

APPENDIX I

¹THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR) ORDER, 1954

C.O. 48

In exercise of the powers conferred by clause (1) of article 370 of the Constitution, the President, with the concurrence of the Government of the State of Jammu and Kashmir, is pleased to make the following Order:—

1. (1) This Order may be called the Constitution (Application to Jammu and Kashmir) Order, 1954.

(2) It shall come into force on the fourteenth day of May, 1954, and shall thereupon supersede the Constitution (Application to Jammu and Kashmir) Order, 1950.

2. ²[The provisions of the Constitution as in force on the 20th day of June, 1964 and as amended by the Constitution (Nineteenth Amendment) Act, 1966, the Constitution (Twenty-first Amendment) Act, 1967, section 5 of the Constitution (Twenty-third Amendment) Act, 1969, the Constitution (Twenty-fourth Amendment) Act, 1971, section 2 of the Constitution (Twenty-fifth Amendment) Act, 1971, the Constitution (Twenty-sixth Amendment) Act, 1971, the Constitution (Thirtieth Amendment) Act, 1972, section 2 of the Constitution (Thirty-first Amendment) Act, 1973, section 2 of the Constitution (Thirty-third Amendment) Act, 1974, sections 2, 5, 6 and 7 of the Constitution (Thirty-eighth Amendment) Act, 1975, the Constitution (Thirty-ninth Amendment) Act, 1975, the Constitution (Fortieth Amendment) Act, 1976, sections 2, 3 and 6 of the Constitution (Fifty-second Amendment) Act, 1985 and the Constitution (Sixty-first Amendment) Act, 1988 which, in addition to article 1 and article 370, shall apply in relation to the State of Jammu and Kashmir and the exceptions and modifications subject to which they shall so apply shall be as follows:—]

(1) THE PREAMBLE.

(2) PART I.

To article 3, there shall be added the following further proviso, namely:—

“Provided further that no Bill providing for increasing or diminishing the area of the State of Jammu and Kashmir or altering the name or

¹Published with the Ministry of Law Notification No. S.R.O. 1610, dated the 14th May, 1954, Gazette of India, Extraordinary, Part II, section 3, page 821.

²The opening words have been successively amended by C.O. 56, C.O. 74, C.O.76, C.O.79, C.O. 89, C.O.91, C.O.94, C.O.98, C.O.103, C.O.104, C.O.105, C.O.108, C.O.136 and C.O. 141 to read as above.

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(e) In clauses (4) and (7) of article 22, for the word "Parliament", the words "the Legislature of the State" shall be substituted.

(f) In article 31, clauses (3), (4) and (6) shall be omitted; and for clause (5), there shall be substituted the following clause, namely:—

"(5) Nothing in clause (2) shall affect—

(a) the provisions of any existing law; or

(b) the provisions of any law which the State may hereafter make—

(i) for the purpose of imposing or levying any tax or penalty;
or

(ii) for the promotion of public health or the prevention of danger to life or property; or

(iii) with respect to property declared by law to be evacuee property."

(g) In article 31A, the proviso to clause (1) shall be omitted; and for sub-clause (a) of clause (2), the following sub-clause shall be substituted, namely:—

'(a) "estate" shall mean land which is (a) occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes—

(i) sites of buildings and other structures on such land;

(ii) trees standing on such land;

(iii) forest land and wooded waste;

(iv) area covered by or fields floating over water;

(v) sites of *jandars* and *gharats*;

(vi) any *jagir*, *inam*, *muafi* or *mukarrari* or other similar grant, but does not include—

(i) the site of any building in any town, or town area or village *abadi* or any land appurtenant to any such building or site;

(ii) any land which is occupied as the site of a town or village;
or

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(iii) any land reserved for building purposes in a municipality or notified area or cantonment or town area or any area for which a town planning scheme is sanctioned.¹

¹[(h) In article 32, clause (3) shall be omitted.]

(i) In article 35—

(i) references to the commencement of the Constitution shall be construed as references to the commencement of this Order;

(ii) in clause (a) (i), the words, brackets and figures “clause (3) of article 16, clause (3) of article 32” shall be omitted; and

(iii) after clause (b), the following clause shall be added, namely:—

“(c) no law with respect to preventive detention made by the Legislature of the State of Jammu and Kashmir, whether before or after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, shall be void on the ground that it is inconsistent with any of the provisions of this part, but any such law shall, to the extent of such inconsistency, cease to have effect on the expiration of ²[³[twenty-five] years] from the commencement of the said Order, except as respects things done or omitted to be done before the expiration thereof.”.

(j) After article 35, the following new article shall be added, namely:—

“35A. *Saving of laws with respect to permanent residents and their rights.*— Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State,—

(a) defining the classes of persons who are, or shall be, permanent residents of the State of Jammu and Kashmir; or

(b) conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects—

(i) employment under the State Government;

¹Subs. by C.O. 89, for cl. (h).

²Subs. by C.O. 69, for “ten years”.

³Subs. by C.O. 97, for “twenty”.

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(ii) acquisition of immovable property in the State;

(iii) settlement in the State; or

(iv) right to scholarships and such other forms of aid as the State Government may provide,

shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part.”.

(5) PART V.

¹[(a) For the purposes of article 55, the population of the State of Jammu and Kashmir shall be deemed to be sixty-three lakhs.

(b) In article 81, for clauses (2) and (3), the following clauses shall be substituted, namely:—

“(2) For the purposes of sub-clause (a) of clause (1),—

(a) there shall be allotted to the State six seats in the House of the People;

(b) the State shall be divided into single member territorial constituencies by the Delimitation Commission constituted under the Delimitation Act, 1972, in accordance with such procedure as the Commission may deem fit;

(c) the constituencies shall, as far as practicable, be geographically compact areas, and in delimiting them regard shall be had to physical features, existing boundaries of administrative units, facilities of communication and public convenience; and

(d) the constituencies into which the State is divided shall not comprise the area under the occupation of Pakistan.

(3) Nothing in clause (2) shall affect the representation of the State in the House of the People until the dissolution of the House existing on the date of publication in the Gazette of India of the final order or orders of the Delimitation Commission relating to the delimitation of parliamentary constituencies under the Delimitation Act, 1972.

¹Subs. by C.O. 98, for cls. (a) and (b).

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(4) (a) The Delimitation Commission shall associate with itself for the purpose of assisting it in its duties in respect of the State, five persons who shall be members of the House of the People representing the State.

(b) The persons to be so associated from the State shall be nominated by the Speaker of the House of the People having due regard to the composition of the House.

(c) The first nominations to be made under sub-clause (b) shall be made by the Speaker of the House of the People within two months from the commencement of the Constitution (Application to Jammu and Kashmir) Second Amendment Order, 1974.

(d) None of the associate members shall have a right to vote or to sign any decision of the Delimitation Commission.

(e) If owing to death or resignation, the office of an associate member falls vacant, it shall be filled as soon as may be practicable by the Speaker of the House of the People and in accordance with the provisions of sub-clauses (a) and (b).”].

¹[(c) In article 133, after clause (1), the following clause shall be inserted, namely:—

‘(1A) The provisions of section 3 of the Constitution (Thirtieth Amendment) Act, 1972, shall apply in relation to the State of Jammu and Kashmir subject to the modification that references therein to “this Act”, “the commencement of this Act”, “this Act had not been passed” and “as amended by this Act” shall be construed respectively as references to “the Constitution (Application to Jammu and Kashmir) Second Amendment Order, 1974”, “the commencement of the said Order”, “the said Order had not been made” and “as it stands after the commencement of the said Order”.’].

²[(d)] In article 134, clause (2), after the words “Parliament may”, the words “on the request of the Legislature of the State” shall be inserted.

²[(e)] Articles 135, ^{3***} and 139 shall be omitted.

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¹Ins. by C.O. 98.

²Cls. (c) and (d) relettered as cls. (d) and (e), *ibid*.

³The figures “136” omitted by C.O. 60.

⁴Cls. (f) and (g) omitted by C.O. 56.

*(Appendix I)*¹[(5A) PART VI.

²[(a) Articles 153 to 217, article 219, article 221, articles 223, 224, 224A and 225 and articles 227 to 237 shall be omitted.]

(b) In article 220, references to the commencement of the Constitution shall be construed as references to the commencement of the Constitution (Application to Jammu and Kashmir) Amendment Order, 1960.

³[(c) In article 222, after clause (1), the following new clause shall be inserted, namely:—

“(1A) Every such transfer from the High Court of Jammu and Kashmir or to that High Court shall be made after consultation with the Governor.”.]

(6) PART XI.

⁴[(a) In article 246, for the words, brackets and figures “clauses (2) and (3)” occurring in clause (1), the word, brackets and figure “clause (2)” shall be substituted, and the words, brackets and figure “Notwithstanding anything in clause (3),” occurring in clause (2) and the whole of clauses (3) and (4) shall be omitted.]

⁵[(b) For article 248, the following article shall be substituted, namely:—

“248. *Residuary powers of legislation.*—Parliament has exclusive power to make any law with respect to—

⁷[(a) prevention of activities involving terrorist acts directed towards overawing the Government as by law established or striking terror in the people or any section of the people or alienating any section of the people or adversely affecting the harmony amongst different sections of the people;]

⁸[(aa)]⁹[prevention of other activities] directed towards disclaiming, questioning or disrupting the sovereignty and territorial

¹Ins. by C.O. 60 (w.e.f. 26-1-1960).

²Subs. by C.O. 89, for cl. (a).

³Subs. by C.O. 74, for cl. (c) (w.e.f. 24-11-1965).

⁴Subs. by C.O. 66, for cl. (a).

⁵Cls. (b) and (bb) subs. by C.O. 85, for original cl. (b).

⁶Subs. by C.O. 93, for cl. (b).

⁷Ins. by C.O. 122.

⁸Cl. (a) relettered as cl. (aa), *ibid.*

⁹Subs., *ibid.*, for “prevention of activities”.

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(13) PART XVIII.

(a) To article 352, the following new clause shall be added, namely:—

¹“[(6)] No Proclamation of Emergency made on grounds only of internal disturbance or imminent danger thereof shall have effect in relation to the State of Jammu and Kashmir (except as respects article 354) ²[unless—

(a) it is made at the request or with the concurrence of the Government of that State, or

(b) where it has not been so made, it is applied subsequently by the President to that State at the request or with the concurrence of the Government of that State.]”.

³[(b) In clause (1) of article 356, references to provisions or provision of this Constitution shall, in relation to the State of Jammu and Kashmir, be construed as including references to provisions or provision of the Constitution of Jammu and Kashmir.

⁴[(bb) In clause (4) of the article 356, after the second proviso, the following proviso shall be inserted, namely:—

‘Provided also that in the case of the Proclamation issued under clause (1) on the 18th day of July, 1990 with respect to the State of Jammu and Kashmir, the reference in the first proviso to this clause to “three years” shall be construed as a reference to ⁵“seven years”’.]

(c) Article 360 shall be omitted.]

(14) PART XIX.

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⁷[(a)] ⁸[Article 365] shall be omitted.

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¹Subs. by C.O. 104, for “(4)”.

²Subs. by C.O. 100, for certain words.

³Subs. by C.O. 71, for cl. (b).

⁴Added by C.O. 151.

⁵Subs. by C.O. 162 for “six years”.

⁶Cl. (a) omitted by C.O. 74.

⁷Cls. (b) and (c) relettered as cls. (a) and (b), *ibid.*

⁸Subs. by C.O. 94, for “Articles 362 and 365”.

⁹Original cl. (c) omitted by C.O. 56.

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Provided that in respect of any period prior to the 10th day of April, 1965, such references shall be construed as references to the person recognised by the President as the Sadar-i-Riyasat of Jammu and Kashmir and as including references to any person recognised by the President as being competent to exercise the powers of the Sadar-i-Riyasat.]”.

(15) PART XX.

¹[(a)] ²[To clause (2) of article 368], the following proviso shall be added, namely:—

“Provided further that no such amendment shall have effect in relation to the State of Jammu and Kashmir unless applied by order of the President under clause (1) of article 370.”.

³[(b) After clause (3) of article 368, the following clause shall be added, namely:—

“(4) No law made by the Legislature of the State of Jammu and Kashmir seeking to make any change in or in the effect of any provision of the Constitution of Jammu and Kashmir relating to—

(a) appointment, powers, functions, duties, emoluments, allowances, privileges or immunities of the Governor; or

(b) superintendence, direction and control of elections by the Election Commission of India, eligibility for inclusion in the electoral rolls without discrimination, adult suffrage and composition of the Legislative Council, being matters specified in sections 138, 139, 140 and 50 of the Constitution of Jammu and Kashmir,

shall have any effect unless such law has, after having been reserved for the consideration of the President, received his assent.”.]

(16) PART XXI.

(a) Articles 369, 371, ⁴[371A], ⁵[372A], 373, clauses (1), (2), (3) and (5) of article 374 and ⁶[articles 376 to 378A and 392] shall be omitted.

¹Numbered as cl. (a) by C.O. 101.

²Subs. by C.O. 91, for “To article 368”.

³Ins. by C.O. 101.

⁴Ins. by C.O. 74.

⁵Ins. by C.O. 56.

⁶Subs. *ibid.*, for “articles 376 to 392”.

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²[(iii) in entry 72, the reference to the States shall be construed,—

(a) in relation to appeals to the Supreme Court from any decision or order of the High Court of the State of Jammu and Kashmir made in an election petition whereby an election to either House of the Legislature of that State has been called in question, as including a reference to the State of Jammu and Kashmir;

(b) in relation to other matters, as not including a reference to that State]; ³[and]

⁴[(iv) for entry 97, the following entry shall be substituted, namely:—

⁵[97. Prevention of activities—

(a) involving terrorist acts directed towards overawing the Government as by law established or striking terror in the people or any section of the people or alienating any section of the people or adversely affecting the harmony amongst different sections of the people;

(b) directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about cession of a part of the territory of India or secession of a part of the territory of India from the Union or causing insult to the Indian National Flag, the Indian National Anthem and this Constitution,

taxes on foreign travel by sea or air, on inland air travel and on postal articles, including money orders, phonograms and telegrams.

Explanation.—In this entry, “terrorist act” has the same meaning as in the *Explanation* to article 248.]”.]

(b) The State List shall be omitted.

¹Original item (iii) omitted by C.O. 74.

²Subs. by C.O. 83, for item (iii).

³Ins. by C.O. 85.

⁴Subs. by C.O. 93, for item (iv).

⁵Subs. by C.O. 122, for entry 97.

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¹[(c) In the Concurrent List—

²[(i) for entry 1, the following entry shall be substituted, namely:—

“1. Criminal law (excluding offences against laws with respect to any of the matters specified in List I and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power) in so far as such criminal law relates to offences against laws with respect to any of the matters specified in this List.”];

³[(ia) for entry 2, the following entry shall be substituted, namely:—

“2. Criminal procedure (including prevention of offences and constitution and organisation of criminal courts, except the Supreme Court and the High Court) in so far as it relates to,—

(i) offences against laws with respect to any matters being matters with respect to which Parliament has power to make laws; and

(ii) administration of oaths and taking of affidavits by diplomatic and consular officers in any foreign country.”;

(ib) for entry 12, the following entry shall be substituted, namely:—

“12. Evidence and oaths in so far as they relate to,—

(i) administration of oaths and taking of affidavits by diplomatic and consular officers in any foreign country; and

(ii) any other matters being matters with respect to which Parliament has power to make laws.”;

(ic) for entry 13, the entry “13. Civil procedure in so far as it relates to administration of oaths and taking of affidavits by diplomatic and consular officers in any foreign country.” shall be substituted;

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¹Subs. by C.O. 69, for cl. (c).

²Subs. by C.O. 70, for item (i).

³Ins. by C.O. 94.

⁴Subs. by C.O. 122, for sub-clauses (ia) and (ib).

⁵Items (ii) and (iii) omitted by C.O. 74.

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¹[64F. The Jammu and Kashmir Restitution of Mortgaged Properties Act, 1976 (Act XIV of 1976).

64G. The Jammu and Kashmir Debtors' Relief Act, 1976 (Act XV of 1976).

²[(b) Entries 87 to 124, inserted by the Constitution (Thirty-ninth Amendment) Act, 1975, shall be renumbered as entries 65 to 102 respectively.]

³[(c) Entries 125 to 188 shall be renumbered as entries 103 to 166 respectively.]

⁴[(25) TENTH SCHEDULE.

(a) for the brackets, words and figures "Articles 102(2) and 191(2)", the brackets, word and figures "[Article 102(2)]" shall be substituted;

(b) in clause (a) of paragraph 1, the words "or the Legislative Assembly or, as the case may be, either House of the Legislature of a State" shall be omitted;

(c) in paragraph 2,—

(i) in sub-paragraph (1), in sub-clause (ii) of clause (b) of the *Explanation*, the words and figures "or, as the case may be, article 188" shall be omitted;

(ii) in sub-paragraph (3), the words and figures "or, as the case may be, article 188" shall be omitted;

(iii) in sub-paragraph (4), the reference to the commencement of the Constitution (Fifty-second Amendment) Act, 1985 shall be construed as a reference to the commencement of the Constitution (Application to Jammu and Kashmir) Amendment Order, 1989;

(d) in paragraph 5, the words "or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State" shall be omitted;

(e) in sub-paragraph (2) of paragraph 6, the words and figures "or, as the case may be, proceedings in the Legislature of a State within the meaning of article 212" shall be omitted;

(f) in sub-paragraph (3) of paragraph 8, the words and figures "or, as the case may be, article 194," shall be omitted.]

¹Ins. by C.O. 106.

²Ins. by C.O. 105.

³Ins. by C.O. 108 (w.e.f. 31-12-1977).

⁴Ins. by C.O. 136.