

***The Constitution
of
Jammu and Kashmir***

PREFACE

In this edition the text of the Constitution of Jammu and Kashmir has been brought up to date by incorporating therein all the amendments up to and including the Constitution of Jammu and Kashmir (Twenty-ninth Amendment) Act, 2002.

In the Appendix the full texts of all the aforesaid amending Acts have been included.

Jammu.

12th March, 2003.

(Sd.) A. H. KOCHAK,

Commissioner/Secretary to Government,
Law and Parliamentary Affairs Department.

CONTENTS

	<i>Page</i>
<i>Preamble</i>	1
PART I	
PRELIMINARY	
1. Short title and commencement	2
2. Definitions	2
PART II	
THE STATE	
3. Relationship of the State with the Union of India	3
4. Territory of the State	3
5. Extent of executive and legislative powers of the State	3
PART III	
PERMANENT RESIDENTS	
6. Permanent residents	3
7. Construction of references to State Subjects in existing laws	4
8. Legislature to define permanent residents	4
9. Special provisions for bills relating to permanent residents	4

10. Rights of the permanent residents	5
---------------------------------------	---

PART IV

DIRECTIVE PRINCIPLES OF STATE POLICY

11. Definitions	5
12. Application of the principles contained in this Part	5
13. State to establish a socialist order of society for the promotion of welfare of the people	5
14. Economy of the State to be developed in a planned manner	6
15. State to ensure speedy improvement in standard of living of rural masses	6
16. Organisation of Village Panchayats	6
17. State to take certain steps for promoting crafts and cottage industries	6
18. Separation of judiciary from executive	7
19. Right to work and .to public assistance in certain cases	7
20. Rights of free and compulsory education in certain cases	8
21. Rights of Children	8
22. Rights of Women	8

(iii)

	<i>Page</i>
23. Protection of educational, material and cultural interests of socially and economically backward sections	9
24. Duty of the State to improve public health	9
25. Duty of the State to foster equality and secularism	9

PART V

THE EXECUTIVE THE GOVERNOR

26. Head of the State	10
27. Appointment of Governor	10
28. Term of office	10
29. Qualifications for appointment as Governor	11
30. Conditions of office	11
31. Oath of Office	11
32. Omitted	12
33. Discharge of the functions of the Governor in certain contingencies;	12
34. Power to grant pardons; reprieves etc.	12

The Council of Ministers

35. Council of Ministers to aid and advise the Governor	12
---	----

	<i>Page</i>
36. Appointment of Ministers	... 13
37. Minister's responsibility to the Legislature	... 13
38. Deputy Ministers	... 13.
39. Tenure of office	...13
40. Oath of office and secrecy	...13
41. Salaries and allowances of Ministers and Deputy Ministers	...13

The Advocate General

42. Advocate General for the State	...14
------------------------------------	-------

Conduct of Government Business

43. Rules of Business	... 14
44. Duties of Chief Minister	... 14
45. Form of orders and instruments and their authentication	... 15

PART VI

**THE STATE
LEGISLATURE**

Composition of the State Legislature

46. Legislature for the State	...15
47. Composition of Legislative Assembly	...16

48. Provision relating to Pakistan occupied territory16
48_A Holding of general election in the event of earlier dissolution of Legislative Assembly	...17
49. Reservation' of seats for Scheduled Castes	...17
50. Composition of Legislative Council	...18

General Provisions

51. Qualification of membership of the Legislature 20
52. Duration of Legislature	...20
53. Sessions of the Legislature, prorogation and dissolution	...21
54. Right of Governor to address and send messages to the House or Houses	...21
55. Special address by the Governor	...22
56. Rights of Ministers and Advocate General as respects the Houses'	...22

Officers of the State Legislature

57. The Speaker and Deputy Speaker of the Legislative Assembly	...22
58. Vacation and resignation of, and removal from the offices of the Speaker and Deputy Speaker	...23

	<i>Page</i>
59. Power of the Deputy Speaker or ether person to perform the duties of the office of or to act as Speaker	...25
60.The Speaker and the Deputy Speaker not to preside while a resolution for his removal <i>from</i> office is under consideration	...25
61. The. Chairman and Deputy Chairman of the Legislative Council	...25
62. Salaries and Allowances of the Speaker and Deputy Speaker and the Chairman and the Deputy Chairman	...25
63. Secretariat of the Legislature	...25
Conduct of Business	
64. Oath or affirmation by members	...25
65. Quorum	...26
66. Power of Houses to act notwithstanding vacancies	...26
67. Voting in the Houses	...26
Disqualifications of Members	
58. Vacation of sears	...26
69. Disqualification for, membership	...27
70. Decision on questions or to disqualification of members.	...28

	<i>Page</i>
71. Penalty for sitting and voting before making oath or affirmation when not qualified or when disqualified	29
Powers, Privileges and Immunities of the State Legislature and Its members	
72. Powers, privileges etc. of the Houses of Legislature and of the members and committees thereof	29
73. Salaries and allowances of members	30
Legislative Procedure	
74. Provisions as to introduction and passing of Bills	...30
75. Restriction on powers of Legislative Council as to Bills other than Money Bills	...31
76. Special Procedure In respect of Money Bills	...32
77. Definition of "Money Bills"	...33
78. Assent to Bills	...34
Procedure In Financial Matters	
79. Annual Financial Statement	...35
80. Procedure In Legislature with respect to estimates	...36
81. Appropriation Bills	...36
82. Supplementary, additional or excess 'grants	... 37

	<i>Page</i>
83. Votes on account, votes of credit and exceptional grants	... 38
84. Special provisions as to Financial Bills	...39

Procedure Generally

85. Rules of procedure	40
86. Regulation by law of procedure in the Legislature in relation to financial business	40
87. Language to be used in the Legislature	41
88. Restriction on discussion in the Legislature	41
89. Courts not to inquire into proceeding of the Legislature	41
90. Requirements as to recommendations regarded as matters of procedure only'	42

Legislative power of the Governor

91. Power of Governor to promulgate Ordinances during recess of Legislature	42
---	----

Breakdown of Constitutional Machinery

92. Provisions in case of failure of Constitutional Machinery in the State	43
--	----

PART VII

THE HIGH COURT

93. Constitution of High Court	45
--------------------------------	----

	<i>Page</i>
94. High Court to be a Court of Record	45
95. Appointment and tenure of office of Judges	45
96. Qualifications for appointment	46
97. Oath or affirmation by Judges of the High Court	46
98. Salaries etc. of Judges	46
99. Resignation or removal of a Judge of High Court	47
100. Appointment of acting Judges	47
100-A Appointment of additional and acting Judges	41
100-B Appointment of retired Judges' at sitting of the High Court	48
101. Place of sitting of the Court	48
102. Saving of existing jurisdiction of the High Court	49
103. Power to Issue certain writs	49
104. Superintendence and control of subordinate courts	49
105. Transfer of cases to High Court	50

106. Omitted	
107. Seal	...51
108. Officer's and servants of the High Court	...51
Subordinate Courts	
109. Appointment of District Judges	...52
109-A Validation of postings and transfers of, and judgments etc. delivered by certain District Judges	...52
110. Recruitment of persons other than District Judges to the Judicial Service	
111. Control over subordinate courts	... 53
112. Interpretation	...53
113. Application of the provisions of this Part to certain class or classes of Magistrates	53

PART VIII

FINANCE, PROPERTY AND CONTRACTS

114. Taxes not to be imposed save by authority of law	54
115. Consolidated Fund and Public Account	54
116. Contingency Fund	
117. Expenditure defrayable by the State out of its revenue	54

	<i>Page</i>
118. Custody, etc., of Consolidated Fund, Contingency Fund and moneys credited to the public account.	...55
119. Custody of sultor's deposit and other moneys received by public servants and courts.	...55
120. Property accruing by escheat or lapse or as bona vacantia	55
121. Power to carry on trade etc.	55
122. Contracts	56
123. Suits and proceedings	56

Part IX

THE PUBLIC SERVICES

124. Recruitment and conditions of service of persons serving the State	56
125. Tenure of office of persons serving the State	57
126. Dismissal, reduction or removal of persons Employed in civil capacities under the State	57
127. Transitional provisions	58

The Public Service Commission

128. Public Service Commission for the State	58
129. Appointment and term of office of members	59

	<i>Page</i>
130. Removal and suspension of a member of the Commission	59
131. Power to make regulations as to conditions of service of members and staff of the Commission	60
132. Prohibition as to the holding of offices by members of the Commission on ceasing to be such members	61
133. Functions of the Commission	61
134. Acting appointment of Chairman of the Commission	62
135. Power to extend functions of the Commission	62
136. Expenses of the Commission	62
137. Reports of the Commission	63

PART X

ELECTIONS

138. Superintendence, direction and control of elections	63
139. No person to be ineligible for inclusion in electoral roll on grounds of religion, race, castes or sex	63
140. Elections to the Legislative Assembly to be on the basis of adult suffrage	... 63

141. Power of Legislature to make provision with respect to elections to Legislature	64
142. Bar to interference by Courts in electoral matters	64

PART XI

MISCELLANEOUS PROVISIONS

143. Protection of Governor	65
144. Flag of the State	65
145. Official language of the State	66
146. Academy for development of Art, Culture and Languages	66

PART XII

AMENDMENT OF THE CONSTITUTION

147. Amendment of the Constitution	66
------------------------------------	----

PART XII

TRANSMONAL PROVISIONS

148. Omitted	67
149. Omitted	67
150. Omitted	67
151. Omitted	67

	<i>Page</i>
152. Omitted	67
153. Provisions as to Judges of High Court	67
154. Courts, authorities and officers to continue to function subject to the provisions of the Constitution	67
155. Money received or raised or expenditure incurred between the commencement of the Constitution and the 31st day of March, 1957	68
156. Power of Sadar-i-Riyasat to remove difficulties	68
157. Repeal and saving of laws and rules	68
158. Interpretation	69

SCHEDULES*Page*

First Schedule	...	Omitted	70
Second Schedule	...	Emoluments, Allowances and Privileges of the Governor	71
Third Schedule	...	Salaries and allowances of the Speaker and Deputy Speaker of the Legislative Assembly and the Chairman and the Deputy Chairman of the Legislative Council	75
Fourth Schedule	...	Salaries, allowances and other conditions of service of the Judges of the High Court.	76
Fifth Schedule	...	Forms of Oaths or affirmations	79
Sixth Schedule	...	Regional Languages	83
Seventh Schedule	...	Provision as to disqualification on ground of . . . defections	84
Appendix	...		95.

THE CONSTITUTION
OF
JAMMU AND KASHMIR

Preamble:-WE, THE PEOPLE OF THE STATE OF JAMMU AND KASHMIR, having solemnly resolved, in pursuance of the accession of this State to India which took place on the twenty sixth day of October, 1947, to further define the existing relationship of the State with the Union of India as an integral part thereof, and to secure to ourselves-

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and' worship;

EQUALITY of status and of opportunity; and to promote among us all ;

FRATERNITY assuring the dignity of the individual and the unity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this seventeenth day of November, 1956, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

(2)

PART I

PRELIMINARY

1. *Short title and commencement:-*(1) This Constitution may be called the Constitution of Jammu and Kashmir.

(2) This section and sections 2, 3, 4, 5, 6, 7,8, and 158 shall come into force at once and the remaining provisions of this Constitution shall come into force on the twenty-sixth day of January, 1957, which day is referred to in this Constitution as the commencement of this Constitution.

2. *Definitions:-*(1) In this Constitution, unless the context otherwise requires-

(a) "Constitution of India" means the Constitution of India as applicable in relation to this State;

(b) "existing law" means any law, ordinance, order, bye-law, rule, notification or regulation passed, made or issued before the commencement of this Constitution by the Legislature or other competent authority or person having power to pass, make or issue such law, ordinance, order, bye-law, rule, notification or regulation;

(c) "Part" means a part of this Constitution;

(d) "Schedule" means a Schedule to this Constitution;
and

(e) "taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly.

(2) Any reference in this Constitution to Acts or laws of the State Legislature shall be construed as including a reference to an Ordinance made by, the ¹[Governor].

1. Substituted for "Sadar-i-Riyasat" by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, S. 2.

(3)

¹[(3) Any reference in this Constitution to the Sadar-i-Riyasat shall, unless the context otherwise requires, be construed as reference to the Governor].

PART II

THE STATE

3. *Relationship of the State with the Union of India:-*The State of Jammu and Kashmir is and shall be an integral part of the Union of India.

4. *Territory of the State:-*The territory of the State shall comprise all the territories which on the fifteenth day of August, 1947, were under the sovereignty or suzerainty of the Ruler of the State.

5. *Extent of executive and legislative power of the State:-*The executive and legislative power of the State extends to all matters except those with respect to which Parliament has power to make laws for the State under the provisions of the Constitution of India.

PART III

PERMANENT RESIDENTS

6. *Permanent residents:-*{1) Every person who is, or is deemed to be, a citizen of India under the provisions of the Constitution of India shall be a permanent resident of the State, if on the fourteenth day of May, 1954-

- (a) he was a State Subject of Class I or of Class II ; or
- (b) having lawfully acquired immovable property in the State, he has been ordinarily resident in the

1. Inserted by the Constitution of Jammu and Kashmir (Sixth Amendment) Act; 1965, S. 3.

(4)

State for not less than ten years prior to that date.

(2) Any person who, before the fourteenth day of May, 1954, was a State Subject of Class I or of Class II and who having migrated after the first day of March, 1947, to the territory now included in Pakistan, returns to the State under a permit for resettlement in the State or for permanent return issued by or under the authority of any law made by the State Legislature shall on such return be a permanent resident of the State.

(3) In this section, the expression "State Subject of Class I or of Class II" shall have the same meaning as in State Notification No. 1-L/84 dated the twentieth April, 1927, read with State Notification No. 13/L dated the twenty-seventh June, 1932.

7. Construction of references to State Subjects in existing laws:-Unless the context otherwise requires, all references in any existing law to hereditary State Subjects or to State Subject of Class I or of Class II or of Class III shall be construed as references to permanent residents of the State.

8. Legislature to define permanent residents:-Nothing in the foregoing provisions of this part shall derogate from the power of the State Legislature to make any law defining the classes of persons who are, or shall be, permanent residents of the State.

9. Special provision for Bills relating to permanent residents:-A Bill making provision for any of the following matters, namely-

- (a) defining or altering the definition of the classes of persons who are, or shall be, permanent residents of the State;

(5)

(b) conferring on permanent residents any special rights or privileges;

(c) regulating or modifying any special rights, or privileges enjoyed by permanent residents ;

shall be deemed to be passed by either House of the Legislature only if it is passed by a majority of not less than two-thirds of the total membership of that House.

10. *Rights of the permanent residents:-*The permanent, residents of the State shall have all the rights guaranteed to them under the Constitution of India.

PART IV

DIRECTIVE PRINCIPLES OF STATE POLICY

11. *Definition:-*In this Part, unless the context otherwise requires, the State includes the Government and the Legislature of the State and all local or other authorities within the territory of the State, or under the control of the Government of the State.

12. *Application of the principles contained In this Part:-*
The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the State and it shall be the duty of the State to apply these principles in making laws.

13. *State to establish a socialist order of society for the promotion of welfare of the people:-*The prime object of the State consistent with the ideals and objectives of the freedom movement envisaged In "New Kashmir" shall be the promotion of the welfare of the mass of the people by establishing and preserving a socialist order of society wherein all exploitation of man has been abolished and wherein justice-social, economic and political-shall inform all the institutions of national life.

(6)

14. *Economy of the State to be developed in a planned manner:-*Consistently with the objectives outlined in the foregoing section, the State shall develop in a planned manner the productive forces of the country with, a view to enriching the material and cultural life of the people and foster and protect

- (a) the public sector where the means of production are owned by the State;
- (b) the co-operative sector where the means of production are co-operatively owned by individuals or groups of individuals; and
- (c) the private sector where the means of production are owned by an individual or a corporation employing labour; provided that the operation of this sector is not allowed to result in the concentration of wealth or of the means of production to the common detriment.

15. *State to ensure speedy improvement in standard of living of rural masses:-* The State shall endeavour to organise and develop agriculture and animal husbandry by bringing to the aid of the cultivator the benefits of modern ' and scientific research and techniques so as to ensure a speedy improvement in the standard of living as also the prosperity of the rural masses.

16. *Organisation of village panchayats:-*The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

17. *State to take certain steps for promoting crafts and cottage industries:-*The State shall in order to rehabilitate,

(7)

guide and promote the renowned crafts and cottage industries of the State, initiate and execute well considered programmes for refining and modernising techniques and modes of production, including the employment of cheap power so that unnecessary drudgery and toil of the workers are eliminated and the artistic value of the products enhanced while the fullest scope is provided for the encouragement and development of individual talent and initiative.

18. *Separation of judiciary from executive:-*The state shall take steps to separate the judiciary from the executive in the public services and shall seek to secure a judicial system which is humane, cheap, certain, objective and impartial whereby justice shall be done and shall be seen to be done and shall further strive to ensure efficiency, impartiality and incorruptibility of its various organs of justice, administration and public utility.

19. *Right to work and to public assistance in certain cases:-*The State shall within the limits of its economic capacity and development, make effective provision for securing

(a) that all permanent residents, men and women equally, have the right to work, that is the right to receive guaranteed work with payment for labour in accordance with its quantity and quality subject to a basic minimum and maximum wage established by law;

(b) that the health and strength of workers, men and women and the tender-age of children are not abused and that permanent residents are not forced by economic necessity to enter avocations unsuited to their sex, age or strength;

(c) that all workers, agricultural, industrial or otherwise, have reasonable, just and humane conditions of

(8)

work with full enjoyment of leisure and social and cultural opportunities;

- (d) that all permanent residents have adequate maintenance in oldage as well as in the event of sickness, disablement, unemployment and other cases of undeserved want by providing social insurance, medical aid, hospitals, sanatoria and health resorts at State expense.

20. *Rights of free and compulsory education in certain cases:-The State shall endeavour-*

- (a) to secure to every permanent resident the right to free education up to the University standard;
- (b) to provide, within a period of ten years from the commencement of this Constitution, compulsory education for all children until they complete the age of fourteen years; and
- (c) to ensure to all workers and employees adequate facilities for adult education and part-time technical, professional and vocational courses; .

21. *Rights of children:-The State shall strive to secure-*

- (a) to all children the right to happy childhood with adequate medical care and attention; and
- (b) to all children and youth equal opportunities in education and employment, protection against exploitation and against moral or material abandonment.

22. *Right of women:-The State shall endeavour to secure to all women-*

- (a) the right to equal pay for equal work;

(9)

- (b) the right to maternity benefits as well as adequate medical care in all employments ;
- (c) the right to reasonable maintenance, extending to cases *of* married women who have been divorced or abandoned;
- (d) the right to full equality in all social, educational, political and legal matters;
- (e) special protection against discourtesy, defamation, hooliganism and other forms *of* misconduct.

23. *Protection of educational, material and cultural interests of socially and economically backward sections:-*The State shall guarantee to the socially and educationally backward sections *of* the people special care in the promotion *of* their educational, material and cultural interests and protection against social injustice.

24. *Duty of the State to improve public health:-*The State shall make every *effort* to safeguard and promote the health *of* the people by advancing public hygiene and by prevention *of* disease through sanitation, pest and vermin control, propaganda and other measures, and by ensuring widespread, efficient and free medical services throughout the State and, with particular emphasis, in its remote and backward regions.

25. *Duty of the State to foster equality and secularism:-*

The State shall combat ignorance, superstition, fanaticism, communalism, racialism, cultural backwardness and shall seek to foster brotherhood and equality among all communities under the aegis *of* a Secular State.

(10)

PART V

THE EXECUTIVE

The *Governor

26. *Head of State:-*(1) The Head of the State shall be designated as the *Governor.

(2) The executive power of the State shall be vested in the *Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(3) Nothing in this section shall-

- (a) be deemed to transfer to the *Governor any functions conferred by any existing law on any other authority; or
- (b) prevent the State Legislature *from* conferring by law functions on any authority subordinate to the *Governor.

¹[27. *Appointment of Governor:-*the Governor shall be appointed by the President by warrant under his hand and seal:

Provided that the person holding office as Sadar-i-Riyasat immediately before the commencement of the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, shall on such commencement be the Governor and shall, subject to the other provisions of this Constitution, continue to hold office as Governor until the remaining period of his term *for* which he was elected as Sadar-i-Riyasat expires.]

28. *Term of Office:-*(1) The *Governor shall hold office during the pleasure of the President.

*See foot-note 1 to S, 2,
1. Substituted by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, S. 4.

(11)

(2) The *Governor may, *by writing under his hand addressed to the President, resign his office.*

(3) Subject to foregoing provisions *of this section, the *Governor shall hold office for a term of five years from the date on which he enters upon his office:*

Provided that he shall, notwithstanding the expiration *of his term continue to hold office until his successor enters upon his office.*

¹[29. *Qualifications for appointment as Governor:-No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty years.]*

30. *Conditions of Office:-*(1) The *Governor shall not be a member *of either House of Legislature and if a member of either House be* ²[*appointed*] as *Governor, he shall be deemed to have vacated his seat in the House on the date on which he enters upon his *office as *Governor.*

(2) The *Governor shall not hold any other office *of profit.*

(3) The *Governor shall be entitled to such emoluments, allowances and privileges as are specified in the Second Schedule.

(4) The emoluments and allowances *of the *Governor shall not be diminished during his term of office.*

³[31. *Oath of Office:-The Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court or, in his absence, the senior*

*See foot-note 1 to S. 2.

1. Substituted by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, S. 5.

2. Substituted for "elected and recognised" by section 6, *ibid.*

3. Substituted by S. 7, *ibid.*

(12)

most Judge of that Court available, an oath or affirmation in the following form, that is to say-

do swear in the name of God

I, A, B. _____ that I will

solemnly affirm

faithfully execute the office of Governor (or discharge the functions of the Governor) of Jammu and Kashmir and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well being of the people of the Stat]

¹[32. Omitted].

²[33. *Discharge of the functions of the Governor in*

Certain contingencies:-The President may make such provisions as he thinks fit for the discharge of functions of the Governor in any contingency not provided for in this Part.]

34. *Power to grant pardons, reprieves, etc.-The *Governor shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.*

The Council of Ministers

35. *Council of Ministers to aid and advise the *Governor:-*

(1) There shall be a Council of Ministers with ³[Chief Minister] at the head to aid and advise the *Governor in the exercise of his functions.

(2) All functions of the *Governor except those under sections 36, 38 and 92 shall be exercised by him only on the advice of the Council of Ministers.

*See foot-note 1 to S. 2.

1. Omitted by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, S. 8.

2. Substituted by S. 9 *ibid*.

3. Substituted for "Prime Minister" by S. 2 *ibid*.

(3) The question whether any, and if so what, advice was tendered by Ministers to the *Governor shall not be enquired into in any court.

36. *Appointment of Ministers.* -The ¹[Chief Minister] shall be appointed by the *Governor and the other Ministers shall be appointed by the *Governor on the advice of the ¹[Chief Minister].

37. *Minister's responsibility to the Legislature.* -(1) The Council of Ministers shall be collectively responsible to the Legislative Assembly.

(2) A Minister who for any period of six consecutive months is not a member of either House of Legislature shall upon the expiry of that period cease to be a Minister.

38. *Deputy Ministers.* -The *Governor may on the advice of the ¹[Chief Minister] appoint from amongst the members of either House of Legislature such number of Deputy Ministers as may be necessary.

39. *Tenure of Office.* -The Ministers and the Deputy Ministers shall hold office during the pleasure of the *Governor.

40. *Oaths of Office and secrecy.* -Before a Minister or a Deputy Minister enters upon his office, the *Governor or, in his absence, any person authorised by him, shall administer to the Minister or the Deputy Minister the oaths of office and of secrecy according to the form set out for the purpose in the Fifth Schedule.

41. *Salaries and allowances of Ministers and Deputy Ministers.* -The salaries and allowances of Ministers and Deputy Ministers shall be such as the Legislature may from time to time by law determine and, until so determined, shall be such as are payable respectively to the Ministers and the Deputy Ministers under the Jammu and Kashmir Ministers'

*See foot-note 1 to S. 2

1. Substituted for "Prime Minister" by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, S. 2.

(14)

Salaries Act, 1956 (Act VI of 1956), the Jammu and Kashmir Ministers Travelling Allowances Rules for the time being in force, and the Jammu and Kashmir Deputy Minister's Salaries and Allowances Act, S. 2010 (Act VIII of S. 2010).

The Advocate General

42. *Advocate General for the State.* -(1) The *Governor shall appoint a person who is qualified to be appointed a Judge of the High Court, to be Advocate General for the State.

(2) It shall be the duty of the Advocate General to give advice to the Government upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Government, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties, the Advocate General shall have the right of audience in all courts in the State.

(4) The Advocate General shall hold office during the pleasure of the *Governor and receive such remuneration as the *Governor may determine.

Conduct of Government Business

43. *Rules of Business.* -The *Governor shall make rules for the more convenient transaction of the business of the Government of the State and for the allocation among Ministers of the said business.

44. *Duties of Chief Minister.* -It shall be the duty of the ¹[Chief Minister].

(a) to communicate to the *Governor all decisions of
the Council of Ministers relating to the administration

* See foot-note 1 to S. 2.

1. Substituted for "Prime Minister" by the " Constitution- of Jammu and Kashmir (Sixth Amendment) Act, 1965, s. 2.

(15)

of the affairs of the State and proposals for legislation.

(b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the *Governor may call for ; and

(c) if the *Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been' considered by the Council.

45. *Form of orders and instruments and their authentication.* -(1) All executive action of the Government shall be expressed to be taken in the name of the *Governor or of the Government of Jammu and Kashmir.

(2) Orders and other instruments made and executed in the name of the *Governor or of the Government of Jammu and Kashmir shall be authenticated in such manner as may be specified' in the rules to be made by the *Governor and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the *Governor or, as the case may be, by the Government of Jammu and Kashmir.

PART VI

THE STATE LEGISLATURE

Composition of the State Legislature.

46.. *Legislature for the State.*-There shall be a Legislature for the State which shall consist of the *Governor and two

* See foot-note 1 to S. 2.

Houses to be known respectively as the Legislative Assembly and the Legislative Council.

47. *Composition of Legislative Assembly.* –(1) The Legislative Assembly shall consist of ¹[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[(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:

³[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.]

48. *Provision relating to Pakistan- occupied territory.*- Notwithstanding anything contained in section 47, until the area

*See foot-note 1 to S. 2.

1. Substituted by the Constitution of Jammu and Kashmir (Twentieth Amendment) Act, 1987, S. 1.
2. Substituted by the Constitution of Jammu and Kashmir (Twelfth Amendment) Act, 1975, S. 2.
3. Inserted by the Constitution of Jammu and Kashmir (Twenty-ninth Amendment) Act, 2002, S. 2.

of the State under the occupation of Pakistan ceases to be, so occupied and the people residing in that area elect their representatives

(a) ¹[twenty-four seats] in the Legislative Assembly shall remain vacant and shall not be taken into account for reckoning the total membership of the Assembly; and

(b) the said area shall be excluded in delimiting the territorial constituencies under section 47.

²[48-A. *Holding of general election in the event of earlier dissolution of Legislative Assembly.*-Notwithstanding anything contained in this Constitution if upon the completion of a census, but before the final readjustment of territorial constituencies, the Legislative Assembly is dissolved prior to the expiry of its duration and the Governor is satisfied that holding of general election without delay is necessary, he may, after consulting the Election Commission, by notification direct that the general election shall be held on the basis of the last preceding delimitation of territorial constituencies].

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-

³[(a) the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published; and]

1. Substituted for "Twenty-five Seats" by the Constitution of Jammu and Kashmir (Twelfth Amendment) Act, 1975, S. 3.
2. Inserted' vide *ibid.* S. 4.
3. Substituted by *ibid.* S. 5.

(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:

¹[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 ²[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.

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.

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

2. Substituted for "forty-three years" by the Constitution of Jammu and Kashmir (Twenty-eighth Amendment) Act, 2000, S. 2 w.e.f. 25th January, 2000.

(19)

(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;

¹[x x x]

(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) ²[Eight] members shall be nominated by the *Governor, not more than three of whom shall be persons

* See foot-note 1 to S. 2.

1. Clauses (c) and (d) omitted by the Constitution of Jammu and Kashmir (Fifth Amendment) Act, 1963, S. 2.

2. Substituted *ibid* S. 2.

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.

General Provisions

51. *Qualifications for membership of the Legislature.*- A person shall not be qualified to be chosen to fill a seat in the Legislature unless he

¹[(a) is a permanent resident of the State, and makes and subscribes before some person authorised in that behalf by the Election Commission of India an oath or affirmation according to the form set out for the purpose in the Fifth Schedule ;]

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age, and in the case of a seat in the Legislative Council, not less than thirty years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Legislature.

52. *Duration of Legislature.* -(1) The Legislative Assembly, unless sooner dissolved, shall continue for ²[six years] from

1. Substituted by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, S. 10.

2. Substituted for "five years" by the Constitution of Jammu and Kashmir (Sixteenth Amendment) Act, 1977, S. 2.

the date appointed for its first meeting and no longer and the expiration of the said period of ¹[six years] shall operate as a dissolution of the Assembly:

Provided that the said period may, while a Proclamation of Emergency issued under Article 352 of the Constitution of India is in operation, be extended by the State Legislature by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

(2) The Legislative Council shall not be subject to dissolution but as nearly as possible one-third of the members thereof shall retire, as soon as may be, on the expiration of every second years in accordance with the provisions made in that behalf by Legislature by law.

53. *Session of the Legislature, prorogation and dissolution.*- (1) The *Governor shall from time to time summon each House of the Legislature to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

- (2) The *Governor may from time to time-
- (a) prorogue the Houses or either House;
 - (b) dissolve the Legislative Assembly.

54. *Right of Governor to address and send messages to the House or Houses.*- (1) The *Governor may address either House of Legislature, or both Houses assembled together, and may for that purpose require the attendance of members.

* See foot-note 1 to S. 2.

1. Substituted for "five years" by the Constitution of Jammu and Kashmir (Sixteenth Amendment) Act, 1977, S. 2.

(2) The *Governor may send messages to either House, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

55. *Special address by the Governor.*-(1) At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the *Governor shall address both Houses of Legislature assembled together and inform the Legislature of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address.

56. *Rights of Ministers and Advocate General as respects the Houses.*- Every Minister and the Advocate General shall have the right to speak in, and otherwise to take part in the proceedings of, both Houses and to speak in, and otherwise to take part in the proceedings of, any Committee of the Legislature of which he may be named a member, but shall not, by virtue of this section, be entitled to vote.

Officers of the State Legislature

57. *The Speaker and Deputy speaker of the Legislative Assembly.*-The Legislative Assembly shall as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member, to be Speaker or Deputy Speaker, as the case may be.

* See foot-note 1 to S. 2.

(23)

58. *Vacation and resignation at and removal from, the offices of the Speaker and Deputy Speaker.* -A member holding office as Speaker or Deputy Speaker of the Legislative Assembly_

- (a) shall vacate his office if he ceases to be a member of the Assembly;
- (b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and
- (c) may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days notice has been given of the intention to move the resolution:

Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before, the first meeting of the Assembly after the dissolution.

59. *Power of the Deputy Speaker or other person to perform the duties of the office of or to act as Speaker.*- (1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or if the office of the Deputy Speaker is also vacant, by such member of the Assembly as the *Governor may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

* See foot-note 1 to S. 2.

60. *The Speaker- and the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.*-(1) At any sitting of the legislative Assembly, while any resolution, for the removal of the Speaker from his office is under consideration, the Speaker or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of subsection (2) of section 59 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall, notwithstanding anything in section 67, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

61. *The Chairman and Deputy Chairman of the Legislative Council.* -(1) The legislative Council shall, as soon as may be, choose two Members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

(2) The provisions of sections 58,59 and 60 shall apply in relation to the Chairman and Deputy Chairman of the Legislative Council with the substitution of the words "Chairman" and "Council" for the words "Speaker" and "Assembly" respectively, wherever they occur in those provisions, and with the omission of the further proviso to section 58.

(25)

62. *Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman.*-There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly and to the Chairman and the Deputy Chairman of the Legislative Council, such salaries and allowances as may be respectively fixed by Legislature by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Third Schedule.

63. *Secretariat of the Legislature.*-(1) Each House of the Legislature shall have a separate secretariat staff :

Provided that nothing in this sub-section shall be construed as preventing the creation of posts common to both Houses.

(2) The Legislature may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of each House.

(3) Until provision is made by the Legislature under sub-section (2), the *Governor may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said sub-section.

Conduct of Business.

64. *Oath or affirmation by members.*-Every member of the Legislative Assembly or the Legislative Council shall, before taking his seat, make and subscribe before the *Governor or some person appointed in that behalf by him an oath or affirmation according to the form set out for the purpose in the Fifth Schedule.

* See foot-note 1 to S. 2

65. *Quorum.*-Save as otherwise provided by the rules of procedure of the House, the quorum to constitute a meeting of the Legislative Assembly and of the Legislative Council shall be twenty and ten respectively.

66. *Power of Houses to act notwithstanding vacancies.*-A House of the Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature shall be valid notwithstanding that it is discovered, subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

67. *Voting in the Houses.*-(1) Save as otherwise provided in this Constitution, all questions at any sitting of a House of the Legislature shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such.

(2) The Speaker or Chairman or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

Disqualifications of Members

68. *Vacation of Seats.*-(1) No person shall be a member of both Houses of the Legislature and provision shall be made by Legislature by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

¹[(2) If a member of a House of the Legislature resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant:

1. Substituted by the Constitution of Jammu and Kashmir (Fourteenth Amendment) Act, 1976, S.2.

(27)

Provided that if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation].

(3) If for a period of sixty days a member of a House of the Legislature is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of-

(a) such absence caused by reason beyond his control; or

(b) any period during which the House is prorogued or is adjourned for more than four consecutive days.

69. *Disqualification for membership.* -(1) A person shall be disqualified for being chosen as and for being, a member of the Legislative Assembly or Legislative Council

(a) if he holds any office of profit under the Government of India or the State Government or any other State Government within the Union of India, other than an office declared by Legislature by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court ;

(c) if he is an undischarged insolvent;

(d) if he is not a permanent resident of the State or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by the legislature.

(2) For the purposes ¹[of sub-section (1)] a person shall not be deemed to hold an office of profit under the Government of India, the State Government or any other State Government within the Union of India, by reason only that he is a Minister, or a Deputy Minister.

²[(3) A person shall be disqualified for being a member of either House of legislature if he is so disqualified under the Seventh Schedule.]

70. *Decision on questions as to disqualifications of members.*-(1) If it is represented to the Speaker or the Chairman that a member of the legislative Assembly or, as the case may be, of the legislative Council, is disqualified for being such a member under the provisions of ³[sub-section (1) of section 69,] or was so disqualified at any time since being chosen as a member, and the member does not admit that he is or was so disqualified, the question shall be referred to the High Court for decision and its decision shall be final:

Provided that, where the disqualification in question arises from circumstances which subsisted at the time of his being chosen as such member, no such representation as aforesaid shall be entertained-

- (a) unless it is made after the expiration of the period prescribed by law for presenting an election petition calling in question the election of the member; and
- (b) if such an election petition is pending or has been tried, unless the Speaker or Chairman, as the case

1. Substituted by the Constitution of Jammu and Kashmir (Eighteenth Amendment) Act, 1987, S. 2.
2. Inserted *ibid.*, S. 2
3. Substituted *ibid.* S. 3.

(29)

may be, is satisfied that the question of the member's disqualification by reason of those circumstances has not been raised or, as the case may be, was not raised, in the proceedings on the election petition.

(2) Where on a representation made under sub-section (1) the member admits that he is or was disqualified under the provisions of [sub-section (1) of section 69,] or where on a reference made under that sub-section the High Court decided that the member is or was so disqualified, his seat shall thereupon become vacant.

71. Penalty for sitting and voting before making oath or affirmation when not qualified or when disqualified.-If a person sits or votes as a member of the legislative Assembly or the legislative Council before he has complied with the requirements of section 61 or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by the Legislature he shall be liable in respect of each day on which he so sits or votes to a penalty of one hundred rupees to be recovered as a debt due to the State.

Powers, Privileges and Immunities of the State Legislature and Its Members

72. Powers, privileges, etc. of the Houses of Legislature and of the members and committees thereof.-(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the legislature, there shall be freedom of speech in the legislature.

(2) No member of the legislature shall be liable to any proceeding in any court in respect of anything said or any vote given by him in the legislature or any committee thereof

and no person shall be so liable In respect of the publication by or under the authority of a House of the Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature and of the members and the committees of a House of the Legislature shall be such as may from time to time be defined by Legislature by law, and until so defined, shall be those of the Parliament of India and of its members and committees.

(4) The provisions of sub-sections (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature or any committee thereof as they apply in relation to members of that Legislature.

73.. *Salaries and ,allowances of members.*- Members of the Legislative Assembly and the Legislative Council shall be entitled to receive such salaries and allowances as may from time to time be determined by Legislature by law and, until provision in that respect is, so made, salaries and allowances at such rates and upon such conditions as were Immediately before, the commencement of this Constitution applica9le in the case of members of the Constituent Assembly.

Legislative Procedure

74. *Provision as to Introduction and passing of Bills.*-(1) Subject to the provisions of sections 76 and 84 with respect to Money Bills and other Financial Bills, a Bill may originate in either House, of the Legislature.

, (2) Subject to the provisions of sections 75 and 76 a, Bill shall not be deemed to have, been passed by the Legislature unless it has been agreed to by both Houses, either

without amendment or with, such amendments only as are agreed to by both Houses.

(3) A Bill pending in the Legislature shall not lapse, by reason of the prorogation of the House or Houses thereof.

(4) A Bill pending in the Legislative Council which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the assembly.

(5) A Bill which is pending In the Legislative Assembly or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

75. Restriction on powers of Legislative Council as to Bills other than Money Bills.-(1) If after a Bill has been passed by the Legislative Assembly and transmitted to the Legislative Council-

- (a) the Bill is rejected by the Council ;or
- (b) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or
- (c) the Bill Is passed by the Council with amendments to which the Legislative Assembly does not agree;

the Legislative Assembly may, subject to the rules regulating its procedure, pass the Bill again in the same or in any subsequent session with or without such amendments, if any, as have been made, suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the legislative Council.

(2) If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council.

- (a) the Bill Is rejected by the Council ; or

(32)

(b) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it ;or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

the Bill shall be deemed to have been passed by the Houses of the Legislature in the form in which it is passed by the Legislative Assembly for the second time with such amendments, if any, as have been made or suggested by the Legislative Council and agreed to by the Legislative Assembly.

(3) Nothing in this section shall apply to a money Bill.

76. Special procedure in respect of Money Bills.-(1) A Money Bill shall not be introduced in the Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly, it shall be transmitted to the Legislative Council for its recommendations and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council of its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period In the form in which it was passed by the Legislative Assembly.

77. *Definition of "Money Bills"*.- (1) For the purpose of this Part, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely-

- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;
- (c) the custody of the Consolidated Fund or the Contingency Fund of the State, payment of moneys into or withdrawal of moneys from any such Fund ;
- (d) the appropriation of moneys out of the Consolidated Fund of the State;
- (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure;
- (f) the receipt of money on account of the Consolidated Fund of the State or the Public account of the State or the custody or issue of such money; or

(g) any matter incidental to any of the matters specified in clauses (a) to (f).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, iteration or regulation of any tax by local authority or body for local, purposes.

(3) If any question arises whether a Bill introduced in the Legislature is a Money Bill or not, the decision of the Speaker of the Legislative Assembly thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under section 76 and when it is presented to the *Governor for assent under section 78, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

78. Assent to Bills.-When a Bill has been passed by both Houses of the Legislature, it shall be presented to the *Governor and the *Governor shall declare either that he assents to the Bill or that he withholds assent therefrom:

Provided that the *Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and when a Bill is so returned, the Houses shall reconsider the Bill accordingly and if the Bill is passed again by the Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom.

* See foot-note 1 to S. 2

Procedure In Financial Matters

79. *Annual Financial Statement.*-(1)The *Governor shall in respect of every financial year cause to be laid before both Houses of the Legislature a statement of the estimated receipts and expenditure of the State for that year, in this Part referred to as the "Annual Financial Statement".

(2) The estimates of expenditure embodied In the annual financial statement shall show separately :

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of the State ; and

(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the State ;

and shall distinguish expenditure on revenue account from other expenditure

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of the State-

(a) the emoluments and allowances of the *Governor and other expenditure relating to his office ;

(b) the salaries and allowances of that Speaker and the Deputy Speaker of the Legislative Assembly and of the Chairman and the Deputy Chairman of the Legislative Council ;

(c) debt charges for which the State is liable including interest, sinking fund charges and redemption

* See foot-note 1 to S. 2

(36)

charges, and other expenditure relating to the raising of the loans and the service and redemption of debt;

(d) expenditure in respect of the salaries and allowances of the judges of the High Court ;

(e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(f) any other expenditure declared by this Constitution, or by Legislature by law, to be so charged.

80. *Procedure in Legislature with respect to estimates.*-(1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of the State shall not be submitted to the vote of the Legislative Assembly, but nothing in this sub-section shall be construed as preventing the discussion in the legislature, of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grant to the Legislative Assembly and the Legislative Assembly shall have power to assent or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the*Governor.

81. *Appropriation Bills.*-(1) As soon as may be after the grants under section 80 have been made by the Assembly, there shall be introduced a Bill to provide for the appropriation

*See foot-note 1 to S. 2

(37)

out of the Consolidated Fund of the State of all moneys required to meet-

- (a) the grants so made by the Assembly; and
- (b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the Houses.

(2) No amendment shall be proposed to any such Bill in either House of the Legislature which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State and the decision of the person presiding as to whether an amendment is inadmissible under this sub-section shall be final.

(3) Subject to the provisions of sections 82 and 83, no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this section.

82. *Supplementary, additional or excess grants.*-(1) The *Governor shall-

(a) if the amount authorised by any law made in accordance with the provisions of section 81 to be expended for a particular service for the current financial year is found "to" be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year; or

*See foot-note 1 to S. 2.

(38)

- (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year,

cause to be laid before the Houses of the Legislature another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly a demand for such excess as the case may be.

(2) The provisions of sections 79, 80 and 81 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or grant.

83. *Votes on account, votes of credit and exceptional grants.*- (1) Notwithstanding anything in the foregoing provisions of this Part, the Legislative Assembly shall have power

- (a) to make any grant in advance in respect of the estimated expenditure for a Part of any financial year pending the completion of the procedure prescribed in section 80 for the voting of such grant and the passing of the law in accordance with the provisions of section 81 in relation to that expenditure;
- (b) to make a grant for meeting an unexpected demand upon the resources of the State when

on account of the magnitude or the indefinite character of the services the demand cannot be stated with the, details ordinarily given in an annual financial statement;

- (c) to make an exceptional grant which forms no part of the current service of any financial year;

and the Legislature shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.

(2) The provisions of sections 80 and 81 shall have effect in relation to the making of any grant under sub-section (1) and to any law to be made under that sub-section as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure.

84. *Special provisions as to financial Bills.*-(1) A Bill or amendment making provision for any of the matters specified in clauses (a) to (f) of sub-section (1) of section 77 shall not be introduced or moved except on the recommendation of the *Governor and a Bill making such provision shall not be introduced in the Legislative Council :

Provided that no recommendation shall be required under this sub-section for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees

*See foot-note 1 to S. 2.

(40)

or licenses or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill, which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of the State shall not be passed by a House of the Legislature unless the *Governor has recommended to that House the consideration of the Bill.

Procedure Generally

85. *Rules of Procedure.*-(1) A House of the Legislature may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under sub-section (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Constituent Assembly while discharging the functions of the Legislative Assembly shall have effect in relation to each House of the legislature subject to such modifications and adaptations as may be made therein, by the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be.

(3) The *Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to communication between the two Houses,

86. *Regulation by law of procedure in the Legislature in relation to financial business.*- The Legislature may, for the

*See foot-note 1 to S. 2.

(41)

purpose of the timely completion of financial business, regulate by law, the procedure of, and the conduct of business in, the Houses of the legislature in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State and, if so far as any provision of any law so made is inconsistent with any rule made by either House of, the legislature under, sub-section. (1) of section 85-or with, any rule or standing order having, effect in relation to either House of the Legislature under sub-section (2) of that section, such provisions shall prevail.

87. *Language to be used in the Legislature.*-(1) Business in the Legislature shall be transacted in Urdu or in English;

Provided that the Speaker of the Legislative Assembly or the Chairman of the Legislative Council or person acting as such, as the case may be, may permit any member to address the House in Hindi, or if he cannot adequately express himself in any of the aforesaid languages, to address the House in his mother-tongue.

(2) The official record of the proceeding in the Legislature shall be kept in Urdu as well as in English,

(3) The text of all Bills and amendments thereof moved in and of all Acts passed by the Legislature, which shall be treated as authoritative, shall be in English.

88. *Restriction on discussion in the Legislature.* -No discussion shall take place in the Legislature with respect to the conduct of any Judge of the Supreme Court or of the High Court in the discharge of his duties.

89. *Courts not to inquire into proceedings of the Legislature.*-(1) The validity of any proceedings in the

(42)

Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

90. *Requirements as to recommendations regarded as matters of procedure only.*-No Act of the Legislature and no provision in any such Act shall be invalid by reason only that some recommendation required by this Constitution was not given, if assent to that Act was given by the *Governor.

Legislative Power of the *Governor

91. *Power of Governor to promulgate Ordinances during recess of Legislature.*-(1) If at any time, except when both Houses of the Legislature are in session, the *Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require:

Provided that the power of making an Ordinance under this section shall extend only to those matters with respect to which the Legislature has power to make laws.

(2) An Ordinance promulgated under this section shall have the same force and effect as an Act of the Legislature assented to by the *Governor but every such Ordinance

(a) shall be laid before both the Houses of the Legislature, and shall cease to operate at the

*See foot-note 1 to S. 2.

(43)

expiration of six weeks from the re-assembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, upon the resolution being agreed to by the Legislative Council, and

(b) may be withdrawn at any time by the *Governor.

¹[(3) Notwithstanding anything in this Constitution, the satisfactorily of the *Governor mentioned in sub-section (1) shall be final and conclusive and shall not be questioned in any Court on any ground].

EXPLANATION. -Where the Houses of the Legislature are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the latter of those dates for the purposes of this sub-section.

Breakdown of Constitutional Machinery

92. Provisions in case of failure of constitutional machinery in the State.-

(1) If at any time, the *Governor is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the *Governor may by Proclamation-

- (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by anybody or authority in the State;
- (b) make such incidental and consequential provisions as appear to the *Governor to be necessary or desirable for giving effect to the objects of the

*See foot-note 1 to S. 2.

1. Inserted by the Constitution of Jammu and Kashmir (Fifteenth Amendment) Act, 1976, S. 2.

(44)

Proclamation, including provisions for suspending in whole or in part the operation of any provision of this Constitution relating to anybody or authority in the State:

Provided that nothing in this section shall authorise the *Governor to assume to himself any of the powers vested in or exercisable by the High Court or to suspend in whole or in part the operation of any provision of this Constitution relating to the High Court.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Any such Proclamation whether varied under subsection (2) or not, shall except where it is a Proclamation revoking a previous Proclamation, cease to operate on the expiration of six months from the date on which it was first issued.

(4) If the *Government or by a Proclamation under his section assumes, to himself any, of the powers of the Legislature to make his laws, any law made by him in the exercise of that power shall, subject to, the terms there of continue to have effect until two years have elapsed from the date on which the proclamation ceases to have effect, unless sooner

(5) No Proclamation under this section shall, except where it is a Proclamation revoking a previous Proclamation, be laid before each House of the Legislature as soon as it is convened.

*see foot-note 1 to S. 2.

PART VII

THE HIGH COURT

93. *Constitution of High Court.* -(1) There shall be a High Court for the State, consisting of a Chief Justice and two or more other Judges.

(2) The High Court exercising jurisdiction in relation to the State immediately before the commencement of this Constitution shall be the High Court for the State.

94. *High Court to be a Court of Record.* - The High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself or of the courts subordinate to it.

95. *Appointment and tenure of office of Judges.*¹[(1) Every Judge of the High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the *Governor, and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court and ²[shall hold office, in the case of an additional or acting judge, as provided in section 100-A, and in any of the case until he attains the age of ³[sixty two years].

⁴[(2) If any question arises as to the age of a Judge of the High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final].

.See foot-note 1 to S. 2.

1. Section 95 renumbered as sub-section (1) by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, S. 11.
2. Substituted by the Constitution of Jammu and Kashmir (First Amendment) Act, 1959, S.2 for shall hold office until he attains age of Sixty years."
3. Substituted by S. 11 for "Sixty years" by. the Constitution of J&K (Sixth Amendment) Act, 196_.
4. Inserted by S. 11, *ibid*.

96. *Qualifications for appointment.*-A person shall not be qualified for appointment as a Judge of the High Court unless he is a citizen of India, and

(a) has for at least ten years held a judicial office in the State or in any other part of India; or

(b) has for at least ten years been an advocate of the State High Court or of any other High Court in India or of two or more such courts in succession.

*Explanation-*For the purposes of this section in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office after he became an advocate.

97. *Oath or affirmation by Judges of the High Court.* Every person appointed to be a Judge of the High Court shall before he enters upon his office, make and subscribe before the *Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Fifth Schedule.

98. *Salaries, etc. of Judges.*-(1) There shall be paid to the Judges of the High Court such salaries as are specified in the Fourth Schedule.

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension ¹[x x x] as are specified in the Fourth Schedule:

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

.See foot-note. 1 to S. 2.

1. Certain words omitted by the Constitution of Jammu and Kashmir (First Amendment) Act, 1959, S. 3.

99. *Registration or removal of a Judge of the High Court.*-(1) A Judge of the High Court may, by writing under his hand addressed to the President, resign his office.

¹[(2) Omitted].

¹[(3) Omitted].

100. *Appointment of Acting Judges.* -(1) When the office of the Chief Justice is vacant or when the Chief Justice is by reason of absence or otherwise unable to perform the duties of his office, the duties of the office, shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

²[(2) Omitted].

³[100-A. *Appointment of additional and acting Judges.*(1) If by reason of any, temporary increase in the business of the High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional judges of the Court for such period not exceeding two years as he may specify.

(2) When any Judge of the High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the President may appoint a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties.

1. Sub-sections (2) and (3) of Section 99 omitted by the Constitution of Jammu and Kashmir (First Amendment) Act, 1959, S. 4.
2. Omitted by S. 5, *ibid.*
3. Inserted by S. 6, *ibid.*

(48)

(3) No person appointed as an additional or acting Judge of the High Court shall hold office after attaining the age of 1[sixty-two-years].

2[100-8. *Appointment of retired Judges at sitting of the High Court.* - Notwithstanding anything in this Part, the Chief Justice of the High Court may at any time, with the previous consent of the President, request any person who has held the office of a Judge of that Court or of any other High Court in India to sit and act as Judge of the High Court, and every such 'person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, power and privileges of, but shall not otherwise be deemed to be a Judge of the High Court :

Provided that nothing in this section shall be deemed to require any such person as aforesaid to sit and act as a Judge of the High Court unless he consents so to do].

101. *Place of sitting of the Court.* -(1) The usual places of sitting of the High Court shall be Jammu and Srinagar.

(2) The Chief Justice shall, with the approval of the *Governor, determine the number of Judges who shall sit from time to time at Jammu and at Srinagar for such period as may be deemed necessary.

(3) Whenever it appears to the Chief Justice that it is desirable that the High Court should hold its sitting at place

*See foot-note .1 to S. 2.

1. Substituted by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, S. 12, for "Sixty Years",
2. Inserted by S. 13 *ibid*

other than Srinagar and Jammu, one or more Judges of the High Court as determined by him shall, with the previous approval of the *Governor, sit at such place.

102. *Saving of existing jurisdiction of the High Court*, -Subject to the provisions of this Constitution and to the provisions of any law for the time being in force, the jurisdiction of and the law administered in the High Court and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof, sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

[Provided that nothing in this section shall be deemed to exclude institution of original civil suits without limit as regards the value in the principal civil court of original jurisdiction in the district].

103. *Power to issue certain writs*.- The High Court shall have power to issue to any person or authority, including in appropriate cases any Government within the State, directions, orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto and Certiorar*, or any of them, for any purpose other than those mentioned in clause (2-A) of article 32 of the Constitution of India.

104. *Superintendence and control of subordinate courts*.-(1) The High Court shall have superintendence and control over all courts for the time being subject to its appellate or revisional jurisdiction and all such courts shall be subordinate to the High Court.

*See foot-note 1 to S. 2.

1. Inserted by the Constitution of Jammu and Kashmir (24th Amendment) Act, 1997, S. 2.

(2) Without prejudice to the generality of the foregoing provision, the High Court may

- (a) call for returns from such courts;
- (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; .
- (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such court.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein:

Provided that any rules made, forms prescribed or tables settled under sub-section (2) or sub-section (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the *Governor.

105. *Transfer of cases to High Court*, -If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution or the Constitution of India the determination of which is necessary for the disposal of the case, it shall withdraw the case and may

- (a) either dispose of the case itself, or
- (b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

* See foot-note 1 to S 2.

¹[106. Omitted].

107. Seal. -(1) The High Court shall have and use as occasion may require a seal bearing a device and impression of the State emblem with an exergue or label surrounding the same with the inscription:

"The seal of the High Court of Jammu and Kashmir".

(2) The seal shall be delivered to and kept in the custody of the Registrar or, such other officer of the Court as the Chief Justice may designate in this behalf.

108. *Officers and servants of the High Court.* -(1) Appointments of officers and servants of the High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:

Provided that the *Governor may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature, the conditions of service of the officers and servants of the High Court shall be such as may be prescribed by rules made by the High Court with the approval of the *Governor.

(3) The administrative expenses of the High. Court including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that fund.

* See foot-note 1 to S 2.

1. Section 106 omitted by the Constitution of Jammu and Kashmir (First Amendment) Act, 1959, S 7.

Subordinate Courts.

109. *Appointment of district judges.*-(1) Appointment of persons to be, and the posting and promotion of, district judges in the State shall be made by the *Governor in consultation with the High Court.

(2) A person not already in the service of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or pleader and is recommended by the High Court for appointment.

¹[109-A. *Validation of postings and transfers of, and judgments, etc. delivered by, certain district judges.*-Notwithstanding any judgment, decree or order of any court,-

- (a) no posting or transfer of a district judge made at any time before the commencement of the Constitution of Jammu and Kashmir (Ninth Amendment) Act, 1967 otherwise than in accordance with the provisions of section 109 or section 111 shall be deemed to be illegal or void or ever to have become illegal or void by reason only of the fact that such posting or transfer was not made in accordance with the said provisions;
- (b) no jurisdiction exercised, no judgment, decree, sentence or order passed or made, and no other act or proceeding done or taken, before the commencement of the Constitution of Jammu and Kashmir (Ninth Amendment) Act, 1967, by, or before, any person posted or transferred as district judge in the State otherwise than in accordance with the provisions of section 109 or section 111 shall be deemed to be illegal or invalid or ever to have become illegal or invalid by reason only of the fact that such posting or transfer was not made in accordance with the said provisions].

* See foot-note 1 to S 2.

1. Inserted vide the Constitution of Jammu and Kashmir (Ninth Amendment) Act, 1967, s. 2.

110. *Recruitment of persons other than district judges to the judicial service.*-Appointments of persons other than district judges to the judicial service of the State shall be made by the *Governor in accordance with rules made by him in that behalf after consultation with the Public Service Commission and with the High Court.

111. *Control over subordinate courts.*-The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of the State and holding any post inferior to the post of district judge shall be vested in the High Court; but nothing in this section shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

112. *Interpretation.....*In this Part-

- (a) the expression "district judge" includes additional district judge, assistant district judge, sessions judge, additional sessions judge and assistant sessions judge;
- (b) the expression "Judicial service" means a service consisting exclusively of persons intended to fill the post of district judge, and other civil judicial posts inferior to the post' of district judge.

113. *Application of the provisions of this Part to certain, class or classes of magistrates.*- The *Governor may/by public notification direct that the foregoing provisions of this Part and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification.

* See footnote 1 to S 2.

PART VIII.

FINANCE, PROPERTY AND CONTRACTS

114. *Taxes not to be imposed save by authority of law.*- No tax, shall be levied or collected except by authority of law.

115. *Consolidated Fund and public account.*-(1) Subject to the provisions of section 116, all revenues received by the Government, all loans raised by the Government by the issue of treasury bills, loans, or ways and means advances and all moneys received by the Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State,"

(2) All other public moneys received by or on behalf of the Government shall be credited to the public account of the State.

(3) No moneys out of the Consolidated Fund of the State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

116. *Contingency Fund.*-The Legislature may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of the State" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the *Governor to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by Legislature by law under sections 82 or 83.

117. *Expenditure defrayable by the State out of its revenues.*-The State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which the Legislature may make laws.

* See footnote 1 to S 2.

118. *Custody etc. of Consolidated Fund, Contingency Fund and moneys credited to the public account.*-The custody of the Consolidated Fund of the State and the Contingency Fund of the State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Fund received by or on behalf of the Government, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature and, until provision in that behalf is so made, shall be regulated by rules made by the *Governor.

119. *Custody of suitors deposits and other moneys received by public servants and courts.*-All moneys received by or deposited with-

- (a) any officer employed in connection with the affairs of the State in his capacity as such, other than revenues or public moneys, raised or received by the Government, or
- (b) any court within the State to the credit of any cause, matter, account or persons,

Shall be paid into the public account of the State.

120. *Property accruing by escheat, or lapse or as bona vacantia.*-Any property within the State which, if this Constitution had not come into operation, would have accrued to the Government or any other authority in the State by escheat or lapse, or as bona vacantia for want Of a rightful owner, shall vest in the State.

121. *Powers to carry on trade etc.*-(1) The executive power of the State shall extend, subject to any law- made by-the State Legislature, to the carrying on of any trade or business and to the grant, sale, disposition or mortgage of any property held for the purposes of the State, and to

* See footnote 1 to S 2.

the purchase or acquisition of property for those purpose and to the making of contractors.

(2) All property acquired for the purposes of the state shall vest in the state.

122. *Contracts.*-(1) All contracts made in the exercise of the executive power of the State shall be expressed to be made by the *Governor and all such contracts and all assurance of property made in the exercise of that power shall be executed on behalf of the *Governor by such persons and in such manner as he may direct or authorise.

(2) The *Governor shall not be personally liable in respect of any contract or assurance made or executed for the I purposes of this Constitution, or for the purposes of any enactment relating to the Government of the State heretofore in force, nor shall any person making or executing any such contract or assurance on his behalf be personally liable in respect thereof.

123. *Suits and proceedings.*-The Government may sue or be sued by the name of the State of Jammu and Kashmir and may, subject to any provision which may be made by Act of the Legislature enacted by virtue of power conferred by this Constitution, sue or be sued in relation to its affairs in the like cases as the state might have sued if this Constitution has not been enacted.

PART IX

THE PUBLIC SERVICES.

124. *Recruitment and conditions of service of persons serving the State.*- subject to the provisions of this Constitution, the Legislature may by law regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the State:

Provided that it shall be competent for the *Governor, or such person as he may direct, to make rules regulating

* See footnote 1 to S 2.

the recruitment, and the conditions of service of person appointed, to such services and posts until provision, in that behalf is made by or under an Act of the Legislature under this section and any rules so made shall have effect subject to the provisions of any such Act.

125. *Tenure of office of persons serving the State.*(1) Except as expressly provided by this Constitution every person who is a member of a civil service of the State or holds any civil post under the State holds office during the pleasure of the *Governor.

(2) Notwithstanding that a person holding a civil post under the State holds office during the pleasure of the Governor, any contract under which a person, not being a member of a civil service of the State, is appointed to hold such a post, may, if the *Governor deems it necessary in order to secure the service of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

126. *Dismissal, reduction or removal of persons employed in civil capacities under the State.*-(1) No person who is a member of a civil service of the State or holds a civil post under the State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

¹[(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed,

* See footnote 1 to S 2.

1. Substituted by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, S 14.

but only on the basis of the evidence adduced during such inquiry :

Provided that this sub-section shall not apply-

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
- (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
- (c) where the *Governor is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonable to hold such inquiry as is referred to in sub-section (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final].

127. *Transitional provisions.*-Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as service or post under the State, shall continue in force so far-as consistent with the provisions of this Constitution.

The Public Service Commission.

128. *Public Service Commission for the State.*-There shall be a Public Service Commission (hereinafter referred to in this Part as “the Commission”) for the State.

* See footnote 1 to S 2.

(59)

129. *Appointment and term of office of members.*-(1) The Chairman and other members of the Commission shall be appointed by the *Governor:

Provided that as nearly as may be one-half of the members of the Commission shall be persons who at the dates of their respective appointments have held office for at least ten years under the Government.

(2) A member of the Commission shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier:

Provided that

- (a) a member of the Commission may, by writing under his hand addressed to the *Governor, resign his office;
- (b) a member of the Commission may be removed from his office in the manner hereinafter provided.

(3) A person who holds office as a member of the Commission shall, on the expiration of his term of office, be ineligible for reappointment to that office.

130. *Removal and suspension of a member of the Commission.*-(1) Subject to the provisions of sub-section (3), the Chairman or any other member of the Commission shall only be removed from his office by order of the *Governor on the ground of misbehavior after the High Court, on reference being made to it by the *Governor, has, on inquiry held in that behalf, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

(2) The *Governor may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the High Court under sub-

* See footnote 1 to S 2.

section (1) until the *Governor has passed orders on receipt of the report of the High Court on such reference.

(3) Notwithstanding anything in sub-section (1), the *Governor may by order remove from office the Chairman or any other member of the Commission if the Chairman or such other member, as the case may be-

- (a) is adjudged an insolvent; or
- (b) engages during his term of office in any paid employment outside the duties of his office; or
- (c) is, in the opinion of the *Governor, unfit to continue in office by reason of infirmity of mind or body.

(4) If the Chairman or any other member of the Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of the State, the Government of India or the Government of any other State in India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehavior.

131. *Power to make regulations as to conditions of service of members and staff of the Commission.*-The *Governor may by regulations-

- (a) determine the number of members of the Commission and their conditions of service; and
- (b) make provision with respect to the number of members of the staff of the Commission and their conditions of service:

Provided that the conditions of service of a member of the Commission shall not be varied to his disadvantage after his appointment.

* See footnote 1 to S 2.

(61)

132. *Prohibition as to the holding of offices by members of the Commission on ceasing to be such members.*-On ceasing to hold office the Chairman and the members of the Commission shall be ineligible for further office under the Government or the State, but a member other than the Chairman shall be eligible for appointment as the Chairman of the Commission.

Explanation.-for the purposes of this section, the office of Minister or Deputy Minister shall not be deemed to be an office under the Government of the State.

133. *Functions of the Commission.*-(1) It shall be the duty of the Commission to conduct examinations for appointments to the services of the State.

(2) The Commission shall be consulted-

- (a) on all matters relating to methods of recruitment to civil services and for civil posts;
- (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and, transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;
- (c) on all -disciplinary matters affecting a person serving under the Government including memorials or petitions relating to such matters, and it shall be the duty of the Commission to advise on any matter so referred to them or on any other matter which the *Governor may refer to them:

Provided that the *Governor may make regulations specifying the matters in which either generally, or in any particular class of cases or in any particular circumstances, it shall not be necessary for the Commission to be consulted.

* See footnote 1 to S 2,

(3) Nothing in sub-section (2) shall require the Commission to be consulted as respects the manner in which a provision may be made by the State for the reservation of appointments or posts in favour of any class of permanent residents which in the opinion of the Government is not adequately represented in the services under the State.

(4) All regulations made under the proviso to sub-section (2) by the *Governor shall be laid for not less than fourteen days before each House of the Legislature as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment as the Legislative Assembly may make during the session in which they are so laid.

134. *Acting appointment of Chairman of the Commission.*-If the office of the Chairman of the Commission becomes vacant or if the Chairman is by reason of absence or for any other reason unable to perform the duties of his office those duties shall until some person appointed under sub-section (1) of section 129 to the vacant office has entered on the duties thereof, or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the *Governor may appoint for the purpose.

135. *Power to extend functions of the Commission.*- An Act made by the Legislature may provide for the exercise of additional functions by the Commission as respects the services of the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution.

136. *Expenses of the Commission.*-The expenses of the Commission including any salaries, allowances and pensions payable to or in respect of the members or the staff, of the Commission, shall be charged on the Consolidated Fund of the State;

* See footnote 1 to S. 2.

137. *Reports of the Commission.*-It shall be the 'duty of the Commission to present annually to the *Governor a report as to the work done by the Commission and the *Governor on receipt of such report, shall cause a copy thereof together with a memorandum explaining, as respects . the cases, if any, where the advice of the Commission was not accepted, the'. reasons for such non-acceptance to be laid before the Legislature.

PART X
ELECTIONS

¹[138. *Superintendence, direction and control of elections.*-The Superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, elections to either House of the State Legislature held under this Constitution, ²[x x x x x] shall vest in the Election Commission of India].

139. *No person to be ineligible for inclusion in electoral roll on grounds of religion, race, caste or sex.*--There shall be one general electoral roll for every territorial constituency for election to either House of the Legislature and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

140. *Elections to the Legislative Assembly to be on the basis of adult suffrage.*-The elections to the Legislative Assembly shall be on the basis of adult suffrage ; that is to say, every person who is a permanent resident of the State and who is not less than ³[Eighteen years] of age on such date as may be fixed in that behalf by or under any law made by the Legislature and is not otherwise disqualified

* See footnote 1 to S 2.

1. Substituted by the Constitution of Jammu and, Kashmir (First Amendment) Act, 1959,

S 8.

2. Omitted vide Constitution of Jammu and Kashmir (Eighth" Amendment) Act, 1967, S.

2.

3. Words substituted by the Constitution of Jammu and Kashmir (Twenty-first Amendment) Act, 1989, S 2.

under this Constitution or any law made by the Legislature on the ground of non-resident, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

141. *Power of 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.

142. *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 ;
- (b) no election to either House of the legislature shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the Legislature:

¹[Provided that nothing in this clause shall preclude a person whose nomination paper has been rejected from preferring. an appeal against the decision of the Returning Officer, to such authority and in such manner as the Legislature may by, law provide:

Provided further that the decision of the Appellate Authority on ,such appeal shall be final subject only to the

1. Added by the Constitution of Jammu and Kashmir (Thirteenth Amendment) Act, 1975, S. 2.

result of the election petition, if any, and shall not be called in question in any Court whatsoever notwithstanding anything contained in this Constitution].

PART XI

MISCELLANEOUS PROVISIONS

143. *Protection of Governor.*-(1) The *Governor shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:

Provided that nothing in this sub-section shall be construed as restricting the right of any person to bring appropriate proceedings against the Government.

(2) No criminal proceedings whatsoever shall be instituted or continued against the *Governor in any court during his term of office.

(3) No process for the arrest or imprisonment of the *Governor shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the *Governor shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as *Governor until the expiration of two months next after notice in writing has been delivered to the *Governor or left at his office stating the nature of the proceeding, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

144. *Flag of the State.*-The Flag of the State shall be rectangular in shape and red in colour with three equidistant white vertical strips of equal width next to the staff and a white plough in the middle with handle facing the strips.

* See footnote 1 to S 2.

The ratio of the length of the Flag to its width shall be 3 : 2.

145. *Official language of the State.*-The official language of the State shall be Urdu but the English language shall unless the Legislature by law otherwise provides, continue to be used for all the official purposes of the State for which it was being used immediately before the commencement of the Constitution.

146. *Academy for development of Art, Culture and Languages.*-The *Governor shall, as soon as may be, after the commencement of the Constitution, establish an Academy of Art, Culture and Languages where opportunities will be afforded for the development of Art and Culture of the State and for the development of Hindi, Urdu and other regional languages of the State specified in the Sixth Schedule.

PART XII

AMENDMENT OF THE CONSTITUTION

147. *Amendment of the Constitution.*-An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in the Legislative Assembly and when the Bill is passed in each House by a majority of not less than two thirds of the total membership of that House, it shall be presented to the Sadar-i-Riyasat for his assent and, upon such assent being given, to, the Bill, the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that a Bill providing for the abolition of the Legislative Council may be introduced in the Legislative Assembly and passed by it by a majority of the total membership of Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting:

* See footnote 1 to S 2.

(67)

Provided further that no Bill or amendment seeking to make any change in-

- (a) this section; or
- (b) the provisions of sections 3 and 5 ; or
- (c) the provisions of the Constitution of India as applicable, in relation to the State,

shall be introduced or moved in either House of the Legislature.

PART XIII

TRANSITIONAL PROVISIONS

¹[148. Omitted.

149. Omitted.

150. Omitted.

151. Omitted.

152. Omitted].

153. *Provisions as to Judges of High Court.* Notwithstanding anything in section 96, the Judges of the High Court holding office immediately before the commencement of this Constitution, shall, unless they have elected otherwise, become on such commencement the Judges of the High Court under this Constitution and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under section 98 in respect of the Judges of the High Court.

154. *Courts, authorities and officers to continue to function subject to the provisions of the Constitution.*-All courts of civil, criminal and revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the territory of the State, shall exercise their respective functions subject to the provisions of this Constitution.

1. Ss. 148, 149, 150, 151 and 152 omitted by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, S 15.

155. *Moneys received or raised or expenditure incurred between the commencement of the Constitution and the 31st day of March, 1957.*-The provisions of this Constitution relating to the Consolidated Fund of the State and the appropriation of moneys out of the same shall not apply in relation to moneys received or raised or expenditure incurred by the Government between the commencement of this Constitution and the thirty-first day of March, 1957, both days inclusive and any expenditure incurred during that period shall be deemed to be duly authorised if the expenditure was specified in the sanctioned estimate for 1956-57 or is authorised by the Sadar-i-Riyasat in accordance with such rules as were applicable to the authorisation of expenditure from the revenues of State immediately before such commencement.

156. *Power of Sadar-i-Riyasat to remove difficulties.*-(1) The Sadar-i-Riyasat may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Jammu and Kashmir Constitution Act, 1996, to the provisions of this Constitution by order direct that this Constitution shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient:

Provided that no such order shall be made after the first meeting of the two Houses of the Legislature after their due constitution under the provisions of Part VI.

(2) Every order made under sub-section (1) shall be laid before the Provisional Legislature, or the newly constituted Legislature, as the case may be.

157. *Repeal and saving of laws and rules.*-(1) The Jammu and Kashmir Constitution Act, 1996 (XIV of 1996) is hereby repealed.

(69)

(2) Notwithstanding the repeal of the said Act but subject to the other provisions of this Constitution, all the laws in force in the State immediately before the commencement of this Constitution shall continue in force until altered or repealed or amended by competent authority.

(3) All notifications published, proclamations issued, powers conferred, jurisdiction vested, forms prescribed, local limits defined, and orders, rules and appointments made under any regulation, order, law or rule in force immediately before the coming into operation of this Constitution and which are not inconsistent with any of the provisions of this Constitution, shall be deemed to have been respectively published, issued, conferred, vested, prescribed, defined and made under this Constitution and shall remain in force until repealed or modified either expressly or by implication by competent authority.

158. *Interpretation.*-Unless the context otherwise requires the General Clauses Act, Svt. 1977, shall apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the State Legislature.

(70)

¹[First Schedule]

1. Omitted by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, S 16.

Second Schedule

(See section 30)

**EMOLUMENTS, ALLOWANCES AND PRIVILEGES OF THE
*GOVERNOR**

1. *Emoluments*:-The emoluments of the *Governor shall be ¹[36,000] per mensem.

²[Provided that if the *Governor, at the time of his appointment,-

(a) is in receipt of a pension (other than disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his emoluments shall be reduced,

(i) by the amount of that pension; and

(ii) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension; or

(b) is in receipt of any benefit by way of contributory provident fund, his emoluments shall be reduced by the pension equivalent of such benefit:

Provided further that nothing contained in this Schedule shall have effect so as to diminish the emoluments and allowances of the *Governor during his term of office].

2. *Allowances*.-In order that the *Governor may be enabled to discharge conveniently and with dignity the duties

* See footnote 1 to S. 2.

1. Substituted by the Constitution of Jammu and Kashmir (Twenty seventh Amendment) Act, 1999, S. 2,

2. Inserted by the Constitution of Jammu and Kashmir (Twenty-third Amendment) Act, 1998, S. 2.

of his office there shall be paid in cash each year for each of the purposes specified below such amount ¹[as may be required by the *Governor and as does not, except in cases provided for in para 3, exceed the maximum amount provided herein under]:-

		Maximum amount provided
(i) Sumptuary Allowance	... ² [Rs.	50,000
(ii) Staff and Household	...Rs.	1,35,000
(iii) Tour Expenses	...Rs.	30,000
(iv) Allowances for Miscellaneous Expenses	... Rs.	20,000
Total	... Rs.	2,35,000]

Note:- The grants specified above shall be operated upon in consultation with the Government.

3. The *Governor may in case of necessity in consultation with the Government sanction ¹[re-appropriations in respect of or additions to the grants] specified in para 2.

4. (1) The *Governor shall throughout his term of office, be entitled without payment of rent or hire, to the use of his furnished official residence and of motor vehicles specified in the sub-joined table and the maintenance of such residences and motor vehicles shall be at the State expense:

³[Provided that-

- (i) if the *Governor occupies as his official residence at Srinagar or Jammu a suitable building owned

* See footnote 1 to S. 2.

1. Substituted by the Constitution of Jammu and Kashmir (Tenth Amendment) Act, 1968, S. 2

2. Substituted by the Constitution of Jammu and Kashmir (Seventh Amendment) Act, 1965, S. 2.

3. Inserted by the Constitution of Jammu and Kashmir (Second Amendment) Act, 1960, S. 2.

(73)

by him, he shall be paid such allowance not exceeding Rs. 12,000 per annum as may be determined by the Government for the maintenance of such building;

(ii) the provisions of clause (i) shall be deemed to have come into force with effect from the twenty sixth day of January, 1957.]

(2) The items specified in the sub-joined table may be varied or amended by the *Governor with the concurrence of the Government.

Explanation.-For the purpose of this order-

- (a) "official residence" means the official residences to be specified by the Government by notifications and includes the staff quarters and other buildings appurtenant thereto and the gardens thereof;
- (b) maintenance in respect of motor vehicles specified in the sub-joined table would include pay and allowances of chauffeurs and the provisions of oil and petrol.

5. There shall be paid to the *Governor, in connection with his assumption of office, and allowance equal to his actual expenses in traveling with his family, if any, and his family effects, to take up his duties, and a similar allowance on his vacating the office to return to the place where he ordinarily resided at the time of his appointment.

6. The *Governor shall be entitled to the free supply of water and electricity for his domestic use.

7. All motor vehicles specified in the table and any private car owned or maintained by the *Governor shall be exempt from payment of any toll or tax leviable under any statute or bye-law.

* See footnote 1 to S. 2.

8. The *Governor, any member of his family and the staff accompanying him shall be entitled to stay free of rent in any Dak Bungalow or Rest House maintained by the Government.

TABLE

Motor Cars	...	Two
Jeep	...	One
Station Wagon	...	¹ [Two]
Motor Cycle	...	One

* See Footnote 1 to S. 2.

1. Substituted by SRO-119 dated 26-3-1968.

(75)

Third Schedule

(See section 62)

**SALARIES AND ALLOWANCES OF THE SPEAKER AND THE
DEPUTY SPEAKER OF THE LEGISLATIVE ASSEMBLY AND THE
CHAIRMAN AND THE DEPUTY CHAIRMAN OF THE LEGISLATIVE
COUNCIL**

1. There shall be paid to the Speaker of the Legislative Assembly and the Chairman of the Legislative Council such salaries and allowances as are payable to a Minister of the State Government under the law for the time being in force.

2. (1) There shall be paid to the Deputy Speaker of the Legislative Assembly such salary and allowances as were payable to him immediately before the commencement of this Constitution.

(2) There shall be paid to the Deputy Chairman of the Legislative Council such salary and allowances as the *Governor may determine.

*See Footnote 1 to S. 2.

(76)

¹Fourth Schedule

(See section 98)

**SALARIES, ALLOWANCES AND OTHER CONDITIONS OF SERVICE
OF THE JUDGES OF THE HIGH COURT**

1. There shall be paid to the Judges of the High Court in respect of time spent on actual service, salary at the following rates per mensem, that is to say:-

The Chief Justice	...	² [30,000 rupees]
Any other Judge	...	² [26,000 rupees]:

Provided that if a Judge of the High Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the High Court shall be reduced

(a) by the amount of that pension; and

(b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension; and

(c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.

2. The rights in respect of leave of absence (including leave allowances) and pension and other conditions of service

1. Substituted by the Constitution of Jammu and Kashmir (First Amendment) Act, 1959, S. 9.
2. Substituted by the Constitution of Jammu and Kashmir (Twenty-Fifth Amendment) Act, 1999, S. 2. w. e. f. 1st January, 1996.

110. *Recruitment of persons other than district judges to the judicial service.*-Appointments of persons other than district judges to the judicial service of the State shall be made by the *Governor in accordance with rules made by him in that behalf after consultation with the Public Service Commission and with the High Court.

111. *Control over subordinate courts.*-The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of the State and holding any post inferior to the post of district judge shall be vested in the High Court; but nothing in this section shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

112. *Interpretation.....*In this Part-

- (a) the expression "district judge" includes additional district judge, assistant district judge, sessions judge, additional sessions judge and assistant sessions judge;
- (b) the expression "Judicial service" means a service consisting exclusively of persons intended to fill the post of district judge, and other civil judicial posts inferior to the post' of district judge.

113. *Application of the provisions of this Part to certain, class or classes of magistrates.*- The *Governor may/by public notification direct that the foregoing provisions of this Part and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification.

* See footnote 1 to S 2.

(54)

PART VIII.

FINANCE, PROPERTY AND CONTRACTS

114. *Taxes not to be imposed save by authority of law.*- No tax, shall be levied or collected except by authority of law.

115. *Consolidated Fund and public account.*-(1) Subject to the provisions of section 116, all revenues received by the Government, all loans raised by the Government by the issue of treasury bills, loans, or ways and means advances and all moneys received by the Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State,"

(2) All other public moneys received by or on behalf of the Government shall be credited to the public account of the State.

(3) No moneys out of the Consolidated Fund of the State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

116. *Contingency Fund.*-The Legislature may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of the State" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the *Governor to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by Legislature by law under sections 82 or 83.

117. *Expenditure defrayable by the State out of its revenues.*-The State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which the Legislature may make laws.

* See footnote 1 to S 2.

118. *Custody etc. of Consolidated Fund, Contingency Fund and moneys credited to the public account.*-The custody of the Consolidated Fund of the State and the Contingency Fund of the State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Fund received by or on behalf of the Government, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature and, until provision in that behalf is so made, shall be regulated by rules made by the *Governor.

119. *Custody of suitors deposits and other moneys received by public servants and courts.*-All moneys received by or deposited with-

- (a) any officer employed in connection with the affairs of the State in his capacity as such, other than revenues or public moneys, raised or received by the Government, or
- (b) any court within the State to the credit of any cause, matter, account or persons,

Shall be paid into the public account of the State.

120. *Property accruing by escheat, or lapse or as bona vacantia.*-Any property within the State which, if this Constitution had not come into operation, would have accrued to the Government or any other authority in the State by escheat or lapse, or as bona vacantia for want Of a rightful owner, shall vest in the State.

121. *Powers to carry on trade etc.*-(1) The executive power of the State shall extend, subject to any law- made by-the State Legislature, to the carrying on of any trade or business and to the grant, sale, disposition or mortgage of any property held for the purposes of the State, and to

* See footnote 1 to S 2.

the purchase or acquisition of property for those purpose and to the making of contractors.

(2) All property acquired for the purposes of the state shall vest in the state.

122. *Contracts.*-(1) All contracts made in the exercise of the executive power of the State shall be expressed to be made by the *Governor and all such contracts and all assurance of property made in the exercise of that power shall be executed on behalf of the *Governor by such persons and in such manner as he may direct or authorise.

(2) The *Governor shall not be personally liable in respect of any contract or assurance made or executed for the I purposes of this Constitution, or for the purposes of any enactment relating to the Government of the State heretofore in force, nor shall any person making or executing any such contract or assurance on his behalf be personally liable in respect thereof.

123. *Suits and proceedings.*-The Government may sue or be sued by the name of the State of Jammu and Kashmir and may, subject to any provision which may be made by Act of the Legislature enacted by virtue of power conferred by this Constitution, sue or be sued in relation to its affairs in the like cases as the state might have sued if this Constitution has not been enacted.

PART IX

THE PUBLIC SERVICES.

124. *Recruitment and conditions of service of persons serving the State.*- subject to the provisions of this Constitution, the Legislature may by law regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the State:

Provided that it shall be competent for the *Governor, or such person as he may direct, to make rules regulating

* See footnote 1 to S 2.

the recruitment, and the conditions of service of person appointed, to such services and posts until provision, in that behalf is made by or under an Act of the Legislature under this section and any rules so made shall have effect subject to the provisions of any such Act.

125. *Tenure of office of persons serving the State.*(1) Except as expressly provided by this Constitution every person who is a member of a civil service of the State or holds any civil post under the State holds office during the pleasure of the *Governor.

(2) Notwithstanding that a person holding a civil post under the State holds office during the pleasure of the Governor, any contract under which a person, not being a member of a civil service of the State, is appointed to hold such a post, may, if the *Governor deems it necessary in order to secure the service of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

126. *Dismissal, reduction or removal of persons employed in civil capacities under the State.*-(1) No person who is a member of a civil service of the State or holds a civil post under the State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

¹[(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed,

* See footnote 1 to S 2.

1. Substituted by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, S 14.

but only on the basis of the evidence adduced during such inquiry :

Provided that this sub-section shall not apply-

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
- (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
- (c) where the *Governor is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonable to hold such inquiry as is referred to in sub-section (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final].

127. *Transitional provisions.*-Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as service or post under the State, shall continue in force so far-as consistent with the provisions of this Constitution.

The Public Service Commission.

128. *Public Service Commission for the State.*-There shall be a Public Service Commission (hereinafter referred to in this Part as “the Commission”) for the State.

* See footnote 1 to S 2.

(59)

129. *Appointment and term of office of members.*-(1) The Chairman and other members of the Commission shall be appointed by the *Governor:

Provided that as nearly as may be one-half of the members of the Commission shall be persons who at the dates of their respective appointments have held office for at least ten years under the Government.

(2) A member of the Commission shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier:

Provided that

- (a) a member of the Commission may, by writing under his hand addressed to the *Governor, resign his office;
- (b) a member of the Commission may be removed from his office in the manner hereinafter provided.

(3) A person who holds office as a member of the Commission shall, on the expiration of his term of office, be ineligible for reappointment to that office.

130. *Removal and suspension of a member of the Commission.*-(1) Subject to the provisions of sub-section (3), the Chairman or any other member of the Commission shall only be removed from his office by order of the *Governor on the ground of misbehavior after the High Court, on reference being made to it by the *Governor, has, on inquiry held in that behalf, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

(2) The *Governor may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the High Court under sub-

* See footnote 1 to S 2.

section (1) until the *Governor has passed orders on receipt of the report of the High Court on such reference.

(3) Notwithstanding anything in sub-section (1), the *Governor may by order remove from office the Chairman or any other member of the Commission if the Chairman or such other member, as the case may be-

- (a) is adjudged an insolvent; or
- (b) engages during his term of office in any paid employment outside the duties of his office; or
- (c) is, in the opinion of the *Governor, unfit to continue in office by reason of infirmity of mind or body.

(4) If the Chairman or any other member of the Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of the State, the Government of India or the Government of any other State in India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehavior.

131. *Power to make regulations as to conditions of service of members and staff of the Commission.*-The *Governor may by regulations-

- (a) determine the number of members of the Commission and their conditions of service; and
- (b) make provision with respect to the number of members of the staff of the Commission and their conditions of service:

Provided that the conditions of service of a member of the Commission shall not be varied to his disadvantage after his appointment.

* See footnote 1 to S 2.

(61)

132. *Prohibition as to the holding of offices by members of the Commission on ceasing to be such members.*-On ceasing to hold office the Chairman and the members of the Commission shall be ineligible for further office under the Government or the State, but a member other than the Chairman shall be eligible for appointment as the Chairman of the Commission.

Explanation.-for the purposes of this section, the office of Minister or Deputy Minister shall not be deemed to be an office under the Government of the State.

133. *Functions of the Commission.*-(1) It shall be the duty of the Commission to conduct examinations for appointments to the services of the State.

(2) The Commission shall be consulted-

- (a) on all matters relating to methods of recruitment to civil services and for civil posts;
- (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and, transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;
- (c) on all -disciplinary matters affecting a person serving under the Government including memorials or petitions relating to such matters, and it shall be the duty of the Commission to advise on any matter so referred to them or on any other matter which the *Governor may refer to them:

Provided that the *Governor may make regulations specifying the matters in which either generally, or in any particular class of cases or in any particular circumstances, it shall not be necessary for the Commission to be consulted.

* See footnote 1 to S 2,

(3) Nothing in sub-section (2) shall require the Commission to be consulted as respects the manner in which a provision may be made by the State for the reservation of appointments or posts in favour of any class of permanent residents which in the opinion of the Government is not adequately represented in the services under the State.

(4) All regulations made under the proviso to sub-section (2) by the *Governor shall be laid for not less than fourteen days before each House of the Legislature as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment as the Legislative Assembly may make during the session in which they are so laid.

134. *Acting appointment of Chairman of the Commission.*-If the office of the Chairman of the Commission becomes vacant or if the Chairman is by reason of absence or for any other reason unable to perform the duties of his office those duties shall until some person appointed under sub-section (1) of section 129 to the vacant office has entered on the duties thereof, or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the *Governor may appoint for the purpose.

135. *Power to extend functions of the Commission.*- An Act made by the Legislature may provide for the exercise of additional functions by the Commission as respects the services of the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution.

136. *Expenses of the Commission.*-The expenses of the Commission including any salaries, allowances and pensions payable to or in respect of the members or the staff, of the Commission, shall be charged on the Consolidated Fund of the State;

* See footnote 1 to S. 2.

137. *Reports of the Commission.*-It shall be the 'duty of the Commission to present annually to the *Governor a report as to the work done by the Commission and the *Governor on receipt of such report, shall cause a copy thereof together with a memorandum explaining, as respects . the cases, if any, where the advice of the Commission was not accepted, the'. reasons for such non-acceptance to be laid before the Legislature.

PART X
ELECTIONS

¹[138. *Superintendence, direction and control of elections.*-The Superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, elections to either House of the State Legislature held under this Constitution, ²[x x x x x] shall vest in the Election Commission of India].

139. *No person to be ineligible for inclusion in electoral roll on grounds of religion, race, caste or sex.*--There shall be one general electoral roll for every territorial constituency for election to either House of the Legislature and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

140. *Elections to the Legislative Assembly to be on the basis of adult suffrage.*-The elections to the Legislative Assembly shall be on the basis of adult suffrage ; that is to say, every person who is a permanent resident of the State and who is not less than ³[Eighteen years] of age on such date as may be fixed in that behalf by or under any law made by the Legislature and is not otherwise disqualified

* See footnote 1 to S 2.

1. Substituted by the Constitution of Jammu and, Kashmir (First Amendment) Act, 1959,

S 8.

2. Omitted vide Constitution of Jammu and Kashmir (Eighth" Amendment) Act, 1967, S.

2.

3. Words substituted by the Constitution of Jammu and Kashmir (Twenty-first Amendment) Act, 1989, S 2.

under this Constitution or any law made by the Legislature on the ground of non-resident, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

141. *Power of 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.

142. *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 ;
- (b) no election to either House of the legislature shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the Legislature:

¹[Provided that nothing in this clause shall preclude a person whose nomination paper has been rejected from preferring. an appeal against the decision of the Returning Officer, to such authority and in such manner as the Legislature may by, law provide:

Provided further that the decision of the Appellate Authority on ,such appeal shall be final subject only to the

1. Added by the Constitution of Jammu and Kashmir (Thirteenth Amendment) Act, 1975, S. 2.

result of the election petition, if any, and shall not be called in question in any Court whatsoever notwithstanding anything contained in this Constitution].

PART XI

MISCELLANEOUS PROVISIONS

143. *Protection of Governor.*-(1) The *Governor shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:

Provided that nothing in this sub-section shall be construed as restricting the right of any person to bring appropriate proceedings against the Government.

(2) No criminal proceedings whatsoever shall be instituted or continued against the *Governor in any court during his term of office.

(3) No process for the arrest or imprisonment of the *Governor shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the *Governor shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as *Governor until the expiration of two months next after notice in writing has been delivered to the *Governor or left at his office stating the nature of the proceeding, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

144. *Flag of the State.*-The Flag of the State shall be rectangular in shape and red in colour with three equidistant white vertical strips of equal width next to the staff and a white plough in the middle with handle facing the strips.

* See footnote 1 to S 2.

The ratio of the length of the Flag to its width shall be 3 : 2.

145. *Official language of the State.*-The official language of the State shall be Urdu but the English language shall unless the Legislature by law otherwise provides, continue to be used for all the official purposes of the State for which it was being used immediately before the commencement of the Constitution.

146. *Academy for development of Art, Culture and Languages.*-The *Governor shall, as soon as may be, after the commencement of the Constitution, establish an Academy of Art, Culture and Languages where opportunities will be afforded for the development of Art and Culture of the State and for the development of Hindi, Urdu and other regional languages of the State specified in the Sixth Schedule.

PART XII

AMENDMENT OF THE CONSTITUTION

147. *Amendment of the Constitution.*-An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in the Legislative Assembly and when the Bill is passed in each House by a majority of not less than two thirds of the total membership of that House, it shall be presented to the Sadar-i-Riyasat for his assent and, upon such assent being given, to, the Bill, the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that a Bill providing for the abolition of the Legislative Council may be introduced in the Legislative Assembly and passed by it by a majority of the total membership of Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting:

* See footnote 1 to S 2.

(67)

Provided further that no Bill or amendment seeking to make any change in-

- (a) this section; or
- (b) the provisions of sections 3 and 5 ; or
- (c) the provisions of the Constitution of India as applicable, in relation to the State,

shall be introduced or moved in either House of the Legislature.

PART XIII

TRANSITIONAL PROVISIONS

¹[148. Omitted.

149. Omitted.

150. Omitted.

151. Omitted.

152. Omitted].

153. *Provisions as to Judges of High Court.* Notwithstanding anything in section 96, the Judges of the High Court holding office immediately before the commencement of this Constitution, shall, unless they have elected otherwise, become on such commencement the Judges of the High Court under this Constitution and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under section 98 in respect of the Judges of the High Court.

154. *Courts, authorities and officers to continue to function subject to the provisions of the Constitution.*-All courts of civil, criminal and revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the territory of the State, shall exercise their respective functions subject to the provisions of this Constitution.

1. Ss. 148, 149, 150, 151 and 152 omitted by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, S 15.

155. *Moneys received or raised or expenditure incurred between the commencement of the Constitution and the 31st day of March, 1957.*-The provisions of this Constitution relating to the Consolidated Fund of the State and the appropriation of moneys out of the same shall not apply in relation to moneys received or raised or expenditure incurred by the Government between the commencement of this Constitution and the thirty-first day of March, 1957, both days inclusive and any expenditure incurred during that period shall be deemed to be duly authorised if the expenditure was specified in the sanctioned estimate for 1956-57 or is authorised by the Sadar-i-Riyasat in accordance with such rules as were applicable to the authorisation of expenditure from the revenues of State immediately before such commencement.

156. *Power of Sadar-i-Riyasat to remove difficulties.*-(1) The Sadar-i-Riyasat may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Jammu and Kashmir Constitution Act, 1996, to the provisions of this Constitution by order direct that this Constitution shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient:

Provided that no such order shall be made after the first meeting of the two Houses of the Legislature after their due constitution under the provisions of Part VI.

(2) Every order made under sub-section (1) shall be laid before the Provisional Legislature, or the newly constituted Legislature, as the case may be.

157. *Repeal and saving of laws and rules.*-(1) The Jammu and Kashmir Constitution Act, 1996 (XIV of 1996) is hereby repealed.

(69)

(2) Notwithstanding the repeal of the said Act but subject to the other provisions of this Constitution, all the laws in force in the State immediately before the commencement of this Constitution shall continue in force until altered or repealed or amended by competent authority.

(3) All notifications published, proclamations issued, powers conferred, jurisdiction vested, forms prescribed, local limits defined, and orders, rules and appointments made under any regulation, order, law or rule in force immediately before the coming into operation of this Constitution and which are not inconsistent with any of the provisions of this Constitution, shall be deemed to have been respectively published, issued, conferred, vested, prescribed, defined and made under this Constitution and shall remain in force until repealed or modified either expressly or by implication by competent authority.

158. *Interpretation.*-Unless the context otherwise requires the General Clauses Act, Svt. 1977, shall apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the State Legislature.

(70)

¹[First Schedule]

1. Omitted by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, S
16.

(71)

Second Schedule

(See section 30)

**EMOLUMENTS, ALLOWANCES AND PRIVILEGES OF THE
*GOVERNOR**

1. *Emoluments*:-The emoluments of the *Governor shall be ¹[36,000] per mensem.

²[Provided that if the *Governor, at the time of his appointment,-

- (a) is in receipt of a pension (other than disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his emoluments shall be reduced,
 - (i) by the amount of that pension; and
 - (ii) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension; or
- (b) is in receipt of any benefit by way of contributory provident fund, his emoluments shall be reduced by the pension equivalent of such benefit:

Provided further that nothing contained in this Schedule shall have effect so as to diminish the emoluments and allowances of the *Governor during his term of office].

2. *Allowances*.-In order that the *Governor may be enabled to discharge conveniently and with dignity the duties

* See footnote 1 to S. 2.

1. Substituted by the Constitution of Jammu and Kashmir (Twenty seventh Amendment) Act, 1999, S. 2,

2. Inserted by the Constitution of Jammu and Kashmir (Twenty-third Amendment) Act, 1998, S. 2.

of his office there shall be paid in cash each year for each of the purposes specified below such amount ¹[as may be required by the *Governor and as does not, except in cases provided for in para 3, exceed the maximum amount provided herein under]:-

		Maximum amount provided
(i) Sumptuary Allowance	... ² [Rs.	50,000
(ii) Staff and Household	...Rs.	1,35,000
(iii) Tour Expenses	...Rs.	30,000
(iv) Allowances for Miscellaneous Expenses	... Rs.	20,000
Total	... Rs.	2,35,000]

Note:- The grants specified above shall be operated upon in consultation with the Government.

3. The *Governor may in case of necessity in consultation with the Government sanction ¹[re-appropriations in respect of or additions to the grants] specified in para 2.

4. (1) The *Governor shall throughout his term of office, be entitled without payment of rent or hire, to the use of his furnished official residence and of motor vehicles specified in the sub-joined table and the maintenance of such residences and motor vehicles shall be at the State expense:

³[Provided that-

- (i) if the *Governor occupies as his official residence at Srinagar or Jammu a suitable building owned

* See footnote 1 to S. 2.

1. Substituted by the Constitution of Jammu and Kashmir (Tenth Amendment) Act, 1968, S. 2

2. Substituted by the Constitution of Jammu and Kashmir (Seventh Amendment) Act, 1965, S. 2.

3. Inserted by the Constitution of Jammu and Kashmir (Second Amendment) Act, 1960, S. 2.

(73)

by him, he shall be paid such allowance not exceeding Rs. 12,000 per annum as may be determined by the Government for the maintenance of such building;

(ii) the provisions of clause (i) shall be deemed to have come into force with effect from the twenty sixth day of January, 1957.]

(2) The items specified in the sub-joined table may be varied or amended by the *Governor with the concurrence of the Government.

Explanation.-For the purpose of this order-

- (a) "official residence" means the official residences to be specified by the Government by notifications and includes the staff quarters and other buildings appurtenant thereto and the gardens thereof;
- (b) maintenance in respect of motor vehicles specified in the sub-joined table would include pay and allowances of chauffeurs and the provisions of oil and petrol.

5. There shall be paid to the *Governor, in connection with his assumption of office, and allowance equal to his actual expenses in traveling with his family, if any, and his family effects, to take up his duties, and a similar allowance on his vacating the office to return to the place where he ordinarily resided at the time of his appointment.

6. The *Governor shall be entitled to the free supply of water and electricity for his domestic use.

7. All motor vehicles specified in the table and any private car owned or maintained by the *Governor shall be exempt from payment of any toll or tax leviable under any statute or bye-law.

* See footnote 1 to S. 2.

8. The *Governor, any member of his family and the staff accompanying him shall be entitled to stay free of rent in any Dak Bungalow or Rest House maintained by the Government.

TABLE

Motor Cars	...	Two
Jeep	...	One
Station Wagon	...	¹ [Two]
Motor Cycle	...	One

* See Footnote 1 to S. 2.

1. Substituted by SRO-119 dated 26-3-1968.

(75)

Third Schedule

(See section 62)

**SALARIES AND ALLOWANCES OF THE SPEAKER AND THE
DEPUTY SPEAKER OF THE LEGISLATIVE ASSEMBLY AND THE
CHAIRMAN AND THE DEPUTY CHAIRMAN OF THE LEGISLATIVE
COUNCIL**

1. There shall be paid to the Speaker of the Legislative Assembly and the Chairman of the Legislative Council such salaries and allowances as are payable to a Minister of the State Government under the law for the time being in force.

2. (1) There shall be paid to the Deputy Speaker of the Legislative Assembly such salary and allowances as were payable to him immediately before the commencement of this Constitution.

(2) There shall be paid to the Deputy Chairman of the Legislative Council such salary and allowances as the *Governor may determine.

*See Footnote 1 to S. 2.

(76)

¹Fourth Schedule

(See section 98)

**SALARIES, ALLOWANCES AND OTHER CONDITIONS OF SERVICE
OF THE JUDGES OF THE HIGH COURT**

1. There shall be paid to the Judges of the High Court in respect of time spent on actual service, salary at the following rates per mensem, that is to say:-

The Chief Justice	...	² [30,000 rupees]
Any other Judge	...	² [26,000 rupees]:

Provided that if a Judge of the High Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the High Court shall be reduced

(a) by the amount of that pension; and

(b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension; and

(c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.

2. The rights in respect of leave of absence (including leave allowances) and pension and other conditions of service

1. Substituted by the Constitution of Jammu and Kashmir (First Amendment) Act, 1959, S. 9.
2. Substituted by the Constitution of Jammu and Kashmir (Twenty-Fifth Amendment) Act, 1999, S. 2. w. e. f. 1st January, 1996.

of the Judges *of* the High Court shall be governed by the provisions of the High Court Judges (Conditions *of* Service) Act, 1954 (Central Act No. 28 *of* 1954) and the rules made thereunder, for the time being in force, as if the said Act and the said rules were applicable to the Judges *of* the High Court *of* Jammu and Kashmir; and in their application to the Judges *of* the' High Court of Jammu and Kashmir

- (a) any reference in those provisions to the State 1[* * *]High Court, Chief Justice, acting chief Justice, Judge, additional Judge, acting Judge and General Provident Fund (Central Services) shall be construed, unless the context otherwise requires, as including a reference to the State of Jammu and Kashmir 1[* * *] the High Court of Jammu and Kashmir and the Chief Justice, acting Chief Justice, Judge, additional Judge and acting Judge of the High Court of Jammu and Kashmir and State General Provident Fund respectively;
- (b) any reference in those provisions to the "commencement of this Act" shall be construed as a reference to the commencement of the Constitution *of* Jammu and Kashmir (first Amendment) Act, 1959.

3. In this Schedule, unless the context otherwise requires,-

- (a) the expression "Chief Justice" includes an acting Chief Justice, and a "Judge" includes an additional Judge and an acting Judge;
- (b) "actual service" includes
 - (i) time spent 'by a Judge on duty as a Judger in the performance *of* such. other functions

1. Omitted by the Constitution *of* Jammu and_Kashmir (Sixth Amendment) Act, 1965, S, 17.

as he may at the request of the President undertake to discharge;

- (ii) vacations, excluding any time during which the Judge is absent on leave; and
- (iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another.

1[4. (1) In the calculation of service for pension of a Judge of any other High Court in India transferred to the High Court of Jammu and Kashmir, his actual service as a Judge of any other High Court in India shall also be reckoned as service for pension as a Judge of the High Court of Jammu and Kashmir.

(2) In the calculation of the amount of leave at the credit of a Judge of any other High Court in India transferred to the High Court of Jammu and Kashmir, the amount of leave due to him as a Judge of any other High Court in India shall be added to the amount of leave at his credit as a Judge of the High Court of Jammu and Kashmir.]

Fifth Schedule

(See sections 40, 64 and 97)

FORMS OF OATHS OR AFFIRMATIONS

Oath for a Minister

"I, A. B., do _____ swear in the name of God _____ that I will bear true
solemnly affirm

faith and allegiance to the Constitution of the State as by law established, [that I will uphold the sovereignty and integrity of India], that I will faithfully and conscientiously discharge the duty upon which I am about to enter, and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.

I further do _____ swear in the name of God _____ that I will not
solemnly affirm

directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the State except as may be required for the due discharge of my duties as such Minister".

1. Inserted by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, S. 18.

FORM B
Oath for a Deputy Minister

"I, A. B., do swear in the name of God that I will bear
solemnly affirm'

true faith and allegiance to the Constitution of the State as by law established, [(that I will uphold the sovereignty and integrity of India]; and that I will faithfully and conscientiously discharge the duty upon which I am about to enter, and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.

I further do swear in the name of God that I will not
solemnly affirm

directly or indirectly communicate or reveal to *any* person or persons any matter which shall be brought under my consideration or shall become known to me as a Deputy Minister for the State except as may be required for the due discharge of my duties' as such Minister".

1. Inserted by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, S.18.

(81)

¹ [FORM C
(I)]

Form of oath or affirmation to be made by a candidate for election
to the State Legislature

'I, A. B., having been nominated as a candidate to fill a seat in the Legislative Assembly, (or Legislative Council) do swear in the name of God/solemnly affirm that I will bear true faith' and allegiance to the Constitution of the State as by law established and that I will uphold the sovereignty and integrity of India".

(II)

Form, of oath or affirmation to be made by a member of the State
Legislature

'I, A, B., having been elected (or nominated) a member of the legislative' Assembly, (or Legislative Council) do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of the State as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter".]

¹, Substituted by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, S. 18.

(82)

FORM D

**Oath or affirmation to be made by the Judges of the
High Court**

'I. A.B., having been appointed Chief Justice (or a Judge) of the High Court of Jammu and Kashmir do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of the State as by law established, I(that I will uphold the sovereignty and integrity of India], that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."

(83)

Sixth Schedule

(See section 146)

REGIONAL LANGUAGES

1. Kashmiri.
2. Dogri.
3. Balti (pali).
4. Dardi.
5. Punjabi.
6. Pahari.
7. Ladakhi.
- 1[8. Gojri].

1. Added by the Constitution of Jammu and Kashmir (Twenty-Sixth Amendment) Act, 1999, S. 2.

(84)

I[Seventh Schedule

[*See section 69 (3)*]

**PROVISIONS AS TO DISQUALIFICATION ON GROUND
OF DEFECTION**

1. *Interpretation.* -In this Schedule, unless the context otherwise requires,

- (a) "House" means: either House of the Legislature of the State;
- (b) "Legislature party", in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 3 or, as the case may be, paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;
- (c) "Leader" in relation to a Legislature party means a member of the party chosen by it as its leader and includes any other member of the party authorised by the party to act, in the absence of the leader, as, or discharge the functions of the leader for the purpose of this Schedule;
- (d) "Original Political Party", in relation to a member of a House, means the political party to which he belongs for the purpose of sub-paragraph (1) of paragraph 2 ;
- (e) "Paragraph" means a paragraph of this Schedule.

(85)

2. *Disqualification on ground of defection.* -{l) Subject to the provisions of paragraphs 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House-

- (a) if he has voluntarily given up his membership of such political party; or
- (b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of, such voting or abstention.

Explanation. -for the purpose of this sub., paragraph

- (a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;
- (b) a nominated member of a House shall,
 - (i) where he is a member of any political party on the date of his nomination as such member be deemed to belong to such political party; .
 - (ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes member before the expiry of six months from the

date on which he takes his seat after complying with the requirements of section 64.

(2) An elected member of a House who has been elected as such otherwise than _ a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the 'expiry of six months from the date on which he takes his seat after complying with the requirements of section 64.

(4) Notwithstanding anything contained in the foregoing provisions of this paragraph, a person who on the commencement of the Constitution of Jammu and Kashmir (Eighteenth Amendment) Act, 1987 is a member of a House (whether elected or nominated as such) shall, -

- (i) where he was a member of a political party, immediately before such commencement be' deemed, for the purposes of sub-paragraph (1) of 'this paragraph, to have been elected as a member of such House as a candidate set up by such political party;
- (ii) in any other case be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph (2) of this paragraph or as the case may be, be deemed to be a nominated member of the House for the purposes of sub-paragraph (3) of this paragraph.'

3. *Disqualification on ground of defection not to apply in case of split.*-Where a member of a House makes a claim

(87)

that he and any other member of his Legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the members of such Legislature party,

(a) he shall not be disqualified under sub-paragraph (1) of paragraph 2 on the ground-

(i) that he has voluntarily given up his membership of his original political party ;

(ii) that he has voted or abstained from voting in such House contrary to any direction issued, by such party or by any person or authority authorised by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention; and

(b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph.

4. Disqualification on ground of defection not to apply in case of merger.- 1) A member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other member of his original political party,-

(a) have become members of such other political party or, as- the case may be, of a new political party formed by such member; or

- (b) have not accepted the merger and opted to function as a separate group,

and *from* the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs *for* the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party *for* the purposes of this subparagraph.

(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-third of the members of the Legislature party concerned have agreed to such merger.

5. Exemption.-Notwithstanding anything contained in this schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the Legislative Assembly or the Chairman or the Deputy Chairman of the Legislative Council shall not be disqualified under this Schedule,

- (a) if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belongs immediately before such election and does not, so long as he continues to hold such office thereafter, rejoin that political party or becomes a member of another political party ;
- (b) if he, having given up by reason of his election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office. .

6. *Decision on questions as to disqualification on ground of defection.*-(1) If any question arises as to whether a member of the House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Leader' of the Legislature party to which such member belongs and his decision shall be final:

Provided that where the question which has arisen relates to a member belonging to a Political party which has not elected any Leader of its Legislature party, the question shall be referred for the decision of the Speaker or, the Chairman, as the case may be, and his decision shall be final:

Provided further that where the question which has arisen relates to a member not belonging to any political party, the question shall be referred for the decision of the Speaker or the Chairman, as the case may be, and his decision shall be final.

(2). All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in the House within the meaning of section 89.

7. *Bar of jurisdiction of Courts.*-(Notwithstanding anything in this Constitution, no Court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.

8. *Rules.*-(1) Subject to the provisions of sub-paragraph (2) of this paragraph, the Chairman or the Speaker of the House may make rules for giving effect to the provisions

of this Schedule, and in particular, and without prejudice to the generality of the foregoing, such rules may provide for

- (a) the maintenance of registers or other records as to the political parties, if any, to which different members of the House belong;
- (b) the report which the leader of a legislature party in relation to a member of a House shall furnish with regard to any condonation - of the nature referred to in clause (b) of sub-paragraph (1) of paragraph 2 in respect of such member, the time within which and the authority to whom such report shall be furnished;
- (c), the reports which a political party shall furnish with regard to admission to such political party of any members of the House and the office of the House to whom, such report shall be furnished; :and
- (d) the procedure for deciding any question referred to in sub-paragraph (1) of paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question.

(2) The rules made by the Chairman or the Speaker of the House under sub-paragraph (1) of this paragraph shall be laid as soon as may be after they are made before the House for a total period of thirty days which may be comprised in one session or, in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the House and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form,

as the case may be, and where they are so disapproved, they shall be of no effect.

(3) The Chairman or the Speaker of the House may, without prejudice to the provisions of section 72 and to any other power which he may have under this Constitution direct that any wilful contravention by any person of the rules made under this paragraph may be dealt with in the same manner as a breach of privilege of the House.]

APPENDIX

(95)

THE CONSTITUTION OF JAMMU AND KASHMIR
(FIRST AMENDMENT) ACT; 1959

(No. XIX of 1959)

(13th October 1959)

An Act to amend the Constitution of Jammu and Kashmir.

Be it enacted by the Legislature of Jammu and Kashmir
in, the Tenth Year of the Republic of India as follows :

1. *Short title and commencement.* -{1) This) Act may be called the Constitution of Jammu and Kashmir (First Amendment) Act, 1959.

(2) It shall come into force on the Twenty-sixth day of January 1960.

2. *Amendment of section 95.* -In section 95 of the Constitution of Jammu and Kashmir (hereinafter referred to as the Constitution'), for the words "shall hold office' until he attains the .age of sixty years", the following words, figures, and letter snail be substituted, namely:

"shall hold office, in the case of an additional or acting Judge, as provided in _section 100-A, and in any other case, until he attains the age of sixty years".

3. *Amendment, of section 98.* -In section 98 of the Constitution, in sub-section (2), the words "as may from time to time be determined by or under law made by the Legislature, and until so determined, to such allowances and rights" shall be, omitted.

4. *Amendment of section 99.* -In section 99 of the Constitution, sub-section (2) and sub-section (3) shall be omitted. .

5. *Amendment of section 100.*-In section 100 of the Constitution, sub-section (2) shall be omitted.

6. *Insertion of new section 100-A.*-After section 100 of the Constitution, the following section shall be inserted, namely ::

"100-A. *Appointment of additional and acting Judges.*-(1) If by reason - of any temporary increase in the business_ of the High Court or by reason of _arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years
'as he may specify.

(2) When any Judge of the High Court other than the Chief Justice is by reason of absence. or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the President may appoint a duly qualified person to act as a Judge of that' Court until the permanent Judge has resumed his duties_

(3) No person appointed as an additional or acting Judge of the High Court shall hold office after attaining the age of sixty years."

7. *Omission of section 106.*-Section 106 of the Constitution shall be omitted.

(97)

8. *Substitution of new section for section 130.*-For section 138 of the Constitution, the following section shall be substituted, namely :

"138. *Superintendence, direction and control of elections.*-The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, elections to either House of the State Legislature, held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of, or in connection with, such elections shall vest in the Election Commission of India."

9. *Substitution of new Schedule for Fourth Schedule.* -For the Fourth Schedule to the Constitution, the following Schedule shall be substituted, namely :

"Fourth Schedule

(See section 90)

Salaries, Allowances and Other Conditions of Service of the Judges of the High Court.

1. There shall be paid to the Judges of the High Court in respect of time spent on actual service, salary at the following rates per mensem, that is to say :- .

The Chief Justice	4,000 rupees
Any other Judge	3,500 rupees

Provided that if a Judge of the High Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous

service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the High Court shall be reduced

- (a) by the amount of that pension; and
- (b) if he has, before such appointment, received in lieu of a portion of the" pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension; and
- (c) if he has, before such appointment, "received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.

2. The_ rights in respect of leave of absence (including leave allowances) and pension and other conditions of service of the Judges of the High Court shall be governed by the provisions of the High Court Judges (Conditions of Service) Act, 1954 (Central Act No. 28 of 1954) and the rules made thereunder, for the time being in force, as if the said Act and the said rules were applicable to the Judges of the High Court of the Jammu and Kashmir, and in their application to the Judges of High Court of Jammu and Kashmir

- (a) any reference in those provisions to the State Governor, High Court, Chief Justice, acting Chief Justice, Judge, additional Judge, acting Judge and General Provident Fund (Central Services) shall be construed, unless the context otherwise requires, as including a reference to the State of Jammu and Kashmir, Sadar-i-Riyasat, the ,High Court of

Jammu and Kashmir and the Chief Justice, acting Chief Justice, Judge, additional Judge and acting Judge of the High Court of Jammu and Kashmir, and State General Provident Fund respectively;

- (b) any reference in those provisions to the "Commencement of this Act" shall be construed as a reference to the commencement of the Constitution of Jammu and Kashmir (First Amendment) Act, 1959.

3. In this Schedule, unless the context otherwise requires,

- (a) the expression "Chief Justice" includes an acting Chief Justice, and a "Judge" includes an additional Judge and an acting Judge;

(b) "actual service" includes-

- (i) time spent by a Judge on duty as a Judge or in the performance of such other functions as he may at the request of the President undertake to discharge;
- (ii) vacations excluding any time during which the Judge is absent or on leave; and
- (iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another."

THE CONSTITUTION OF JAMMU AND KASHMIR
(SECOND. AMENDMENT) ACT, 1960.

(No. XI of 1960)

(22nd March 1960)

**An Act further to amend the Constitution of
Jammu and Kashmir.**

Be it enacted by the Jammu and Kashmir State Legislature in the Eleventh Year of the Republic of India as follows :

1. ' *Short tit/e.*-This Act may be called the Constitution of Jammu and Kashmir (Second Amendment) Act, 1960.

2. *Amendment of Second Schedule to the Constitution of Jammu and Kashmir.*-In the Second Schedule to the Constitution of Jammu and Kashmir

(a) in paragraph 2, for the words and figures

"Rs. 15,000 ; R's. 75,000; Rs. 10,000 ;
Rs. 9,000; and Rs. 1,09,000" the words and figures "Rs.
30,000 ; Rs. 1,20,000; Rs. 15,000 ; Rs. 20,000 and Rs.
1,85,000" shall respectively be substituted;

(b) to sub-paragraph (1) of paragraph 4 the following
proviso shall be inserted, namely :

"Provided that:

(i) If the Sadar-i-Riyasat occupies as his official residence at Srinagar or Jammu a suitable building owned by him, he shall be paid such allowance not exceeding Rs. 12,000 per annum as may be determined by the Government for the maintenance of such building;

(ii) the provisions of clause (i) shall be deemed to have come into force with effect from the twenty-sixth day of January, 1957."

(101)

THE CONSTITUTION OF JAMMU AND KASHMIR
(THIRD AMENDMENT) ACT, 1961.

(14th March 1961)

An Act further to amend the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Twelfth Year of Republic of India as follows: -

1. *Short title:* - This Act may be called the Constitution of Jammu and Kashmir (Third Amendment) Act, 1961.

2. *Amendment of section 49 of the Constitution of Jammu and Kashmir:*-In sub-section (2) of section 49 of the Constitution of Jammu and Kashmir for the words "five years" the words "thirteen years shall be substituted.

(102)

THE CONSTITUTION OF JAMMU AND KASHMIR
(FOURTH AMENDMENT) ACT, 1963.

(27th March 1963)

An Act further to amend the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Fourteenth Year of the Republic of India as follows: -

1. *Short title:* -*This Act may be called the Constitution of Jammu and Kashmir (Fourth Amendment) Act, 1963.*

2. *Amendment of Fourth Schedule to the Constitution of Jammu and Kashmir:-*
In the Fourth Schedule to the Constitution of Jammu and Kashmir, after paragraph 3, the following paragraph shall be added, namely: -

4. (1) In the calculation of service for pension of a Judge of any other High Court in India transferred to the High Court of Jammu and Kashmir, his actual service as a Judge of any other High Court in India shall also be reckoned as service for pension as a Judge of the High Court of Jammu and Kashmir.

(2) In the calculation of the amount of leave at the credit of a Judge of any other High Court in India transferred to the High Court of Jammu and Kashmir, the amount of leave due to him as a Judge of any other High Court in India shall be added to the amount of leave at his credit as a Judge of the High Court of Jammu and Kashmir."

THE CONSTITUTION OF JAMMU AND KASHMIR
(FIFTH AMENDMENT) ACT, 1963.

(1st October 1963)

An Act further to amend the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Fourteenth Year of the Republic of India as follows: -

1. *Short title:* - This Act may be called the Constitution of Jammu and Kashmir (Fifth Amendment) Act; 1963.

2. *Amendment of section 50 of the Constitution of Jammu and Kashmir:-In* section 50 of the Constitution of Jammu and Kashmir.

(a) in sub-section (4); clauses (c) and (d) shall be omitted.

(b) in sub-section (6); for the word "Six" the word "Eight" shall be substituted.

(104)

THE CONSTITUTION OF JAMMU AND KASHMIR
(SIXTH AMENDMENT) ACT, 1965.

(10th April, 1965)

An Act further to amend the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Sixteenth Year of Republic of India as follows:-

1. *Short title:-*This Act may be called the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965.

2. *Amendment of the Constitution:-*In the Constitution of Jammu and Kashmir (hereinafter referred to as the Constitution) except in Parts XII and XIII for the expressions "Sadar-i-Riyasat" and "Prime Minister" wherever they occur the expressions "Governor" and "Chief Minister" shall respectively be substituted.

3. *Amendment of section 2:-* In section 2 of the Constitution, after sub-section (2) the following sub-section shall be inserted, namely :-

“(3) Any reference in this Constitution to the Sadar-i-Riyasat shall, unless the context otherwise requires, be construed as a reference to the Governor”

4. *substitution of new section for section 27:-*For section 27 of the Constitution, the following section shall be substituted, namely:-

"27. Appointment of Governor:- The Governor shall be appointed by the President by warrant under his hand and seal:

Provided that the person holding office as Sadar-Riyasat immediately before the commencement of the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, shall on such commencement be the Governor and shall, subject to the other provisions of his Constitution, continue to hold office as Governor until the remaining period of his term for which he was elected as Sadar- Riyasat expires."

5. *Substitution of new section for section 29*:-For section 29 of the Constitution, the following section shall be substituted, namely :-

"29. *Qualifications for appointment as Governor*:-No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty years. "

6. *Amendment of section 30*:-In section 30 of the Constitution, in subsection (1) for the words "Elected and recognized" the words "appointed" shall be substituted.

7. *Substitution of new section for section 31*:-For section 31 of the Constitution, the following section shall be substituted, namely :-

"31. *Oath of office*: - The Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court or, in his absence, the senior most Judge of that Court available, an oath or affirmation in the following form, that is to say-

swear in the name of God

I, A. B., do _____ that I will faithfully
solemnly affirm

execute the office of Governor (or discharge the functions of the Governor) of Jammu and Kashmir and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well being of the people of the State".

8. *Omission of section 32*:-Section 32 of the Constitution shall be omitted.

9. *Substitution of new section for section 33*:-For section 33 of the Constitution, the following section shall be substituted, namely :-

"33. *Discharge of the functions of the Governor in certain contingencies*: -
The President may make such provision as he thinks fit for the discharge of functions of the Governor in any contingency not provided for in this Part".

10. *Amendment of section 51*:-In section 51 of the Constitution, for clause (a), the following clause shall be substituted, namely :-

"(a) is a permanent resident of the State, and makes and subscribes before some person authorized in that behalf by the Election Commission of India an oath or affirmation according to the form set out for the purpose in the Fifth Schedule."

11. *Amendment of section 95*:-Section 95 of the Constitution shall be renumbered as sub-section (1) of that section, and-

(a) in sub-section (1) as so renumbered, for the words "sixty year" the words "sixty-two years" shall be substituted;

(107)

(b) after sub-section (1) the following sub-section shall be inserted namely :-

"(2) If any question arises as to the age of a Judge of the High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final."

12. *Amendment of section 100-A*:-In section 100-A of the Constitution, in sub-section (3), for the words "sixty years" the words "sixty-two years" shall be substituted.

13. *Insertion of new section 100-8*:- After section 100-A of the Constitution, the following section shall be inserted:-

"100-B. *Appointment of retired Judges at sittings of the high Court*-Notwithstanding anything in this Part, the Chief Justice of the High Court may" at any time, with the previous consent of the President, request any person who has held the office of a Judge of that Court or of any other High Court in India to sit and act as Judge of the High Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be a Judge of the High Court :

Provided that nothing in this section shall be deemed to require any such person as aforesaid to sit and act as a Judge of the High Court unless he consents so to do."

14. *Amendment of section 126*: -In section 126 of the Constitution, for sub-sections (2) and (3) the following sub-sections shall be substituted, namely: -

"(2). No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in

(108)

which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry :

Provided that this sub-section shall not apply-

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
- (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reasons, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
- (c) where the Governor is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in subsection (2), the decision thereon of the authority empowered to dismiss, or remove such person or to reduce him in rank shall be final"

15. *Omission of sections 148 to 152:* -Sections 148, 149, 150, 151 and 152 of the Constitution shall be omitted.

16. *Omission of the First Schedule:* - The First Schedule to the Constitution shall be omitted.

17. *Amendment of the Fourth Schedule:*-In the Fourth Schedule to the Constitution in paragraph 2, in

clause (a) the words "Governor" and "Sadar-i-Riyasat" shall be omitted.

18. *Amendment of the Fifth Schedule:-*In the Fifth Schedule to the Constitution-

(a) in Form A, B, and D after the words "Constitution of the State as by law established" the words "that I will uphold the sovereignty and integrity of India" shall be inserted;

(b) for Form C, the following shall be substituted, namely:-

"FORM C"

(I)

**Form of oath or affirmation to be made by a candidate
for election to-the State Legislature**

I, A. B., having been nominated as a candidate to fill a seat in the Legislative Assembly (or Legislative Council) do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of the State as by law established and that I will uphold the sovereignty and integrity of India.

(II)

**Form of oath or affirmation to be made by a member of the State
Legislature.**

I, A. B., having been elected (or nominated) a member of the Legislative Assembly (or Legislative Council) do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of the State as by law established,

that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter."

19. *Construction of reference to "Sadar-i-Riyasat" and "Prime Minister" in other laws, orders etc.*:-Any reference in any other law, Ordinance, order, rule, bye-law, notification or regulation in force in the State immediately before commencement of the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, to the Sadar-i-Riyasat or the Prime Minister shall, unless, the context otherwise requires, be construed respectively as a reference to the Governor or the Chief Minister.

20. *Savings*:-Anything done or any action taken (including any order, rule, appointment or delegation made, notification, order, instruction or direction issued) before the commencement of the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, by or on behalf of the Sadar-i-Riyasat or the Prime Minister under the provisions of the Constitution or any other law in force in the State shall continue in force unless and until superseded by anything done or any action taken by or on behalf of the Governor, the Chief Minister, or, as the case may be, any other competent authority.

(111)

THE CONSTITUTION OF JAMMU AND KASHMIR
(SEVENTH AMENDMENT) ACT, 1965.

(13th April, 1965)

An Act further to amend the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Sixteenth Year of the Republic of India as follows:-

1. *Short title*:-This Act may be called the Constitution of Jammu and Kashmir (Seventh Amendment) Act, 1965.

2. *Amendment of the Second Schedule to the Constitution of Jammu and Kashmir*: -In the Second Schedule to the Constitution of Jammu and Kashmir in paragraph 2, for the letters and figures "Rs. 30,000", "Rs. 1,20,000" "Rs. 15,000", "Rs. 20,000 and "Rs. 1,85,000", letters and figures "Rs. 50,000", "Rs. 1,35,000", "Rs. 30,000", "Rs. 20,000" and "Rs. 2,35,000" shall respectively be substituted.

(112)

THE CONSTITUTION OF JAMMU AND KASHMIR
(EIGHTH AMENDMENT) ACT, 1967.

(25th August, 1967)

An Act further to amend the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Eighteenth Year of the Republic of India as follows: -

1. *Short title:* -*This* Act may be called the Constitution of Jammu and Kashmir (Eighth Amendment) Act, 1967.

2. *Amendment of section 138:* -In section 138 of the Constitution of Jammu and Kashmir, the words, "including the appointment of election tribunals for the decision of doubts and disputes arising out of, or in connection with, such elections shall be omitted.

(113)

THE CONSTITUTION OF JAMMU AND KASHMIR
(NINTH AMENDMENT) ACT, 1967.

(15th October 1967)

An Act further to amend the Constitution of Jammu And Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Eighteenth Year of the Republic of India as follows:-

1. *Short title*:- This Act may be called the Constitution of Jammu and Kashmir (Ninth Amendment) Act, 1967.

2. *Insertion of new section 109-A*:-After section 109 of the Constitution of Jammu and Kashmir, the following section shall be inserted, namely :-

"109-A *Validation of postings and transfers of and, judgments, etc. delivered by, certain District Judges*: -Notwithstanding any judgments, decree or order of any court,

- (a) no posting or transfer of a District Judge made at any time before the commencement of the Constitution of Jammu and Kashmir (Ninth Amendment) Act, 1967, otherwise than in accordance with the provisions of section 109 or section 111 shall be deemed to be illegal or void or ever to have become illegal or void by reason only of the fact that such posting or transfer was not made in accordance with the said provisions;

(b) no jurisdiction exercised, no judgement, decree, sentence or order passed or made, and no other act or proceeding done or taken, before the commencement of the Constitution of Jammu and Kashmir (Ninth Amendment) Act, ,1967 by, or before, any person posted or transferred as a, District Judge in the State otherwise than in accordance with the provisions of section 109 or section 111 shall be deemed to be illegal or invalid or ever to have become illegal or invalid or by reason only of the fact that such posting or transfer was not made in accordance with the said provisions."

THE CONSTITUTION OF JAMMU AND KASHMIR
(TENTH AMENDMENT) ACT, 1968.

(10th October, 1968)

An Act further to amend the Constitution Of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Nineteenth Year of the Republic of India as follows:-

1. *Short title*:- This Act may be called the Constitution of Jammu and Kashmir (Tenth Amendment) Act, 1968.

2. *Amendment of the Second Schedule to the Constitution of Jammu and Kashmir*:-In the Second Schedule to the Constitution of Jammu and Kashmir-

- (a) in para 2, for the words, "not exceeding the maximum provided hereunder, as may be required by the Governor", the words "as may be required by the Governor and -as does not except in cases provided for in para 3, exceed the maximum amount provided hereunder" shall be substituted;

- (b) in para 3, for the words, "re-appropriations in respect of the grants", the words, "re-appropriations in respect of or additions to, the grants", shall be substituted.

(116)

THE CONSTITUTION OF JAMMU AND KASHMIR
(ELEVENTH AMENDMENT) ACT, 1970.

(24th October, 1970)

An Act further to amend the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Twenty-first Year of the Republic of India as follows: -

1. *Short title:* - This Act may be called the Constitution of Jammu and Kashmir (Eleventh Amendment) Act, 1970.

2. *Amendment of section 49 of the Constitution of Jammu and Kashmir:-in* sub-section (2) of Section 49 of the Constitution of Jammu and Kashmir for the words, "thirteen years" the words "twenty-three years" shall be and shall always be deemed to have been substituted.

(117)

THE CONSTITUTION OF JAMMU AND KASHMIR (TWELFTH AMENDMENT) ACT, 1975.

(19th October 1975)

An Act further to amend the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Twenty-sixth Year of the Republic of India as follows:

1. *Short title and commencement:-*(1) This Act may be called the Constitution of Jammu and Kashmir (Twelfth Amendment) Act, 1975.

(2) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Government may, by notification in the Government Gazette, appoint.

2. *Amendment of section 47 of the Constitution of Jammu and Kashmir:-*In section 47 of the Constitution of Jammu and Kashmir (hereinafter referred to as the Constitution) for sub-section (2) the following sub-section shall be substituted, namely:-

"(2) For the purpose 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. *Amendment of section 48 of the Constitution:-*In clause (a) of section 48 of the Constitution for the words "twenty-five seats", the words, "twenty-four seats", shall be substituted.

4. *Insertion of new section after section 48 of the Constitution:-*After section 48 of the Constitution the following

section shall be inserted, namely:-

“48-A. Holding of general election in the event of earlier dissolution of Legislative Assembly: - Notwithstanding anything contained in this Constitution if upon the completion of a census, but before the final readjustment of territorial constituencies, the Legislative Assembly is dissolved prior to the expiry of its duration and the Governor is satisfied that holding, of general election without delay is necessary, he may after consulting the Election Commission, by notification direct that the general election shall be held on the basis of the last preceding delimitation of territorial constituencies.”

5. *Amendment of section 49 of the Constitution:-*In section 49 of the Constitution, clause (a) of explanation to sub-section (1) shall be substituted by the following, namely: -

"(a) the expression 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published; and"

(119)

THE CONSTITUTION OF JAMMU AND KASHMIR
(THIRTEENTH AMENDMENT) ACT, 1975.

(19th August, 1975)

An Act further to amend the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Twenty-sixth Year of the Republic of India as follows:-

1. *Short title and commencement-(1)* This Act may be called the Constitution of Jammu and Kashmir (Thirteenth Amendment) Act, 1975.

(2) This Act shall come into force on the date it is published in the Government Gazette.

2. *Amendment of section 142 of the Constitution of Jammu and Kashmir:-*
In section 142 of the Constitution of Jammu and Kashmir, the full-stop at the end of clause (b) shall be substituted by colon and thereafter the following proviso shall be added, namely:-

"Provided that nothing in this clause shall preclude a person whose nomination paper has been rejected from preferring an appeal against the decision of the Returning Officer to such authority and in such manner as the Legislature may by law provide:-

Provided further that the decision of the Appellate Authority on such appeal shall be final subject only to the result of the election petition, if any, and shall not be called in question in any Court what so-ever notwithstanding anything contained in this Constitution."

(120)

THE CONSTITUTION OF JAMMU AND KASHMIR
(FOURTEENTH AMENDMENT) ACT, 1976.

(12th March, 1976)

An Act further to amend the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Twenty-seventh Year of the Republic of India as follows:-

1. *Short title:-*(1) This Act may be called the Constitution of Jammu and Kashmir (Fourteenth Amendment) Act, 1976.

2. *Amendment of section 68 of the Constitution of Jammu and Kashmir:-*For sub-section (2) of section 68 of the Constitution of Jammu and Kashmir, the following shall be substituted, namely:-

"(2) If a member of a House of the Legislature resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case maybe and his resignation is accepted by the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant:

Provided that if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation."

(121)

THE CONSTITUTION OF JAMMU AND KASHMIR (FIFTEENTH AMENDMENT) ACT, 1976.

(12th March, 1976)

An Act further to amend the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Twenty-seventh Year of the Republic of India as follows:-

1. *Short title:-*(1) This Act may be called the Constitution of Jammu and Kashmir (Fifteenth Amendment) Act, 1976.

2. *Amendment of section 91 of the Constitution of Jammu and Kashmir:-*In section 91 of the Constitution of Jammu and Kashmir, after sub-section (2) the following sub-section shall be and shall always be deemed to have been inserted, namely:-

"(3) Notwithstanding anything in this Constitution the satisfaction of the Governor mentioned in subsection (1) shall be final and conclusive and shall not be questioned in any Court on any ground."

(122)

THE CONSTITUTION OF JAMMU AND KASHMIR
(SIXTEENTH AMENDMENT) ACTS, 1977.

(17th February 1977)

An Act further to amend the Constitution of Jammu and Kashmir.

Be it enacted I by the Jammu and Kashmir State Legislature in the Twenty-eighth "Year of the Republic of India as follows:-

1. *Short title:-*(1) This Act may be called the Constitution of Jammu and Kashmir (Sixteenth Amendment) Act, 1977.

2. *Amendment of section 52 of the Constitution of Jammu and Kashmir:-*(1) In sub-section (1) of section 52 of the Constitution of Jammu and Kashmir, for the words "five, years" the words "six years" shall be substituted.

(2) The amendment made by sub-section (1) to section 52 shall apply also to the Legislative Assembly in existence on the date of coming into force of this Act without prejudice to the power of the State Legislature with respect to the extension of the duration of the Legislative Assembly under the proviso to that sub-section

(123)

THE CONSTITUTION OF JAMMU AND KASHMIR
(SEVENTEENTH AMENDMENT) ACT, 1979.
(29th September, 1979)

An Act further to amend the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Thirtieth Year of the Republic of India as follows:-

1. *Short title:-(1)* This Act may be called the Constitution of Jammu and Kashmir (Seventeenth Amendment) Act, 1979.

2. *Amendment of section 49 of the Constitution of Jammu and Kashmir:-In* sub-section (2) of section 49 of the Constitution of Jammu and Kashmir for the words, "twenty-three years" the words "thirty-three years" shall be substituted.

THE CONSTITUTION OF JAMMU AND KASHMIR
(EIGHTEENTH AMENDMENT) ACT, 1987.

(3rd July, 1987)

An Act further to amend the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Thirty-eighth Year of the Republic of India as follows:-

1. *Short title:-*(1) This Act may be called the Constitution of Jammu and Kashmir (Eighteenth Amendment) Act, 1987.

2. *Amendment of section 69 of the Constitution of Jammu and Kashmir:-*In section 69 of the Constitution of Jammu and Kashmir (hereinafter referred to as the 'State Constitution')

(a) in sub-section (2) for the words "of this section" the words brackets and figure "of sub-section (1)" shall be substituted;

(b) after sub-section (2) the following sub-section shall be inserted, namely:-

"(3) A person shall be disqualified for being a member of either House of Legislature if he is so disqualified under the Seventh Schedule."

3. *Amendment of section 70 of the Constitution of Jammu and Kashmir:-*In section 70 of the State Constitution, for the word and figures "section 69" wherever occurring, the words, brackets and figures "sub-section (1) of section '69" shall be substituted.

4. *Addition of Seventh Schedule to the State Constitution.* -After the Sixth Schedule to the State Constitution, the following Schedule shall be added, namely:

"Seventh Schedule

...
[Section 69 (3)]

PROVISIONS AS TO DISQUALIFICATION ON GROUND
OF DEFECTION.

1. *Interpretation.*-In this -Schedule, unless the context otherwise requires,

- (a) "House" means either House of the Legislature of the State;
- (b) "Legislature party", in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 3 or, as the case may be, paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;
- (c) "Leader" in relation to a Legislature party means a member of the party chosen by it as its leader and includes any other member of the party authorised by the party to act, in the absence of the leader, as, or discharge the functions of, the leader for the purpose of this Schedule;
- (d) "Original political party", in relation to a member of a House, means the political party to which he belongs for the purpose of sub-paragraph (1) of paragraph 2;
- (e) "Paragraph" means a paragraph of this Schedule.

2. *Disqualification on ground of defection.* -(1) Subject to the provisions of paragraphs 3,4 and 5, a member of a house belonging to any political party shall be disqualified for being a member of the House

- (a) if he has voluntarily given up his membership of such political party; or
- (b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

Explanation: -for the purpose of this sub-paragraph

- (a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;
- (b) a nominated member of a House shall,-
 - (i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party ;
 - (ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes member before the expiry of six months from the date on which he takes his seat after complying with the requirement of section 64.

(127)

(2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of section 64.

(4) Notwithstanding anything contained in the foregoing provisions of this paragraph, a person who on the commencement of the Constitution of Jammu and Kashmir (Eighteenth Amendment) Act, 1987 is a member of a House (whether elected or nominated as such) shall,

- (i) where he was a member of a political party, immediately before such commencement be deemed, for the purpose of sub-paragraph (1) of this paragraph, to have been elected as a member of such House as a candidate set up by such political party;
- (ii) in any other case be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph (2) of this paragraph or as the case may be, deemed to be a nominated member of the House for the purposes of sub-paragraph (3) of this paragraph.

"

3. *Disqualification on ground of defection not to apply in case of split.*-Where a member of a House makes a claim that he and any other member of his Legislature party constitute the group representing a fiction- which has arisen as a result

of a. split in his original political party and such group consists of not less than one-third of the members of such Legislature party,

(a) he shall not be disqualified under sub-paragraph (1) of paragraph 2 -on the ground-

- (i) that he has voluntarily given up his membership of his original political party ;
- (ii) that he has voted or abstained from voting in such House contrary to any direction issued by such party or by any person or authority authorised by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention; and

(b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph.

4. *Disqualification on ground of defection not to apply in case of merger.* -{1} A member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other member of his original political party,

(a) have become members of such other political party or, as the case may be, of a new political party formed by such member; or

(b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.

(2) For the purposes of sub-paragraph (1) of this paragraph the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-third of the members of the Legislature party concerned have agreed to such merger.

5. Exemption. -Notwithstanding anything contained in this Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the Legislative Assembly or the Chairman or the Deputy Chairman of the Legislative Council shall not be disqualified under this Schedule,

- (a) If he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belongs immediately before such election and does not, so long as he continues to hold such office thereafter, rejoins that political party or becomes a member of another political party;
- (b) if he, having given up by reason of his election to such office membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office.

6. Decision on questions as to disqualification on ground of defection. - (1) If any question arises as to whether a member of the House has become subject to disqualification

under this Schedule, the question shall be referred for the decision of the Leader of the Legislature party to which such member belongs and his decision shall be final:

Provided that where the question which has arisen relates to a member belonging to a political party which has not elected any leader of its Legislature party, the question shall be referred for the decision of the Speaker or, the Chairman, as the case may be, and his decision shall be final: .

Provided further that where the question which has arisen relates to a member not belonging to any political party, the question shall, be referred for decision of the Speaker or the Chairman, as the case may be and his decision shall be final.

(2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in the House within the meaning of section 89.

7. *Bar of jurisdiction of Courts.* -Notwithstanding anything in this Constitution, no Court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.

8. *Rules.*-(1) Subject to the provisions of sub-paragraph (2) of this paragraph, the Chairman or the Speaker of the House may, make rules for giving effect to the provisions of this Schedule, and in particular, and without prejudice to the generality of the foregoing, such rules may provide for

- (a) the maintenance of registers or other records as to the political parties, if any, to which different members of the House belong;
- (b) the report which the Leader of a Legislature party in- relation to a member of a House shall furnish

with regard to any condonation of the nature referred to in clause (b) of sub-paragraph (1) of paragraph 2 in respect of such member, the time within which and the authority to whom such report shall be furnished;

(c) the report which a political party shall furnish with regard to admission to such political party of any members of the House 'and 'the officer of the House to whom such report shall be furnished; and

(d) .the procedure for deciding any question referred to in sub-paragraph (1) of paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question.

(2) The rules made by the Chairman or the Speaker of the House under sub-paragraph (1) of this paragraph shall be laid as soon as may be after they are made before the House for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the House and where they are so approved, they shall take-effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved,. they shall be of no effect.

(3) The Chairman or the Speaker of the House may, without prejudice_ to the provisions of section 72 and to any other power which he may have under the Constitution direct that any wilful contravention by any person of the rules made under this paragraph may be dealt with in the same manner as a breach of privilege of the House."

THE CONSTITUTION OF JAMMU AND KASHMIR
(NINETEENTH AMENDMENT) ACT, 1987.

(20th August, 1987)

An Act further to amend the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Thirty-eighth Year of the Republic of India as follows:

1. *Short title and commencement.* -{1} This Act may be called the Constitution of Jammu and Kashmir (Nineteenth Amendment) Act, 1987.

(2) It shall be deemed to have come into force on the first day of April 1986.

2. *Amendment of the Second Schedule to the Constitution of Jammu and Kashmir.*-In the Second Schedule to the Constitution of Jammu and Kashmir (hereinafter referred to as the 'State Constitution'), in paragraph 1, for the letters and figures, "Rs. 5,500", the letters and figures "Rs. 11,000" shall be substituted.

3. *Amendment of Fourth Schedule to the State Constitution.*-In the Fourth Schedule to the State Constitution in paragraph 1, for the figures and word "4,000 rupees" and "3,500 rupees", the figures and word "9,000 rupees" and "8,000 rupees" shall respectively be substituted.

THE CONSTITUTION OF JAMMU AND
KASHMIR (TWENTIETH AMENDMENT) ACT,
1988.

(2nd February 1988)

**An Act further to amend the Constitution of Jammu and
Kashmir.**

Be it enacted by the Jammu and Kashmir State Legislature in
the Thirty-eighth Year of the Republic of India as follows :

1. *Amendment of section 47 of the Constitution of
Jammu and Kashmir.*--(1) In section 47 of the Constitution of
Jammu and Kashmir, in sub-section (1), for the -words "One
hundred" the words "One hundred and eleven" shall be substituted.

(2) The amendment made by sub-section (1) shall not affect
the present composition of or representation in the existing
Legislative Assembly until its dissolution.

**THE CONSTITUTION OF JAMMU AND
KASHMIR (TWENTY-FIRST AMENDMENT)
ACT, 1989.**

(21st June, 1989)

**An Act further to amend the Constitution of Jammu and
Kashmir.**

Be it enacted by the Jammu and Kashmir State Legislature in
the Fortieth Year of the Republic of India as follows :

1. *Short title.*-This Act may be called the Constitution of
Jammu and Kashmir (Twenty-first Amendment) Act, 1989.

2. *Amendment of section 140 of the Constitution of Jammu and
Kashmir.* --In section 140 of the Constitution of Jammu and
Kashmir, for the words "Twenty-one years" the words "eighteen
years" shall be substituted.

(13§)

THE CONSTITUTION OF JAMMU AND KASHMIR
(I WENTY-SECOND AMENDMENT) ACT, 1989.

(10th November, 1989)

An Act further to amend the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Fortieth Year of the Republic of India as follows:

1. *Short tit/e.*-This Act may be called the Constitution of Jammu and Kashmir (Twenty-second Amendment) Act, 1989.

2. *Amendment of section 49 of the Constitution of Jammu and Kashmir.*-In sub-section (2) of section 49 of the Constitution of Jammu and Kashmir, for the words "Thirty-three years" the words "Forty-three years" shall be substituted.

**THE CONSTITUTION OF JAMMU AND KASHMIR
(TWENTY-THIRD AMENDMENT) ACT, 1998.**

(20th May, 1998)

An Act further to amend the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Forty-ninth Year of the Republic of India as follows :

1. *Short tit/e.-This* Act may be called the Constitution of Jammu and Kashmir (Twenty-third Amendment) Act, 1998.

2. *Amendment of the second Schedule to the Constitution of Jammu and Kashmir State.-In* the Second Schedule to the Constitution of Jammu and Kashmir after paragraph 1, the following provisos shall be inserted, namely:

"Provided that if the Governor, at the time of his appointment.

- (a) is in receipt of a pension (other than disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his emoluments shall be reduced.
 - (i) by the amount of that pension; and
 - (ii) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by that amount of that portion of the pension; or

(b) is in receipt of any benefit by way of contributory provident fund, his emoluments shall be reduced by the pension equivalent of such benefit:

Provided further that nothing contained in this Schedule shall have effect so as to diminish the emoluments and allowances of the Governor during his term of office",

THE CONSTITUTION OF JAMMU AND
KASHMIR (TWENTY-FORTH AMENDMENT)
ACT, 1997.

(13th April 1997)

An Act further *to* amend the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu & Kashmir State Legislature in the Forty-eight Year of the Republic of India as follows:

1. *Short title.*-This Act may be called the Constitution of Jammu and Kashmir (Twenty-Fourth Amendment) Act, 1997.

2. *Amendment of section 102 of the Constitution of Jammu and Kashmir.*-In the Constitution of Jammu and Kashmir, the full-stop at the end of section 102 shall be substituted by colon and thereafter the following proviso shall be inserted, namely :

"Provided that nothing in this section shall be deemed to exclude institution of original civil suits without limit as regards the value in the principal civil court of original jurisdiction in the district".

**THE CONSTITUTION OF JAMMU AND
KASHMIR (TWENTY-FIFTH AMENDMENT)
ACT, 1999.**

(10th March 1999)

An Act further to amend the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Fiftieth Year of the Republic of India as follows:

1. *Short title.*-This Act may be called the Constitution of Jammu and Kashmir (Twenty-fifth Amendment) Act, 1999.

(2) It shall be deemed to have come into force on the first day of January, 1996.

2. *Amendment to Fourth Schedule of the Constitution of Jammu and Kashmir.*-In the Fourth Schedule to the Constitution of Jammu and Kashmir, in paragraph 1, for the figures and words "9,000 rupees" and "8,000 rupees", the figures and word, "30,000 rupees" and "26,000 rupees" shall respectively be substituted.

3. *Arrears.*-The difference of salary payable to a Judge of a High Court under the said Schedule as amended by this Act and salary payable to such Judge but for this Act, shall be paid in 'two installments, the first installment being five thousand rupees plus fifty per cent of the balance of such difference to be paid as early as may be practicable, and the second installment to be paid within such period as may be decided by the Government.

THE CONSTITUTION OF JAMMU AND
KASHMIR (TWENTY-SIXTH AMENDMENT)
ACT, 1999.

(29th April, 1999)

**An Act further to amend the Constitution of Jammu and
Kashmir.**

Be it enacted by the Jammu and Kashmir State Legislature in
the Fiftieth Year of the Republic of India as follows:

1. *Short title.*-This Act may be called the Constitution of
Jammu and Kashmir (Twenty-sixth Amendment) Act, 1999.

2. *Amendment of Sixth Schedule to the Constitution of
Jammu and Kashmir.*-After entry 7 in the Sixth Schedule to the
Constitution of Jammu and Kashmir, the following entry shall be
added, namely :

"8. Gojri."

**THE CONSTITUTION OF JAMMU AND
KASHMIR ("TWENTY-SEVENTH
AMENDMENT) ACT, 1999.**

(9th June, 1999)

**An Act further to amend the Constitution of Jammu and
Kashmir.**

Be it enacted by the Jammu and Kashmir State Legislature in
the/Fiftieth Year of the Republic of India as follows :

1. *Short title and commencement*, - This Act may be called the
Constitution of Jammu and Kashmir (Twenty-seventh Amendment)
Act, 1999.

(2) It shall be deemed to have come into force on the first day
of January, 1996.

2. *Amendment to Second Schedule of the Constitution of
Jammu and Kashmir*. - In the Second Schedule to the Constitution
of Jammu and Kashmir, in paragraph 1, for the letters and figures
"11,000 rupees" the letters and figures "Rs. 36,000" shall be
substituted.

THE CONSTITUTION OF JAMMU AND
KASHMIR (TWENTY-EIGHTH AMENDMENT)
ACT, 2000.

(26th April 2000)

**An Act further to amend the Constitution of Jammu and
Kashmir.**

Be it enacted by the Jammu and Kashmir State Legislature in
the Fifty-first Year of the Republic of India as follows:

1. *Short title and commencement.*-This Act may be called the
Constitution of Jammu and Kashmir (Twenty-Eight Amendment)
Act, 2000.

(2) It shall come into force with effect from 25th January
2000.

2. *Amendment of section 49 of the Constitution of Jammu and
Kashmir.*- In sub-section (2) of section 49 of the Constitution of
Jammu and Kashmir, for the words "forty-three years" the words
"fifty-three years" shall be substituted.

THE CONSTITUTION OF JAMMU AND
KASHMIR (TWENTY-NINTH AMENDMENT)
ACT, 2002.

(23rd April, 2002)

**An Act further to amend the Constitution of Jammu and
Kashmir.**

Be it enacted by the Jammu and Kashmir State Legislature in
the Fifty-third Year of the Republic of India as follows :

1. *Short title.*-This Act may be called the Constitution of
Jammu and Kashmir (Twenty-ninth Amendment) Act, 2002.

2. *Amendment of section 47 of the Constitution of
Jammu and Kashmir.*-The fullstop at the end of proviso to sub-
section (3) of section 47 of the Constitution of Jammu and
Kashmir (hereinafter referred to as "the Constitution") shall be
substituted by a colon and thereafter the following proviso shall be
added, namely :

"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. *Amendment of section 49 of the Constitution of
Jammu and Kashmir.*-The fullstop at the end of Explanation to
sub-section (1) of section 49 of the Constitution shall be
substituted by a colon and thereafter the following proviso shall be
added, namely :

"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: