CONCLUSION
CHAPTER: 10 – CONCLUSION

10.1 RIGHT TO INDEPENDENCE AND RIGHT TO HOLD A PLEBISCITE

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

RIGHT TO INDEPENDENCE: The possibility of the independence of Kashmir has been discussed in this thesis. It has been stated that under the provisions and accepted doctrines of international law the people of the State have the right to demand independence. However, it is extremely difficult to implement this right of independence, as the mother State from which a territory intends to become independent seldom acknowledges this right. The union of the State of Jammu and Kashmir with India occurred by the signing of the Instrument of Accession by the Maharaja of the State who under law had the power to do so. This was not only permitted by the
provisions of the Government of India Act 1935 or the Indian Independence Act 1947 but was also accepted under the accepted principles of international law. After accession of Kashmir with India the Constitution of India 1950 and later the Constitution of Jammu and Kashmir 1957 came into force. These two constitutions read together make it absolutely clear that the State of Jammu and Kashmir was now an integral and inseparable part of India. Under the provisions of these two Constitutions it is absolutely impossible to cede any part of the territory of India and to allow it to become independent. Though the independence of the State of Jammu and Kashmir, or even the independence of any part of Indian Territory from India under the principles of international law is theoretically possible, it is an impossibility under the present Indian law.

The Instrument of Accession, the Constitution of India and the Constitution of Jammu and Kashmir are all legally acceptable documents the contents of which can neither be superseded nor ignored. Hence it is impossible for the Government of India to even permit a plebiscite for the purpose of independence of State of Jammu and Kashmir as such a contemplation of independence would be unconstitutional. Even if in a peaceful plebiscite an overwhelming majority of the population votes in favour of the independence of Kashmir, it would be impossible to grant such independence. However, the remote possibility of independence of the State is beyond doubt the cause of all controversy. The deadlock is created by its impossibility. The only way the Government of India can avoid this
deadlock is by creating a situation in the State by which the demand for independence is dropped. Once the demand for independence is dropped the question of holding a plebiscite for granting independence to the State does not arise.

RIGHT TO PLEBISCITE: The State of Jammu and Kashmir is broadly divided into three geographic regions, Ladakh, having a predominant Buddhist population, Kashmir, having a predominant Muslim population and Jammu, having a predominant Hindu population. Besides this, there is a large number of displaced Kashmiri Hindu Pundits who form a part of the State’s population. Another part of the State’s population is residing in Pakistan Occupied Kashmir and the territories under the possession of China since 1963. Kashmir also has a part of its population residing abroad. The divided nature of the State’s territory and population makes it impossible to hold a plebiscite with in the State. Another aspect that stands in the way of conducting a plebiscite in the State is the insurgency prevailing within the State. Unless the State can be restored into a single unit as it was prior to accession and until peace is restored to the State, a plebiscite will not be possible.

Legally also a plebiscite is not possible in the State of Jammu and Kashmir. Holding of a plebiscite would be repugnant to the Constitutions
of India and Kashmir. As already stated, it is impossible for the Government of India to even permit a plebiscite for the purpose of determining the future of the State of Jammu and Kashmir with independence of the State as an option; as such a contemplation of independence would be in violation of the Constitution of India 1950. Even if in a peaceful plebiscite an overwhelming majority of the population votes in favour of the independence of Kashmir, it would be impossible for the Government of India to grant such independence. However, it is not yet established that the independence of the State would provide an appropriate solution to the Kashmir issue. It has already been pointed out that the opinion of the people is of value only if it can be legally implemented. The option of holding a plebiscite or declaring the independence of Kashmir, even if found to be the will of the people, cannot be legally implemented.

10.2 STEPS TO BE TAKEN BY THE GOVERNMENT OF INDIA

The public opinions collected in the State of Jammu and Kashmir reflect that a large percentage of the population, which has opted for independence have opted for pre-1953 status as a second option. Though there was no provision in the questionnaire for giving second options, this most unexpected event has thrown light on the only possible and reasonable solution to the Kashmir issue. The demand for independence is

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out of dissatisfaction, which has been nurturing in the minds of the people for a very long time. If the dissatisfaction can be removed, then automatically the demand for independence would disappear. In order to remove this dissatisfaction, certain rights and privileges need to be given to the people of the State. The questionnaire shows that Pre-1953 status is their alternative demand. However, blindly reverting back to pre-1953 status would not solve the Kashmir issue as prior to 1953 the people of the State were dissatisfied and there was chaos and turmoil in the State. The Government of India has to find out and implement a special status that will satisfy the people of the State. This new status may differ from Pre-1953 status or the special status presently enjoyed by the people of the State. To discover what form of special status will satisfy the people of the State, the following the procedure is to be followed:

I. APPOINTMENT OF A CENTRAL COMMISSION

II. COLLECTION OF RECOMMENDATIONS

III. ANALYSIS OF RECOMMENDATIONS

IV. PROPOSAL OF THE CENTRAL GOVERNMENT

V. PASSING OF NECESSARY ACTS AND NOTIFICATIONS

VI. ISOLATING THE DISTURBED AREAS

VII. INTEGRATION OF THE STATE

I. APPOINTMENT OF A CENTRAL COMMISSION: A Central Commission, presided over by a Chairman and consisting of 11 or 12
members specialized in various fields, shall be appointed for the purpose of collecting and analyzing various recommendations in the manner suggested below. On the basis of these recommendations, the Central Commission shall submit its report making certain recommendations regarding the future status of the State. On the basis of the recommendations of the Central Commission, Parliament shall enact necessary laws for proper implementation of the recommendations made by the Central Commission.

II. COLLECTION OF RECOMMENDATIONS: Though there is an apparent bar to proceed with a plebiscite for the purpose of determining the independence of the State of Jammu and Kashmir there is no bar in collecting recommendations from various groups and organizations. These recommendations shall contain the proposals from various corners regarding what rights and privileges should be granted to the State of Jammu and Kashmir. These proposals should be collected primarily from the Ruling party of the State, the opposition parties, leaders of various parties and groups such as the regional leaders of Jammu, Ladakh, leaders of the displaced Kashmiri Pundits, representatives of various religious groups and social work organizations, NGO's working in Kashmir or on the Kashmir issue, etc. Recommendations should also be accepted from the leaders of the so-called extremist groups and leaders of Pakistan Occupied Kashmir.
Recommendations regarding the status of Kashmir should also be accepted from the various State Governments and the various opposition parties of the States, so that the rights and privileges ultimately sanctioned to the State of Jammu and Kashmir will have the sanction of both the Centre and the other States. If the recommendations are collected in the manner mentioned hereinabove, then the decision regarding the future status of Kashmir shall be determined, if not by the people directly, but at least by their elected representatives.

The advantage of collecting these recommendations is two fold. First, views from various sections can be collected in writing without entering into complicated dialogue and second, views can be taken from all sections be they recognized, unrecognized or even banned. However the groups will have to be organized in to a pyramid on the basis of priority. The recommendations will be only for the purpose of making certain proposals as to on what terms and conditions the people are willing to be an integral part of the Indian Union. Recommendations containing any proposal with regards to independence should be rejected immediately as such a proposition would be an impossibility.

III. ANALYSIS OF THE RECOMMENDATIONS: After the recommendations have been collected they are to be carefully analyzed and arranged in a systematic manner by the Central Commission. First priority
should be given to the recommendations submitted by the ruling party of Kashmir. Immediately after the recommendations submitted by the ruling party, priority is to be given to the recommendations submitted by the opposition parties. Next priority is to be given to the representatives of the minority groups, such as the people of Jammu, Ladakh, and displaced Kashmiri Pundits, etc. Next priority must be given to the representatives of the leaders of Pakistan Occupied Kashmir and the various factions operating outside India. Lastly various Social Organizations and NGO's working in or concerned with Kashmir may also submit their suggestions. While these recommendations are being analyzed on one hand, on the other hand, recommendations from the ruling and opposition parties of the other Indian States should also be gathered and analyzed. This is to be done so that the Central Commission can assess how much autonomy will the other State's permit in the case of the State of Jammu and Kashmir. It must be noted that presently the time has come for everyone to forget their own vested interest and come forward and give their neutral and honest recommendations. These recommendations should be analyzed and arranged by the Central Commission in order to prepare a specific list of demands.

IV. PROPOSAL OF THE CENTRAL COMMISSION: The process of satisfying the people of the State of Jammu and Kashmir should not result in causing nationwide dissatisfaction. It is for this reason the
elaborate process of collecting and analyzing the recommendations has been adopted. By using the recommendations submitted as guidelines, the Central Commission is now to consider the list of demands drawn out from the various recommendations. After several rounds of hectic consideration, the Central Commission is to make its proposal regarding the future status to be enjoyed by the State of Jammu and Kashmir and the rights and privileges to be enjoyed by the people of the State. These proposals are to be published and made known to all, especially those who have submitted their recommendations for this purpose, for their re-consideration and approval. Of course, many will be possibly dissatisfied with the proposal of the Central Commission as it is expected that the recommendations will contain various demands of diverse nature. It is for this reason the proposal of the Central Commission after being circulated, must be returned to the Central Commission by the concerned parties after endorsing their comments and views. However, all parties must be ready to make heavy concessions if they want to put the Kashmir issue at rest once and for all. After all the concerned parties have returned the proposal of the Central Commission to the Central Commission, the Central Commission shall re-consider their proposal in the light of the suggestions now made by the concerned parties. The Central Commission is now to perform the mammoth task of making its final proposal regarding the future status of the State of Jammu and Kashmir and the people of the State. This final proposal made by the Central Commission is to provide necessary
guidelines to Parliament for the enactment of necessary Acts and Notifications for legally implementing the final suggestions and proposals.

V. PASSING OF NECESSARY ACTS AND NOTIFICATIONS:
After the final report of the Central Commission is submitted, Parliament shall pass necessary Acts and Notifications for implementation of the recommendations. The abrogation of certain laws will also be necessary. It is important to ensure that the new sets of laws are extremely specific and not only passed but also properly implemented. Laws no longer required to be in force should be swiftly repealed. It should be kept in mind that all the laws passed and repealed has been done only after considering the recommendations of all the concerned parties and that all should try their level best to see that the newly acquired special status of the State of Jammu and Kashmir is peacefully implemented. This newly acquired special status will hopefully restore peace and tranquility in the State of Jammu and Kashmir. A few selfish persons who are more concerned with their own personal gain rather than the gain of the State and the Nation should not be allowed to spoil this. For this purpose the Central Government shall have to take special care.

VI. ISOLATING THE DISTURBED AREAS: While the Central Commission and Parliament are busy finding the perfect solution one task still remains. Restoring peace within the State. Binding the broken
fragments together by force will not do. Central and State Administration will have to do better than that. The peaceful areas of the State are to be segregated from the disturbed regions. After the disturbed regions are isolated, all forms of insurgency are to be squeezed out from these disturbed regions.

VII. INTEGRATION OF THE STATE: Finally the state is to be integrated. The regions isolated as disturbed, after being declared as peaceful, shall be integrated with the rest of the regions of the State forming a single homogeneous State based on fraternity and brotherhood. The regions under the occupation of Pakistan and China will also have to be regained. It is hoped that if the leaders of these regions participate in the process discussed above, then automatically these territories will be regained. After integration of all the territories that were originally a part of the State of Jammu and Kashmir, the question of re-organization of the State be considered. Re-organization does not necessarily only mean fragmentation of the State, but would also mean reorganizing the State internally, by creating new districts within the State, if necessary.

10.3 EVEN DISTRIBUTION OF SPECIAL STATUS

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