

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

I.A. No. OF 2020

IN

WRIT PETITION (CIVIL) NO. 1048 of 2019

IN THE MATTER OF:

Shakir Shabir

...Petitioner-in-Person

VERSUS

Union of India & Ors.

...Respondents

**AN APPLICATION FOR EARLY HEARING OF THE CAPTIONED
PETITION**

To,

THE HON'BLE CHIEF JUSTICE
OF INDIA AND HIS COMPANION
JUSTICES OF THE HON'BLE
SUPREME COURT OF INDIA

THE HUMBLE APPLICATION
OF THE APPLICANT ABOVE
NAMED:

Most respectfully Showeth:

1. That the instant application is being preferred seeking early hearing in the captioned petition. The present petitioner/applicant had preferred the captioned Public Interest Litigation under Article 32 of the Indian Constitution challenging the promulgation of the Constitution (Application to Jammu and Kashmir) Order, 2019 vide the impugned notification G.S.R. 551 (E) [C.O. 272] dated 05.08.2019 [Hereinafter referred to as the Impugned Order], amending Article 367 of the Constitution of India being arbitrary, whimsical and *void ab initio* as also being *ultra vires* to the Constitution of

India. Apart from the present petitioner, the following petitions, to the knowledge of the present petitioner, also have come to be filed challenging the impugned order dated 05.08.2019 as well as other consequent notifications:

- a) **W.P. (C) No. 1037 of 2019** –
Mohd. Akbar Lone Vs. Union of India & Ors.
- b) **W.P.(C) No. 1099 of 2019** –
Shah Faesal Vs. Union of India & Ors.
- c) **W.P.(C) No. 1068 of 2019** –
Soayib Qureshi Vs. Union of India & Ors.
- d) **W.P.(C) No. 1165 of 2019** –
Jammu and Kashmir Peoples Conference vs. Union of India & Ors.
- e) **W.P.(C) No. 1082 of 2019** –
Farooq Ahmad Dar Vs. Union of India & Ors.
- f) **W.P.(C) No. 1070 of 2019** –
Radha Kumar Vs. Union of India & Ors.
- g) **W.P.(C) No. 1104 of 2019** –
Muzzafar Iqbal Khan Vs. Union of India & Ors.
- h) **W.P.(C) No. 1210 of 2019** –
Mohammed Yousuf Tarigami Vs. Union of India & Ors.
- i) **W.P.(C) No. 1062 of 2019** –
Inder Salim Alias Inder Ji Tickoo Vs. Union of India & Ors.
- j) **W.P.(C) No. 1268 of 2019** –

Jammu and Kashmir High Court Bar Association, Srinagar vs. Union of India & Ors.

k) W.P.(C) No. 1368 of 2019 –

Peoples Union for Civil Liberties Vs. Union of India & Ors.

l) W.P.(C) No. 1013 of 2019 –

Manohar Lal Sharma Vs. Union of India & Ors.

2. That for the sake of brevity, the contentions in the petition and those of other petitioners are not being repeated in the present application. The petitioner, however, seeks to rely upon the contents of the captioned petition as a supplement to the present application.
3. That vide order dated 28.08.2019, this Hon'ble Court hearing the captioned petition and connected matters was pleased to issue notice upon the petitions so filed challenging the revocation of Article 370 in the erstwhile State of Jammu and Kashmir. By the same order, this Hon'ble Court also referred the entire batch of petitions to a Constitution Bench in light of the substantial questions of law relating to the interpretation of the Constitution involved in the present issue.
4. That pursuant thereto, the captioned petition along with connected petitions, with W.P. (C) No. 1013 of 2019 being the lead petition, were listed for

consideration before a Constitution Bench of this Hon'ble Court on 01.10.2019. As in some petitions pleadings had not been served upon the Ld. Attorney General, the batch of petitions were accordingly adjourned to enable service upon the respondents concerned. The registry was also directed *not to entertain any other Writ Petitions on these issues in future* vide order dated 01.10.2019.

5. That the captioned petition, along with connected matters, was thereafter listed for consideration before this Hon'ble Court on 14.11.2019, when the Union of India as also the State of Jammu & Kashmir were directed by this Hon'ble Court to file their respective counter affidavits on or before 22.11.2019. It was also directed that the respective sides would be filing easy compilations of all the petitions for the assistance of this Hon'ble Court. All matters were directed to be listed on 10.12.2019.

6. That subsequently, the hearing in the batch of petitions commenced. At the outset, learned senior counsel appearing for one of the Petitioners in W.P. (C) No. 1013/19 and Petitioner in W.P. (C) No. 1368/19 raised the contention that the present matter needs to be referred to a larger Bench as there were contrary opinions by two different Constitution Benches on the

interpretation of Article 370 of the Constitution. In that light it was decided that this Hon'ble Court would first hear the counsels on the preliminary issue of reference of the batch of petitions to a larger bench. Considering the urgency involved in the batch of connected petitions, arguments on the preliminary issue of reference to larger bench by the respective counsels were being heard on the following dates:

10.12.2019 –	The petitions were heard and remained part-heard.
11.12.2019 –	The petitions were heard and remained part-heard.
12.12.2019 –	The petitions were heard and remained part-heard.
21.01.2020 –	The petitions were heard and remained part-heard.
22.01.2020 –	The petitions were heard and remained part-heard.
23.01.2020 –	Arguments were concluded on the preliminary issue and order was reserved.

7. That on 02.03.2020, this Hon'ble Court pronounced its judgment on the preliminary issue of a reference to larger bench of the issues concerned in the batch of petitions, and held in light of the reasons cited in the judgment dated 02.03.2020 that there was no reason to refer these petitions to a larger Bench on the questions considered.

8. That subsequent thereto, while requests for reference to a larger bench had been rejected by this Hon'ble Court and the matters were supposed to be listed

before the 5 Judge bench Constitution bench, unfortunately due to the outbreak of the COVID-19 pandemic, this Hon'ble Court has been functioning in limited functioning throughout the period of lockdowns imposed and presently as well. Though physical access to this Hon'ble Court has been curtailed in the best interests of the health of the counsels, Hon'ble Judges and court staff, this Hon'ble Court has been considerate in continuing to impart justice by way of hearings through video-conferencing and while initially a limited number of benches were conducting hearings in matters of most urgent nature, with the appropriate infrastructure being placed, this Hon'ble Court has been hearing a number of matters daily with the earlier strength.

9. That further in the meantime subsequent to the impugned order dated 05.08.2019 and in absence of any stay with regard to the same, the respondents are continually proceeding ahead with further changes in laws concerning the erstwhile State of Jammu and Kashmir, which has now been split into two distinct Union Territories of Jammu and Kashmir & Laddakh. It is submitted that the impugned order dated 05.08.2019 being challenged in the captioned petition, all consequent acts of the govt. deriving authority from such impugned order or subsequent orders which have also come to be challenged

in several petitions before this Hon'ble Court, are also illegal and void ab initio and by the mere passage of time, such illegal and unconstitutional actions risk to render the captioned petition infructuous while rendering permanency to the impugned order(s). For the kind assistance of this Hon'ble Court the petitioner above named is submitting the following chart indicative of subsequent developments post the impugned order and revocation of Article 370 of the Indian Constitution:

Date	Legislation	Brief description
06.08.2019	Declaration under Article 370(3) of the Constitution of India.	Declaring that all clauses under Article 370 shall cease to be operative and amended the same.
09.08.2019	The Jammu and Kashmir Re-organization Act, 2019	<p>Divided the erstwhile State of J&K into two UTs namely:</p> <ol style="list-style-type: none"> 1. The UT of Jammu and Kashmir 2. The UT of Ladakh <p>The Act under Section 96 provides the Central Government with the power to adapt laws.</p> <p>The Act, under V Schedule, provides for:</p> <ol style="list-style-type: none"> 1. Extension of 108 Central Legislations to the 2 UTs. (Table 1)

		<ol style="list-style-type: none"> 2. Application of 7 State Laws, alongwith amendments, to the 2 UTs. (Table 2) 3. Repealing of 153 State Laws and 11 Governor's Act. (Table 3) 4. Continuation of 166 State and Governor's Laws without amendment in the 2 UTs. (Table 4)
06.03.2020	<p>Delimitation Commission under the Delimitation Act, 2002 for J&K, State of Assam, Arunachal Pradesh, Manipur and Nagaland</p> <p>Under the Chairmanship of Justice (Retd.) Ranjana Prakash Desai</p>	<p>In relation to UT of J&K, the commission has been set up under provisions of Part V of the Jammu and Kashmir (Reorganization) Act, 2019.</p> <p>The commission will work in accordance and furtherance of the data collected under the census of 2011.</p>
18.03.2020	<p>Jammu & Kashmir Reorganization (Adaptation of Central Laws) Order, 2020</p>	<p>Through this Order, 37 Central Act, alongwith specific amendments regarding <i>inter alia</i> name, limitation, application, etc. have been extended to the UT of Jammu and Kashmir.</p> <p>The following Central Laws, among other laws, have been extended:</p> <ol style="list-style-type: none"> 1. C.P.C.1908 2. Cr.P.C. 1973

		<ol style="list-style-type: none"> 3. Indian Forests Act of 1927 4. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013 5. Arbitration and Conciliation Act of 1996 6. SARFAESI, 2002 7. The Representation of People Act, 1950 8. The Real Estate (Regulation and Development) Act, 2016 9. The Protection of Human Rights Act, 1993 10. The Prevention of Corruption Act, 1988 11. The Limitation Act, 1963
20.03.2020	Draft Tourism Policy for 10 years.	<p>Completely overhauls the Tourism Industry of Kashmir.</p> <p>Various stakeholders have raised their reservations in regards to the same, such as, the Policy provides for certain guidelines, fines, regulation, etc. for houseboats. It does not provide for any benefits/subsidiary to them and thus the owners of the houseboats, who are already under considerable economic strain, have to invest more in order to carry out their business.</p>

20.03.2020	Captive Power and Open Access Policy for 10 years	Provides that any industrialist, who is establishing an industry in J&K, may without any license construct, maintain and operate captive power and dedicated transmission lines within UT of J&K.
20.03.2020	AYUSH Care Investment Policy for 10 years	Provides for different subsidies <i>inter alia</i> Capital, Interest, freight, power tariffs, etc. as well as Land Rebates by providing for lease of land extendable up to 90 years alongwith financial support to new AYUSH facilities and also establishment of a mega AYUSH healthcare facility.
20.03.2020	Hydropower and Renewable Energy Policy for 10 years	In order to promote generation of green and clean power using hydro and solar energy, create conditions conducive to the involvement of investor in renewable energy projects, enhance use of solar energy sources that assist in mitigating environmental pollution.
31.03.2020	Jammu and Kashmir Re-organization (Adaptation of State Laws) Order, 2020	Provides for: 1. Repealing of 27 State Acts, namely: i. The Agriculturists Relief Act, 1983 ii. The Jammu and Kashmir Government Aid to Agriculturists and Land Improvement Act, 1993

		<ul style="list-style-type: none">iii. The Jammu and Kashmir State Aid to Industries Act, 1961iv. The Jammu and Kashmir Civic Laws (Special Provisions) Act, 2014v. The Jammu and Kashmir Civil Services (Special Provisions) Act, 2010vi. The Jammu and Kashmir State Commission for Backward Classes Act, 1997vii. The Jammu and Kashmir Deputy Ministers' Salaries and Allowance Act, 1957viii. The Jammu and Kashmir State Emergency Relief Fund Act, 1960ix. The Jammu and Kashmir Finance Commission Act, 2006x. The Jammu and Kashmir State and Forest Corporation Act, 1978xi. The Jammu and Kashmir Golf Development and Management Authority Act, 2013
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		<p>xxi. The Jammu and Kashmir Treasure Trove Act, 1954</p> <p>xxii. Urban Immovable Property Tax (Repeal and Saving) Act, 2002</p> <p>xxiii. University of Ladakh Act, 2018</p> <p>xxiv. The Jammu and Kashmir Urban Property Ceiling Act, 1971</p> <p>xxv. Usurious Loans Act, 1977</p> <p>xxvi. The Jammu and Kashmir Vaccination Act, 1967</p> <p>xxvii. The Jammu and Kashmir Vegetable Seeds Act, 2009</p> <p>xxviii. The Jammu and Kashmir State Vigilance Commission Act, 2011</p> <p>2. Amendment of 111 State Acts, mostly for change of name of State and application of central legislations <i>inter alia</i> Indian Penal Code; C.P.C.1908; Cr.P.C. 1973; Indian Forests Act of 1927; Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013;</p>
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		<p>Arbitration and Conciliation Act of 1996; etc.</p> <p>Emphasis may be given to the amendments made in The Jammu and Kashmir Civil Services (Decentralization and Recruitment) Act, 2010. Through the amendments, the pre-requisites and eligibility criterion for domiciles has been amended by changing Section 1,2,3,6,7,8 and 13 as well as insertion of Section 3A, 3B and 5A. In consonance to which all the Class IV jobs have been reserved for State domiciles whereas the rest of the Jobs have been opened for all citizens.</p>
20.05.2020	Jammu & Kashmir Reorganization (Adaptation of State Laws) Second Order, 2020	Makes amendments in The Jammu and Kashmir Civil Services (Decentralization and Recruitment) Act, 2010. As an effect of which, the amendment in domicile will be applicable to all posts of Civil Services.
02.06.2020	Media Policy, 2020 of Department of Information and Public Relations (DIPR) Approved on 29.04.2020	<p>Policy to create 'sustained' govt narrative and thwart fake news.</p> <p>The said policy has been a major concern for the fourth estate as the 53 page document gives the government unbridled powers to decide what is 'fake', 'unethical' or 'anti-national'</p>

		and to take legal action against the journalist or media organization.
05.10.2020	Jammu & Kashmir Reorganization (Adaptation of Central Laws) Second Order, 2020	<p>Provides for extension of 11 Central Laws with specific amendments, the legislations such as:</p> <ol style="list-style-type: none"> 1. The Banning of Unregulated Schemes Act, 2019 2. The Building and Other Construction Workers (Regulation of employment and Conditions of Service) Act, 1996 3. The Contract Labour (Regulation and Abolition) Act, 1970 4. The Factories Act, 1948 5. The Industrial Disputes Act, 1947 6. The Industrial Employment (Standing Order) Act, 1946 7. The Motor Transport Workers Act, 1961 8. The Pharmacy Act, 1948 9. The street Vendors (Protection of Livelihood and regulation of Street Vending) Act, 2014 10. The Sales Promotion Employees Act, 1976

		11. The Trade Unions Act, 1926
05.10.2020	Jammu & Kashmir Reorganization (Adaptation of State Laws) Third Order, 2020	<p>Provides for complete restructuring of different Municipal Bodies of the UT by making over encompassing amendments in 10 State Legislations, including but not restricted to:</p> <ol style="list-style-type: none"> 1. Jammu and Kashmir Municipal Act, 2000 2. Jammu and Kashmir Municipal Corporation Act, 2000 3. Jammu and Kashmir School Education Act, 2002 4. The Jammu and Kashmir Co-operative Societies Act, 1989 5. The Jammu and Kashmir Self-reliant Co-operatives Act, 1999 6. The Jammu and Kashmir Goods and Services Tax Act, 2017 7. The Jammu and Kashmir Metropolitan Region Development Authorities Act, 2018
16.10.2020	Jammu & Kashmir Reorganization (Adaptation of State Laws) Fourth Order, 2020	<p>Makes amendments in Jammu and Kashmir Panchayati Raj Act, 1989</p> <p>Provides for provisions of holding direct elections for District</p>

		<p>Development Councils, which will constitute the third-tier of the Panchayati raj system.</p> <p>Introduction of Halqa Panchayats.</p>
26.10.2020	<p>Jammu & Kashmir Reorganization (Adaptation of State Laws) Fifth Order, 2020</p>	<p>Provides for:</p> <ol style="list-style-type: none"> 1. Amendment in 13 State laws, making major changes in the following laws: <ol style="list-style-type: none"> i. The Jammu and Kashmir Agrarian Reforms Act, 1976 <p>Insertion of section 28A, which provides for a bar against transfer of agrarian lands to other individuals without prior approval of government.</p> ii. The Jammu and Kashmir Development Act, 1970 <p>Extends powers to the Authority and the Government for declaration of any land as development area; to declare any area as Strategic Area on the request of army officials; to prescribe master plans; grant permissions for development projects; etc. and complete overhaul of Jammu and Kashmir</p>

		<p>Industrial Development Corporation.</p> <p>iii. The Jammu and Kashmir Land Grants Act, 1960 Gives the government/authorities the power to grant land lease to different categories of person for reasons they deem fit.</p> <p>iv. Complete overhaul of Jammu and Kashmir Land Revenue Act, 1996 the definition of agriculture and allied activities have been extended to raising of crops including food and non-food crops, fodder or grass, fruits, vegetable, flowers, animal husbandry, dairy, poultry farming, stock breeding, fishery, and agro-processing related activities.</p> <p>v. Provisions for defection not to apply in case of split, in the Jammu and Kashmir Municipal Act, 2000 and Jammu and Kashmir Municipal Corporation Act, 2000</p> <p>vi. Complete Overhaul of The Stamp Act, Samvat 1977</p>
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		<p>2. Repeals 13 State Laws, a few amongst them are as follows:</p> <ol style="list-style-type: none"> i. The Jammu and Kashmir Alienation of Land Act, 1995 ii. The Jammu and Kashmir Big Landed Estate Abolition Act, 2007 iii. The Jammu and Kashmir Common Lands (Regulation) Act, 1956 iv. The Jammu and Kashmir Consolidation of Holdings Act, 1962 v. The Jammu and Kashmir Prevention of Fragmentation of Agricultural Holdings Act, 1960
<p>26.10.2020</p>	<p>Jammu & Kashmir Reorganization (Adaptation of Central Laws) Third Order, 2020</p>	<p>Provides for extension of the following 3 Central Laws, with certain amendments, to the UT of Jammu & Kashmir:</p> <ol style="list-style-type: none"> 1. The Real Estate (Regulation and Development) Act, 2016 2. SARFAESI, 2002 3. Cr.P.C of 1973

10. That as can be observed from the aforesaid, several laws are being promulgated by the respondents pursuant to the developments that have taken place on or subsequent to 05.08.2019. After passage of more than one year, all such actions that are being taken by the respondents shall also be rendered illegal and void should this Hon'ble Court, after consideration of the petitions so filed, deem the initial impugned order to be unconstitutional and void. However, the petitioner submits before this Hon'ble Court that the mere passage of time and pendency of the present issues along with continuous enactments by the respondents also stands to risk giving permanency to the initial impugned order dated 05.08.2019, which has been challenged in several petitions.

11. That it is further submitted that while the purported intent of the impugned order has continually been portrayed to have been for the betterment of the populace of the erstwhile State of Jammu & Kashmir, the truth remains that it is the very people who are presently suffering in the midst. Not only due to repeated internet shutdowns and reduced internet speeds have the students and businesses being suffering in Jammu and Kashmir, the impugned order and the slew of restrictions continually damage the economy as well as everyday life of the locals, who have been completely kept away from the

entire process despite the fact that each change under the laws detrimentally effects the locals at an individualistic level. In a report published in the national daily “The Hindu” on 05.08.2020, one year after the impugned order had been passed, it has been observed that *“with the tourism industry crippled and 4G Internet still not restored, J&K’s economy has suffered. While terrorism considerably dipped, cross-border infiltrations have gone up and more locals are being recruited for terrorist activities.”* It further mentions that tourism, which forms 8-10% of J&K’s GDP, was in a shambles after the August 5, 2019 lockdown. Moreover, as per Kashmir Chamber of Commerce & Industry in the 120 days after August 5, 2019, the 10 districts of the Kashmir Valley suffered a loss of ₹17,878.18 Crores. A copy of news report dated 05.08.2020 published in The Hindu titled *“Data| One year since Article 370 revocation: economy crippled, more locals take up militancy, and more”* has been marked and annexed herewith as **Annexure No. A-1**.

12. That therefore, in light of the aforesaid the petitioner submits that this Hon’ble Court may kindly allow the present application and list the batch of petitions along with the captioned petition before the duly constituted constitution bench for further consideration.

13. PRAYER:

In the circumstances, it is, therefore, most humbly and respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a. Allow the present application for early hearing and direct the listing of the captioned petition and connected matters before the duly constituted constitution bench for further hearing; and
- b. Pass such further order or orders as this Hon'ble Court may deem fit and necessary in the facts of the present case;

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Drawn and Filed By:

Filed on: 02.11.2020
New Delhi

Shakir Shabir
Petitioner in Person