

Constitution of India

Constitution Order 48 - Constitution (Application to Jammu and Kashmir) Order, 1954

C.O. 48

Dated the 14th May, 1954

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

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, 1950¹.

2. The provisions of the Constitution 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 boundary of that State shall be introduced in Parliament without the consent of the Legislature of that State."

(3) PART II

(a) This Part shall be deemed to have been applicable in relation to the State of Jammu and Kashmir as from the 26th day of January, 1950.

(b) To article 7, there shall be added the following further proviso, namely :--

"Provided further that nothing in this article shall apply to a permanent resident of the State of Jammu and Kashmir who, after having so migrated to the territory now included in Pakistan, returns to the territory of that State under a permit for resettlement in that State or permanent return issued by or under the authority of any law made by the Legislature of that State, and every such person shall be deemed to be a citizen of India."

(4) PART III

(a) In article 13, references to the commencement of the Constitution shall be construed as references to the commencement of this Order,

(b) In clause (4) of article 15, the reference to Scheduled Tribes shall be omitted.

(c) In clause (3) of article 16, the reference to the State shall be construed as not including a reference to the State of Jammu and Kashmir.

(d) In article 19, for a period of five years from the commencement of this Order :--

(i) in clauses (3) and (4) after the words "in the interests of" the words "the security of the State or" shall be inserted ;

(ii) in clause (5), for the words "or for the protection of the interests of any Scheduled Tribe" the words "or in the interests of the security of the State" shall be substituted ; and

(iii) the following new clause shall be added, namely :--

"(7) The words "reasonable restrictions" occurring in clauses (2), (3), (4) and (5) shall be construed as meaning such restrictions as the appropriate Legislature deems reasonable."

(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 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

(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.'

(h) In article 32, clause (3) shall be omitted ; and after clause (2), the following new clause shall be inserted, namely :-

"(2A) Without prejudice to the powers conferred by clauses (1) and (2), the High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any Government within those territories, directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by this Part".

(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, figures and brackets "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 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 ;

(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 provisions of this Part."

(5) PART V

(a) In articles 54 and 55, references to the elected members of the House of the People and to each such member shall include references to the representatives of the State of Jammu and Kashmir in that House ; and the population of the State shall be deemed to be forty-four lakhs and ten thousand.

(b) In the proviso to clause (1) of article 73, the words, "or in any law made by Parliament" shall be omitted.

(c) Article 81 shall apply subject to the modification that the representatives of the State in the House of the People shall be appointed by the President on the recommendation of the Legislature of the State.

(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.

(e) Articles 135, 136 and 139 shall be omitted.

(f) In articles 149 and 150, references to the States shall be construed as not including the State of Jammu and Kashmir.

(g) In article 151, clause (2) shall be omitted.

(6) PART XI

(a) In article 246, the words, brackets and figures "Notwithstanding anything in clauses (2) and (3)" occurring in clause (1), and clauses (2), (3) and (4) shall be omitted,

(b) Articles 248 and 249 shall be omitted.

(c) In article 250, for the words "to any of the matters enumerated in the State List", the words "also to matters not enumerated in the Union List" shall be substituted.

(d) In article 251, for the words and figures, "articles 249 and 250", the words and figures, "article 250" shall be substituted, and the words "under this Constitution" shall be omitted; and, for the words "under either of the said articles", the words "under this article" shall be substituted.

(e) To article 253, the following proviso shall be added, namely:-- "Provided that after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, no decision affecting the disposition of the State of Jammu and Kashmir shall be made by the Government of India without the consent of the Government of that State."

(f) In article 254, the words, brackets and figure "or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2)" and the words "or as the case may be, the existing law", occurring in clause (1), and the whole of clause (2) shall be omitted.

(g) Article 255 shall be omitted.

(h) Article 256 shall be renumbered as clause (1) of that article, and the following new clause shall be added thereto, namely:--

"(2) The State of Jammu and Kashmir shall so exercise its executive power as to facilitate the discharge by the Union of its duties and responsibilities under the Constitution in relation to that State; and in particular, the said State shall, if so required by the Union, acquire or requisition, property on behalf and at the expense of the Union, or if the property belongs to the State, transfer it to the Union on such terms as may be agreed, or in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India."

(i) Article 259 shall be omitted.

(j) In clause (2) of article 261, the words "made by Parliament" shall be omitted.

(7) PART XII

(a) Clause (2) of article 267, article 273, clause (2) of article 283, articles 290 and 291 shall be omitted.

(b) In articles 266, 282, 284, 298, 299 and 300, references to the State or States shall be construed as not including references to the State of Jammu and Kashmir.

(c) In articles 277 and 295, references to the commencement of the Constitution shall be construed as references to the commencement of this Order.

(8) PART XIII

(a) In clause (1) of article 303, the words "by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule" shall be omitted.

(b) In article 306, references to the commencement of the Constitution shall be construed as references to the commencement of this Order.

(9) PART XIV

In article 308, after the words "First Schedule", the words "other than the State of Jammu and Kashmir" shall be added.

(10) PART XV

(a) Article 324 shall apply only in so far as it relates to elections to Parliament and to the offices of President and Vice-President.

(b) Articles 325, 326, 327, 328 and 329 shall be omitted.

(11) PART XVI

(a) In article 330, references to the "Scheduled Tribes" shall be omitted.

(b) Articles 331, 332, 333, 336, 337, 339 and 342 shall be omitted.

(c) In articles 334 and 335, references to the State or the States shall be construed as not including references to the State of Jammu and Kashmir.

(12) PART XVII

The provisions of this Part shall apply only in so far as they relate to--

(i) the official language of the Union ;

(ii) the official language for communication between one State and another, or between a State and the Union ;
and

(iii) the language of the proceedings in the Supreme Court.

(13) PART XVIII

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

"(4) 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) unless it is made at the request or with the concurrence of the Government of that State."

(b) Articles 356, 357 and 360 shall be omitted.

(14) PART XIX.

(a) In article 361, after clause (4), the following clause shall be added, namely:--

"(5) The provisions of this article shall apply in relation to the Sadar-i-Riyasat of Jammu and Kashmir as they apply in relation to a Rajpramukh, but without prejudice to the provisions of the Constitution of that State."

(b) Articles 362 and 365 shall be omitted.

(c) In article 366, clause (21) shall be omitted.

(d) To article 367, there shall be added the following clause, namely :--

"(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 Government of the said State shall be construed as including references to the Sadar-i-Riyasat acting on the advice of his Council of Ministers ;

(c) references to a High Court shall include references to the High Court of Jammu and Kashmir ;

(d) references to the Legislature or the Legislative Assembly of the said State shall be construed as including references to the Constituent Assembly of the said State ;

(e) references to the permanent residents of the said State shall be construed as meaning persons who, before the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, were recognised as State subjects under the laws in force in the State or who are recognised by any law made by the Legislature of the State as permanent residents of the State ; and

(f) references to the Rajpramukh shall be construed as references to the person for the time being recognised by the President as the Sadar-i-Riyasat of Jammu and Kashmir and as including references to any person for the time being recognised by the President as being competent to exercise the powers of the Sadar-i-Riyasat."

(15) PART XX

To 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".

(16) PART XXI

(a) Articles 369, 371, 373, clauses (1), (2), (3) and (5) of article 374 and articles 376 to 392 shall be omitted.

(b) In article 372--

(i) clauses (2) and (3) shall be omitted,

(ii) references to the laws in force in the territory of India shall include references to hidayats, ailsans, ishtihars, circulars, robkars, irshads, yadashts, State Council Resolutions, Resolutions of the Constituent Assembly, and other instruments having the force of law in the territory of the State of Jammu and Kashmir ; and

(iii) references to the commencement of the Constitution shall be construed as references to the commencement of this Order.

(c) in clause (4) of article 374, the reference to the authority functioning as the Privy Council of a State shall be construed as a reference to the Advisory Board constituted under the Jammu and Kashmir Constitution Act, 1996, and references to the commencement of the Constitution shall be construed as references to the commencement of this Order.

(17) PART XXII

Articles 394 and 395 shall be omitted.

(18) FIRST SCHEDULE.

(19) SECOND SCHEDULE

Paragraph 6 shall be omitted.

(20) THIRD SCHEDULE.

Forms V, VI, VII and VIII shall be omitted.

(21) FOURTH SCHEDULE

(22) SEVENTH SCHEDULE

(a) In the Union List--

(i) for entry 3, the entry "3. Administration of cantonments" shall be substituted ;

(ii) entries 8, 9, 33 and 34, the words "trading corporations including" in entry 43, entries 44, 50, 52, 54, 55, 60, 67, 69, 78 and 79, the words "inter-State migration" in entry 81, and entry 97 shall be omitted ;

(iii) for entry 53, the entry "53. Petroleum and Petroleum Produces, but excluding the regulation and development of oilfields and mineral oil resources ; other liquids and substances declared by Parliament by law to be dangerously inflammable" shall be substituted ; and

(iv) in entries 72 and 76, the reference to the States shall be construed as not including a reference to the State of Jammu and Kashmir.

(b) The State List and the Concurrent List shall be omitted.

(23) EIGHTH SCHEDULE

(24) NINTH SCHEDULE

After entry 13, the following entries shall be added, namely :--

"14. The Jammu and Kashmir Big Landed Estates Abolition Act (No. XVII of 2007).

15. The Jammu and Kashmir Restitution of Mortgaged Properties Act (No. XVI of 2006).

16. The Jammu and Kashmir Tenancy Act (No. II of 1980).

17. The Jammu and Kashmir Distressed Debtors Relief Act (No. XXVII of 2006).

18. The Jammu and Kashmir Alienation of Land Act (No. V of 1995).

19. Order No. 6-H of 1951, dated 10th March 1951 regarding Resumption of Jagirs and other assignments of Land Revenue, etc.

20. The Jammu and Kashmir State Kuth Act (No. I of 1978).