INTRODUCTION
1.1 NEED FOR RESEARCH ON ARTICLE 370 OF THE CONSTITUTION OF INDIA.

India became independent on 15th August 1947 and the framing of a Constitution for independent India became necessary. Amongst the various hurdles the Constituent Assembly had to face, possibly the most critical was the incorporation of the numerous Princely States, which were made independent by the Indian Independence Act 1947. The State of Jammu and Kashmir was one such Princely State. However the Draft Constitution was completed and was discussed and criticized in most of the Provincial Assemblies. A remarkable trend to these discussions was the general consensus of opinion on the soundness of its fundamentals and the firm hope that the Constitution would prove a working document for a new India that was taking shape.¹

Article 370 of the Constitution of India, 1950, deals with the temporary provisions with respect to the State of Jammu and Kashmir and it is under the provisions of this Article that the State of Jammu and Kashmir holds a peculiar position under the Constitution of India.² Article 370 was incorporated in the Constitution of India after the debates of the

¹ Constitutional Amendments in India – Page 14 – M. V. Pylee.
Constituent Assembly held mainly on 17\textsuperscript{th} October 1949, where Mr. N. Gopalaswamy Ayyangar enumerated the special conditions prevailing in Jammu and Kashmir for which its incorporation was necessary.\textsuperscript{1} The legislative prudence of the then Constituent Assembly accepted the existence of the special conditions enumerated by Mr. Ayyangar and consequential necessity of incorporation of the provisions of Article 370.\textsuperscript{2} The present Article 370 was included in the Draft Constitution as Article 306-A.

The Jammu and Kashmir issue has been one of the most baffling issues confronting the Government of India since independence.\textsuperscript{3} There are several politico-legal and socio-economic factors responsible for the worst state of affairs now prevailing in Kashmir.\textsuperscript{4} This research is an in depth study of Article 370 of the Indian Constitution and aims at finding a legally and constitutionally acceptable solution to all controversies arising form Article 370. This research, though deals with, is in no way concerned with any political, religious or any other vested interests. The legal issues revolving around the constitutional aspects of Article 370, unequivocally, tell that its deletion or retention should no longer be the domain of any

\textsuperscript{1} Constituent Assembly Debates, Book No. 5, Vol. No. X-XII published by Lok Sabha Secretariat
\textsuperscript{2} Article 370 of the Constitution of India – Its past and Present – Bimal Kr Chatterjee
\textsuperscript{4} Article 370: A Constitutional Dilemma – Dr M. K. Bhandari – AIR 1992 Journal 52
\textsuperscript{5} Kashmir is the universally recognized abbreviation for the State of Jammu and Kashmir
political gimmick or political ideology, but the political elites must now
take a realistic or pragmatic or functional, and not escapist, vision of the
whole gamut of the problem.\(^1\) It is extremely essential that the politician is
fully aware of the legal consequences of his acts and the aim of this
research, which deals purely with the legal aspects of Article 370 of the
Constitution of India, is to help and guide politicians and legislators in this
mammoth task.

For convenience this research has been divided into ten chapters. The present chapter, i.e. Chapter 1, is an introductory chapter dealing with
the background of the Kashmir issue and explains the scheme and need of
this research. Chapter 2 starts with a detailed description of the State’s
geographical and topographical position, followed by a narration of the
State’s history, starting from Kalhana’s ‘Rajtarangini’ and ending with
Kashmir’s modern history. Chapter 2 highlights almost every historical
event that lead to the Kashmir problem, such as, Islamization of the State
of Jammu and Kashmir, discrimination against Muslim population and the
birth of the idea of Pakistan. Chapter 3 mainly deals with the
Constitutional History of the State of Jammu and Kashmir and the various
events that lead to the Drafting of the Constitution of Jammu and Kashmir.
Chapter 3 deals with events like the birth of the National Conference,

accession of the State of Jammu and Kashmir and the view of the United Nations on the Accession of Kashmir. Chapter 4 deals with framing of the Constitution of India 1950, Constitutional relationship of the State of Jammu and Kashmir with India, framing of the Constitution of Jammu and Kashmir 1957, Indo-Pakistan dialogue on Kashmir and the position of Pakistan Occupied Kashmir. Chapter 5 provides a discussion on the Permanent Residents of the State of Jammu and Kashmir and the various rights and privileges enjoyed by them both prior to and after the State’s Accession. Chapter 5 deals with topics such as dual citizenship, applicability of Fundamental Rights and the need for protection of rights of the Permanent Residents. The first five chapters are based on facts and form the foundation of this research. The importance of these five chapters is that they reveal how the complex situation presently prevailing in Kashmir developed over the years.

The next five chapters analyze the facts and attempts to draw an inference to the Kashmir issue. Chapter 6 investigates the working of the Constitution of India with special emphasis on the basic structure of the Constitution and its amendment, Centre-State relation under the Constitution of India, the various reports on Centre-State relations and the Supremacy of the Constitution of India. Chapter 7 dealing with judicial opinion and Chapter 8 dealing with public opinion are of utmost importance as the opinion of the people cannot be of any value until and
unless it fits into the straight jacket of the law. For this reason it is necessary to understand the judicial view regarding the Kashmir issue. The demand of the people must have the sanction of law if it is to be implemented. Chapter 7 deals with the judicial view regarding change of sovereignty, Acts of State, cession of Indian Territory, Article 370 of the Constitution of India and citizenship. Chapter 7 also discusses the right to hold a plebiscite. Chapter 8 deals with public opinion, which has been collected and analyzed under two heads, public opinion of the State of Jammu and Kashmir and public opinion for the rest of India. Chapter 8 also makes a comparative analysis between the events going on between India and Kashmir; and the events going on between China and Tibet, Pakistan and Bangladesh, Sri Lanka and Jaffna. Chapter 9 is a summation of the research and chapter 10 provides the final conclusion and proposed solution to the Kashmir issue.

The unique position of the State of Jammu and Kashmir is the result of a series of complex legal and political events. These events need to be untangled and analyzed in order to reach an acceptable and reasonable solution to the Kashmir issue. It is hoped that this research, which is aimed at finding a legally acceptable solution to the Kashmir issue, is successful in its purpose.