brought to our notice that basic diagnostic facilities as in the nature of PET scan machines essential for cancer patient are not available in Jammu till recently. A cancer patient from remote parts of Jammu and Kashmir thus travels all the way to Chandigarh or Delhi for routine testing and treatment. Available facilities are extremely deficient.

Organ transplants (even Coroneal transplant surgery) have not commenced till recently.

173. Jammu and Srinagar are barely around an hour's flight from Delhi. Yet the disparity in facilities is incredible.

174. Several writ petitions in the public interest have also been filed in both the Jammu and the Srinagar Wing of the High Court highlighting the extreme deprivations which the people of Jammu and Kashmir have been facing and complaining denial of above rights, a series of public interest litigations are pending in both wings of the High Court.

175. In the Jammu Wing, *WP(C)PIL No. 37/2013 Smile Social Youth Club of J and K* has been filed praying for order to the Government to establish, create and run one organ transplant centre in Jammu and Kashmir whereas *WP(C)PIL No.2/2018 Citizen's Forum Jammu v. State of J&K* seeks provision of adequate medical facilities.

176. Before the Srinagar Wing, in *WP(C)PIL Nos. 9/2013 & 9/2016*, suo motu cognizance has been taken on a report regarding apathetic condition of a Government orphanage namely Markaz Falahi Itifal at Nishat Srinagar. *PIL No. 10/2017 'Ajaz Ahmed Bund and others v. State and others'* has been filed seeking implementation of the judgment of the Supreme Court recognizing transgender as

the third gender, their rights and formulation of schemes for their welfare. *PIL nos. 05/2015 & 3/2018* have been filed relating to the status of public roads and highways.

177. So far as delicate environmental issues are concerned, the concern of the Court on the Dal lake in *PIL No.159/2002, 'Syed Tahir Geelani v. State of J&K'* is significant. Apparently over Rs.400 crores stand expended on improving the Dal Lake with hardly anything of significance visible. Even the boundaries of the Lake could be mapped with the assistance of the Surveyor General of India, census and mapping of houseboats effected and steps to control flow of pollutants into the lake undertaken amongst other important measures only last year.

178. Given the inability to secure basic fundamental rights and huge gaps in the basic facilities to the people of Jammu and Kashmir; levels of unemployment, illiteracy and poverty in the Union Territory, it is questionable as to whether the divergence of valuable financial resources on pursuing the practice of the Darbar Move can be justified, especially keeping in view its adverse impact on public interest.

179. We have no manner of doubt that emotion necessarily has to give way to the larger public interest and that public resources must be utilised for the larger good of the people and expended in ensuring basic facilities guaranteed as fundamental rights under the Constitution of India and optimally utilised for equally advancing the interest of every common child, woman and man of Jammu and Kashmir as a whole and to usher in development, physical and technological, as is taken for granted elsewhere.

XXVII. Human cost for the Darbar Move - effect thereof

180. We now come to another critical aspect of the matter. It is important for us to ask while implementing the Darbar Move, as to whether we have ever asked the stakeholders, the personnel who actually move, what is their reaction to the Darbar Move? Does the Darbar Move have any kind of cost - physical, emotional and financial - upon them?

181. Thousands of Government personnel involved in Darbar Move in Jammu and Kashmir are per force separated from families for atleast six months in a year. The Move must be at a huge emotional cost to the employee who would thereby stand separated from his close family on special occasions as birthdays, anniversaries, festivals, etc. The persons who are called upon to shift from Kashmir to Jammu or from Jammu to Kashmir may be having several personal problems. Many may be undergoing treatment for diseases for which they may be under treatment at one or the other place. The Darbar Move employee may be an only child who is the sole care giver for a bed ridden dependant parent. How does such a person cope? Do we have trained care givers in the Union Territory to look after such sick persons? Even if we did, would the employee be compensated by his employer for the cost of hiring such professional help.

This cannot but create distress and lead to diminished interest in work assignments of the employee. Hence the Darbar Move directly and adversely impacts human resource efficiency.

182. The Darbar Move employee may have children at sensitive stages in their academic careers who need the presence of both parents the whole year round. Or such employee may be a single parent confronted with maintaining academic continuity for her child despite the Darbar Moves. The Darbar Move compels the Government employees to abandon their personal needs and all compulsions of their

needs. The six monthly shifting is at a huge cost on the psychological health if not the physical health of these persons.

183. The right to marriage is also an entrenched part of the fundamental right to life under Article 21 of the Constitution. Cohabitation with family is a basic aspiration of every human being and society. This is denied biannually to the personnel compelled to shift with the Darbar.

184. Despite our research, we are unable to find any instance of a bi-annual posting in any other service. The Move personnel are perforce constrained to incur the expenditure of having to maintain a residential establishment in both cities, a drain on limited personal resources of a salaried person. We have not come across any other service requiring its personnel to maintain two homes, having to bear expenses of duplicating household effects including expensive electrical appliances, say for instance, washing machines, televisions, microwaves etc as here. What does the Move employee do with the belongings from the second home on superannuation? This would be another wasteful personal exercise.

185. The issue which has to be considered is as to whether is this fair to the government employee in the Union Territory of Jammu and Kashmir? Are we doing justice to these employees and their families?

186. The above discussion would show that the working of the Darbar Move compelling Government officers to biannually move with the Darbar Move unfairly impacts their right to life under Article 21.

187. Fixed tenures of service are recognised in guidelines and policies on transfer in all services. Even the Defence Services, the Police and Central Armed Police Forces follow discipline in transfers premised on informed policies informing tenures of postings to their employees.

188. It needs no elaboration that in public service, transfer is an incident of service. In *AIR 1974 SC 555 E.P. Royappa v. State of Tamil Nadu*, the Supreme Court had declared that it was an implied condition of service and that the appointing authority has wide discretion in the matter. It is the Government which is the best judge to decide how to distribute and utilise the services of its employees and the power should be exercised honestly, bonafide, reasonably on public interest.

189. The implementation of the Darbar Move is in all probability the only instance in the country, where government employees at every level are compelled to move every six months.

190. As discussed above this has to have a huge toll on their physical and mental health. It works an unfair financial burden on them. It has to work incalculable harm to their family members and dependents. Such biannual shifting is not grounded in any consideration of public interest and is unquestionably and manifestly arbitrary. The practice requiring such shifting is therefore violative of Article 14 of the Constitution of India.

191. It is truly unfortunate that no heed has been given to these important fundamental rights of these thousands of Government employees for decades together.

XXVIII. Whether the Darbar Move contributes to emotional integration?

192. The supporters of the Darbar Move urge that the Move contributes to the emotional integration of otherwise diverse regions of the Union Territory of Jammu and Kashmir.

193. Our experience is to the contrary. We find that while effecting assignments, an unwritten rule appears to be in vogue premised on the expectations of the employees at all levels. Even though there is one service and employees are

recruited for the Union Territory as a whole, however, service personnel hailing from Jammu, expect postings only in Jammu while those from Kashmir, expect to serve only in Kashmir. Such aspirations if not, lead to dissatisfaction and complaints and, therefore, are also largely fulfilled.

194. As a consequence, an automatic segregation results. This results in diminished sensitivities to the part of the Union Territory other than that to which a person belongs. It would be definitely resulting in a lack of concern, attachment or engagement with issues regarding the other parts of the Union Territory. Such unwritten practice would contribute to favouritism and nepotism in postings. Whereas the diversity between the regions deserves to be assimilated into a cohesive unit.

195. It is also pointed out to us that some 10,000 odd employees only move with the Darbar out of which over four lakh employees. This would barely come to 2.5% of the total staff of the Government. Heads of Departments also do not appear to be moving. Can it really be said that movement of 2.5% out of total workforce of the Union Territory Government contributes to emotional integration in the Union Territory? More so when the employee being separated from his close family, would be greatly resenting the requirement of having to move.

196. Social integration is a key aspect of societal development. It entails mending conditions of social fragmentation and developing a collective consciousness. In order to promote social integration, there is a need to evolve our approach to suit the conditions of present times. Conservation and redistribution of socio-economic resources, increasing representation in key spheres, improving access to justice and state support feeds an approach which may maximize benefit an approach to all in contemporary times.

197. The Durbar move originated at a time devoid of technological alternatives and out of the discomfort with climatic conditions. It therefore lacks the rootedness of culture required to contribute towards the 'identity building' of a society as a whole. Moreover, with changing conditions and evolving opportunities, it ceases to have relevance in the technologically advanced modern society of today.

198. Integration results out of migration of people from one region to another. It is automatic result of movement of the people, exchange of ideas, cultural activity, social gatherings, traditional sharings etc would result in segregation. The Darbar Move does not have any such effect and certainly would not contribute to emotional or social integration of the people of the Union Territory.

199. It is necessary, therefore, to examine all practices which have the impact of creating divisions in the Union Territory and also encourages regional loyalties and commitments instead of generating sensitivity for integrated development of the Union Territory as a whole.

XXIX. Some instances available of the practice of States having two capitals in Independent India

200. We find that instances of States having two capitals are available in India post independence. In Himachal Pradesh, in March 2017, shortly before the elections that year, the then Chief Minister had declared that Dharmshala in Kangra would be the 'second Capital' of the State. The Cabinet of Himachal Pradesh took a decision to hold the Winter Session of the Vidhan Sabha at Kangra. This Winter Session is however for the short period of around one week and only a few Government officials move to Dharamshala to facilitate the Session and is only a limited functioning in the winter.

However, this practice is not on the lines followed in Jammu and Kashmir where there is bi-annual shifting of the entire Secretariat and part of the judiciary.

201. We find that in Maharashtra, Nagpur, the third largest city of State is the seat of the annual winter session of the Maharashtra State Assembly.

In the 19th Century, after being taken over by the British East India Company, Nagpur was made the capital of the Central Province of Barar. Upon the first re-organisation of States, the city lost its capital status but according to the 'Nagpur Pact' between the political leaders, it was made the second capital of Maharashtra.

Now the annual Winter Session of the Vidhan Sabha is held in Nagpur. This winter session lasts only between 15 to 20 days. This also does not involve the nature of movement of the Secretariat and the judiciary which is involved in the Darbar Move in practice in Jammu and Kashmir.

202. It is noteworthy that till the year 2000, Ranchi was the summer capital of undivided Bihar. Thereafter, Patna remains its capital round the year. Today Ranchi is the capital of the state of Jharkhand.

203. None of the above three instances thus involve the shifting of the magnitude and financial cost as that which is entailed in the two Darbar Moves in Jammu and Kashmir. The judiciary is not a part of the shifting of the government.

XXX. Denial of justice to the people of the Union Territory of Jammu and Kashmir – basic judicial infrastructure lacking

204. Access to justice has been considered a basic fundamental right guaranteed as part of right to life of every person and has to be ensured. In the judgment of the Supreme Court dated 1st February 2012 in *Criminal Appeal*

Nos.254-262 of 2012 Imtiyaz Ahmed v. State of Uttar Pradesh, the Supreme Court has held thus:

“A person’s access to justice is a guaranteed fundamental right under the Constitution and particularly Article 21. Denial of this right undermines public confidence in the justice delivery system and incentivized people to look for short-cuts and other for where they feel that justice will be done quicker. In the long run, this also weakens the justice delivery system and poses a threat to Rule of Law.”

(Emphasis supplied)

205. Justice can be rendered only if, basic facilities, proper court rooms being the bare minimum, are made available to the judges and lawyers as well as the consumers of justice i.e. litigants. Ought not the public resources be first utilized for enhancing the basic judicial infrastructure to further the fundamental rights of the people first rather than undertaking avoidable expenditure in the Union Territory?

206. We find that the judiciary in the Union Territory of Jammu and Kashmir is confronted with a precarious situation because of the pathetic status of the available infrastructure. Because of the significant manner it adversely impacts one of the most important fundamental rights of the people, since information on this issue is available, we dwell on it in some detail.

207. It appears that the infrastructure in the High Court as well as Trial Courts was constructed long back, for the most part atleast three and a half decades prior to today. Several courts buildings which are being utilized today are relatable to periods even prior thereto.

208. While judicial infrastructure has received urgent attention in every part of the country in terms of physical structures as well as technology, a sense of contentment with the '*status quo*' has guided the development of judicial infrastructure in the erstwhile State of Jammu and Kashmir.

209. From every sense, be it physical infrastructure, use of technology and working style, huge investments and radical improvements are urgently needed in order to enable the judiciary in Jammu and Kashmir to attain bare minimum of the essentials, let alone to march in synchronization with the developments in the rest of the country, to ensure access to justice to the people.

210. Take for instance, the physical facilities available even to the High Court of Jammu and Kashmir which functions in two Wings, one in Jammu, the other in Srinagar.

211. Till 1985, the sanctioned strength of the High Court was only 6 judges. In the year 1986, it stood raised to 11, which position continued for an almost three decades.

212. The existing court building in Jammu was raised in the 1990s inaugurated on 3rd September 1994. This building stands constructed for the sanctioned strength of the High Court of only six judges. The High Court building at Jammu has only 7 court rooms - one for the Chief Justice and six to accommodate judges.

213. In the Srinagar Wing, the existing High Court building was inaugurated on 5th December 1987. It then consisted of a total of 7 court rooms - again one for the Chief Justice and six for judges. Two additional court rooms have been added in 2010.

214. The ground floor of this Wing had got completely inundated in the disastrous floods in Srinagar on the night of 7th September 2014. The entire record upto 2014 of the Court got destroyed in this flooding.

215. It was only in 2014, the sanctioned judge strength of the High Court was increased to 17. Neither in the Jammu or the Srinagar Wing of the High Court, are there sufficient court rooms to accommodate the full sanctioned strength of the High Court. It bears noting that in 2018, to accommodate a newly appointed judge, a make shift court had to be created by converting a part of the ministerial section into the court room. The chamber of the judge had to be housed in the office of the Deputy Registrar (Administration).

216. Just last month, upon a new elevation, the court of the Registrar Judicial has had to be converted into the office chamber of one of the newly elevated judges.

217. As on 31st March 2010, the pendency of main cases was 29244 in the High Court. By 31st March 2018, this had increased to 62603 main cases, out of which 42000 cases are pending in the Jammu Wing of the High Court.

218. In a judgment dated 2nd August 2018 rendered by the Supreme Court of India in *Writ Petition (Civil) No.1022/1989, All India Judges Association v. Union of India* case, bare minimum requirements of the court complexes stand laid down. Most of these requirements are either lacking in the High Court complex or are absolutely outdated and insufficient.

219. An audit of the court building for evaluating its security and fire safety was conducted by the Department of Fire and Emergency as also Security Agencies who in their separate reports dated 3rd January 2019 and 7th January 2019, have expressed apprehensions that in case of disaster, the impediments to the access and exit of the corridors of the court complex can have serious consequences.

220. In a shocking deficiency of facilities, the filing counters in the High Court are working from congested spaces in both Wings.

221. In the Jammu Wing, the filing counter is space of barely around 10 x 15 feet; the post office is housed in a small room of 10 x 12 feet; the Dispensary is a space of 15 x 15 feet; the legal aid office of 10 x 25 feet; the office of Dy. SP (Security) of 8 x 8 feet all of which stand carved out by temporary partitioning of the corridors. Similarly, space of 10 x 8 feet for security officer on duty has been created by putting a makeshift partition in the corridors. This creation of rooms for imperative court functions has required blocking of circulation spaces in the building which is completely illegal.

222. On each Darbar Move, the complete administrative record of the High Court is shifted to the other Wing of the court in hundreds of trunks. For want of space, these trunks are stacked in the corridors of the Wing.

223. Additionally, Godrej and wooden almirahs have been indiscriminately and haphazardly placed in every available space in the corridor, creating dingy unlit spaces and obstructing free movement, seemingly without any record of permissions for the same. This has resulted in a creation of dangerous dark, unlit corners which can be misused by miscreants. The blocking of the corridors is both a fire and security hazard in a public building.

224. The Administrative section of the high court in the Jammu Wing is completely without any ventilation, which lends to health hazards.

225. It appears that there was no space for developing the facilities for the e-court project of the High Court. The Computer cum Server Room was inaugurated on 14th March 2018 after dividing the Canteen into two parts. There is no space for

installing equipment urgently required for revamping the e-services or for the officers and staff in this section.

226. The space in the record rooms stand exhausted. Resultantly, the same stands stacked in corridors and partly in some garages for judges' vehicles.

227. In the Jammu Wing, there is dire need of proper washrooms, crèche, bar rooms, canteens, telecom facilities, conference centers amongst other facilities all considered basic to any court complex. There is hardly any waiting area for the litigants and lawyers. It is impossible to generate any of these facilities. There is no space available to house the large contingent of security personnel with basic facilities and they unfortunately have had to be accommodated in garages constructed for judges vehicles and are compelled to exist in the most shabby conditions.

228. Surprisingly the High Court in both Wings has functioned without any inspection rooms of court records even though the High Court Rules postulate the same. Again such room has been recently created with great difficulty with narrow spaces taken away from the court administration, which would be grossly insufficient if lawyers started making optimum use of this facility.

229. The court buildings in either Wing of the High Court have no facility for the differently abled persons to access justice.

230. Efficiency in daily court functioning is hampered again for want of space. The court rooms cannot accommodate staff required for operationalising Division Benches with bench secretaries and stenographers having to sit shoulder to shoulder in cramped proximity. There is no space for installation of a computer for the stenographer to type any matter in the court, unlike courtrooms in the other High Courts in the country.

231. No e-court program can be implemented without digitisation of the court records. There is acute shortage of space for the essential digitisation of court records. In the Jammu Wing, the ADR building of the District Court has been taken over for this purpose. Unfortunately this building is also located most inefficiently at a distance of 500 meters away from the main court building, severely impeding the pace at which digitisation can be carried out.

232. The office of the Registrar Vigilance as well as the Secretary of the High Court Legal Services Committee Jammu should essentially be appropriately placed in the court complex itself. For sheer want of space they have had to be located in the ADR building and in the Judicial Academy respectively, located more than 500 meters away.

233. The Jammu Wing of the High Court does not have a Bar library. As a result, members of the Bar are found using the facilities of the Judges Library. Consequently, there is no privacy or confidentiality to the research which is required to be undertaken by judges, law researchers and court staff for judicial functioning. There is thus no proper library for the judges.

234. Reports from Principal Districts Judges have shown that Districts courts are in shambles with many of the courts running from building which are unsafe; many housed in government offices or even in accommodation rented from the public.

235. Most of the trial courts in Jammu and Kashmir lacks essential basic facilities including washrooms, crèches, bar rooms, canteens, telecom rooms, lockups, bar room and libraries etc.

236. There are several instances of courts having been positioned in residences of Government officials. For instance, the court of the *Munsiff, D H Pura*

(Damhal Hanji Pura) in District Kulgam, is housed in the official residence of the officer for the reason that in the year 2017, the main court complex was burned down by miscreants.

237. The courts of the *Munsiffs in Akhnoor (Jammu), Bani, Billawer, Basohli and Hiranagar* in District Kathua; the *Munsiff Mahore*, District Reasi; the *Munsiff Chennani* (District Udhampur); *Munsiff Kangan*, Ganderbal District; the *Munsiff Ramban and Sub Judge Batote* in District Ramban are in absolutely shabby and dilapidated conditions requiring immediate repairs and renovations. The *Munsiff court in Dooru, Anantnag* was burnt down by miscreants in July 2016. Till date, the court is housed in temporary facility without any toilet for the lawyers and litigants.

None of these are premises are befitting a basic trial court.

238. The Court of the *Special Mobile Magistrate* (13th Finance Commission), *Rajouri* is functioning from a room measuring approximately 10 x 10 feet, without any judge's chamber or washroom. The size of the *Munsiff Court Ukhral* 12x10 ft and *Munsiff/Additional Special Mobile Magistrate, Ramban* is 10 x 8 ft.

239. Information has been received that the position of the *courts at Katra, Reasi* is not very different. Katra is barely 45 kms from Jammu.

240. We may here also advert to the building of the *District Court in Jammu*. It was constructed for housing 12 magisterial courts only. At present, from the same space, 27 courts including 14 Sessions courts are running. The ministerial staff stands accommodated by using temporary panels round stair-case and corridors. Tiny private spaces for judges have been similarly created. The condition of the toilets for judges, lawyers and litigants is abominable. Shockingly, there is no

lock up for women prisoners in this complex. As a result, if any women prisoner is brought to the court, she is kept in the police vehicle for the whole duration of the court visit, a serious violation of her basic human rights.

241. To be more specific, it is pertinent to take note of the fact that presently **09 Courts** are running from *rented buildings*; **31 Courts** are running from *Government buildings* and *life of 25 Court buildings is between 50-100 years*, which have posed great threat to all the stake holders visiting these buildings.

242. There is *no self-owned residential accommodation* for the **Judicial Officers** at around 73 places.

243. Clearly, the judiciary needs a critical boost to the existing infrastructure for which infusion of funds is necessary.

244. Physical and technological infrastructure form the core of a well functioning judicial system. A well planned and designed court complex impacts not only the quality of interactions between the court and litigants but also improve the efficiency level of the judges and the court staff. Therefore, deficient physical infrastructure invariably results in judicial delays and hinders access to quality justice.

245. It may be noted that quality justice is not limited to just the outcome of the cases but also the experience a litigant has throughout her interaction with the judicial system.

246. One of the critical lessons from the COVID-19 pandemic is that we urgently realize that equal importance that needs to be given to technological infrastructure. In the absence of infrastructure which enables use of resources such as computers etc the entire judicial system can come to a grinding halt. This is what is being experienced at present where hearings have been reduced to only urgent

matters. This has severely impeded the constitutional right of access to justice which has been given to every person.

247. So far the courts in Jammu and Kashmir are concerned, the challenge is regarding development of both physical and technological infrastructure. Diverse capabilities amongst people have to be accounted and provided for. Court complexes have to be inclusive and disabled friendly addressing all special needs.

248. For designing digital infrastructure, lack of digital literacy, access to technological devices, internet connectivity, etc has to be accounted for by making special provisions. For instance, e-filing kiosks in the court complexes; dissemination of training through judicial academies, bar associations etc have to be factored in needing physical space, infrastructure and resources.

249. The current COVID-19 crisis requires social distancing and an immediate need to shift to modern technology in court process. Digitisation and e-filing have to be imperatively introduced. The Supreme Court of India has mandated creation of e-Seva Kendras in the Courts.

For lack of space in the existing High Court buildings and trial courts, it is impossible to even contemplate these systems.

250. Justice can be effectively dispensed only if, at least basic, if not optimum, facilities are provided.

251. It has to be examined as to whether the Union Territory which is unable to provide the very essential, minimal basic infrastructure to the judiciary, as even decent courtrooms, can afford the luxury of indulging in an operation which has no basis in essentiality, public interest or development of the economy, at a cost of hundreds of crores of rupees twice a year.

XXXI. The Darbar Move – its contribution to case adjournments and judicial delays

252. Does the Darbar Move have any impact on the justice dispensation in the Union Territory of Jammu and Kashmir? This impact can be gauged from our experience in the High Court. It has been our experience that from the months of November to April, State Counsels in the Srinagar Wing of the High Court had no access to any official records to enable them to file counter affidavits/replies etc. in cases in that Wing. These counsels sought repeated adjournments from the courts to do so. This was for the reason that the Darbar alongwith all official records was in Jammu.

253. It is vice-versa if the Darbar is in Srinagar and a case against the Government has to be conducted in the Jammu Wing of the High Court.

254. On the 16th April 2020, we had called upon the Secretary of General Administration Department of the Government to inform this Court as to the status and location of all the records of the Government of Union Territory of Jammu and Kashmir as at present.

255. The General Administration Department has filed an additional report dated 20th April 2020 confirming that all records of the Union Territory of Jammu and Kashmir, are presently lying at Jammu. Clearly, Government pleaders in Srinagar must be taking repeated adjournments for filing counter affidavits in cases against the Government and Public Sector Undertakings involved in the Move.

256. It is a matter of extreme pain as to the effect of similar adjournment requests in criminal cases, for instance, cases against public officials under the Prevention of Corruption Act, 2006 or other prosecutions where Government records are required. The movement of these records with the Darbar Move, must

be responsible for numerous delays in the criminal prosecutions. Adjudication in civil cases involving the Government must be getting similarly adjourned.

257. The public is a stakeholder in adjudication, especially criminal prosecution. No study or empirical data is available on this important aspect. However, our evaluation is based on logic and is the only possible conclusion.

The question is, can such a situation be tolerated?

258. Delayed adjudication, especially in criminal matters, has significant societal ramifications. It emboldens those who violate the law. Adjournments in civil cases bring a state of hopelessness to those seeking justice.

The answer to the above question therefore has to be an emphatic no.

This is yet another very important reason for examining the existing system.

XXXII. Whether there exists any justification for involving the judicial system in the Darbar Move – need for delinking the judiciary from the same?

259. Despite extensive research, we have not been able to find either the historical date, the reasons or the order of involvement of the judiciary in the Darbar Move.

260. It may be noted that while the Darbar Move is stated to have commenced in the year 1872, the High Court of Jammu and Kashmir came into existence in the year 1928.

261. There is no discernible good reason at all for requiring the shifting of the Chief Justice and the senior most Puisne Judge along with Darbar Move. No element of public interest has been pointed out in joining the judiciary in the Darbar Move.

262. Experience has shown that the two senior most judges in the High Court ought not normally be placed together, unless administrative reasons in view of the prevalent needs and situation warrant otherwise.

263. It is also not possible for a Chief Justice to abandon one Wing of the High Court completely for a long stretch of six months at a time. This has been the experience for the last one and half year when effort has been made (by the present Chief Justice) to spend time every month in the Wing other than the Wing in the city from which the Darbar has shifted. Important decision making which was getting delayed in the other Wing could be resolved and pressing issues addressed thereby.

264. Additionally, the shifting of the entire administrative record (which includes personal records of the Judiciary) is itself an extremely cumbersome and risky proposition and is also without any rationale for the same.

265. An important differential in the working of the High Court of Jammu and Kashmir is that the High Court was established with two Wings, one in Jammu and the other in Srinagar. Despite the Darbar Move, judges appointed to the High Court of Jammu and Kashmir may be assigned to work in either of the Wings. It is significant that both Wings work continuously irrespective of the Darbar Move. There is therefore no warrant for requiring the movement of the Chief Justice or the senior most puisne Judge with the Darbar Move in the Union Territory.

266. We have discussed two instances where, only the winter proceedings of the Vidhan Sabha are shifted in Maharashtra and Himachal Pradesh. The courts in these States are, however, completely independent of the actions of the executive.

267. No other instance is available from any other State or country, where the movement of judges is linked to the shifting of the executive.

This is a very important aspect of the Darbar Move and requires to be examined at the earliest.

XXXIII. The Union Territory of Jammu and Kashmir is a fiscally constrained Union Territory – can it afford the expenditure on the Darbar Move

268. As per the information in the public domain, the Union Territory has projected a budget of over 1,00,000.00 crores. It is able to generate revenues of less than Rs.13,000/- crore. The Union Territory of Jammu and Kashmir, therefore, largely depends for its funds on the Government of India, grants and loans to the tune of around Rs.90,000/- crores. The above would show that Jammu and Kashmir is able to barely generate approximately 12% of its expenditure.

269. From the reports noticed by us heretofore, the financial expenditure entailed in the Darbar Move can be summed up thus:

Sr. No.	Category	April 2019	Oct 2019	Total-2019 (Rs. in lakhs)
		(10112 employee)	(9695 employee)	
1.	Expenditure (Rs. in lakhs) on Moving TA	1308.16	2288.53	3665.99
2.	Expenditure (Rs. in lakhs) on Temporary Moving Allowance @ Rs.2000/- per employee for 6 months	1213.44	1163.40	2376.84
3.	Expenditure incurred by Estates Department in hiring facilities for making available accommodation to the personnel who made the move in Winter from Srinagar to Jammu (Rs. in lakhs)	4161.7	2053.99	6215.69
4.	Expenditure incurred by the Finance Department on carriage, Ref. and other charges	153.82	99.5128	253.3328
5.	Expenditure incurred by the Finance Department for loadng/unloading.	45.41	50.67	96.08
6.	Expenditure (Rs. in lakhs) incurred by Transport Department in Darbar Move on Transportation, loading, unloading of records etc	0.98	1.08	2.06
7.	Expenditure (Rs. in lakhs) incurred by Transport Department in Darbar Move in Travel expenses (Move TA)	3.75	6.0	9.75
8.	Expenditure (Rs. in lakhs) incurred by Transport Commissioner, J&K on transportation, loading, unloading of records etc	1.175	1.154	2.329
9.	Expenditure (Rs. in lakhs) incurred by Transport Commissioner J&K on account of Travel expenses (Move TA)	2.55	4.75	7.3
10.	Expenditure (Rs. in lakhs) incurred by State Motor Garage, J&K on account of	0.58	0.62	1.2

	transportation, loading, unloading of records.			
11.	Expenditure (Rs. in lakhs) incurred by State Motor Garage, J&K on Travel Expenses (Move TA).	36.70	60.50	97.2
12.	Revenue generated by J&KSRTC for transportation of employees and records (Rs. in lakhs)	51.82	48.22	100.04
13.	Expenditure (Rs. in lakhs) incurred by the High Court on account of travel expenses (Move TA)	16.35	26.60	42.95
14.	Expenditure (Rs. in lakhs) incurred by the High Court on account of Temporary Move Allowance for the calendar year 2019			25.20
15.	Expenditure of Salary for six weeks to High Court employees for which no work is done.	2.15	2.15	4.30
16.	Expenditure (Rs. in lakhs) incurred by the High Court on account of Transportation and other miscellaneous charges for Darbar Move.	2.982	2.848	5.83
17.	Expenditure of salary paid to all Move employees for the three weeks for which no work is done in the Secretariat (Rs. in lakhs).	3476.169	3476.169	6952.338
Total		10477.736	9286.1858	19858.4298

270. Salary of Move employees for six weeks for which no work is done in the Secretariat comes to **Rs.6952.338 lakhs**. For the year 2019, the disclosed expenditure on the two Darbar Moves is to the tune of **Rs. 19858.4298 lakhs**. If calculated for the 73 years period since independence on this basis, the total expenditure comes to **Rs. 1449665.3754 lakhs**.

271. We may note that apart from the above, there are expenses for which there is no information available with us. Because of the bi-annual shifting of the Government, official accommodation has to be allotted to Government officials in both cities. As the Darbar moves, the allotted residential accommodations from the place of the Move, say when moving to Jammu, accommodations in Srinagar are completely closed down, packed up and disabled from use and habitation for six months. Harsh winters in Srinagar and vagaries of nature in both cities would be taking a heavy toll on closed houses as their inmates have been compelled to shift to

the other city. As a result, before the Darbar Move extensive renovations and repairs are undertaken of these houses by maintenance staff readying them for occupation.

272. The repairs/renovations are not minor in nature and entail complete repainting, servicing of plumbing and electrical fittings etc. The expenditures on such repairs and housekeeping must be running into several crores of rupees every year, a totally wasteful expenditure.

273. The above figures also do not include the details or the expenses of salary to security personnel who guard all Government properties (including the residential bungalows) which are left empty after the Darbar moves from one city to the other. The deployments are of the Central Armed Police Forces (BSF/CRPF) and are in formation of 1 JCO +4 Jawans or 1+6 personnel at the empty residential houses. The deployments at the empty Secretariat and other empty Government buildings are of much higher levels. No cost evaluation of this security is available. Thus because of the needs emanating from these Moves, able bodied, fit Jawans have to be deployed to guard empty residential house for six months at the time, all at the cost of the tax payer.

274. It is noteworthy that we do not have any figures of the expenditure incurred on provisions of the security detailed for enabling the Darbar Move either in terms of the Move from Jammu to Srinagar or vice-versa. We do not have the cost of the security deployment on the personnel, the records or the equipment in Srinagar.

275. Additionally, these properties require security which is assigned round the year even over empty properties, yet another unwarranted expenditure.

276. Before every Darbar Move, extensive repairs of roads and paintings of public buildings etc is also commenced. This is again a huge cost to the public exchequer which has not been factored in.

277. In this regard, we may advert to Article 39 of the Constitution of India laying down certain Directive Principles of State Policy. Article 39(b) clearly states that the State shall in particular, direct its policy towards securing that the ownership and the control of the material resources of the community are so distributed as best to subserve the common good. Thus, the State is bound to ensure that it distributes its resources to secure common good. Inherent in this principle is the Constitutional mandate on the State not to utilise its resources for any purpose which does not serve the common good. The expenditure on the Darbar Moves nowhere serves any element of common good of the community at all.

278. It is trite that public funds can be utilised only for the public purpose. In **(2013) 9 SCC 659: 2013 SCC Online SC 579, S. Subramaniam Balaji v. State of T. N.**, it is held thus:

“19. While statutory authorities can confer social or economic benefits on particular sections of the community, their power is limited by the principle that such benefits must not be excessive or unreasonable. As Lord Atkinson stated in Roberts v. Hopwood [1925 AC 578: 1925 All ER Rep (HL)], the State cannot act in furtherance of “eccentric principles of socialistic philanthropy”. In view of the above, a reference was also made to Bromley London Borough Council v. Greater London Council [(1983) 1 AC 768: (1982) 2 WLR 62: (1982) 1 ALL ER 129 (HL)] and R. v. Secy. of State for Foreign and Commonwealth Affairs, ex p World Development Movement Ltd. [(1995) 1 WLR 386: (1995) 1 All ER 611 (DC)]

20. *In this context, it is pointed out that Article 41 of the Constitution of India states that the State, “within its economic capacity and development” can make effective provision for securing “public assistance” in certain special cases. Article 39(b) states that the State shall endeavour to ensure that the “material resources” of the community are so distributed as best to subserve the “common good”. Both these articles imply that the goal of the Constitution, as evidenced by these directive principles, is to ensure that the State distributes its resources to secure “public assistance” and “common good”, and must not create private assets.”*

The Supreme Court has repeatedly adversely commented on loss caused to public exchequer.

279. It is for the competent authority to examine as to whether this disclosed expenditure of Rs.19858.4298 lakhs and undisclosed expenditure of several crores is in public interest, justified, warranted, or permissible. It needs to be examined as to whether the exercise of the biannual Darbar Move is necessary in today’s context, having regard to the technological advances and concerns of continuity of governance and administration in the entire Union Territory round the year.

XXXIV. Whether there can be any alternative to the Darbar Move in its current form?

280. Given the magnitude of the problems which arise because of the Darbar Move, the expenses involved, we have been compelled to give our thought as to whether there can be any possible alternative to the Darbar Move. It is urged that the Darbar Move continues to exist on account of regional power aspirations. The above discussion amply bears out that the projected reasons of public interest in the practice do not appear to hold any water. It appears to us that any satisfactory alternative

would need to resolve this basic issue and require fine tuning of decentralization of powers between regions.

281. The aforementioned working of the systems in Himachal and Maharashtra could shed valuable light for finding optimal solutions. The principle of asymmetrical federalism; part of the Indian Constitution, could be relied upon as a justification for the same.

282. Apart from the two instances noted above, certain other options are in practice in other countries. We briefly examine this hereafter:

283. Joint Capitals: A system of joint capitals functions in some countries. In such places, there is either a division of organs of States between different cities; or there is official capital is in one city but all State organs functions out of a different city. This enables decongesting of capital cities and also decentralization of power.

284. Division of Organs of State: An instance of this is found in South Africa where the legislature sits at Cape Town, the executive in Pretoria and the judiciary is in Bloemfontein. Another instance of division of the organs of State is found in Georgia, where the executive is located in the official capital Tblisi while the legislators are located in Kutaisi.

285. Instances of such division are to be found in states in India as well. For instance, in Madhya Pradesh, while the legislators and the executive are located in Bhopal, however, the Principal seat of the High Court as well as the Bench of the Administrative Tribunal is located in Jabalpur. It appear that all industry related departments and public sector undertakings are based in Indore, while the Transport and Land Revenue Departments are located in Gwalior.

Similarly in Chhattisgarh, the capital of the State is located in Raipur whereas the High Court is based in Billaspur.

Again in the State of Uttar Pradesh, while the capital of the State is located in Lucknow but the High Court is located in Allahabad.

We find that in Rajasthan, while the Secretariat, Assembly and some Departments are located in Jaipur, other departments are divided between Jodhpur and Udaipur.

286. *Official versus De facto capital:* There are some instances available of this practice as well. For instance in the Netherlands, the Constitutional capital is in Amsterdam while the government and legislators work out of Hague;

Again in Ivory Coast, the official capital is in Yamoussoukro, but the organs of the Government function out of Abidjan.

In Benin, the official capital is Proto Novo, but the de facto capital is in Cotonou.

287. *Division of Ministries:* Another possible alternative would be to retain the capital in one city while the specific departments of governance could be divided between the cities. This could be based on an analysis as to which department of governance are best suited for being situated in which city. This way both cities would retain their importance while doing away with the need for movement between them.

288. In his article in the 'Kashmir Life', Dr. Sirfaraz Ahmed has suggested that with the support of information technology, full time Secretariat Offices without Move employees should be opened throughout the year in both the regions without any break. He has suggested that the Governor and the Chief Minister of the State, being heads can shift every six months, thus the ceremonial Moves to satisfy the

emotions of both the regions would continue. Dr. Sirfaraz Ahmad has suggested that Ministers and MLAs can be regularly on tour rotation in offices and their own constituencies. Heads of Departments and other staff employees can be called as and when required.

It is pointed out that this would create opportunities of promotions when two proper functional Secretariat Offices with full staff strength are created and that this would put an end to the huge amount on stagnation in the departments.

289. We have merely noted that above instances to point out that reasonable alternatives to the existing practice of the Darbar Move are possible. And that these are in vogue in other countries and States in order to meet the compulsions of regional aspirations. It is not for us to suggest which is the best option. Whatever be the best module, it is for the competent authority to examine the entire material and take a view.

290. At the same time, given the COVID-19 crisis and other circumstances noted by us above. It also cannot be sufficiently emphasized that the matter brooks no delay and requires an imperative and urgent examination.

XXXV. Conclusions

291. The Darbar Move was an arrangement of shifting the capital because of the concerns of weather and the harsh winter in Srinagar which was implemented by the Maharaja in the year 1872. It neither involved an issue of any administrative exigency or consideration of more effective or efficient governance. The continuance of this practice long after the rule of the Maharaja came to an end is not premised on any such consideration. When commenced, the Darbar Move involved some officers and records in a few cartloads. Today it involves shifting of nearly 151

government departments and over 10,000 government personnel (including officers, staff and employees of every category), reportedly thousands of official documents and equipments including computers and even pieces of furniture are packed in bundles, cartons and metallic trunks loaded in over 150 trucks and transported for over 300 kms between Jammu and Srinagar, twice a year. All this is at a cost hundreds of crores of rupees to the public exchequer.

292. From the above discussion, the following conclusions emerge:

I. No reasons or grounds are forthcoming for enabling and supporting considerations of administrative efficiency, legal justification or Constitutional basis for effecting the Darbar Moves.

II. Both the Jammu as well as the Srinagar regions equally require administration and governance round the year without interruption. It is unfair and opposed to public interest to deprive either region completely of access to government machinery for six months at a time.

III. For a period of almost six weeks annually, the entire governance and administration in the Union Territory comes to a grinding halt creating a governance deficit. The sensitivity of the issues with which the Union Territory Government is engaged can ill afford this gap in governance. This is glaringly opposed to every element of public interest.

IV. Given the modern weather control mechanisms, clearly the consideration of extremities of weather, which was the case, reason and basis for the Darbar Move, does not hold weight today. This justification of the Darbar Move has lost all relevance.

V. Valuable documents and resources of the Union Territory in the nature of important and sensitive government documents are put to

tremendous risk in the process of their transportation as they are packed in trunks and carried in hired trucks over a distance of 300 kms between Jammu and Srinagar and vice-vice twice a year. This practice may have the consequence of imperiling State and National security.

VI. On account of technological advancements and availability of electronic modes, maintenance of record and communication, there is no need for physical conveyance of assets.

VII. Information technology integrates disjoint units into single units virtually. Therefore, even if the Secretariat and Departments were divided and placed at different locations, they could be virtually unified into a single Secretariat with minimal movement of human resources.

VIII. In view of the large scale logistics involved today, the economic burden of the Darbar Move is not justified by the original considerations of the weather.

IX. Thousands of government employees are compelled to live apart from their families for six months at a time resulting in physical and emotional pressure not only on the employees but spouses, parents, children and dependants. This has an exponentially negative impact on emotional health of the employees and their families and would contribute to dejection and lack of interest in assigned tasks of the Darbar Move employees.

X. The administrative requirement of the biannual shifting of the employees year after year as part of their conditions of service to effectuate

the Darbar Move is manifestly arbitrary and is hit by Article 14 of the Constitution of India.

XI. The Darbar Move places a huge burden on the police, security forces in the Union Territory. Security provisions relating to the Darbar Move are also at a phenomenal undesirable cost (of both financial and manpower), to the Nation and to the public exchequer which ought not be countenanced in public interest.

XII. Right to life, education, health, good environment are amongst the several essential concomitants of the right to life guaranteed to the people of Jammu and Kashmir under Article 21 of the Constitution of India. The Union Territory is unable to provide to all its people even basic essentials including those of education and healthcare, judicial infrastructure resulting in violation of the right to life of the people. Valuable resources of the State - financial and physical - cannot be diverted to completely non-essential usage.

XIII. There is unwarranted disruption of movement of traffic and personnel on the National Highway for four days on each Darbar Move adversely impacting public interest.

XIV. Jammu and Kashmir already suffers from high fiscal deficit and the expenditure on the Darbar Move is an unwarranted burden on the depleted resources of the Union Territory. The Darbar Move is an unwarranted drain on the public exchequer and the tax payers hard earned contributions.

XV. The expenditure involved is in the nature of misutilisation of valuable public resources which are urgently required for public purposes, say for instance, the imperative and pressing needs of upgrading public health facilities, and upgrading all health installations. A large financial outlay is

required to meet the immediate needs to address COVID-19 issues including health, infrastructure, transportation, technology, security, social welfare, unemployment, food to name just a few.

XVI. Looked at from any angle, the Darbar Move results in wastage of tremendous amount of time, efforts and energy on inefficient and unnecessary activity (say, packing of records). It nurtures inefficiency and leads to lack of governance. It also has a huge financial cost in terms of salary paid to employees who spend weeks on this unproductive work. It is a practice which works to the detriment of the larger interest of all the people.

XVII. No reason or justification at all is available for requiring the judiciary to shift with the Darbar Move. The same negatively impacts justice dispensation and impedes judicial administration.

XVIII. The Darbar Move causes delay in justice dispensation as government records are not available to the pleaders in one region for six months at a time.

XIX. Non availability of the record with the government pleaders in the Wing other than the Main Wing, per force compels them to seek repeated adjournments as they are unable to file their responses in civil cases or conduct criminal prosecutions for want of government record. The Darbar Move therefore adversely effects the fundamental right of access to justice of the public as guaranteed under Article 21 of the Constitution of India.

XX. Keeping in view the public interest and to enable continuous efficient governance, it is essential that movement of employees and physical assets be minimized. Rationalisation of the Darbar Move is urgently required.

XXI. The spread of COVID-19 infection imperils the Union Territory; the consequential lockdown has compelled enforcement of the '*Stay at Home and Work from Home*' situation, social distancing has become necessary norm. These circumstances compelled the Government's conclusion in the order dated 17th April 2020 that the Darbar Move could have dangerous consequences. For this reason as well, the Darbar Move is been rendered unworkable.

XXII. In case this practice was rationalized, the amount of money, resources and time which could be saved, could be utilised towards the welfare and development of the Union Territory which has otherwise witnessed much turmoil. The financial saving and resources could be utilised for contributing towards the protection and propagation of its inherent culture and heritage of the communities. It could also be used for facilitating expenditure on the COVID-19 related issues including those of food shortages, unemployment and healthcare amongst others.

XXXVI. Result

293. In this judgment, we have recorded our reasons and judgment on the several aspects which arise on account of the implementation of the Darbar Move in the Union Territory of Jammu and Kashmir including Constitutional and legal implications and consequences thereof, taking into consideration the provisions of

the Constitution of India and binding judicial precedents of the Supreme Court of India. In recording the judgment, we have had to rely upon disclosures by the Government of the details of the cost of the Darbar Move only on some of the steps taken towards it. We have also noted the several steps on which we have no information at all, say, for instance, the cost incurred on the security forces and the police utilised for ensuring the Darbar Move and the huge burden to the public exchequer on the moneys spent on the security and the biannual maintenance, repairs and housekeeping of empty government properties, official and residential. We are sure that these costs will be equal to, if not more than the expenditure which has been disclosed to us.

There must also be several imponderables which have to be factored in while making a decision.

294. We have also noted above the limitations on the extent of our jurisdiction whereby we stand precluded from making a declaration on the permissibility or the continuation of the practice of the Darbar Move. We defer this task to the best wisdom of those on whom the Constitution of India bestows this solemn duty keeping in view, the interest of the Union Territory of Jammu and Kashmir, the larger interest of its people and the mandate of the Constitution of India.

295. In view thereof, we direct as follows:

- (i) Let the above judgment be served upon the Secretary, Ministry of Home Affairs, Government of India, Shastri Bhawan, New Delhi with the direction to place the same before the competent authorities for examining the issues raised and taking a considered decision thereon.

- (ii) Let the above judgment be served upon the Chief Secretary of the Union Territory of Jammu and Kashmir with the direction to place the same before the competent authorities for examining the issues raised and taking a considered decision thereon.

(RAJNESH OSWAL)
JUDGE

(GITA MITTAL)
CHIEF JUSTICE

Jammu
05.05.2020
Raj Kumar

Whether the order is speaking? : Yes/No.
Whether the order is reportable? : Yes/No.

