

APPENDIX I _569[THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR)
ORDER, 1954
C.O. 48

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

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

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

_570[2. The provisions of the Constitution as in force on the 20th day of June, 1964 and as amended by the Constitution (Nineteenth Amendment) Act, 1966, the Constitution (Twenty-first Amendment) Act, 1967, section 5 of the Constitution (Twenty-third Amendment) Act, 1969, the Constitution (Twenty-fourth Amendment) Act, 1971, section 2 of the Constitution (Twenty-fifth Amendment) Act, 1971, the Constitution (Twenty-sixth Amendment) Act, 1971, the Constitution (Thirtieth Amendment) Act, 1972, section 2 of the Constitution (Thirty-first Amendment) Act, 1973, section 2 of the Constitution (Thirty-third Amendment) Act, 1974, sections 2, 5, 6 and 7 of the Constitution (Thirty-eighth Amendment) Act, 1975, the Constitution (Thirty-ninth Amendment) Act, 1975, the Constitution (Fortieth Amendment) Act, 1976, sections 2, 3 and 6 of the Constitution (Fifty-second Amendment) Act, 1985 and the Constitution (Sixty-first Amendment) Act, 1988 which, in addition to article 1 and article 370, shall apply in relation to the State of Jammu and Kashmir and the exceptions and modifications subject to which they shall so apply shall be as follows:-

(1) THE PREAMBLE.

(2) PART I.

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

"Provided further that no Bill providing for increasing or diminishing the area of the State of Jammu and Kashmir or altering the name or boundary of that State shall be introduced in Parliament without the consent of the Legislature of that State."

(3) PART II.

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

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

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

(4) PART III.

(a) In article 13, references to the commencement of the Constitution

shall be construed as references to the commencement of this Order.

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

(d) In article 19, for a period of _572[_573[twenty-five] years] from the commencement of this Order:-

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

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

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

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

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

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

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

(a) the provisions of any existing law; or

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

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

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

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

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

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

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

(ii) trees standing on such land;

(iii) forest land and wooded waste;

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

(v) sites of jandars and gharats;

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

(i) the site of any building in any town, or town area or village

abadi or any land appurtenant to any such building or site;

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

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

_574[(h) In article 32, clause (3) shall be omitted.]

(i) In article 35-

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

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

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

"(c) no law with respect to preventive detention made by the Legislature of the State of Jammu and Kashmir, whether before or after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, shall be void on the ground that it is inconsistent with any of the provisions of this part, but any such law shall, to the extent of such inconsistency, cease to have effect on the expiration of _575[_576[twenty-five] years] from the commencement of the said Order, except as respects things done or omitted to be done before the expiration thereof.".

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

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

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

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

(i) employment under the State Government;

(ii) acquisition of immovable property in the State;

(iii) settlement in the State; or

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

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

(5) PART V.

_577[(a) For the purposes of article 55, the population of the State of Jammu and Kashmir shall be deemed to be sixty-three lakhs.

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

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

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

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

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

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

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

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

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

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

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

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

_578[(c) In article 133, after clause (1), the following clause shall be inserted, namely:-

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

_579[(d)] In article 134, clause (2), after the words "Parliament may", the words "on the request of the Legislature of the State" shall be inserted.

_579[(e)] Articles 135 _580*** and 139 shall be omitted.

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_582[(5A) PART VI.

_583[(a) Articles 153 to 217, article 219, article 221, articles 223, 224, 224A and 225 and articles 227 to 237 shall be omitted.]

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

_584[(c) In article 222, after clause (1), the following new clause shall be inserted, namely:-

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

(6) PART XI.

_585[(a) In article 246, for the words, brackets and figures "clauses (2) and (3)" occurring in clause (1), the word, brackets and figure "clause (2)" shall be substituted, and the words, brackets and figure "Notwithstanding anything in clause (3)," occurring in clause (2) and the whole of clauses (3) and (4) shall be omitted.]

_586[_587[(b) For article 248, the following article shall be substituted, namely:-

"248. Residuary powers of legislation.- Parliament has exclusive power to make any law with respect to-

_588[(a) Prevention of activities involving terrorist acts directed towards overawing the Government as by law established or striking terror in the people or any section of the people or alienating any section of the people or adversely affecting the harmony amongst different sections of the people;]

_589[(aa)] _590[Prevention of other activities] directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about cession of a part of the territory of India or secession of a part of the territory of India from the Union or causing insult to the Indian National Flag, the Indian National Anthem and this Constitution; and

(b) taxes on-

(i) foreign travel by sea or air;

(ii) inland air travel;

(iii) postal articles, including money orders, phonograms and telegrams.".]

_591[Explanation.-In this article, "terrorist act" means any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or any other substances (whether biological or otherwise) of a hazardous nature.]

_592[(bb) In article 249, in clause (1), for the words "any matter enumerated in the State List specified in the resolution", the words "any matter specified in the resolution, being a matter which is not enumerated in the Union List or in the Concurrent List" shall be substituted.]]

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

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(e) To article 253, the following proviso shall be added, namely:-

"Provided that after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, no decision affecting the disposition of the State of Jammu and Kashmir shall be made by the Government of India without the consent of the Government of that State."

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_595[(f)] Article 255 shall be omitted.

_595[(g)] Article 256 shall be re-numbered as clause (1) of that article, and the following new clause shall be added thereto, namely:-

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

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_597[(h)] In clause (2) of article 261, the words "made by Parliament" shall be omitted.

(7) PART XII.

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_599[(a)] Clause (2) of article 267, article 273, clause (2) of article 283 _600[and article 290] shall be omitted.

_599[(b)] In articles 266, 282, 284, 298, 299 and 300, references to the State or States shall be construed as not including references to the State of Jammu and Kashmir.

_599[(c)] In articles 277 and 295, references to the commencement of the Constitution shall be construed as references to the commencement of this order.

(8) PART XIII.

_601***In clause (1) of article 303, the words "by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule" shall be omitted.

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(9) PART XIV.

_602[In article 312, after the words "the States", the brackets and words "(including the State of Jammu and Kashmir)" shall be inserted.]

_603[(10) PART XV.

(a) In clause (1) of article 324, the reference to the Constitution shall, in relation to elections to either House of the Legislature of Jammu and Kashmir, be construed as a reference to the Constitution of Jammu and Kashmir.

_604[(b) In articles 325, 326, 327 and 329, the reference to a State shall be construed as not including a reference to the State of Jammu and Kashmir.

(c) Article 328 shall be omitted.]

(d) In article 329, the words and figures "or article 328" shall be omitted.]]

_605[(e) In article 329A, clauses (4) and (5) shall be omitted.]

(11) PART XVI.

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_607[(a)] Articles 331, 332, 333, _608[336 and 337] shall be omitted.

_607[(b)] In articles 334 and 335, references to the State or the States shall be construed as not including references to the State of Jammu and Kashmir.

_609[(c) In clause (1) of article 339, the words "the administration of the Scheduled Areas and" shall be omitted.]

(12) PART XVII.

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

(i) the official language of the Union;

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

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

(13) PART XVIII.

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

"_610[(6)] No Proclamation of Emergency made on grounds only of internal disturbance or imminent danger thereof shall have effect in relation to the State of Jammu and Kashmir (except as respects article 354) _611[unless-

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

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

_612[(b) In clause (1) of article 356, references to provisions or provision of this Constitution shall, in relation to the State of Jammu and Kashmir, be construed as including references to provisions or provision of the Constitution of Jammu and Kashmir.

_613[(bb) In clause (4) of article 356, after the second proviso, the following proviso shall be inserted, namely:-

"Provided also that in the case of the Proclamation issued under clause (1) on the 18th day of July, 1990 with respect to the State of Jammu and Kashmir, the reference in the first proviso to this clause to "three years" shall be construed as a reference to _614["seven years"].]

(c) Article 360 shall be omitted.]

(14) PART XIX.

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_616[(a)] _617[Article 365] shall be omitted.

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_616[(b)] To article 367, there shall be added the following clause, namely:-

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

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

_619[(aa)] references to the person for the time being recognised by the President on the recommendation of the Legislative Assembly of the State as the Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office, shall be construed as references to the Governor of Jammu and Kashmir;

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

Provided that in respect of any period prior to the 10th day of April, 1965, such references shall be construed as including references to the Sadar-i-Riyasat acting on the advice of his Council of Ministers;]

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

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_621[(d)] references to the permanent residents of the said State shall be construed as meaning persons who, before the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954 were recognised as State subjects under the laws in force in the State or who are recognised by any law made by the Legislature of the State as permanent residents of the State; and

_622[(e)] references to a Governor shall include references to the Governor of Jammu and Kashmir:

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

(15) PART XX.

_623[(a)] _624[To clause (2) of article 368], the following proviso

shall be added, namely:-

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

_625[(b) After clause (3) of article 368, the following clause shall be added, namely:-

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

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

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

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

(16) PART XXI.

(a) Articles 369, 371, _626[371A], _627[372A], 373, clauses (1), (2), (3) and (5) of article 374 and _628[articles 376 to 378A and 392] shall be omitted.

(b) In article 372-

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

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

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

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

(17) PART XXII.

Articles 394 and 395 shall be omitted.

(18) FIRST SCHEDULE.

(19) SECOND SCHEDULE.

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(20) THIRD SCHEDULE.

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

(21) FOURTH SCHEDULE.

_630[(22) SEVENTH SCHEDULE.

(a) In the Union List-

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

_631[(ii) entries 8, 9 _632[and 34], _633*** entry 79, and the words "Inter-State migration" in entry 81 shall be omitted;]

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_635[(iii) in entry 72, the reference to the States shall be construed,-

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

(b) in relation to other matters, as not including a reference to that State]; _636[and]

_637[(iv) for entry 97, the following entry shall be substituted, namely:-

"_638[97. Prevention of activities-

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

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

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

Explanation.- In this entry, "terrorist act" has the same meaning as in the Explanation to article 248.]".]

(b) The State List shall be omitted.

_639[(c) In the Concurrent List-

_640[(i) for entry 1, the following entry shall be substituted, namely:-

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

_641[_642[(ia) for entry 2, the following entry shall be substituted, namely:-

"2. Criminal procedure (including prevention of offences and

constitution and organisation of criminal courts, except the Supreme Court and the High Court) in so far as it relates to,-

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

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

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

"12. Evidence and oaths in so far as they relate to,-

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

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

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

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_644[_645[(ii)] for entry 30, the entry "30. Vital statistics in so far as they relate to births and deaths including registration of births and deaths." shall be substituted;]

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_647[(iii) entry 3, entries 5 to 10 (both inclusive), entries 14, 15, 17, 20, 21, 27, 28, 29, 31, 32, 37, 38, 41 and 44 shall be omitted;

(iiia) for entry 42, the entry "42. Acquisition and requisitioning of property, so far as regards acquisition of any property covered by entry 67 of List I or entry 40 of List III or of any human work of art which has artistic or aesthetic value." shall be substituted; and]

_648(iv) in entry 45, for the words and figures "List II or List III", the words "this List" shall be substituted.]

(23) EIGHTH SCHEDULE.

_649[(24) NINTH SCHEDULE.

_650[(a)] After entry 64, the following entries shall be added, namely:-

_651[64A.] The Jammu and Kashmir State Kuth Act (No. I of Svt. 1978).

_651[64B.] The Jammu and Kashmir Tenancy Act (No. II of Svt. 1980).

_651[64C.] The Jammu and Kashmir Alienation of Land Act (No. V of Svt. 1995).

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_653[64D.] The Jammu and Kashmir Big Landed Estates Abolition Act (No. XVII of Svt. 2007).

_653[64E.] Order No. 6-H of 1951, dated the 10th March, 1951, regarding Resumption of Jagirs and other assignments of land revenue,

etc.

_654[64F. The Jammu and Kashmir Restitution of Mortgaged Properties Act, 1976 (Act XIV of 1976).

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

_655[(b) Entries 87 to 124, inserted by the Constitution (Thirty-ninth Amendment) Act, 1975, shall be renumbered as entries 65 to 102 respectively.]

_656[(c) Entries 125 to 188 shall be renumbered as entries 103 to 166 respectively.]

_657[(25) TENTH SCHEDULE.

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

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

(c) in paragraph 2,-

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

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

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

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

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

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