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Demolishing Democracy in Kashmir: Relating the Theory of Utility

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ABSTRACT

India is the largest democracy in the world where the Government is formed 'by the people, for the people and of the people'; which means the will of the people is supreme and the people of India are sovereign. This concept of democracy was founded upon the essence of Mill's Theory of Utility, as it talked about 'maximum good of maximum people' which later developed into 'establishment of will of the maximum people'. While abolishing the special status, i.e. having a strict federal sovereignty that Kashmir used to enjoy for being a part of India by the virtue of the Instrument of Accession, the will of the people was neglected and many provisions of the Constitution was misinterpreted and misused. This write up attempts to provide an evaluation of the incidents of Kashmir and how the ignorance towards utilitarianism resulted into overthrowing democracy, the Constitution of India and its moralities embedded. To do justice with the subject, literature of theories of justice will be analyzed in order to establish the illegality of it from the very foundation and its adverse effect to the democratic principles, without going into the political need of such happening. The question is not whether the provision is desirable or not, but whether the Central Government could use the temporary and indirect cover of Presidential Rule to permanently affect the federal structure of the India.

Keywords: Arbitrariness, Article 370, Democracy, Procedural equality, Utilitarianism, Special status of Kashmir

I. INTRODUCTION

As per the suggestions of John H. Ely, “. . . democracy is a sort of applied utilitarianism – unfortunately possessing utilitarianism's weaknesses as well as its strengths – an institutional way of determining the happiness of the greatest number”³. A kindred proposition is also put forth by Alexis de Tocqueville:

[D]emocratic laws generally tend to promote the welfare of the greatest possible number; for

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³ John Hart Ely, *Constitutional Interpretivism: Its Allure and Impossibility*, 53 IND. L. J. 399, 407 (1978).

they emanate from the majority of the citizens, who are subject to error, but who cannot have an interest opposed to their own advantage . . . The advantage of democracy does not consist . . . in favouring the prosperity of all, but simply in contributing to the well-being of the greatest number⁴.

The possible link between ethics of utility and a democratic government is sadly taken for granted even by the great British scholars of utilitarian theory, including Bentham, James Mill and J.S. Mill.⁵ The assertion that “. . . utilitarianism, whether as moral or a social doctrine, lacks a psychology and a politics”⁶ is contestable, at least in the classical context of Bentham and the two Mills, but clarification of utilitarian psychology and politics is certainly required. Moreover, all the aforementioned writers take an example of America to epitomize their notion in thesis. Ely’s remarks, on the other hand, are much more general in nature, which is:

[W]hat is important to an attempt to understand the seemingly inexorable appeal of democracy in America is that whether we admit it or not . . . we are all, at least as regards the beginnings of our analysis of proposed governmental policy, utilitarians. There may be, indeed there must be, further steps, but the formation of public policy, at least in this country, begins with the questions how many are helped, how many hurt, and by how much.⁷

I am not insisting that utilitarianism is the only conceivable ethical foundation for democracy. Democrats need not be utilitarians. But utilitarian ethics are sufficient for democratic government if inter personal utility comparisons are ruled out.

Utilitarians are inevitably democrats if the conditions of interpersonal comparability are checked and are, therefore, absent. There is no contingency on any cost-benefit calculation for comparison between democracy and other forms of Government like that of monarchy, anarchy or a dictatorship. If the inefficiency of utility information is such that interpersonal comparisons cannot be made, then superfluous it is to do any further calculation. The notion in hand is that a utilitarian calculus in addition with aforementioned deprived utility information is a conspicuous implication that the consequences of the optimism of democratic Government. Democracy is necessary to utilitarianism under those circumstances.

⁴ ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 247-249 (P. Bradley ed. 1945)

⁵ See generally, JEREMY BENTHAM, *FRAGMENT ON GOVERNMENT* (1776); see also, *Constitutional Code*, in 9 *WORKS OF JEREMY BENTHAM* (J. Bowring ed. 1843); James Mill, *Essay on Government*, in *UTILITARIAN LOGIC AND POLITICS* (J. Lively and J. Rees eds., 1978); John Stuart Mill, "De Tocqueville on Democracy in America" (1835-40) and "Considerations on Representative Government" (1861), in *Collected Works of J. S. Mill*, ed. J. Robson (Toronto and London: University of Toronto Press and Routledge & Kegan Paul, 1977), vols. 18 and 19

⁶ AMARTYA K SEN AND BERNARD WILLIAMS, *UTILITARIANISM AND BEYOND* 21 (1982).

⁷ JOHN HART ELY, *supra* note 1, at 407

II. UTILITARIANISM AND PROCEDURAL EQUALITY

If every person's function of utility is defined over a set of alternative feasible policy, the classical utilitarian philosophy suggests that society is supposed to choose alternative x over alternative y, when the sum of personal utilities at x are same, if not greater, than the corresponding sum at y. The alteration of the definition of personal utility does not change the procedural mechanics of that calculus, unlike the normative appeal of the notion and the Procedural equality is defined as the combination of these four conditions: "[F]or any given domain of admissible set of personal utility functions, procedural equality is equivalent to the combination of strong anonymity, strong neutrality, strong Pareto principle, and strong monotonicity"⁸

III. PROCEDURAL EQUALITY AND DEMOCRACY

When the notion of procedural equality is given a utilitarian interpretation, it provides an equal opportunity to each citizen to effect the societal outcome in such a restricted sense so that happiness of each person will be given same value as any other person's happiness on a per unit or marginal basis. In a perception of democratic values, the elucidation of the procedural equality is disputable as the citizens are not treated equally, provided they deem to share an identical cardinal comparable personal utility functions.

Although, it seems that utilitarian ethics is unable to apprehend the general democratic notion of procedural equality, it is to be argued that utilitarian philosophy is that foundation of essence of democracy and, obviously poverty in utility information causes reduction in democratic conception.⁹ It would be fallacious to conclude that, apart from the exactitude of utility information, there is any normative discrepancy between utilitarianism and democracy over equality. A complete utilitarian calculus implies rich cardinal comparable utility information but democratic voting rules efficaciously negate the empirical significance of cardinal comparability and estimate the utilitarian calculus on the grounds of absolutely ordinal utility information.¹⁰ The democratic inception of procedural equality can also be termed, by

⁸ Strong monotonicity need not be independently specified since it is implied by the combination of strong neutrality and strong Pareto in the context of utilitarianism. But in contexts where personal utility information is too poor to support the generation of true utilitarian social judgments, strong monotonicity is no longer implied by strong neutrality together with strong Pareto, and so must be specified independently. It should be noted that the combination of strong monotonicity and strong neutrality implies strong Pareto.

⁹ Criticism of procedural egalitarianism under the light of democratic jurisprudence in discusses in many places. See generally, Robert A. Dahl, *On Removing Certain Impediments to Democracy in the United States*, 45 POL. SCI. Q. 1-23 (1982); see also, JOHN H. ELY, *DEMOCRACY AND DISTRUST* (1980).

¹⁰ JONATHAN RILEY, *THE ROUTLEDGE GUIDEBOOK TO MILL'S ON LIBERTY* 239 (2nd ed. 2015).

reasonable rationale, as what might be termed a purely ordinalist-utilitarian genesis.¹¹

The rich cardinal comparable personal utility information, which is a proper foundation of utilitarianism, have more of a factual suppositions than ethical ones. The other utilitarian axioms have a chance a carrying prescriptive appeal to scholars who negate the rich informational condition.

Exclusively, ordinalist procedural equality is more inclined towards capturing the general interpretation of procedural equality of democratic philosophy. The impossibility of recovering any particulars about an individual's happiness afar his ordering of predilection, every individual's contentment experiences the same importance in the societal decision-making processes. Under such situation, utilitarians suggests 'equal treatment and respect' for every individual preferences because of utility information being too less for comparing marginal units of utility. This, though arguably, corresponds to democratic interpretation of procedural equality.

IV. TRANSITION OF THE ETHICS OF UTILITARIANISM TO POLITICS OF DEMOCRACY

Even if the relation between ordinalist-utilitarian values and democratic values is accepted, the question as to the version that allows desertion utilitarian calculus encouraging of democratic procedures still sustains. It appears to be requirement of an 'indirect' version of utilitarianism which uses the institutions of democracy to measure the general welfare but the question that pinches is regarding the acceptance of such indirect procedure, discarding familiar utilitarian calculus. The economic burden that will be on the Government to institute such utilitarian calculus and keeping it operational seems to be a likely hypothesis.

If such complication is affirmed by the broad scholars, the will also upheld the thought that the egalitarian social judgments, in terms of practical procedure, must be vested in social institutions.¹² In this regard, if the accession and utilization of any utility information more affluent than purely ordinal utility information involves a more cost-benefit ratio in at least some circumstances, then utilitarianism itself adequately commends dependence upon purely ordinalist decision-making procedures. The principal conjecture is that these purely ordinalist utilitarian institutions can be deemed as democratic institutions. When the acquisition of complete utilitarian calculus is too costly then the democratic government is works as a set of

¹¹ See, KENNETH J. ARROW, SOCIAL CHOICE AND INDIVIDUAL VALUES 21-22 (2ND ED. 1963); Kenneth J. Arrow, *Some Ordinalist-Utilitarian Notes on Rawls's Theory of Justice*, 70 j, PHILOS. 245-67(1973); *see also*, Kenneth J. Arrow, *Extended Sympathy and the Possibility of Social Choice*, 67 Am. Econ. REV. 219-25(1977).

¹² KENNETH J. ARROW, *supra* note 14, at 106-7.

procedure to calculate the general welfare.

On the condition of uselessness of interpersonal utility comparisons, any utilitarian society, for all empirical impetus, is limited to the exclusive ordinal utility information. Such informational constraints cause transition of utilitarians into democrats. Even if the constraints are removed, utilitarians will become democrats by choice to meet the proper ratio of cost- benefit of the procedure. This can reasonably be the cause in certain conditions like that of large scale elections where the issues are concerning about general expedience. If acceptance is given to the particular scenarios where clustered welfare can be expanded by restoring a full-blown utilitarian calculus with purely ordinalist utilitarian procedures, then utilitarians will correctly become democrats in those conditions.

If in case of determining public issues, efficiency of democratic policies is held to be more than a utilitarian calculus, and then a more complex version of utilitarianism emerges. This more composite version of the theorem relents societal judgments as if every individual of society has a sub-ranking system that ranks his ordinal predilection ranking above his cardinal comparable utility ranking in certain circumstances.¹³ Utilitarians capability to do a reasoned contemplation makes them democrats, as such deliberation convinces them of the general convenience of democratic procedure for the at determinations hand.

V. KASHMIR PROPAGANDA: VIEWING THE SPECIAL STATUS

During 1947, the State of Jammu and Kashmir was the largest of all the 562 princely states in the Indian subcontinent.¹⁴ The rulers of Jammu and Kashmir belonged to upper-caste Hindus from the Jammu region, namely Dogras, founded by one of many local princes in the court of Ranjit Singh – Gulab Singh. When Ranjit Singh died, he began to intrigue with British stratagem to erode and consequentially abolish Sikh power.¹⁵ In the late 19th and early 20th century, in all literatures J&K painted a ghastly picture of a selfish, inept realm and Muslim subject population living in inhumane and medieval conditions of penury and maltreatment.¹⁶ After that the situation till time of independence was a bloody and shady story of protest,

¹³ AMARTYA K. SEN, ON ETHICS AND ECONOMICS 80-88 (1987).

¹⁴ Carolyn C. James and Özgür Özmadar, *Religion as a Factor in Ethnic Conflict: Kashmir and Indian Foreign Policy*, in RELIGION IN WORLD CONFLICT 156 (Jonathan Fox and Shmuel Sandler eds., 2006).

¹⁵ SUMANTRA BOSE, KASHMIR: ROOTS OF CONFLICT, PATHS TO PEACE 15 (2003),

¹⁶ PREM NATH BAZAZ, INSIDE KASHMIR 252-253 (1987); *see also*, C.E. TYNDALE BISCOE, KASHMIR INN

SUNLIGHT AND SHADE 79-80 (1922); For further references, *see generally*, MOHAMMAD ISHAQ KHAN, KASHMIR'S TRANSITION TO ISLAM: THE ROLE OF MUSLIM RISHIS (1994).

politics and oppression.¹⁷

At the time of independence, the number of existing princely states existing in India was about 565. Being tied with a system of subsidiary alliance, they were not under direct rule but being of indirect possession.¹⁸

The instrument of accession was a kind of legal document, introduced by the Government of India Act, 1935¹⁹ drafted to beget accession between the princely states and either of the newly formed nations that is India or Pakistan.²⁰ By this the British brought uncertainty in the future of such princely states.²¹

History of the Special Status

After the immediate turmoil during independence three kings, that were the Nawab of Junagadh, Kashmir's Maharaja Hari Singh and Nizam of Hyderabad delayed their process of merging with India. Hari Singh was the great-grandson of Gulab Singh. Mohammad Ali Jinnah, had perhaps suppose that Kashmir, by the reason of its majority Muslim population, would naturally become a part of his country Pakistan. The experience of the developments in Junagadh strengthened his stance that Jammu and Kashmir is supposed to become a part of Pakistan.²² Such notion came to halt, when even after weeks of independence, Maharaja Hari Singh did not initiated the process of merging with Pakistan – causing a forced invasion by tribal Pathans at early hours of 24th October, 1947.²³ Under such circumstances, help of Indian army was sought for with the consideration for Kashmir's accession to India.²⁴

In 1947, when Kashmir gave assent to be acceded to India, the Indian Government gave commitment to holding a referendum to take account of the will of people of Kashmir. The then Prime Minister Pandit Nehru himself termed the great commitment as the proviso to “proviso to the Instrument of Accession of Kashmir”.²⁵ The same was reiterated by many spokesperson of the Union in particular terms. In the Security Council meeting, Mr. G. Ayyangar declared in clear cut terms:

¹⁷ See, SUMANTRA BOSE, *supra* note 18, at 18-30.

¹⁸ RAMACHANDRA GUHA, *INDIA AFTER GANDHI* 44 (2007).

¹⁹ Previously, to accede the princely kingdoms into ‘Federation of India’ as laid down in the Government of India Act, 1935

²⁰ JUDITH M. BROWN. *MODERN INDIA: THE ORIGINS OF AN ASIAN DEMOCRACY* 334 (1984); *also see*, EDWARD LUCE, *IN SPITE OF GODS: THE STRANGE RISE OF MODERN INDIA* 231 (2006).

²¹ B. L. GROVER AND ALKA MEHTA, *A NEW LOOK AT MODERN INDIAN HISTORY* 470 (2015).

²² MAJOR K.C. PRAVAL, *INDIAN ARMY AFTER INDEPENDENCE* 24-25 (1993).

²³ MARIA MISHRA, *VISHNU'S CROWDED TEMPLE: INDIA SINCE THE GREAT REBELLION* 244-5 (2008).

²⁴ RAMACHANDRA GUHA, *supra* note 21, at 68; *also see*, DOMINIQUE LAPPIERRE AND LARRY COLLINS, *FREEDOM AT MIDNIGHT* 448-9 (4th rep. 2000).

²⁵ K SARWAR HASAN AND ZUBEDIA HASAN, *THE KASHMIR QUESTION* 74 (1966).

[T]he question of the future status of Kashmir vis-a-vis her neighbours and the world at large, and a further question, namely, whether she should withdraw from her accession to India, and either accede to Pakistan or remain independent, with a right to claim admission as a member of the United Nations - all this we have recognized to be a matter for unfettered decision by the people of Kashmir, after normal life is restored to them.²⁶

This stance of India also caused acceptance of the Security Council Resolution²⁷ and the UNCIP Resolutions²⁸ which provided for a polling to be held under the auspices of a UN appointed administrator in Kashmir. Though in early years, India fulfilled, or at least pretended to fulfil, but as the passing of time, the Government differed from its position and negated the possibility of such plebiscite.²⁹ Though untenable in nature, Mr. Krishna Menon took defence of *rebus sic standibus* and the change in the situation by the cause of "seizure of Gilgit and other Northern Areas, the formation of the Azad Kashmir Government, Pakistan's membership of the military pacts and its parleying with China on the of a section of Kashmir's border with Sinkiang.

Creation of Pseudo Autonomy

By the virtue of the Instrument of Accession, the Constituent Assembly enumerated Article 370 in the Constitution, as a temporary provision which can be later repealed with special circumstances and abiding by democratic procedure. It made promise to the State of J&K that—

1. Although, Article 238, which is now repealed, made J&K a state of the Union of India, provisions are not enforceable to the state to the level as it is on other states.
2. Only Article 1 and Article 370 can be imposed on the state of State of J&K by a presidential order with adequate ratification of the Government of J&K, in the matters that concerns the Instrument of Accession.
3. Under Article 370(1) (b) the President could also pass ordinances in the matters that does not involve the Instrument of Accession, subjected to the concurrence of State Government.
4. Under Article 370(1), the dissolve of the Constituent Assembly will cease the power of the State Government to give assent to the orders passed by President and also of the Constituent Assembly to revise such orders.

²⁶ *Id.* at 144.

²⁷ S.C. Res. 286 (Apr. 21, 1948).

²⁸ UNCIP Res. 1948/1100 (Aug. 13, 1948) and UNCIP Res. 5/1196 (Jan 5, 1949).

²⁹ K. SARWAR HASAN AND ZUBEIDA HASAN, *supra* note 28, at 381.

5. Article 370(3) authorises the President to make abrogation or amending order, with a mandatory recommendation of the State Constituent Assembly.

6. In the current situation, Article 370 cannot be touched as it necessitates the mandatory recommendation of the State Constituent Assembly, which now stands dissolved.

Despite the promises and guarantees embedded in the Constitution of India, to the people of J&K and the State of J&K, the President passed 42 orders during 1950 to 1986 to amend or revise even the matters that mandatorily needed concurrence from the State Constituent Assembly, which was then dissolved.³⁰ The Constitution of Jammu and Kashmir faced various crucial difficulties for such presidential orders, such as restricted powers of State Legislature and extended legislative powers of Union, application of financial provisions, provisions regarding All India Services, CBI, emergency provisions, and regulation of the judiciary of the Constitution of India. The Presidential order also put the state at more disadvantageous position than other states.³¹ Vide the Presidential order dtd. 30th July, of 1986, the application of Article 249 of the Constitution of India was extended on merely the basis of a Rajya Sabha resolution and through obtaining assent from then Governor of the State, instead of taking into account of the opinion of the democratically elected legislature.

Judicial Precedence

The President's power to pass such order of above mentioned nature is reviewed and interpreted by the apex court three times previously. The first instance was the case of *Prem Nath Koul v. State of Jammu and Kashmir*³². The constitutional bench observed that the framers of the Constitution gave great importance to the second clause of Article 370. Ironically, in one later case titled *Sampat Prakash v. State of Jammu and Kashmir*³³, the Supreme Court gave a contrary opinion, without even referring to the only previous case which was *Prem Nath Koul*. It upheld the President's power to pass such orders even without the concurrence of State's Constituent Assembly. Its observation was mainly focused on a situation where assent is to be given when Constituent Assembly was yet to be framed, but overlooked the main situation which giving the same assent after dissolution of the Constituent Assembly. The judgement allowed the Central Government to extend the applicability of the provisions of the Indian Constitution to the State of J&K. Such interpretation caused erosion of Article 370. Tragically,

³⁰ Gazala Peer and Javedur Rahman, *An Unpleasant Autonomy: Revisiting the Special Status of Jammu and Kashmir*, ECONOMIC AND POLITICAL WEEKLY, June 9, 2012, at 72, 73.

³¹ For example, to retain presidential rule in Punjab the Parliament had to amend the Constitution itself four times, but in case of J&K it was imposed and is being continued solely on the basis of the executive orders.

³² AIR 1959 SC 749 (India).

³³ AIR 1970 SC 111 (India).

while deciding as to who the Government is while giving concurrence under Article 370, the Hon'ble Supreme Court again overlooked the ratio of *Prem Nath Koul* and held that "Saddr-e-Riyasat" was the same as the appointed governor.³⁴

The Constitution (Application to Jammu and Kashmir) Order, 2019: Final Nail in the Coffin

After all the years of consistent encroachment and violation of the previously made promise, in 2019 the Central Government took the bold and shameless step of completely abrogating the Article 370 and thus, demolishing the special status of Kashmir. On 5th August of 2019, The Constitution (Application to Jammu And Kashmir) Order, 2019³⁵ came into force – adding a fourth clause in Article 367 for the purpose of interpretation, which is:

(4) *For the purposes of this Constitution as it applies in relation to the State of Jammu and Kashmir—*

(a) *references to this Constitution or to the provisions thereof shall be construed as references to the Constitution or the provisions thereof as applied in relation to the said State;*

(b) *references to the person for the time being recognized by the President on the recommendation of the Legislative Assembly of the State as the Sadar-i- Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office, shall be construed as references to the Governor of Jammu and Kashmir;*

(c) *references to the Government of the said State shall be construed as including references to the Governor of Jammu and Kashmir acting on the advice of his Council of Ministers; and*

(d) *in proviso to clause (3) of article 370 of this Constitution, the expression "Constituent Assembly of the State referred to in clause (2)" shall read "Legislative Assembly of the State"*

References in the sub-clause (b) of the newly added clause 4, in nothing but the legislative reflection of the judgement of *Mohammed Maqbool Damnoo* case therefore, obviously is undesirable and ambiguous in nature due overlooking the law laid down in *Prem Nath Koul* case. Such ignorance is, at no reason, a bliss as the latter was the only case that dealt with the matter in hand, unlike other precedents where countless precedents putting the same things exists – making the discussion of all of them an unnecessary burden.

The most ambiguous and frivolous part of the whole ordinance is the last sub-clause that declares that the meaning of Constituent Assembly of the State referred to in clause (2) is same

³⁴ Mohammed Maqbool Damnoo v. State of Jammu and Kashmir, AIR 1972 SC 9 (India).

³⁵ The Constitution (Application to Jammu And Kashmir) Order, 2019, Gazette of India, pt. II sec. 3 (Aug. 5,, 2019).

as the Legislative Assembly of the State. This declaration lacks both scholarly and rational backing up. There exists no such jurisprudence or precedence that interprets the State Legislative Assembly in a same manner as the Constituent Assembly, unless is otherwise provided in the enactment itself. This is so done to do away with Article 370 indirectly, as it was impossible to do directly. The colourable and malicious process was –

1. Giving the power of Constituent Assembly to the State Legislature.

2. As there was Presidential rule, the powers of the State Legislature to make laws was under the realm of the Parliament, which can be conferred on President, and the Parliament can also authorise the President to delegate the same as per the latter satisfaction, which is, conventionally, the Governor of the concerned state.³⁶

3. Under such give circumstances, the power to give concurrence was given to the Governor as being the State Government, and thus the Presidential order had assent of the State Government, that is the Governor only.

Analysis of the Abrogation

1. The whole Presidential order was a piece of colourable legislation. As it is discussed above, the power of the Constituent Assembly is dissolved with the dissolution of the State's Constituent Assembly, which is after the enactment of the Constitution of J&K. Therefore, it is prominent that the existence of Article 370 could not have been diminished directly, therefore, legally it is unconstitutional to deny it indirectly by using loopholes, or rather ambit of broad interpretations, in the Constitutional Provisions.³⁷

2. It is also to be kept in mind that in the delegation of power in accordance with Article 357 (1) of the Constitution of India, is of such a nature that the power of the parliament (or President or its delegate, as the case may be) is same as the State Legislative Assembly, which it also has to follow the restrictions as well. The second proviso of Section 147 of the Constitution of Jammu & Kashmir puts absolute restriction on passing any bill or amendment that seeks change in “. . . the provision of the constitution of India as applicable in relation to the State”³⁸.

The preamble of the J&K Constitution starts with the same word as that of the Constitution of India, that “We, the people of the State of Jammu and Kashmir . . . and to secure to ourselves .

³⁶ INDIA CONST. art. 357, cl. 1.

³⁷ K.C. Gajapati Narayan Deo v. State of Orissa, AIR 1953 SC 375 (India).

³⁸ J&K CONST. § 147.

. . Hereby Adopt Enact and Give to ourselves this constitution”.³⁹ By the rule of interpretation by taking external aid from provisions *parimateria*⁴⁰ the implications will be the same, that is the Constitution of the State of J&K is the will of the people, and hence absolute in a democratic sense.

VI. THE VOTING RULES: ORDINALIST UTILITARIAN PHILOSOPHY OF DIRECT AND INDIRECT DEMOCRACY

Democracy is the process where the law is for the people, by the people and of the people. Upholding such will involves voting either directly by the people (Presidential form of Government), or their representatives (Parliamentary form of Government).

1. Direct Democracy

2. Indirect Democracy

VII. CONCLUDING SUGGESTIONS

1. Comparative Amendment Procedure through Direct Voting

2. Implementation of Referendum

³⁹ J&K CONST. preamble.

⁴⁰ As both the Constitutions are dealing with a similar subject matter, that is governance, and the wordings of the preamble in both the cases are similar in nature. *See, Raees-Uz-Zama v. State NCT of Delhi,*