

Article 370 of the Indian Constitution/Temporary provisions

(1) Temporary provisions with respect to the State of Jammu and Kashmir.

Notwithstanding anything in this Constitution,-

(a) The provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir:

(b) The power of Parliament to make laws for the said State shall be limited to--

(i) Those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) Such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation.- For the purposes of this article, the Government of the State means the person for the time being recognized by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

(c) The provisions of article 1 and of this article shall apply in relation to that State;

(d) Such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order Specify:

Provided that no such order, which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order, which relates to matters other than those referred to in the last preceding proviso, shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

PART XXI

[TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS]

The Temporary provisions with respect to the State of Jammu and Kashmir and special powers of the President of India.

Notwithstanding anything in this Constitution,—

(a) the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to—

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the

Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) Such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation. — For the purposes of this article, the Government of the State means the person for the time being recognized by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

(c) the provisions of article 1 and of this article shall apply in relation to that State;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify:

Subs. by the Constitution (Thirteenth Amendment) Act, 1962, s. 2, for "TEMPORARY AND TRANSITIONAL PROVISIONS" (w.e.f. 1-12-1963).

In exercise of the powers conferred by this article the President, on the recommendation of the Constituent Assembly of the State of Jammu and Kashmir, declared that, as from the 17th day of November, 1952, the said art. 370 shall be operative with the modification that for the Explanation in cl. (1) thereof, the following Explanation is substituted, namely: -

"Explanation – For the purposes of this article, the Government of the State means the person for the time being recognized by the President on the recommendation of the Legislative Assembly of the State as the *Sadar-I Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office."

Now "Governor". (Ministry of Law Order No. C.O. 44, dated the 15th November, 1952).

See the Constitution (Application to Jammu and Kashmir) Order, 1954 (C.O. 48), as amended from time to time in Appendix I.

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

Continuance in force of existing laws and their adaptation.—(1)

Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(3) Nothing in clause (2) shall be deemed—

(a) to empower the President to make any adaptation or modification of any law after the expiration of ² [three years] from the commencement of this Constitution; or

(b) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

Explanation I.—The expression “law in force” in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

Explanation II.—Any law passed or made by a Legislature or other competent authority in the territory of India which immediately before the commencement of this Constitution had extra-territorial effect as well as effect in the territory of

India shall, subject to any such adaptations and modifications as aforesaid, continue to have such extra-territorial effect.

Explanation III.—Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force.

Explanation IV.—An Ordinance promulgated by the Governor of a Province under section 88 of the Government of India Act, 1935, and in force immediately before the commencement of this Constitution shall, unless withdrawn by the Governor of the corresponding State earlier, cease to operate at the expiration of six weeks from the first meeting after such commencement of the Legislative Assembly of that State functioning under clause (1) of article 382, and nothing in this article shall be construed as continuing any such Ordinance in force beyond the said period.

See the Adaptation of Laws Order, 1950, dated the 26th January, 1950, Gazette of India, Extraordinary, p. 449, as amended by Notification No. S.R.O. 115, dated the 5th June, 1950. Gazette of India, Extraordinary, Part II, Section 3, p. 51, Notification No. S.R.O. 870, dated the 4th November, 1950, Gazette of India, Extraordinary, Part II, Section 3, p. 903, Notification No. S.R.O. 508, dated the 4th April, 1951, Gazette of India, Extraordinary, Part II, Section 3, p. 287, Notification No. S.R.O. 1140B, dated 2nd July, 1952, Gazette of India, Extraordinary, Part II, Section 3, p. 616/I, and the Adaptation of the Travancore-Cochin Land Acquisition Laws Order, 1952, dated the 20th November, 1952, Gazette of India, Extraordinary, Part II, Section 3, p. 923.

Subs. by the Constitution (First Amendment) Act, 1951, s. 12 for "Two years".

Power of the President to adapt laws.—

- (1) For the purposes of bringing the provisions of any law in force in India or in any part thereof, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, into accord with the provisions of this
- (2) Constitution as amended by that Act, the President may by order² made before the first day of November, 1957, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.
- (3) Nothing in clause (1) shall be deemed to prevent a competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.]

Power of President to make order in respect of persons under preventive detention in certain cases.

Until provision is made by Parliament under clause (7) of article 22, or until the expiration of one year from the commencement of this Constitution, whichever is earlier, the said article shall have effect as if for any reference to Parliament in clauses (4) and (7) thereof there were substituted a reference to the President and for any reference to any law made by Parliament in those clauses there were substituted a reference to an order made by the President.

Provisions as to Judges of the Federal Court and proceedings pending in the Federal Court or before His Majesty in Council.—(1)

The Judges of the Federal Court holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the Supreme Court 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 article 125 in respect of the Judges of the Supreme Court.

(2) All suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the same, and the judgments and orders of the Federal Court delivered or made before the commencement of this Constitution shall have the same force and effect as if they had been delivered or made by the Supreme Court.

(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of, any judgment, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such Court by this Constitution.

(4) On and from the commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State specified in Part B of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State shall cease, and all appeals and other proceedings pending before the said authority at such commencement shall be transferred to, and disposed of by, the Supreme Court.

(5) Further provision may be made by Parliament by law to give effect to the provisions of this article.

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 India, shall continue to exercise their respective functions subject to the provisions of this Constitution.

Ins. by the Constitution (Seventh Amendment) Act, 1956, s. 23.
See the Adaptation of Laws Order, 1956 and 1957.

Provisions as to Judges of High Courts.

Notwithstanding anything in clause (2) of article 217, the Judges of a High Court in any Province 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 in the corresponding State, 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 article 221 in respect of the Judges of such High Court.

[Any such Judge shall, notwithstanding that he is not a citizen of India, be eligible for appointment as Chief Justice of such High Court, or as Chief Justice or other Judge of any other High Court.]

(2) The Judges of a High Court in any Indian State corresponding to any State specified in Part B of the First Schedule 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 in the State so specified and shall, notwithstanding anything in clauses (1) and (2) of article 217 but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article, the expression "Judge" does not include an acting Judge or an additional Judge.

Provisions as to Comptroller and Auditor-General of India

The Auditor-General of India holding office immediately before the commencement of this Constitution shall, unless he has elected otherwise, become on such commencement the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and to such rights in respect of leave of absence and pension as are provided for under clause (3) of article 148 in respect of the Comptroller and Auditor-General of India and be entitled to continue to hold office until the expiration of his term of office as determined under the provisions which were applicable to him immediately before such commencement.

Provisions as to Public Service Commissions.

The members of the Public Service Commission for the Dominion of India holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the members of the Public Service Commission for the Union and shall, notwithstanding anything in clauses (1) and (2) of article 316 but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

(2) The Members of a Public Service Commission of a Province or of a Public Service Commission serving the needs of a group of Provinces holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the members of the Public Service Commission for the corresponding State or the members of the Joint State Public Service Commission serving the needs of the corresponding States, as the case may be, and shall, notwithstanding anything in clauses (1) and (2) of article 316 but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

Power of the President to remove difficulties

The President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, 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 Parliament duly constituted under Chapter II of Part V.

(2) Every order made under clause (1) shall be laid before Parliament.

(3) The powers conferred on the President by this article, by article 324, by clause (3) of article 367 and by article 391 shall, before the commencement of this Constitution, be exercisable by the Government.