



Daya Sagar

History of Delimitation in Jammu and Kashmir

Jammu Kashmir Study Center

History of Delimitation in Jammu and Kashmir



Jammu Kashmir Study Center

First Edition : 2013

Jammu Kashmir Study Center

Pravasi Bhawan, 50

Deendayal Upadhyay Marg,

New Delhi-110002

Tel. : 011-2321 3039

Email : jkscdel@gmail.com

Website : www.jammukashmirnow.org

Price : 30/-

Printed at : Pragati Creations

Dilshad Garden, Delhi-95

Tel : 011-2259 6695

PREFACE

The Delimitations of single member assembly segments of the J&K Legislative Assembly as done since 1951 have been brutally unfair for the people living the distant, backward, and remotely connected areas of J&K. The worst sufferers have been the people in and around the district of DODA (Kishtwar, Ramban), Udhampur (Reasi), Kathua, Rajouri, Kupwara/ Naramulla. People of Poonch and Kargil too have a case of discrimination when compared with districts of small geographical compactness and better terrain in Kashmir Valley. The basis as kept in the Representation of the People Act 1957 for providing to people their representative in the Legislative Assembly (MLA) have been ignored by the Delimitation Commissions. So far The spirits and guidelines as laid in the Constitution of J&K (Section-50) and of the J&K Representation of the Peoples Act 1957 (Section-4) have been mercilessly violated by the interim Delimitation done by Delimitation Committee in 1951 and even by the Order 27/28-04-1995 of Justice K.K. Gupta Delimitation Commission (Justice Bilal Nazki and N.A Swaminathan Dy Election Commissioner of India were other two members . There was no Associate member with the then D.C).

The J&K Representation of the people Act of 1957 does not lay down population as the only criteria. It also lays down : (i) Geographical Compactness (Distribution of people in Kashmir valley is very compact in comparison to Jammu region. Pre 2007 districts of Doda, Rajouri , Kathua , Udhampur have area of 21522 sq km and only 21 MLAs have been allocated . Where as the total area of erstwhile districts of Pulwama , Anantnag , Srinagar and Badgam is just 8981 sq km but 31 MLAs were allocated). (ii) Nature of terrain (Jammu region has not more than 25% plain terrain where as Kashmir region has more than 75 % terrain as plain) (iii) facilities of Communication (Percentage of area covered by roads in Kashmir valley was almost 2.5 times) and (iv) like considerations as other parameters.

Even going by the questioned census figures, four out of five parameters mention in RPA go in favour of the areas falling in Jammu Region. If the present 87 seats are fairly distributed the MLAs for erstwhile Udhampur District (pre 2007) would increase from 6 to atleast 8, for Doda (pre 2007) areas from 6 to atleast 11, for Kathua areas from 5 to atleast 7, Rajouri from 4 to 5 and like. Seats in other districts would decrease from the present level. But still the overall share of Jammu region will be atleast 45 out of 87 seats and Kashmir Region will get around 38 seats. Such like distribution is also supported by the provisions as have been kept in Section-50 of J&K Constitution i.e 14 (MLC) elected members in Legislative Council from Jammu Region and only 12 (MLC) elected members in Legislative Council from Kashmir Region. But in total disregard to spirit and provisions under lying the Constitution of J&K Justice K. K.Gupta Delimitation Commission had ordered on 27-04-1995 only 37 MLAs for Jammu Region (that had 14 Elected MLCs) and 46 MLAs for Kashmir Region (that had only 12 elected MLCs). Whereas Delimitation if done in line with Section-4 of RPA 1957 would distribute 45 to 46 MLAs over areas of Jammu Region and only 37 to 38 MLAs over Kashmir region..

An exercise for distribution of seats as per the requirement of RPA 1957 was done (with what ever prime data was available) by the writer and the exerts were published in media starting from 20 April 1992. A copy of the detailed note was also submitted / sent on 25-09-1994 to Justice K. K. Gupta, T.N Sheshan Chief Election Commissioner of India and Mr. N.A

Vishwanathan Dy Election Commissioner. But the Commission it appears went ahead with the pre tutored contents for issuing the Delimitation order of 27/28-04-1995..

The miseries, backwardness, illiteracy, poverty and ill health of the poor and backward area people has not been honestly medicated over last 65 years. It is also due to this reason that people of farflung areas have suffered the most due to militancy. In view of larger distances and difficult terrains the MLAs are not able to frequently foot their constituency..

-Daya Sagar

Contents

| | | |
|----|--|----|
| A- | 1951 Delimitation for Constituent Assembly | 7 |
| B- | Some vital brief physicals of Pre Oct 1947 & Post Oct 1947 as of J&K | 9 |
| C- | 1951'Delimitation Committee' was influenced by the Kashmir Valley leadership with Sheikh Mohd Abdullah | 14 |
| D- | Constituent Assembly was also seen as Praja Sabha or the Legislative Assembly by the Regent | 18 |
| E- | Constituent Assembly was also to work as Legislative Assembly | 19 |
| F- | Adhoc distribution of MCAs was unfairly carried to Legislative Assembly even after Section-50 was written in the Constitution of J&K | 21 |
| G- | (i)Sections and Acts of J&K Constitution that need immediate attention | 23 |
| | (ii)Provisions for Delimitation in J&K Constitution and J&K Representation of the Peoples Act 1957: | 27 |
| H- | First regular elections to J&K Legislative Assembly in 1957 | 30 |
| I- | Irregular Delimitations | 31 |
| J- | Irregular Delimitation continued | 32 |
| K- | Why no truthful Delimitation was done | 33 |
| L- | Delimitation Commissions surely did not see Section-50 of J&K Constitution | 34 |

| | | |
|----|--|----|
| A- | 1951 Delimitation for Constituent Assembly | 35 |
| B- | Some vital brief physicals of Pre Oct 1947 & Post Oct 1947 as of J&K | 36 |
| C- | 1951'Delimitation Committee' was influenced by the Kashmir Valley leadership with Sheikh Mohd Abdullah | 58 |
| | | 60 |
| D- | Constituent Assembly was also seen as Praja Sabha or the Legislative Assembly by the Regent | 64 |
| E- | Constituent Assembly was also to work as Legislative Assembly | |
| F- | Adhoc distribution of MCAs was unfairly carried to Legislative Assembly even after Section-50 was written in the Constitution of J&K | |
| G- | (i)Sections and Acts of J&K Constitution that need immediate attention | |
| | (ii)Provisions for Delimitation in J&K Constitution and J&K Representation of the Peoples Act 1957: | |
| H- | First regular elections to J&K Legislative Assembly in 1957 | |
| I- | Irregular Delimitations | |
| J- | Irregular Delimitation continued | |
| K- | Why no truthful Delimitation was done | |
| L- | Delimitation Commissions surely did not see Section-50 of J&K Constitution | |

A- 1951 Delimitation for Constituent Assembly

It was on May 1st 1951 that Yuvraj Karan Singh issued Proclamation No: 22 for instituting a Constituent Assembly. For this it was suggested through a notification that for constituting the Constituent Assembly the State of J&K was to be divided into Electoral Districts. Each Electoral District was to comprise a Segment of 40000 people (subjects of J&K). The Proclamation of 1-05-1951 read as under :

“Whereas it is general desire of the people of the State of Jammu and Kashmir that a Constituent Assembly should be brought into being for the purpose of framing a constitution for the State; Whereas it is commonly felt that the convening of the Assembly can no longer be delayed without detriment to the future well-being of the State. **And whereas the terms of the proclamation of the Maharaja dated 5 March, 1948 in regard to the convening of a national assembly as contained in clauses 4 to 6 of the operative part thereof do not meet the requirements of the present situation;**

I, Yuvraj Karan Singh, do hereby direct as follows :

1. A Constituent Assembly consisting of representatives of the people, elected on the basis of adult franchise, shall be constituted forthwith for the purpose of framing a constitution for the State of Jammu and Kashmir;
2. For the purposes of the said elections the State shall be divided into a number of **territorial constituencies**, each containing a population of 40,000 or as near thereto as possible, and each electing one member. **A delimitation**

committee shall be set up by the Government to make recommendations **as to the number of constituencies and the limits of each constituency;**

3. Elections to the Constituent Assembly shall be on the basis of adult franchise, that is to say, every person who is a State subject of any class, on the **first day of March**, has been a resident in the constituency for such period as may be prescribed by the rules, shall be entitled to register in the electoral rolls of that constituency, provided that any person who is of unsound mind or has been so declared by a competent court, shall be disqualified for registration;

4. The vote at the election shall be by direct and secret ballot ;

5. The Constituent Assembly shall have power to act notwithstanding any vacancy of the membership thereof ;

6. The Constituent Assembly shall frame its own agenda and make rules for the governing of its procedure and the conduct of its business.

The Government shall make such rules and issue such instructions and orders as may be necessary to give effect to the terms of this proclamation.

B- Some vital brief physicals of Pre Oct 1947 & Post Oct 1947 as of J&K

Facts & Statistics that would have attracted the attention of Delimitation Committee for Constituent Assembly and Delimitation Commissions there after:

The total population of J&K on the basis of 1941 census figures (provisional as laid in the Administrative Report of the Government of Maharaja of J&K 16-10-1940 to 15-10-1941) was 40,21,616 . The population of Jammu Province was 20,01,557, Kashmir was 17,28,686 and that of Gilgit / frontier Illakas of Skardu, Kargil & Ladakh was 3,11,915. No Census was conducted in 1951 before deciding the Electoral Districts. The census 1941 figures too had become immediately not that relevant in view of mass exodus of people from POJK and migration in October 1947. Most of the POJKDPs had settled in Jammu region/ outside Kashmir Valley.

The delimitation of Single Member Constituent Assembly Segments (Electoral Districts) as done in 1951 appears to have been made in haste and without much scientific consideration & procedure. The basis for calculating population in 1951 has been nowhere explained. Only thing that could be inferred is that on the basis of 40 Lakh population in 1941 total 100 Members in the Constituent Assembly were assumed. 25 Electoral Districts / segments were set aside for the areas occupied by Pakistan. Out of the remaining 75 segments, 43 Electoral Districts were distributed over the areas of Kashmir Region (excluding areas occupied by Tribals / Pakistan in 1947 through aggression), just 30 Electoral Districts over Jammu Region and two Electoral districts for Ladakh Region (one each for

Leh and Kargil) by the Interim Local Government of J&K that had Sheikh Mohd Abdullah as the Prime Minister. The number 75 appears to have been arrived on simple arithmetical figures assuming the population as 30,00,000 with 1941 census as base excluding the areas occupied by Pakistan. Whereas the population numbers had much changed after 1941 census and after the disturbed conditions since Oct 1947. The manner in which the segments of Constituent assembly were distributed reveals that it was assumed that most of the population that was left in occupied areas under Pakistan belonged to Jammu Region since going by the proportions of 43:30:2 it could be so only if out of 3000000 population 80000 was in Ladakh Region, 1200000 in Jammu Region and 1720000 in Kashmir Region. It is worthwhile to have a look again at the population figures as of 1941 Census i.e. population of Jammu Province was 20,01,557, Kashmir was 17,28,686 and that of Gilgit / frontier Illakas of Skardu, Kargil & Ladakh was 3,11,915. This clearly shows that the Maharaja's Government with Yuvraj Karan Singh as the Regent was very much under the pressures of her Prime Minister Sheikh Mohammed Abdullah otherwise even if the total base population was assumed to be 3000000, still the area distributions were surely wrong.

The other important point that needs to be taken note of is that before October 1947 the Jammu Region comprised of 5 (five) districts (Jammu, Kathua, Udhampur, Reasi and Mirpur) and two Jagirs (Poonch Jagir – a very large area just like a district; and Chenani Jagir – a small area). Whereas Kashmir region comprised of just 3 districts (Anantnag, Baramulla and Muzaffrabad. Jammu Region (province) had 17 Tehsils plus two Jagirs whereas Kashmir Valley / region had just 10 tehsils. Ladakh Region of course had one sparsely populated district. And After Pakistani intrusion / attack

(before accession) on the territories of the princely State of J&K in October 1947 the areas that were occupied by Pakistan from Jammu Region were District of Mirpur and few villages of Poonch Jagir where as still 4 Districts (Jammu, Kathua, Udhampur and Reasi) and two Jagirs were there for carving out the Electoral Districts. And the then Delimitation Committee/ Commission/ Authority appointed by Sheikh Abdullah administration allocated only 30 Electoral Districts out of 75 for these areas of Jammu Region (under observation after Accession with India Dominion). Similarly after Pakistani intrusion / attack (before accession) on the territories of the princely State of J&K in October 1947 the areas that were occupied by Pakistan from Kashmir Region (Valley) were District of Muzaffrabad and few border villages of Baramulla district where as only 2 Districts (Anantnag and Baramulla) were left there for carving out the Electoral Districts. But the then Delimitation Committee/ Commission/ Authority appointed by Sheikh Abdullah administration allocated 43 Electoral Districts out of 75 for these areas (Kashmir Region as was available after Accession with India Dominion). Similarly the areas excluding the areas occupied by Pakistan left in Jammu region was around 26293 sq km (out of total of 32145 sq km +4170 sq km Poonch and Chenani Jagirs = 36315 sq km), as left in Kashmir Region was 15948 sq km (out of total 22133 sq km) and in Ladakh Region around 96701sq km (out of total 165000 sq km). As per the Website of J&K Raj Bhawan (10-04-2013) the total area of the State is 2, 22, 236 sq. kms including 78114 sq. kms under the illegal occupation of Pakistan and 42, 685 sq. kms under that of China. (the data on Websites under Pakistan control - so called 'Azad Kashmir' i.e Mirpur /Muzaffrabad etc 13297 sq km ; Gilgit / Baltistan Northern Areas 72496 sq km - and

even in some other official documents could be with some variations but the differences need not matter for reviews like the one being made here).

The total area of J&K as mentioned in Annual Administrative Report of the J&K State for the Samvat 1997/98 Vikrami (16 Oct 1940 to 15 Oct 1941 AD) including jurisdictional Jagir of Poonch and Chenani is app 86080 sq miles / 223127 sq km (84471 sq miles / 218957 sq km plus 1600 sq miles/ 4147 sq km plus say 9 sq mile/ 47 sq km). Where as, as per Planning Commission GOI Report chapter -VI page 336, 37555 sq km area was occupied by China in 1962 and control of 5180 sq km of areas out of the areas occupied by Pakistan in 1947 October was given by Pakistan to China in 1963 (it has also been confirmed by GOI in reply to Rajay Sabha Question No: 367 from Chandra Mitra on 15-03-2012). The Region wise area details mentioned in the administrative report of the State of Jammu & Kashmir 16-10-1940 to 15-10-1941 are Jammu province was 36315 sq km (32145 sq km + 4170 sq km) / 14010 sq miles (12401 sq miles plus app 1609 sq miles of Jagirs), the area of Kashmir Province / Jehlum valley was 22133 sq km (8539 sq miles), the area of district of Gilgit and frontier illaques of Skardu, Ladakh and Kargil was 164739 sq km (63554 sq miles). **Surveyor General of India had issued provisional figures as 222236 sq km. Subject to verification for taking a general note of the situation the J&K Territories under illegal occupation and control of Pakistan & China (as per JK Raj Bhawan website) could be said as about 54 % of area (4.5 % is from Jammu province, 2.78 % of Kashmir region and rest is from of Ladakh region). The present area that is often covered for elections from Jammu Region is about 162 % of Kashmir Region (on over all based on the times of**

Maharaja Hari Singh Jammu Region could be said as 174% of the area of Kashmir Valley)

There was mass displacement from areas occupied by Pakistan from District of Mirpur and Muzaffrabad in Oct 1947 and almost all the displaced persons settled outside Kashmir valley (mostly in Jammu Region). In view of the advice laid in 'The Proclamation of 1-05-1951' it could be inferred that by method of proportions 1 0 0 seats were assumed taking 40000 per seat over 1941 figure of 40 Lakh for whole State. But going by the ground realities since only 30 seats were distributed over Jammu region it could be said that unfairly it was like keeping one seat for 60000 population by the 'Delimitation Committee' and just nearly 40000 (40216 per seat taking 100 seats taking population figure of 1941 Census as base line) for Kashmir region where 43 seats were distributed. Whereas on simple population basis there should have been around 36 to 37 seats distributed over Jammu region and only around 35 to 36 seats in Kashmir region even if the parameters like geographical compactness, means of communication and terrain were not taken into account in 1951 (these parameters were later laid down under Section- 4 Sub Section-2 Clause (a) of the J&K Representation of the Peoples Act 1957 as was passed by J&K Assembly to meet the requirements of Section-47 of J&K Constitution.

C- 1951'Delimitation Committee' was influenced by the Kashmir Valley leadership with Sheikh Mohd Abdullah

At the time of delimitation for election to Constituent assembly in 1951, total 100 assembly segments were assumed for whole of J&K. 75 seats that were taken as effective working strength of the Assembly till the occupied areas are recovered. As discussed earlier 30 Assembly Segments/ seats were distributed over Jammu province (region), 43 seats were distributed over Kashmir region and 2 over Ladakh region by Delimitation Committee for elections to Constituent assembly in 1951. So looking at the brief vital statistics discussed in the foregoing paras ,surely the 1951'Delimitation Committee' was influenced by the Kashmir Valley leadership with Sheikh Mohd Abdullah working as Prime Minister and the Regent Yuvraj Karan Singh working only to the choice of Delhi where Pandit Jawahar Lal Prime Minister was there to care more for the valley view points. After Mir Pur District, Muzaffrabad District, Gilgit Baltistan parts of Ladakh region and some bordering villages of Poonch Jagir & Baramulla District were occupied by Pakistan/ Pakistan sponsored tribals in 1947 Kashmir region was left with only 2 districts out of earlier 3 where Jammu region still had 4 districts plus Jagir of Poonch & Jagir of Chenani (out of 5 Districts and two Jagirs) but still the Delimitation Committee 1951 distributed 43 Constituent Assembly segments over 2 Districts of Kashmir Region and just 30 over 4 Districts and 2 jagirs of Jammu Region.

Elections to the Constituent Assembly were held in Oct 1951 and all 75 seats were won by National Conference (Congress had not Contested , rather Congress had taken the face of

National Conference). This also ,in a way , incidentally formed the CONSTITUENT ASSEMBLY OF J&K for framing the Constitution of Naya Kashmir under the leadership of Sheikh Mohd Abdullah Mirza Afzal Beg and Maulana Mohd Masoodi (the theoretician and motivator of National Conference).

Members of J&K Constituent Assembly

| S.No. | Members | Constituency |
|--------------|--------------------------------|---------------------|
| 1. | Maulana Mohammad Sayeed Masudi | Amira Kadal |
| 2. | Sheikh Mohammed Abdullah | Hazratbal |
| 3. | Bakshi Ghulam Mohammed | Safa Kadal |
| 4. | Mirza Mohammed Afzal Beg | Anantnag |
| 5. | Girdhari Lal Dogra | Jasmergarh |
| 6. | Sham Lal Saraf | Habba Kadal |
| 7. | Abdul Aziz Shawl | Rajouri |
| 8. | Abdul Gani Trali | Rajpora |
| 9. | Abdul Gani Goni | Bhalesa |
| 10. | Syed Abdul Qadus | Biruwa |
| 11. | Bakshi Abdul Rashid | Charar-i-Sharief |
| 12. | Abdul Kabir Khan | Bandipora (Gurez) |
| 13. | Abdul Khaliq | Saniwara |
| 14. | Syed Allaudin Gilani | Handwara |
| 15. | Assad Ullah | Mir Ramban |
| 16. | Bhagat Ram Lander | Tikri |
| 17. | Bhagat Chhajju Ram | Ranbirsinghpura |
| 18. | Sardar Chela Singh | Chhamb |
| 19. | Chuni Lal Kotwal | Bhaderwah |
| 20. | Durga Prashad Dhar | Kulgam |
| 21. | Ghulam Ahmad Mir | Dachinpara |

| SNo. | Members | Constituency |
|-------------|-----------------------------|-----------------------|
| 22. | Master Ghulam Ahmed | Haveli |
| 23. | Ghulam Ahmad Dev | Doda |
| 24. | Pirzada Ghulam Gilani | Pampore |
| 25. | Ghulam Hassan Khan | Narwah |
| 26. | Ghulam Hassan Bhat | Nandi |
| 27. | Ghulam Hassan Malik | Devasar |
| 28. | Pir Ghulam Mohammad Masoodi | Tral |
| 29. | Ghulam Mohammad Sadiq | Tankipora |
| 30. | Mirza Ghulam Mohammad Beg | Naubag Brang Valley |
| 31. | Ghulam Mohammad Butt | Pattan |
| 32. | Ghulam Mohi-ud-Din Khan | Khansahib |
| 33. | Ghulam Mohi-ud-Din Hamdani | Khanyar |
| 34. | Mirwaiz Ghulam Nabi Hamdani | Zaddibal |
| 35. | Ghulam Nabi Wani | Darihgam |
| 36. | Ghulam Nabi Wani | Lolab |
| 37. | Ghulam Qadir Bhat | Kangan |
| 38. | Ghulam Qadir Masala | Drugmulla |
| 39. | Ghulam Rasool Sheikh | Shopian |
| 40. | Ghulam Rasool Kar | Hamal |
| 41. | Ghulam Rasool Kraipak | Kishtwar |
| 42. | Hakim Habibullah Khan | Sopore |
| 43. | Hem Raj Jandial | Ramnagar |
| 44. | Sardar Harbans Singh Azad | Baramulla |
| 45. | Syed Ibrahim Shah | Kargil |
| 46. | Ishar Devi Maini | Jammu city (Northern) |
| 47. | Janki Nath Kakroo | Kothar |
| 48. | Jamal-ud-Din | Drahal |
| 49. | Maulvi Jamaitali Shah | Mendhar |

| S No. | Members | Constituency |
|--------------|-----------------------|-----------------------|
| 50. | Kushak Bakula | Leh |
| 51. | Kishen Dev Sethi | Nowshera |
| 52. | Sardar Kulbir Singh | Poonch city |
| 53. | Mohammad Afzal Khan | Uri |
| 54. | Sheikh Mohammad Akbar | Tangmarg |
| 55. | Mohammad Anwar Shah | Karnah |
| 56. | Mohammad Ayub Khan | Arnas |
| 57. | Syed Mohammad Jalali | Badgam |
| 58. | Pir Mohd Maqbool Shah | Ramhal |
| 59. | Syed Mir Qasim Doru | Shahabad |
| 60. | Mubarik Shah | Magam |
| 61. | Mansukh Rai | Reasi |
| 62. | Mahant Ram | Basohli |
| 63. | Moti Ram Baigra | Udhampur |
| 64. | Mahasha Nahar Singh | Bishnah |
| 65. | Noor Dar | Kowapora |
| 66. | Noor-ud-Din Sufi | Ganderbal |
| 67. | Major Piara Singh | Kathua |
| 68. | Ram Chand Khajuria | Billawar |
| 69. | Lala Ram Piara Saraf | Samba |
| 70. | Ram Devi | Jammu city (Southern) |
| 71. | Ram Rakha Mal | Kahanachak |
| 72. | Wazir Ram Saran | Jandrah Garota |
| 73. | Ram Lal | Akhnoor |
| 74. | Sagar Singh | Parmandal |
| 75. | Sona Ullah Sheikh | Pulwama |

D- Constituent Assembly was also seen as Prajya Sabha or the Legislative Assembly by the Regent

It was this assembly (Constituent Assembly) that framed the Constitution of J&K and finds reference in the text of article 370 of

Constitution of India. The same Constituent Assembly which was in the process of drafting the Constitution of J&K was later named by the Regent to be in the role of Praja Sabha or the Legislative Assembly where ever needed.

E- Constituent Assembly was also to work as Legislative Assembly

The Constituent Assembly first met for the first time in Srinagar on October 31, 1951 with Maullana Masoodi in Chair. The Jammu and Kashmir Constitution 1996 Samvat (1939 AD) was amended by the Regent (Yuv Raj Karan Singh in 1951 AD (An Act further to amend the Jammu and Kashmir Constitution Act, 1996. Act No. XVII of 2008, 1951 AD) incorporating among other things the words Legislative Assembly for Praja Sabha, and Constituent Assembly to work as Legislative Assembly till the new constitution is framed and accepted, that the Prime Minister and other Ministers shall be collectively responsible to the Legislative Assembly of the State, the Prime Minister shall be the President of the Council, amendment of section 9, Act XIV of 1996 saying that, the Council shall consist the Prime Minister appointed by His Highness and such other Ministers of the State as His Highness may appoint on the advice of the Prime Minister. The Prime Minister and other Ministers shall be collectively responsible to the Legislative Assembly of the State; for the words "The Prime Minister may with the previous sanction of His Highness", the words "The Council may" shall be substituted; the Legislature of the State shall consist of His Highness and a House to be known as the Legislative Assembly; notwithstanding anything contained in this Act, the powers of the Legislative Assembly under this Act shall, until other provision is made by or in accordance with a law made by the Constituent Assembly set up under the Proclamation 1951, be exercisable by the said Constituent Assembly and references in this Act to the Legislative Assembly shall be construed accordingly, the Legislative Assembly may make rules and standing orders, subject to the

provisions of this Act for regulating their procedure and conduct of their business, until rules are made under subsection (3), the rules of Procedure and standing orders in force in relation to the the Praja Sabha shall apply to the Legislative Assembly, subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly

F- Adhoc distribution of MCAs was unfairly carried to Legislative Assembly even after Section-50 was written in the Constitution of J&K

At the time of delimitation for election to Constituent Assembly in 1951, total 100 Members of Constituent Assembly (MCA) for Constituent assembly segments were assumed for whole of J&K and 25 seats had been kept aside for POJK areas. It was surely on adhoc basis that out of the remaining 75 seats (that were taken as effective working strength of the Assembly till the occupied areas are recovered), only 30 Assembly Segments/ seats had been distributed over Jammu province (region) where as, 43 seats were distributed over Kashmir region and 2 over Ladakh region while delimiting the Constituencies for elections to Constituent assembly in 1951. And so strangely the same was carried as distribution of MLAs in the Legislative Assembly there after for quite some time even when Section - 50 was laid in the Constitution of J&K thereby constitutionally allocating 14 Elected MLCs (Member Legislative Council) to areas falling in Jammu Region and only 12 MLC to the areas falling in Kashmir Region (2 MLC have been mentioned for Ladakh region. Where was the justification to hold elections 1957 onwards to J&K Legislative Assembly distributing the MLAs in the same way as was done in 1951 (for Constituent Assembly) even after J&K Representation of Peoples Act 1957 dated 1-02-1957 was passed laying down the procedure / parameters for distribution of single member segments in the Legislative Assembly. All half Delimitation exercises done there after were just formalities totally ignoring JK RPA 1957.

Even when a regular Delimitation Commission was constituted for the first time after 30 years (in 1981) still the

correction was not applied .It was surely in view of the physical and logical constitutional needs that the same “1951 Constituent Assembly” with 43 out of 75 members from Kashmir Valley (Region) incorporated under Section-50 of J&K Constitution in November 1956 that the Legislative Council will have 14 Elected MLCs from Jammu Region and only 12 Elected MLCs from Kashmir Region .

It was only since the Kashmir Valley centric attitude was to prevail that even the Delimitation Commission constituted in 1981 was dragged till April 1995 and Delimitation Commission was influenced to rush through the exercise without applying any truthful corrections in line with parameters laid down in the Representation of the people Act 1957 (population, geographical compactness – area-, terrain, means of communication and like factors) and the signals that emerged from the proportion of elected MLCs in Legislative Council (14 for Jammu and only 12 for Kashmir region).

G.(i)-Sections and Acts of J&K Constitution that need immediate attention

WE need to closely understand the provisions in the J&K Constitution as laid in Section-46, Section -47, Section- 48 and Section -50 as well as Representation of the Peoples Act 1957:13

Section-46 -There shall be a Legislature for the State which shall consist of the Governor and two Houses to be known respectively as the Legislative Assembly and the Legislative Council.

Section-47. Composition of Legislative Assembly. -(1) The Legislative Assembly shall consist of [one hundred and eleven] members chosen by direct election from territorial constituencies in the State: Provided that the Governor may if he is of opinion that women are not adequately represented in the Assembly, nominate not more than two women to be members thereof. [(2) For the purposes of sub-section (1), the State shall be divided into single member territorial constituencies by such authority and in such manner as the Legislature may by law determine. (3) Upon the completion of each census, the number, extent and boundaries of the territorial constituencies shall be readjusted by such authority and in such manner as the Legislature may by law determine : Provided that such readjustment shall not effect representation in the Legislative Assembly until the dissolution of the then existing Assembly: [Provided that until the relevant figures for the first census taken after the year 2026 have been published, it shall not be necessary to readjust the total number of seats in the Legislative Assembly of the State and - the- division of the State into territorial constituencies under this sub-section.

(3. Inserted by the Constitution of Jammu and Kashmir (Twenty-ninth Amendment) Act, 2002,)

Section 48 : Provision relating to Pakistan- occupied territory.- Notwithstanding anything contained in section 47, until the area of the State under the occupation of Pakistan ceases to be, so occupied and the people residing in that area elect their representatives (a) [twenty -four seats] in the Legislative Assembly shall remain vacant and shall not be taken into account for reckoning the total membership of the Ass embly; and (b) the said area shall be excluded in delimiting the territorial constituencies under Section 47.

Section 49 : Reservation of seats for Scheduled Castes.-(1) There shall be reserved in the Legislative Assembly for the Scheduled Castes in the State a number of seats which shall bear, as nearly as may be, the same ,proportion to the total number of seats in the Assembly as the population of the Scheduled Castes bears to the population of the State. Explanation.-In this sub-section- (a) the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published; and (b) "Scheduled Castes" means the castes, races or tribes or part of, or groups within, castes, races, or tribes which are for the purposes of the Constitution of India deemed to be Scheduled Castes in relation to the State under the provisions of Article 341 of the Constitution: [Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures of the first census taken after the year 2026 have been published, be construed as a reference to the 1981 census.]

(2) The provisions of sub-section (1) shall cease to have effect on the expiration of a period of [fifty-three years]

from the commencement of this Constitution:

Provided that such cesser shall not affect any representation in the Legislative Assembly until the dissolution of the then existing Assembly.

Section-50. Composition of Legislative Council.-(1) Legislative Council shall consist of thirty-six members, chosen in the manner provided in this section.

(2) Eleven members shall be elected by the members of the Legislative Assembly from amongst persons who are residents of the Province of Kashmir and are not members of the Legislative Assembly:

Provided that of the members so elected, at least one shall be a resident of Tehsil Ladakh and at least one shall be a resident of Tehsil Kargil.

(3) Eleven members shall be elected by the members of the Legislative Assembly from amongst persons who are residents of the Province of Jammu and are not members of the Legislative Assembly: Provided that of the members so elected, at least one shall be a resident of Doda District and at least one shall be a resident of Poonch District.

(4) one member shall be elected by each of the following electorates, namely

(a) the members of municipal council, town area committees and notified area committees in the Province of Kashmir;

(b) the members of municipal council, town area committees and notified area committees in the province of Jammu; (5)

Two members shall be elected by each of the following electorates, namely (a) the members of the Panchayats and such other local bodies in the Province of Kashmir as the Governor may by order specify; (b) the members of the

Panchayats and such other local bodies in the Province of Jammu as the Governor may by order specify. (6) [Eight] members shall be nominated by the *Governor, not more than three of whom shall be persons belonging to any of the socially or economically backward classes in the State, and the others shall be persons having special knowledge or practical experience in respect of matters such as literature, science, art, co-operative movement and social service. (7) Elections under sub-sections (2) and (3) shall be held in accordance with the system of proportional representation by means of the single transferable vote.

G (ii) - Provisions for Delimitation in J&K Constitution and J&K Representation of the Peoples Act 1957:

Part II Representation of Peoples Act 1957 lays down Delimitation of Constituencies. 3. Constitution of Delimitation Commission,—(1) As soon as may be after the completion of each census the Governor shall constitute a Commission to be called the Delimitation Commission which shall consist of three members as follows :- (a) two members, each of whom shall be a person [who is or has] been a Judge of the Supreme Court or of a High Court in India ; and [(b) the Deputy Election Commissioner nominated by the Chief Election Commissioner.] (2) The governor shall nominate one of the members appointed under clause (a) of subsection (1) to be the Chairman of the Delimitation Commission. [(3) The Delimitation Commission shall determine the delimitation of Assembly Constituencies in the State within such period as may be specified by the Governor. [(3-A) Associate Members.-(1) The Commission shall associate with it five members of the Legislative Assembly to be nominated by the Speaker, having due regard to the composition of the Assembly : 7[Provided that when the Legislative Assembly stands dissolved, the five members of the dissolved Legislative Assembly earlier nominated by its speaker shall cease to be Associate Members of the Commission and in their place three Associate Members shall be nominated by the Governor in consultation with the Chairman of the Legislative Council, from amongst the members of the Legislative Council, and two Associate Members shall be nominated by the Governor in consultation with the Speaker of the Lok Sabha from amongst the members of the Lok Sabha elected from the

State of Jammu and Kashmir : Provided further that where the Delimitation Commission is constituted during a period when the Legislative Assembly stands dissolved, the five Associate Members of the Commission shall be nominated by the Governor in the same manner as prescribed in the preceding proviso : Provided also that where for any reason election to the House of the People for electing members from the State is not held, the Commission shall have only three Associate Members referred to in the first proviso.].(2) None of the Associate Members shall have a right to vote and sign any decision of the Commission. (3) If owing to death or resignation, the office of an Associate Member falls vacant, it shall be filled, as soon as practicable, in the manner prescribed in sub-section (1) above]

4. Delimitation of Assembly Constituencies.—(1) The Delimitation Commission shall, -(a) readjust the extent and boundaries of the Assembly Constituencies ; and (b) determine the number of seats in the Legislative Assembly to be reserved for the Scheduled Castes (2) The Delimitation Commission shall in the manner herein provided, distribute the 4[Eighty-seven] seats in the Legislative Assembly to single member territorial constituencies and delimit them having due regard, as far as practicable to the following :- (a) (i) Population as ascertained at the last preceding census of which the relevant figures have been published ;and (ii) geographical compactness ;and (iii) nature of terrain ; and (iv) facilities of communication ; and (v) the like consideration.] (b) constituencies in which seats are reserved for the Schedule Castes shall be distributed in different parts of the State and located, as far as practicable, in those areas where the proportion of their population to the total is comparatively large, (3) The Delimitation Commission shall- (a) publish its proposal for the delimitation of constituencies

in the Gazette and also in such other manner as it thinks fit ;
(b) specify a date on or after which the proposals will be further considered by it ; (c) consider all objections and suggestions which may have been received by it before the date so specified, and for the purpose of such consideration hold one or more public sittings at such place or places in the State as it thinks fit ; and (d) thereafter by order determine the delimitation of Assembly Constituency in the State.

4-A Procedure and Powers of Delimitation Commission.-(1) The Delimitation Commission shall determine its procedure and shall in the performance of its function have all the powers of a Civil court under the Code of Civil Procedure, Svt. 1977, while trying a suit, in respect of the

H- First regular elections to J&K Legislative Assembly in 1957

First regular elections to J&K Legislative Assembly were held in 1957 without constitution of any fresh Delimitation Commission under the J&K Representation of the Peoples Act 1957. There could be no the justification to hold elections 1957 onwards to J&K Legislative Assembly distributing the MLAs in the same adhoc way as was done in 1951 (for Constituent Assembly) even after J&K

Representation of Peoples Act 1957 dated 1-02-1957 had been put in place laying down the procedure / parameters for distribution of single member segments in the Legislative Assembly. All half Delimitation exercises done there after were just formalities totally ignoring JK RPA 1957. Even when a regular Delimitation Commission was constituted for the first time after 30 years (in 1981) still the correction was not applied .It was surely in view of the physical and logical constitutional needs that the same “1951 Constituent Assembly” with 43 out of 75 members from Kashmir Valley (Region) incorporated under Section-50 of J&K Constitution in November 1956 that the Legislative Council will have 14 Elected MLCs from Jammu Region and only 12 Elected MLCs from Kashmir Region .

I-Irregular Delimitations

Later on one seat was reduced from over areas falling in Kashmir Region in 1966 and seats distributed over Jammu region were increased from 30 to 31 and Kashmir region reduced from 43 to 42. For Ladakh Region number remained 2. The 1961 Census population was shown as 16 Lakh and Kashmir Valley population as 18 Lac. On this basis in Jammu region population per seat was app 51600 and Kashmir region it was just around 42850 where the area was more compact & better connected and terrain was easier.

J- Irregular Delimitation continued

There was further some browbeating from Jammu region people demanding review of the 'Delimitation' formality done. Instead of going for a fair review by Constituting a fresh regular Delimitation Commission as per the J&K Representation of the people Act 1957 dated 1-02-1957, one seat was reduced from the 25 seats set aside for POJK through the 12th Constitutional Amendment Act of 1975 of 19-08-1975 amending Clause (a) of Section 48 of J&K Constitution. The effective strength of Legislative Assembly was raised from 75 to 76. This single seat was specifically distributed over the Jammu Region without any fresh logical delimitation raising from 31 to 32 seats / MLAs for Jammu Region and 42 seats remained distributed over Kashmir Region. The 1971 Census data had put population for Kashmir Valley as 23 Lakh and Jammu as 21 Lakh. So on this basis there become one MLA for every 65630 persons for Jammu Region and only 54760 for Kashmir Valley where the area was more compact & better connected and terrain was easier..

K- Why no truthful Delimitation was done

No any truthfully regular Delimitation Commission was constituted as laid down in the J&K Representation of Peoples Act 1957 till 1981. Surely it was done so because the balance in the J&K Assembly would have got tilted towards Jammu region like it was in the J&K Legislative Council where Jammu Region had 14 elected MLCs and Kashmir Region had only 12 elected MLCs under Section-50 of J&K Constitution . Till 1965 it was National Conference that held power in J&K and thereafter it was the same NC leaders who as Congress held the power till 1975 and then supported Sheikh Mohd Abdullah as CM till 1977 who did not have then a political party of his own (not even National Conference). This way it could be said it has been for most of the period only Congress under the guise of National Conference or Congress / its associates that have held the reins of power in J&K.

L-Delimitation Commissions surely did not see Section-50 of J&K Constitution

It appears The 1981 through 1995 Delimitation Commission (s) did not even read Section -50 of J&K Constitution : In the Legislative Council under Section -50 of J&K Constitution that came into force wef January 1957 12 elected MLCs were kept for areas falling in Kashmir Region , 2 for areas falling in Ladakh region (Kargil and Leh) and 14 elected members were kept for the areas falling in Jammu region but so strangely the Delimitation Commissions (even the only one regular Delimitation Commission that was Constituted in 1981 and completed work in April 1995) acted without any trueness to this fact and the requirements of The J&K Representation of People Act 1957. Delimitation Commission did not even care to make corrections to the rough adhoc delimitation done in 1951 for elections to the Constituent Assembly (Kashmir Region 43 Ladakh region 2 and Jammu Region 30 MLs) nor did rationally attempt to do a fair delimitation.

M- Increasing Districts in Kashmir Valley from 3 to 6

No Commission or committee was constituted before increasing the number of Districts from 3 to 6 in Kashmir Region : It is worthwhile to mention here that when Sheikh Abdullah came to power with the support of Congress in 1975, Jammu Region had six districts (Jammu, Kathua, Udhampur, Doda, Rajouri and Poonch and Kashmir Region had only three districts (Srinagar, Anantnag and Baramulla) but without going for any rational review and exercise Sheikh's government ordered on 1-07-1979 creation of three more districts (Badgam, Pulwama and Kupwara) in Kashmir Region through a Cabinet decision but Districts in Jammu Region were not increased. It was done to simply make the districts in Kashmir Region equal to Jammu Region since pressures for doing a rational distribution of MLAs over Jammu Region that had 6 districts as against only 3 for Kashmir region were increasing.

N- Delimitation Commission 1981

The first regular Delimitation Commission for delimitation of 76 single member segments in the Legislative Assembly was constituted under Section-3 of J&K Representation of the people Act 1957 vide SRO No; 537 of 02-12-1981 . The said Commission comprised of Justice J. N. Wazir (Retd CJ of J&K HC) , Justice Mian Jalal u Din & S. L. Shakdar Chief Election Commissioner of India (ex- officio) as members. Mr. J. N. Wazir was appointed as the Chairman of the Commission under provisions of Sub Section - 2 of section - 3 of the RPA 1957 by the Governor. Justice Mian Jalalu Din after some time became Chairman of the Commission.

Babu Parmanand as Speaker of the Legislative Assembly notified under Section 3-A of the representation of the People Act on 20- 01-1982 five sitting MLAs as Associate member of DC ie. Ghulam Mohi u Din Shah , P.L. Handoo, M. R Sharma, Rafiq Hussain Khan and Rishi Kumar Koushal. (Justice J. N. Wazir Rtd CJ J&K HC also headed Wazir Commission that among other things had to do the job for reorganization / rationalization of Districts administrative units as constituted under 2352 GD of 1981 dated 12-11-1981 and that later submitted its report on 03-01-1984 recommending three new districts of Kishtwar, Reasi and Samba in Jammu Region – making total 9 districts and only one new District in Bandipora in Kashmir Region-making total 7 districts.) .

(i) The level of Chief Election Commissioner of India used to be of a Justice of High Court at the time of Constitution of first Delimitation Commission in 1981 under the provisions of the RPA 1957.

(ii) Secretary J&K Delimitation Commission issued under No : SDC/C/24/82 dated 30-01-1982 a notice to all MLA, MPs, MLCs. Political parties, BAR Councils , municipalities etc etc to submit suggestions./ views / opinions on delimitation.

(iii) As per the information available the Delimitation Commission held a meeting at Delhi on 27-08-1982 and arbitrarily proposed to summarily increase the seats for areas falling in Jammu Region from 32 to 34 and to reduce the MLAs in areas falling in Kashmir Region from 42 to 40. Although this was in contravention of the Constitution of J&K as well as the procedures laid down in the RPA of 1957 still the Associate members from Kashmir Valley did not agree. As per the source information it was also discussed to take out two seats from POJK through an amendment of Constitution (as was also done earlier through 12th constitutional amendment in 1975 reducing POK seats from 25 to 24) thereby distributing the seats (if withdrawn from 24) over Jammu region thereby increasing seats from 32 to 34 for Jammu, keeping 42 for Kashmir Region, and two for Ladakh Region but this too did not get through although this proposal was also not satisfying the requirements of Section - 4 of Representation of People Act 1957.

(iv). Later in a Session of J&K Assembly at Jammu through the Jammu & Kashmir Constitution (20th amendment) Act of 1987 the total seats/ segments in JK Legislative Assembly were increased from 100 to 111 (leaving 24 for POK areas and increasing effective strength from 76 to 87 for this side of J&K.

(v). The Delimitation Commission had not completed the work till then. The Delimitation Commission was then headed by Justice Jalalu Din of J&K HC. It was alleged that Mian Jalalu Din did not take cognizance of the proceedings the Delimitation Commission had with J N Wazir as Chairman . More so Thakur Baldev Singh MLA (who later became Associate member), too had asked the Commission to issue a fresh notification as was done in 1982 for inviting suggestions since seats for delimitation had been increased from 76 to 87.

(vi). Justice Jalal u Din Commission for all purposes was like

a fresh Delimitation Commission but Secretary J&K Delimitation commission did not issue any notice for seeking public opinions as was done earlier by the commission under No : SDC/C/24/82 dated 30-01-1982 to all MLA, MPs, MLCs. Political parties, BAR Councils , municipalities etc etc asking to submit suggestions./views / opinions on delimitation.

(vii). Mr. Rishi Kumar Koushal who was Associate Member of the Delimitation Commission with Justice J. N. Wazir had disclosed through media that on number occasions he had the privilege of discussing with Justice Wazir the entire gamut of the related issues and Mr. Rishi Kumar on the basis of same could vouch for the fact the Mr. Wazir was very keen to see that the work the Delimitation of Assembly Constituencies was finalized after the implementation of Wazir Commission report for rationalizing District Administrative Units as and when submitted.

(viii). The then delimitation commission headed by Justice Mian Jalalu Din , Judge of J&K high court, issued a notification date 4-04-1989 in the extra ordinary issue of gazette :: “In pursuance of sub section (3) of section -4 of Jammu & Kashmir Representation of the People act of 1957 (Act No: IV of 1957), the Delimitation Commission hereby publishes proposals for the division of the State of Jammu & Kashmir into eighty seven single member constituencies for the Legislative Assembly of the State and for the delimitation thereof together with the dissenting proposals of the Associate members and specify the 10th may 1989 as the date on or after which proposals will be further considered by it. Any objections or suggestions in regard to these proposals should reach the Secretary, Delimitation Commission, Civil Secretariat, Basement Floor, Mini Secretariat, Jammu / Old Secretariat Stone Building, Srinagar before the said date “

(ix). From the draft proposals notified it could be seen that the note of dissent as submitted by Th Baldev Singh Associate Member (MLA) had not received any consideration though it qualified for the same under section -4 sub Section – 2 of the RPA 1957. (x). Earlier when the Assembly seats were 76 (without POJK), Kashmir Region was sending 42 MLAs and Jammu region was sending 32 MLAs. Although population is only one of the five parameters laid down in J&K RPA of 1957 still even looking at the 1981 census figures, earlier Kashmir region on an average sent one MLA for every 74640 population and Jammu region sent on an average one MLA for every 84981 population and Ladakh Region for every 67186 population. And looking at the proposals as notified on 4-04-1989 (46 MLAs distributed over Kashmir Region and 37 MLAs distributed over Jammu Region and 4 MLAs over Ladakh Region) and 1981 census figures Jammu region was to send one MLA for every 73462 population and Kashmir region for every 68150 population and Ladakh Region for every 33593 population on the over all average although Jammu Region had lesser geographical compactness, bad terrain and lesser communication infrastructure as compared to Kashmir Region. The parameters of Geographical compactness (Jammu region has much larger populated area spread in comparison to Kashmir region), Terrain (Jammu region has very bad terrain in comparison to Kashmir region) and Means of communication (Jammu region in 1987/88 had about 18% area covered by roads as against 40 % for Kashmir region. The road length in Jammu region was around 3500 km in 1987 and Kashmir Region it was 4900 km) had been totally over looked. No ground or logic had been given by the Delimitation Commission for allocation of 4 more seats to Kashmir Region and only 5 to Jammu Region defying the provisions of J&K Representation of the People Act 1957. By this time Justice J. N. Wazir (Rtd CJ J&K HC) Commission known as Wazir Commission that was

constituted under 2352 GD of 1981 dated 12-11-1981 (that among other things had to do the job for reorganization / rationalization of Districts administrative units) had already submitted its report on 03-01-1984 recommending three new districts of Kishtwar , Reasi and Samba in Jammu Region and only one new District in Bandipora in Kashmir Region; and it could be alleged that Delimitation Commission had not cared to seen the report.. Why did Justice Mian Jalalu Din Delimitation Commission not take notice of the exercise done by Wazir Commission, the fact that under Section -50 of J&K Constitution Jammu Region had 14 elected MLCs in the Legislative Council, Kashmir Region had only 12 MLCs and the guideline parameters like geographical compactness/ terrain/means of communication, could be a big question. Discrepancy also existed as regards the MPs. Kashmir Region based on 1981 census was sending 3 MPs (1044968 population per MP) and Jammu Region 2 MPs (1359056 population per MP) . In J&K first regular election to Lok Sabha was held in 1967

(xi). Similarly the proposals showed that minimum population for hilly constituency like Karnah in Kashmir Region was about 32000 (1981 census basis) where as in Jammu Region it was 45000 population for Bani. Thakur Baldev Singh in his note of dissent had said that Basoli and Billawar tehsils had a population of 1,30000 (1981 census) and very bad terrain but had been proposed only 3 seats as also the Hiranagar and Kathua Tehsils having population of 230000 had also been proposed only two seats out of 37 seats distributed over Jammu Region. Baldev Singh had said that simply on the basis of population (1981) Jammu Region qualified for 39 seats. It appeared that the Commission did not take seriously the suggestions / dissent of its members since in the proposals published there were no comments made by the commission on the population of Kathua District as conveyed by Baldev Singh ie. 360000 as against 369121 as was mentioned in Annexure-C in reference to

Economic Review of J&K 1984 -85 page 73 based on 1981 Census. (xii). Prof Chaman Lal General Secretary BJP sent his comments / objections on 5-06-1989 to proposals as notified on 4-04-1989 pointing out that Paddar (Doda), Lamdhar & Pancheri (Udhampur), Parmandal & Saruinsar Jammu, Barnoti (Kathua) are the areas that have bad terrains and have not been fairly treated in proposals. Chaman Lal had also pointed out that Kashmir valley had 81% plain area where as Jammu region had only 13 % plain area. The objection did have substance and the commission did not even care to get his observation on plain area commented / verified by field agencies.

(xiii). Rishi Kumar Koushal had on the basis of only population suggested 39 seats for Jammu region in 1988 and later on the official demand was placed by Sh Radha Kishan Sharma BJP VP as 41 out of 87 seats well before proposals were published in 1989.

(xiv). Governor Rule was imposed in J&K after that (1990).

(xv). By this time Mass migration had taken place from Kashmir Valley and the farflung areas of Jammu Region were adversely affected. Such facts also required special considerations from the DC.

(xvi). The Representation of the people Act 1957 was amended vide Governor's Act No: XVI of 1990 dated 17-7-1990 in exercise of the powers vested under proclamation P-1 /90 of 1990 dated 19-01-1990 issued under Section 92 of the Constitution of Jammu & Kashmir providing that when the Legislative assembly stands dissolved , the three Associate Members shall be nominated by the Governor in consultation with Chairman Legislative Council and two associate members shall be nominated by the Governor in consultation with the Speaker of Lok Sabha out of the MPs from J&K (in case parliament is also dissolved / no member being there from J&K , then only 3 Associate Members from

Legislative Council will work). Earlier Section 3A of RPA 1957 provided for nomination of 5 Associate members from LA by the Speaker.

(xvii) The Delimitation Commission (DC) was reconstituted vide SRO : 52 dated 29-01-1991 with Justice K. K. Gupta as the Chairman. 3 MLCs as members Delimitation Commission were nominated as Associate members vide SRO No: 87 of 5-03-1991 in view of the Governor's Act No: XVI of 1990 dt 17-07-1990 / President's Act No: 3 of 1992 (replacing 5 MLA's by 3 MLCs and 2 MPs) since Legislative Assembly was not in place. Associate members G. R Kar Cong President MLC, S. Harbans Singh MLC NC and Wali Mohd Ittoo MLC NC.

(xviii). Since by this time the status of Chief Election Commissioner of India had been elevated to the level of the Judge of the supreme Court of India and Justice K.K Gupta was ex judge of High Court, the Chief Election Commissioner T.N Seshan did not participate (as a member) in the proceedings of the Commission and for all legal purposes in view of the anomalous situation amendment to Act / Constitution was needed to make the proceedings of Delimitation Commission legally tenable. The 1989 DC proposals were receiving resentment from whole of Jammu Region. Any how later by Presidents Act No :3 of 1992 17-07-1992 the Chief Election was replaced by Dy Election Commissioner to be nominated by Chief Election Commissioner.

(xix). The new constituted Delimitation Commission (J&K) issued a notification under No. DIC/101 and the same was published in Extraordinary issue of Gazette Vol 105 No.26-1 the 28th September 1992. Under No. 1 of the Notification said :: “ where as in pursuance of sub section (3) of the section (4) of the Jammu and Kashmir Representation of the People Act, 1957 the proposals of the Delimitation Commission for the Delimitation of Assembly

constituencies in the State of Jammu & Kashmir were published in the Jammu and Kashmir Gazette of 4th April 1989; And where as all the objections and suggestions received in relation to the said proposals were considered by the Commission at Public sittings held at various places of the State on various dates ; We hereby determine as follows : (1) The Territorial constituencies into which the State of Jammu & Kashmir shall be divided for the purposes of the elections to Legislative Assembly and the extent of each such constituency shall be as shown in the table below”. The notification marked segments 1 to 5 for Kupwara District, 6-15 for Baramulla District , 16 to 25 for Srinagar District, 26 to 50 for Badgam district, 31 to 36 for Pulwama District, 37 to 46 for Anantnag District, 47 to 58 for Leh District , 49 to 50 for Kargil District, 51 to 56 for Doda District, 57 to 62 for Udhampur District, 63 to 67 for Kathua District, 68 to 80 for Jammu District, 81 to 84 for Rajouri District and 85 to 87 for Poonch District. The notification was printed s/d Justice K. K. Gupta Chairman, Justice A.M. Mir Member, Mr. T. N. Seshan Chief election Commissioner of India member. The proposals were almost the same as were published by Justice Mian Jalal u Din Commission on 04-04-1989 and it appeared Justice K. K. Gupta commission did no fresh review.

(xx). The order dated 28.9.1992 of DLC was a simple formality on the proposals notified by the earlier DC in April 1989. The Commission that was constituted vide SRO : 52 dated 29-01-1991 was almost a new DC and hence was required to work with independent view point but the final order issued by this Commission showed that it had simply endorsed the earlier proposals. More over as said earlier this notification was shown as s/d Justice K. K. Gupta Chairman, Justice A.M. Mir Member, Mr. T. N. Seshan Chief election Commissioner of India member but Mr. T. N. Seshan Chief Election Commissioner of India had not at all participated in any meeting of the new DC. It was reported in local media on

24-10-1992 that Chairman DC had opined on 23-10-1992 that the order / report was otherwise ready in May 1992 but could not be published since other member Justice Mir. Had been transferred to Srinagar. Chairman also denied the reports that there was some dissenting note from Justice Mir. It was also reported that as disclosed Justice Jajal u Din proposals of 04-04-1989 had been signed the then Chief Election Commissioner Peri Shastri . Justice Lalal u Din commission continued till he resigned in 1991.Ofcourse Justice K K Gupta did confirm that CEC T N Seshan did not participate in proceedings but he did sign the report. But it was reported i that CEC TN Seshan has named the order of KKG DC of 28-09-1992 as a “fraud and deceit”. It was also reported that CEC has said that he could know about the Delimitation order of 28-09-1992 only after he received a copy of same.It was also reported that on RPA1957 had been amended on 17-07-1992 to include Dy EC as member instead of CEC but CEC had expressed that he was not consulted. Some media reports also said that CEC conveyed his opinions on constitution of DC on 12-08-1992 but

(xxi).- The Chief Election Commissioner did not own the proposals / expressed annoyance / disassociation.

- And the proposals were also contested by some people from Jammu Region. The distribution of seats over different areas of J&K was in total defiance to the requirements of J&K Representation of the People Act of 1957 (Act No IV dated 1-02- 1957) since the far flung and backward distantly placed areas of Jammu region having much poorer means of communication and bad terrain in comparison to Kashmir region had been allocated 8 to 10 seats less . These areas had less geographic compactness, bad terrain and had only 18 % area covered by roads as compared to 40 % in Kashmir Valley (region). As per Statistical Digest 1985-86 there was 3500 kilometer roads network over 26293 sq km of Jammu Region where as just for 15948 sq km of Kashmir region

there was 4500 km road net work. BJP State President Chaman Lal submitted a memorandum to J&K Governor against the proposals of K.K. Gupta Commission as of 28-9-1992 . Conveying among other things that Jammu region had just 13 % plain area where as Kashmir Region had 81 % plain are. (xxii). Earlier M. M. Jacob the then MOS for Home GOI when asked about likely extension of President's rule beyond 03-03-2002 had said that since Delimitation of Assembly segments has not been completed it was legally untenable to hold elections in Kashmir Valley and that too in a political vacuum (UNI 25-02-1992). Why did Jacob say that the elections are legally untenable unless delimitation is completed could well be explained through Section 47 and 48-A of J&K Constitution as well as the J&K Representation of the people Act 1957. Sub Section (3) of Section 47 of J&K Constitution provides that upon completion of each census the number, extent and boundaries of the territorial constituencies shall be readjusted by such authority and such a manner as the legislature may by law determine. But it was also a fact that the Constitution of J&K (Twelfth amendment Act of 1975) inserted Section 48-A laying that for holding of general elections in the event of earlier dissolution of legislative assembly notwithstanding any thing contained in this constitution if upon the completion of a census , but before the final adjustment of STC (single member territorial constituencies of Legislative assembly), the legislative Assembly is dissolved prior to the expiry of its duration and Governor is satisfied that holding of general elections without delay is necessary, he may do so, after consulting the Election Commission, through a notification directing that elections be held on the basis of delimitation last done. Though this was done for meeting extra ordinary circumstances but it could be felt that the delays in delimitation were due to the people at the helm of affairs may be feeling that it shall not be possible to carry on the 1951 policy regarding delimitation for more time and in also

feared reactions from Kashmir Valley in case a fair Delimitation is done in line with the guidelines as laid in Section (4) Sub Section(2) Clause (a-i to a-v) of the J&K RPA of 1957, even if it is truthful.

(xxiii). On 8-01-1993 media reported from Delhi that the then CEC T. N. Seshan, in his order issued on 4th January 1993 had charged the J&K Delimitation Commission with “ fraud and deceit” and warned that the decision taken by it (Delimitation Commission) would not be binding on the Election commission. It was also reported that the CEC had not attended any sitting of the DC and had rather even objected to the manner of making amendment dated 17-07-1992 as made to J&K Representation of the People Act 1957 for including Deputy Election Commissioner as member in the DC in place of the Chief Election Commissioner. (xxiv). It was later reported on 20-09-1993 that the DC started the work again but still no public activity was there for quite some time.

(xxv). Election Commission order of 9th September 2004 had said : “ The Election Commission of India hopes and trusts that the proceedings of the J&K Delimitation Commission will be carried strictly in consonance with the letter and spirit of the provisions of the J&K Constitution and J&K Representation of people Act 1957”. Hence it could be inferred that the delimitations done till then or proposed so far had not been fair to the constitutional requirements. Hence a new opportunity emerged for Justice K K Gupta Commission for making corrections through the 'reconstituted' commission.

(xxvi). It was reported in the media on 13-09-1994 (Daily Excelsior 14-09-1994) that after 20 months the conflict between the Chief Election Commissioner and J&K Government had been resolved and Mr. N. A. Vishwanathan Dy Election Commissioner had been appointed as the member of State Delimitation Commission (under order

issued by S. K. Mendiratta Secretary to CEC and the State Delimitation Commission was to start the work de novo. But it was also reported by media Mr. T. N. Seshan had nominated N. A. Vishwanathan Dy EC only after assurance was given by J&K Government to the CEC for resuming the delimitation work which was annulled earlier for its not being in consonance with the delimitation laws of the State.

(xxvii). The DC office again started work at Jammu Civil Secretariat Complex on 17-09-1994. The first regular meeting of the reconstituted Delimitation Commission was held on 20-09-1994 at Jammu with Justice K. K. Gupta (Chairman), Mr. N. A. Vishwanathan Dy Election Commissioner and Justice (Rtd) G. A. Kuchai (he had replaced Justice A. M. Mir since he had shown reluctance continue with the newly 'constituted' Commission). It was almost a review commission. The three Associate members were no more with the Commission since G. R Kar and Harbans Singh were no more MLCs and Mr. Wali Mohd Ittoo had been killed by militants on 18-03-1994. Another meeting Justice K. K. Gupta told media men on 20th September that the earlier Associate Members were no more with the commission and there was no need to appoint new members since the job to be accomplished has been done by earlier members. He said that another meeting will be held at Jammu on 21st September and then at Srinagar on 3rd October 1994 where he was sure that the proposals already made would be approved. This showed that the DC had not taken the observations with respect to requirements of J&K Constitution and RPA of 1957 that seriously. But the meeting of 3rd October could not be held at Srinagar since local authorities had informed the chairman that the staff associated was reluctant to associate with the commission work due to militant threats. Mr. N. A Vishwanathan was informed of the change on 30th September 1994 itself.

(xxviii). I (Daya Sagar , social activist) too had done an exercise on Delimitation of Assembly Segments in consonance with the letter and spirit of the provisions of the J&K Constitution and J&K Representation of people Act 1957 (Section-4 Subsection-2 Clause –a) with the immediate relevant data that was broadly available and would also must have been more easily and elaborately available to justice K. K. Gupta Commission . The material prepared had been published in the leading Daily News Paper of J&K repeatedly (14-06-1992, 14-07-1992, 26-02-1993, 4-10-1993, 25-03-1995, and like) and elaborately even well before the Justice K K Gupta Commission issued its Delimitation order of 25-04-1995. The author also met the CM DC , submitted the notes as prepared by him to the Chairman in person and submitted the law points. It was on 25-09-1994 that a letter was sent to T. N. Seshan CEC with copy to Justice K K Gupta CM DC and Mr. N. A Viswanathan Dy Election Commissioner / Member DC by the writer enclosing the summary of work done regarding Delimitation and vital points that need notice for correction. Delimitation Commissions in J&K have not stood to requirements of J&K Representation of People Act 1957 :: People of backward and Far Flung areas have been so far unduly denied due representations in the legislative assembly. Preamble of J&K Constitution secures to self EQUALITY of status and opportunity : JUSTICE social, economic & political. Democracy through Parliament & State Legislature is the ESSENCE of the Pledge laid in the Constitution. For accomplishment of the objectives, a representative of nearness in Legislature could only ensure the pledge. And hence The J&K Representation of People Act 1957 was drafted in a very very special manner for delimitation of single member assembly segments (MLAs) in terms of the contents of Clauses a (i) to a (v) of Sub Section (2) of Section- (4) . But still the People living in far flung areas of J&K have all these years been not been given fair

representation in the Legislative Assembly by the Delimitation Commissions. More of the far flung and backward areas fall in Jammu Region. The exercise was done by the writer keeping in view the guidelines laid down in The J&K Representation of People Act 1957 of with what ever data as was available in 1993/94. Incidentally the data and details as would have been available to the K. K. Gupta Delimitation Commission in 1994-95 too would have been near to data used like census data of 1981. Still the same data could be used today to test the trueness of the Delimitation as was ordered by KK Gupta Commission in 1995. Where ever required comments on the present data (Census-2001 and Census- 2011) are also made at appropriate place. No doubt a new Delimitation Commission can not be constituted till 2031 unless a Bill is passed in the J&K Assembly to undo the ban imposed by 29th Constitutional Amendment to Section 47 of J&K Constitution. And ofcourse the interests of the Scheduled Tribes and the Scheduled Caste too are very much linked with Timely conduct of delimitations. It is not only the seats in the L .Assembly that need be redistributed, even distribution of seats in Parliament have not rationally distributed. Even a member of Parliament needs to be near his/ her people and only population of the area can not be the criteria. Delhi Chandni Chowk Parliament seat has an area of just 10 sq Km for the MP to cover per lakh of the population where as Jammu Region has nearly 13000 sq km area per MP and Kashmir Region has only 5300 sq Km area per MP. Jammu Region need be given atleast 4 MPs in case Kashmir has to have 3 or 3 for Jammu and two for Kashmir Region.. As regards Ladakh region the inhabited area is very less.

The summary of the exercise done and the basic data (also incorporating some more relevant events / information that emerged worth notice after 1995) is placed here.

The vital statistics of J&K as are relevant for Delimitation of single member segments in the Legislative Assembly, present status and proposed distribution of segments it self speaks the truth.

| S.No. | Particulars | Jammu Region | Kashmir Region | Ladakh Region | Remarks |
|-------|--|-----------------|----------------|---------------|--|
| 1. | ***Population as per 1981 CENSUS | 27,18,113 | 31,34,909 | 1,34,372 | ***2001 Census figures show the population of Jammu Region as 4395712 souls and the voter lists as made for Sep/Oct 2002 Assembly Elections showed 28.92 Lac voters for Jammu region where as the population for Kashmir Region as per 2001 census has been shown as 5441341 souls as against only 25.46Lac Voters in 2002. Hence the census figures of 2001 are not dependable. |
| 2. | Geographical area (excluding POJK) Sq. Km | 26,293 | 15,948 | 96,701 | |
| 3. | Area Under Forest Sq. Km. | 12,050 | 8,115 | 17 | |
| 4. | % Forest Area | 45. 83 | 50. 88 | 0. 02 | |
| 5. | Road Network upto 1987 in Km | 3500 | 4900 | | |
| 6. | % Area covered by Roads | 18 | 40 | | |
| 7. | Area other than forest Sq. Km | 14,243 | 7,833 | | |
| 8. | Proportionate units of elected members in Legislative Council as per Section (50) of Constitution of J&K State | 14 ⁺ | 12 | 2 | |
| 9. | Present strength of segments in Legislative Assembly as ordered by Delimitation Commission on 27.04.95 | + 37 ? | +46 ? | 4 | +Jammu region has more elected seats in the Legislative Council but so strangely the Delimitation Commission has kept lesser seats in Assembly for Jammu region |

| S.No. | Particulars | Jammu Region | Kashmir Region | Ladakh Region | Remarks |
|-------|--|---|--|------------------|--|
| 10. | **District Administrative Units (Districts) before October 1947 | 5 Jammu, Kathua, Udhampur, Reasi, Mirpur. There were 2 Jagirs also (Poonch and Chenani) | 3 Anantnag, Baramulla, Muzaffarabad | 1 Ladakh | |
| 11. | Districts in 1994/95 (excluding POK) | 6 Jammu, Kathua, + Udhampur, + Doda, Rajouri and Poonch. | 6 Srinagar, **Badgam, Anantnag, **Pulwama, Baramulla and **Kupwara | 2 Leh, Kargil | The + spread of districts in Jammu Region was much more vast as compared to Kashmir region in 1975 when Sheikh Mohd Abdullah returned to power, But still **three new districts were carved (1-07-1979) in Kashmir Division much before the Wazir Commission Report (much before 3- 1-1984) was submitted to Government. |
| 12 | District Administrative Units as recommended (1-03-1984) by Wazir Commission | 6 + *3=9 Jammu, Kathua, Udhampur, Doda, Rajouri Poonch, *Reasi. *Kishtwar and *Bahu/ Samba | 6 + *1=7 Srinagar, Badgam, Anantnag, Pulwama, Baramulla, Kupwara and *Bandipora | | Wazir Commission (Justice J. N Wazir) was constituted in November 1981 in view of agitations in areas like Kishtwar. |
| 13. | Rational/ Legitimate likely segments in Legislative Assembly out 87 (24 out of 111 have been kept for POK) Keeping in view **Section (4), Sub- Section (2), Clause a (i) to Clause a (v) of J&K Representation of People Act of 1957 | **45 to 47 | **38 to 36 | 4 | **J&K Representation of People Act of 1957 (Act. No. IV), Section- 4, Sub Section –2 Clause – a (i) : Population Clause – a (ii) : Geographical Compactness Clause – a (iii) : Nature of terrain Clause – a (iv) : Facilities of Communication Clause – a (v) : And the like considerations. |

Had the Delimitations been fair, The Position in J&K Assembly would have been different People of Doda, Rajouri, Udhampur, Kathua areas have been more losers :

Likely/ rational distribution of seats in Legislative Assembly of J&K based on data of 1981 ***census (since the population census figures of 2001 & 2011 though have been released officially but the same have not been logically explained to trueness when questioned. In spite of heavy migration from Kashmir Region the new data showed disproportionate, rather unbelievably, large increase of population for Kashmir region over 1981 figures. To quote the .***2001 Census figures show the population of Jammu Region as 4395712 souls and the voter lists as made for Sep/Oct 2002 Assembly Elections showed 28 . 92 Lac voters for Jammu region where as the population for Kashmir Region as per 2001 census was shown as 5441341 souls as against only 25 . 46 Lac Voters in 2002. Hence the data on population for 1981 has been taken here and the same was also available to Justice K. K. Gupta Delimitation Commission in 1994/95) and keeping in view the spirit of J&K Representation of People Act of 1957 and the Constitution of J&K is being demonstrated here through vital statistics . Taking 87 Seats for Jammu , Kashmir and Ladakh Regions & 24 seats for POJK out of total of 111 seats a rational distribution could be : (Since comparison is being made with the order of Delimitation Commission as issued on 27 April 1995, the District Administrative units as existed in 1995 are being referred here) : Table A

District wise distribution of seats in the Legislative assembly as per Last Delimitation (27-04-1995), as it existed before 27-4-1995 and as it should be (as has been arrived at through the exercise as done in Table- B) as per the ground conditions as well as the requirements as laid down in the Representation of the People act of 1957 and as directed through the intentions of Constitution of J&K. Table-B

Table A

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---------------------------------|-------------------------|--------------------|---------------------------|------------------------|---|--|---|--|--|
| Region | District as before 2006 | Area in Square Km. | Forest Area in Square Km. | Population 1981 census | Likely number of seats on the basis of total area | Likely number of seats on the basis of area without forest | Likely number of seats on the basis population as per 1981 census | Average Due Share on the basis of total elected seats in the Legislative Council | Overall average for the District/ Region as of Column 6, 7 and 8 |
| Kashmir | Srinagar | 2228 | 380 | 708328 | 4.38 | 6.95 | 10.04 | Total seats as elected in council | 7.12 |
| | Badgam | 1371 | 481 | 367267 | 2.69 | 3.35 | 5.21 | are just 12 for | 3.75 |
| | Anantnag | 3984 | 2197 | 656351 | 7.83 | 6.72 | 9.31 | Kashmir Region & | 7.95 |
| | Pulwama | 1398 | 729 | 404078 | 2.75 | 2.51 | 5.73 | 14 for Jammu | 3.66 |
| | Baramulla | 4588 | 2677 | 670142 | 9.01 | 7.18 | 9.5 | Region | 8.56 |
| | Kupwara | 2379 | 1651 | 328743 | 4.67 | 2.74 | 4.66 | | 4.03 |
| Kashmir region (excluding POJK) | | 15948 | 8115 | 3134909 | 31.33 | 29.45 | 44.45 | 38.31 say | 31.77 say 32 |
| | | | | | | | | | overall average of Col 9 & 10 say 36 |
| Jammu | Jammu | 3097 | 1339 | 943395 | 6.09 | 6.61 | 13.38 | | 8.68 |
| | Kathua | 2651 | 789 | 369123 | 5.21 | 7 | 5.23 | | 5.81 |
| | Udhampur | 4550 | 1945 | 453636 | 8.94 | 9.79 | 6.43 | | 8.38 |
| | Doda | 11691 | 5848 | 425262 | 22.97 | 21.79 | 6.03 | | 16.99 |
| | Rajouri | 2630 | 1304 | 302500 | 5.16 | 4.98 | 4.29 | | 4.81 |
| | Poonch | 1674 | 825 | 224197 | 3.29 | 3.19 | 3.18 | | 3.22 |
| Jammu Region (excluding POJK) | | 26293 | 12050 | 2718113 | 51.66 | 53.54 | 38.54 | 44.69 say 45 | 47.89 say 48 |
| Ladakh* | Kargil | | | | | | | | overall average of Col 9 & 10 = 46.5 say 47 |
| | Leh | | | | | | | | 2 |
| | | | | | | | | | 2 |

*Ladakh Region: The area and locations are such that for this region the allocation has to be made in a special manner. The area is very large but the inhabited area is very less and hence the area factor can not be so simply applied to in this case. Of course, the population, the means of communication and topography need be given due consideration.

Table B

| S. No | District (Administrative Unit) | As existed before April 1995 out of 76 Seats | As proposed by Delimitation Commission in April 1989 out of revised strength of 87 seats | As ordered by Delimitation Commission on 28 th September 1992 out of revised strength of 87 seats | As ordered by review Delimitation Commission on 27 th April 1995 | Legitimate and fair share as it should be out of true spirit of RPA 1957 and intentions of Constitution of J&K |
|-------|---------------------------------------|--|--|--|---|--|
| 1 | Srinagar | 14 | 10 | 10 | 10 | 8 |
| 2 | Badgam | - | 5 | 5 | 5 | 4 |
| 3 | Anantnag | 15 | 10 | 10 | 10 | 8 |
| 4 | Pulwama | - | 6 | 6 | 6 | 4 |
| 5 | Baramulla | 13 | 10 | 10 | 10 | 10 |
| 6 | Kupwara | - | 5 | 5 | 5 | 4 |
| | Total Kashmir Region | 42 | 46 | 46 | 46 | 38 |
| 7 | Jammu | 11 | 13 | 13 | 13 | 10 |
| 8 | Kathua | 4 | 5 | 5 | 5 | 6 to 7 |
| 9 | Udhampur | 5 | 6 | 6 | 6 | 8 to 7 |
| 10 | Doda | 6 | 6 | 6 | 6 | 11 to 13 |
| 11 | Rajouri | 3 | 4 | 4 | 4 | 5 |
| 12 | Poonch | 3 | 3 | 3 | 3 | 3 |
| | Total Jammu Region | 32 | 37 | 37 | 37 | 45 |
| 13 | Leh | 1 | 2 | 2 | 2 | 2> |
| 14 | Kargil | 1 | 2 | 2 | 2 | 2> |
| | Total Ladakh Region | 2 | 4 | 4 | 4 | 4>5 |
| | Total J&K Excluding (POJK) | 76 | 87 | 87 | 87 | 87 |

Since the micro level data on road distribution and the condition of fairness of roads as well as the distribution of the populated area as well as the forest was / is not immediately forthcoming for all the Districts of J&K (at least upto Tehsil level) the exercise done may require adjustments upto 8 to 10 % of the indicated seats in the legislature at the district level with in a Region (Jammu or Kashmir) but the overall distribution of seats at the Regional Level will not show a variation of more than 5% on the plus minus side of what has been proposed (45 for Jammu Region and 38 for Kashmir Region) when a regular exercise is done, of course with the participation of those who have a rational mind on the subject to think beyond local personal motive

(xxix). It was around 05-10-1994 that Justice G.A Kuchai also resigned from the Delimitation Commission (some people opined that it was due to threats from Hizbul Militants. Any how he did say some thing like that he was more for the local cause and sentiments.

The targeted date of 03-10-1994 was left far behind. Justice Kuchai was replaced by Sitting Judge Bilal Nazki and the Delimitation Commission started 3 day sitting at Jammu from 10-04-1995. A.R. Rathar, A.M. Sagar, Shabir Ahmd Salaria (all from N C met the commission) met the Commission and fully endorsed it's 28-09-1992 order. They criticized the attitude of T N Seshan. Other leaders like Chaggar Singh of BJP too met the Commission and repeated their earlier suggestions. Chaggar Singh suggested that atleast 42 MLAs need be distributed over Jammu Region.

(xxx) The Delimitation Commission still did not do the formality of visiting atleast some district head quarters afresh . Like in the past suggestions were made by some people to DC to revisit.

(xxxi). Delimitation Commission did not venture into the ground realities . Dy Election Commissioner as member too fell flat before the Kashmir Centric approach. The K. K. Gupta Delimitation Commission finalized the delimitation order (it was no doubt a copy of the 28-09-1992 proposals of the commission as regards the vitals) on 27-04-1995 (published in the extraordinary issue of the State Gazette 28-04-1995) delimiting the Assembly Segments thereby putting a final seal on distributing 46 segments over Kashmir Region, 37 over Jammu Region and 4 over Ladakh Region. This order ,a carbon copy of earlier order dated 28-09-1992 , in a way made mockery of resentment shown by T. N. Seshan that had reflected from the spirit of Election Commission

order of 9th September 2004 that had said : “ The Election Commission of India hopes and trusts that the proceedings of the J&K Delimitation Commission will be carried strictly in consonance with the letter and spirit of the provisions of the J&K Constitution and J&K Representation of people Act 1957”. How did CEC allow the DC REPEAT the earlier order, how could Law Ministry not find any deficiency worth law points in the report / order in the light of the contents of J&K Constitution and so particularly Section- 4 of the J&K RPA of 1957 would always be million \$ questions. No doubt no representing leader or party from Jammu Region too also did not do that serious an exercise on the details of ground positions and points of law worth putting a pressure that could force the Justice K K Gupta Commission to come out of the pressures of Kashmir centric pressures that also must be coming from New Delhi. No political party, even BJP did not present any demand or data demanding more MLAs than Kashmir Region, any proposal that was made demanded less than Kashmir region. It was only in 1990s that the some demands for plus 40 were made.

Section -141 of J&K Constitution empower the Legislature to make provision with respect to elections to Legislature.- Subject to the provisions of this Constitution the Legislature may from time to time by law make provision with respect to all matters relating to or in connection with elections to either House of the Legislature, including, the preparation of electoral rolls, the delimitation of constituencies, appointment of election tribunal, and all other matters necessary for securing the due constitution of the two Houses & Section-142 puts a bar to interference by courts in electoral matters.-Notwithstanding anything in this, Constitution- (a) the validity of any law relating to the delimitation of territorial constituencies for the purpose of

electing members of the Legislative Assembly or the allotment of seats to such constituencies, made or purporting to be made under section 141, shall not be called in question in any court It could be seen that the Law made could not be challenged but incase the Delimitation is not as per law made it could be surely challenged. And the Delimitation order of 1995 was surely not in line with the Constitution of J&K and the basis laid down in SECTION- 4 Sub Section-2 of J&K Representation of Peoples Act (Act No : IV) of 1957 . This could well be seen from the data exercise done by me and presented through media right from June 1992 and during the period Justice K K Gupta Delimitation Commission was on job. Had the political leadership picked the treads, constitutional injustice to the people of backward and distance areas would have been undone.

O- Unfair use of legislature to defer Delimitation till 2031

This has not been the end. Another game was played to avoid Delimitation till 2031: A simple opportunity was seized by the Kashmir Valley centric mind set of the governing centers of J&K when it was laid down that the number of MPs in Indian Lower House (Lok Sabha) would be reviewed only after 2026 AD. J&K Assembly too, that had a large majority of sitting NC MLAs as well as was enjoying the benefit of unfair delimitation done in 1995, amended Section-47 Sub Section-3 of J&K Constitution by the Constitution of Jammu and Kashmir (Twenty-ninth Amendment) Act, 2002, S. 2. laying down that ; “ Upon the completion of each census, the number, extent and boundaries of the territorial constituencies shall be readjusted by such authority and in such manner as the Legislature may by law determine : Provided that such readjustment shall not effect representation in the Legislative Assembly until the dissolution of the then existing Assembly: Provided that until the relevant figures for the first census taken after the year 2026 have been published, it shall not be necessary to readjust the total number of seats in the Legislative Assembly of the State and - the- division of the State into territorial constituencies under this sub-section” :: Justification extended was that number of seats for Legislative Assembly had already been increased from 100 to 111 through a constitutional amendment in 1987. But ,the restrictions on Delimitation were also inserted with otherwise intentions by Kashmir centric leadership / strength in Legislature since any new Delimitation Commission for assembly segments of the Legislative Assembly would have found it difficult to keep any more 37 seats in the assembly for Jammu region

and 46 for Kashmir Region in the light of facts like the 1984 recommendations of Justice J. N. Wazir Commission (that recommended in 1984 nine Districts of Jammu Region and only 7 Districts of Kashmir Region)Province, Section-50 of J&K Constitution providing 14 elected MLCs in Jammu Region and only 12 in Kashmir Region, Jammu Region still having 4 Districts and two Jagirs in comparison to just 2 left over districts with Kashmir Region after Oct 1947 invasion by Pakistan and considerations like geographical compactness, terrain and means of communication totaling tilting the balance towards Jammu Region. Providing 4 new districts as against only one recommended by Wazir Commission (1984) wef 1-04-2007 to Kashmir region and only 4 as against 3 recommended by Wazir Commission to Jammu Region by Ghulam Nabi Azad lead Congress – PDP Government was another attempt made to fabricate the statistical scales.

P- Backward and underprivileged denied fair treatment

Fair treatment in the field of Development as well as in the Legislature has been denied to the poor, backward and distant place subjects of J&K : In 1947 Jammu Province of Maharaja Hari Singh had Five Districts namely Udhampur (5 tehsils), Jammu (four tehsil), Kathua (3 tehsils) , Mirpur (three tehsils) and Reasi (two tehsils) as well as two Jagirs of Poonch & Chenani. Where as Kashmir Province had only three districts ie Anantnag (four tehsils) , Baramulla (three tehsils) and Muzaffarabad (three tehsils). Srinagar was a tehsil of Anantnag then and Uri was a tehsil of Muzaffarabad.

After 1947 Accession with India till 1978 the Jammu Province had 6 districts (Udhampur, Jammu, Kathua, Doda, Rajouri and Poonch). Similarly Kashmir Division that was nearly half the area of Jammu Division had 3 Districts (Srinagar, Anantnag and Baramulla). Sheikh Abdullah head J&K Government in 1979 raised the number from 3 to 6 districts in Kashmir Region by reducing the area of the districts .

In view of the multi-dimensional inter-regional contradictions Government of J&K had set up Gajendragadkar Commission in 1967. Gajendragadkar Commission had observed that the main cause of irritation and tension was the feeling of political neglect and discrimination from which the certain regions (Jammu and Ladakh) suffered. Gajendragadkar Commission further observed that even if all the matters are equally settled, there would still be a measure of discontent unless the political aspirations of the different regions are satisfied.

After Poonch agitation of 1978-79 and localized agitations

on the issues of development and employment in the districts of Udhampur and Doda the Government of Jammu & Kashmir had set up a Commission headed by Justice Janki Nath Wazir. Wazir commission was appointed on Nov 12, 1981 for studying different issues including rationalisation of Administrative Units (Districts). Justice JN Wazir incidentally also had vast experience on J&K affairs as he also headed the first regular Delimitation Commission as well.

Wazir Commission in 1984 had recommended 9 districts Units for Jammu Division as against seven for Kashmir region Surely any new study further if done would not have reduced the number of three new districts proposed by Wazir Commission for Jammu Division, rather the number surely would have increased further if any new criteria is adopted for creation of more districts to redress the grievance of people even from Kashmir Region. Total areas (in square kilometers) and areas without forest for different districts as they existed before creation of 8 new districts w.e.f 1-04-2007 are Doda (11691 / 5843), Baramulla (4588 / 1911), Udhampur (4550 / 2605), Anantnag (3984 / 1787), Jammu (3097 / 1758), Kathua (2651 / 1862), Rajouri (2630 / 1326), Kupwara (2379 / 728), Srinagar (2228 / 1848), Poonch (1674 / 849), Pulwama (1398 / 669) and Badgam (1371 / 890).

After independence New Delhi could not come out from the political pressure of the Kashmir Valley based leadership. Gajendragadkar Commission Report of 1967, reports of Commissions headed by Justice Janki Nath Wazir (particularly report submitted in 1984 by Justice J N Wazir) and the Singhal Committee Report of 1998 did endorse grievances (neglect) of people outside Kashmir Valley.

Although the spread (area) of districts in Jammu Region

was much more vast as compared to Kashmir region in 1975 when Sheikh Mohd Abdullah returned to power. Three new districts (Pulwama, Kupwara and Budgam) were carved (1979) in Kashmir Division even before the Wazir Commission was appointed in 1981. It was only after a very exhaustive study, interactions and ascertained factual positions, Wazir Commission submitted its report on January 3, 1984. The Commission recommended creation of three more districts in Jammu region to be carved out one each from existing Jammu, Doda and Udhampur districts. nine. The Commission also recommended creation of one more district of Bandipore out of Baramulla in Kashmir region raising number of districts in Kashmir Division from six to seven (Wazir commission appeared to be under pressure to nearly accept the 3 districts already created in Kashmir Division by State Government in early eighties).

The Wazir Commission had taken cognizance of area, backwardness, topography, geographical continuity and distribution of population. Area wise (excluding POK and allied areas) Jammu region has 26,293 sq. km. Kashmir region 15948 while Ladakh topping the list with 96,701. At times when Wazir commission was on job road network was nearly 4900 Km in Kashmir Division as against less than 3500 km in Jammu Division. In view of more backward areas in Jammu region creation of three more districts was recommended as against only one for Kashmir Division where 3 districts had already been carved out of District of Anantnag (Anantnag and Pilwama), Srinagar (Srinagar and Badgam) and Baramulla (Baramulla and Kupwara) much before the Wazir Commission had submitted the report. Even the original Districts of Baramulla, Anantnag and Srinagar were very very small in comparison to the district of Doda. The total combined area of Baramulla and Kupwara districts was 6977 sq kilometers where as that of

Doda district was 11691 sq kilometers. Even the area of Doda district excluding forest area was 5843 sq kilometer and that Baramulla Kupwara combine excluding forest was only 2639 sq kilometers. Area of Kishtwar tehsil of Doda District was 4550 sq kilometers. Those who had kept the Wazir Commission report under the carpet for over 20 years have surely done a great injustice to the people of far flung areas. Kishtwar and Bhadarwah Tehsils of Doda districts were the poorest of the poor areas of J&K inspite of the fact they had the major portion of forest wealth of J&K and at least half as large a tourism potential as the Kashmir valley has.

In general the developmental plan funds and other allocations are made by Government taking District Administrative unit / Community development block as the basis. The recommendations of the Wazir Commission if accepted would have made the Jammu Division entitled for more fund allocations in comparison to Kashmir Division. Implementation of a report like 1984 Justice J.N. Wazir Commission Report in time and constitution of a new impartial Delimitation Commission for reorganization of single member assembly segments of J&K Legislative assembly would have surely placed 'Dogriat' ahead of 'Kashmiriat'. Creation of new districts also has direct bearing on the assembly seats. Inview of the Government of J&K creating three more districts in Kashmir region over and above only one (Bandipora), those who are demanding carving out more districts out of some areas of Doda, Kathua, Rajouri and Udhampur Districts of Jammu province in addition to already carved districts of Reasi, Kishtwar, Ramban and Samba surely have some logic. May be a rational study if done, atleast 2 to 3 more new districts could be recommended for Jammu Region of J&K going by the proportions.

Q- Fair delimitation will have to be done one day

The Kashmir Valley centric leader well understood that it would not be that easy in future to manipulate the delimitation commissions. Hence 29th Jammu & Kashmir Constitution amendment Bill was passed in the year 2002 amending Sub - Section 3 of section 47 of Constitution so that no Delimitation Commission could be constituted only after 2031 (census after 2026). This way the strength of Jammu & Kashmir Legislative Assembly has been divided into three parts atleast upto 2031 with Kashmir Region playing the role of Big Brother that is beyond the basic spirit of the original constitution. Not only this even Section-49 of J&K Constitution too has been made practically in operative till 2031 as neither the number of SC seats can not be changed nor can relocated as per the RPA 1957. This too has more negative effect on the people belonging to Jammu Region. So to apply corrections a Delimitation Commission should to be constituted under Sub -Section (2) of Section 47 of J&K Constitution RPA 1957 J&K Constitution needs to be amended

Demands for setting up a Delimitation Commission for relocation of number, extent and boundaries of single member Assembly Segments of J&K Legislative Assembly (MLA) have been made more by Jammu based political groups. Leaders from Congress, National Conference and infant J&K Peoples Democratic Party have not vociferously made such demands. The leaders and people from Kashmir Valley have shown very less concern for constitution of a Delimitation Commissions since so far the balance of seats allocated in the J&K Legislative assembly has all along been kept tilted towards Kashmir Valley.

It is sure that any fair delimitation, if done, would tilt the

balance towards the Jammu Region. To cover up the wrongs done number of the Districts in Jammu and Kashmir regions have been made 10 each w.e.f 1-04-2007 just to give a fabricated face lift to vital parameters that matter in Delimitation but the truth as laid in Section-50 of J&K Constitution will still keep on irritating.

People should hope that new Delimitation Commission, when constituted, for reorganizing single member segments in Legislative assembly would work under no pressure and shall undo the mistakes as were done by the earlier Commission in mid nineties. In case the Delimitation Commission would work honestly the backward distantly placed areas like the ones falling in Doda, Kathua, Rajouri, Udhampur , Kupwara, Kargil / Leh districts would surely see more MLAs under the provisions of J&K representation of People Act 1957. Jammu Province's share out of present 87 seats (111 less 24 kept for POJK) would be nearly 45 and that of Kashmir Valley around 38. J&K Legislative Council already has 14 elected MLC's from Jammu Region as per Section 50 of J&K Constitution where as Kashmir Valley has only 12 elected MLC's seats in the Legislative Council.

The Ladakh Region of J&K State has a unique position and vital statistics. Position is quite evident from the number of Districts, Divisions , Tehsils, sub Tehsils (niabats) and Panchayats the Ladakh Region has and that is surely due to unique geography and inhabitation the region has . It will be worthwhile to have a brief but pointed look at the vitals of Ladakh region here.

Ladakh Region of J&K is the most remotely placed and tough terrain area of J&K. Most of the area of the State of Jammu and Kashmir as occupied by Pakistan in 1947 and China in 1962 is from Ladakh Region of J&K of pre 1947 days. The trackable areas falling in two districts range from 7500 ft AMSL to 16000 ft. Pakistan had occupied in

1947/48 78,114 sq. km of Ladakh Region and later in 1962 China occupied 37,555 sq.km of the state from Ladakh Region. In 1963 Pakistan leased out 5180 sq. kms of the area (78114 sq km) as occupied by it in 1947 to China. So presently only around 61000 -63000 sq km area is being operated upon the LAHDC Leh and LAHDC Kargil.

Ladakh region had a population of 134372 as per 1981 Census. The Population of Leh District was 68380 and Kargil District was 65992. There were 2 Assembly Constituencies in Ladakh Region in 1981. Ladakh region was a single District before 1979. Kargil District was carved out in Ladakh Region vide Govt. order no. SRO-306 dated 6-6-1979. So, the number of districts in Ladakh Region increased to 2.

Present Leh District has 3 Tehsils (Leh, Sumoor and Khaltshi) and 9 Community Development Blocks namely Leh, Khaltshi, Nyoma, Durbuk, Kharu, Nubra, Saspol, Panamic and Chuchot. Leh is the only township of the district. Politically, the district is governed (since 1995) by the Ladakh Autonomous Hill Development Council, Leh having a strength of 30 councilors (26 elected and 04 nominated) which is headed by the Chairman/Chief Executive councilor of the rank of State Cabinet Minister under provisions of the Constitution of India/Jammu and Kashmir. Present area of Leh District under reference being handled by LAHDC Leh is around 45000 to 46000 Sq Km. Leh town is located at a distance of 434 Kms by road from Srinagar and 474 Kms from Manali (Himachal Pradesh). Leh has 112 inhabited / census villages and one un-inhabited village. The average distance of the block headquarter from Leh is 180 Kms. Bus communication is very poor. Border roads organization maintains most of the high way connecting the block head quarter. Whole of the Leh District has been declared as a tribal districts and has more than 90 panchayat halqas. It is

due to special conditions there that the District also has three Sub Divisional Magistrates (Nobra, Khaltsi and Nyoma).

Earlier to 1995 Delimitation Leh District had only one member in the Legislative Assembly. The 1995 Delimitation order increased the MLAs in Legislative Assembly from one to two. District has two seats in Legislative Assembly (Leh and Nobra) and one in the Legislative Council of J&K assembly.

Nearly whole of Kargil District has hilly topography. Kargil is mountainous area with three parallel ranges of the Himalayas, the Zaskar, the Ladakh and the Karakoram. Between these ranges, the Shayok, Indus and Zaskar rivers flow and most of the population lives in valleys of these rivers. It is full of rocky mountains and is snowcapped. Kargil district has four high level natural valleys (Upper Sindh Valley or the Kanji Valley, the Indus Valley, the Drass Valley and the Suru Valley). The Kargil district comprises of 129 villages apart from the Kargil town. Out of these 127 are habited while two remain inhabited. The Kargil district is almost devoid of natural vegetation due to the desert type of climate. But the climate here is milder than that in Leh. Drass a mini town in Kargil could see as low a temperature as minus 60 degree C. The only crop that is grown here is wheat. Irrigation is provided through the channels formed by the melting of glaciers. The area administered by LAHDC Kargil is around 14000 to 15000 sq km. Kargil and Zaskar are two Assembly constituencies and Kargil has one member in Legislative council. Zaskar is about 220 Km from Kargil.

The district of Kargil is inhabited by various scheduled tribes. Padam (Zaskar) a beautiful inhabitation area of the district is separated from Kargil by 14000 Ft high pass. Zaskar is surrounded by Leh, Kargil, Himachal. Road from Kargil to Padam (Zaskar) started in 1974 and was traffic worthy in

1981. Still the road condition is not that good. 1980s. Most of the areas have only Populus tree plantations. The route from Kargil to Padum via Penzi La is the only motorable road to reach Zangskar valley, which remains open only from June to September. The Kargil to Padum Road was completed in the late 70's. Idea of the vastness of the area can be had from the fact that Padum is the sub-tehsil of Zangskar which is 464 kms from Leh and 234 kms from Kargil. Once the Capital of the Zangskar valley, today it is the administrative headquarter of the 'mini region' and probably the most populous settlement of Zangskar. Stakrimo Gonpa on a hill side and the 10th century monument carved on a huge rock near the river bank, provides an indication that the area was influenced by Buddhism since ancient period.

Ladakh Autonomous Hill Development Council Kargil was installed in July 2003. Kargil district is consisting of nine Community Development Blocks. Ladakh is connected to the main land through two roads namely Leh-Srinagar highway and Manali- Leh Highway. The two roads remain open only during summer months and during the winter it remains closed for more than 6 to 7 months due to closure of the passes (Zojila, Rotang Pass),

Earlier to 1995 the Region had only two MLAs in Legislative Assembly and the 1995 Delimitation order increased the number of MLAs in the Region from 2 to 4. So, going by the data of population and areas one may say that the region has been given quite fair representation in assembly by the 1995 Delimitation order looking at the J&K Representation of the Peoples Act 1957. But still there may be some scope for adding one more MLA to the area . May be it was due to distant representation in Assembly that the region at local level remained so much neglected.



Daya Sagar is a free-lancer scribe. He freely and critically covers social, education, economy, international relations, human rights, and subjects like J&K affairs/history of J&K. He has over 900 articles published in different newspapers/magazines (published from Srinagar City, Jammu City, Delhi, Jaipur, Ahmedabad, Bhopal, Bangalore, and other cities) over the last 22 years. He is an Engineer

by profession with a Post Graduate Degree (1971). Professionally also he has excelled as Engineer. He has worked in Private as well as Public Sector for 34 years.

Sagar is an original thinker. He is working in the voluntary sector for the social/human needs and rights of the under privileged/needy since 1980. He has remained associated/is associated with social organisations (even headed some organisations) like J&K Samaj Kalyan Kendra primarily working for the welfare of the Hearing Handicap)/Handicapped/underprivileged, Jammu Gramin Vikas Sanstha (working in the rural health and education sector), etc. Sagar is an Advisor to International Human Rights Protection Council, Jammu (J&K). He has been President of J&K Confederation of Voluntary, Social and Charitable Organisations. Daya Sagar has the distinction of having promoted the idea of Social Audit through a voluntary group—Group Research and Audit on Social Programmes (GRASP INDIA) in 1990s.

He belongs to a family that has remained associated politically and administratively with the times of Maharaja Hari Singh Sheikh Mohd Abdullah/pre 1953 days/times of Bakshi Gulam Mohammed/Shams-u-Din/G. M. Sadiq/Sayed Mir Qasim/Sheikh Abdullah 1975 once again. His associate families had/have many bureaucrats, social activists, political leaders including Ministers and legislators. He is always available for work for the cause of humanity. The cause of the rural, backward and economically weaker sections of society is priority number one for him. He is particularly working on promoting the concept of HUMANITARIAN COEFFICIENT (HQ) along with Intelligence Coefficient (IQ). Since no intelligence is of use to Humanity unless it is used for the WELFARE/CAUSE of Others. VOICE of the unheard Carries awareness to remotely placed Indians for standing against the divisive designs of those who promote caste or religion based politics:

Books:

- J&K Affairs: Mishandled-Misquoted—Miscarried
- Jammu and Kashmir State: 1947 Accession: Events Thereafter
- Article 370 – Law and Politics-Daya Sagar Looks into the Mirror of A G Noorani
- A Look Through the Mist: PDP Self Rule
- Jammu Kashmir- A Victim (A Victim of Personal Ambitions and Mishandling by the Core Indian Leadership)