

**SRIMAAN COACHING CENTRE-TRICHY-TRB-BEO-  
UNIT-5 STUDY MATERIAL-TO CONTACT:8072230063.**

**2023-24  
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## TRB BEO

### BLOCK EDUCATIONAL OFFICER

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**STUDY MATERIAL-(NEW SYLLABUS 2023)**

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**TRB-BEO EXAM-2023**

## **UNIT V – NATIONAL MOVEMENTS & CONSTITUTIONAL DEVELOPMENT**

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### **Salient Features of the Constitution**

1.Lengthiest Written Constitution (Articles 465, 25 Parts, 12 Schedules) –Geography, History, both for centre and states, legal luminaries in the constituent assembly -The British Constitution can be found in a variety of documents.

2.Drawn from various sources –borrowed –H.WORK

3.Blend of Rigidity (Special procedure for Amendment) & Flexibility (ordinary)

4. Federal System (1 + Many) with Unitary Bias (Many as 1)

### **Federal**

Two governments, Division of power, Written Constitution, Supremacy of the Constitution, Rigidity of the Constitution, Independent Judiciary, Bicameralism

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## Unitary

Strong Centre, Single Constitution, Single citizenship, Flexibility, Integrated Judiciary, Appointment of Governor, All India Services, Emergency Provisions.

5. Parliamentary form of Government/ Responsible/ Cabinet Government/ Westminster Model/ – Cooperation & Coordination between legislature and executive [Presidential – Separation of Powers]

### Parliamentary Form in India (Centre & States) – Parliament not sovereign

Nominal & real executives, Majority party rule, Collective responsibility of the executive to legislature, Membership of the minister in the legislature, Leadership of P.M or C.M, Dissolution of the lower house.

6. Synthesis of Parliamentary Sovereignty (UK) and Judicial Supremacy (US)

- ✿ Due process of Law – Maneka Gandhi case in 1978 [Judiciary Upper Hand, US] Vs Procedure established by Law-Article 21 [Legislature Upper Hand, Japan]

7. Integrated and Independent Judiciary

8. Fundamental Rights – Not absolute & Not Sacrosanct

9. DPSP – Directive Principles of State Policy

10. Fundamental Duties

11. A. Secular

12. Universal Adult Franchise

13. Single Citizenship

14. Independent Bodies-Election Commission, Comptroller & Auditor General of India, UPSC & SPSCs –

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security of tenure, fixed service conditions, expenses charged on the Consolidated Fund of India...

15. Emergency Provisions

16. Three-tier government

## **Preamble –Introduction/Preface**

- ✚ Objective Resolution –Nehru
- ✚ Nature of Indian State:
- ✚ Sovereign
- ✚ Socialist [42nd AA in 1976, Democratic Socialism; blend of Marxism & Gandhism]
- ✚ Secular [42nd AA in 1976, Positive Secularism]
- ✚ **Democratic:** Doctrine of popular sovereignty [A referendum is a vote by all enrolled electors on a single political question ex: On 2014 people in Scotland voted in a Referendum to remain in the United Kingdom, plebiscite The direct vote of all the members of an electorate on an important public question such as a change in the policy]
- ✚ **Republic:** Elected Head of State /Political Sovereignty in the people –Up to 1956, Pakistan was British dominion.

## **Objectives:**

- ❖ Justice: Social, Economic, Political –FRs, DPSP
- ❖ Liberty: Thought, Expression, Belief, Faith, Worship –FRs
- ❖ Equality: FRs, DPSP, Art. 325 & 326 [Elections]
- ❖ Fraternity: Single Citizenship, FDs, \_Union of States.

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**Preamble part or not of the Constitution?-Supreme Court**

1960 –BerubariUnion Case –NOT

1973 –KesavanandaBharathiCase –Part, Amendable

1995 –LIC of India case –Part

**Union and its Territory**

- ❏ Art 1: India, that is Bharat –a Union of states
- ❏ States: 29 states –29thTelanganastate was inaugurated formally on 2014 –J&K –Special Provisions to MH, GJ, NL, AS, MA, AP, SK, MI, ARP –5th& 6thschedules tribal areas
- ❏ UTs: 7
- ❏ Art 3: Internal readjustment of states –two conditions & 1 Note
  1. Prior recommendation of president
  2. Concern of concerned state legislature but, Not binding

Note: Art 2 & 3 not consider as amendment except cession to foreign State

**Art 1 to 4: Union and its Territory**

- ✓ Evolution of states & UTs
- ✓ Integration of Princely States –Hyderabad (police action), Junagadh(referendum) & Kashmir (instrument of accession)
- ✓ Demand for states on linguistic basis

1948 –Go appointed SK Dhar–administrative convenience

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1948 – Congress appointed JVP – reject language

Death of Potti Sriramalu on hunger strike – 1953 Andhra created

1953 – AKP – accepted linguistics states – States Re-organization Act, 1956 – 14 states & 6 UT

1960 – Bombay – MH & GJ

1963 – NL

1966 – PJ & HY

1972 – MA, T, ME

1975 – SK – 36th AA

1987 – MI, ARP, GO

2000 – CH, UT, JH

### **Art : 5 to 11 : Citizenship-Single Citizenship**

- Citizens-Full members of Indian State and owe allegiance
- Constitutional provisions: Art 5 to 11, but not elaborate provisions.
- Citizenship Act, 1955...Amended many times
- Indian Constitution does not restrict eligibility to the top constitutional offices of President and Vice-President to natural-born citizens. There is also no question of placing any such restriction on eligibility to become a Minister or Prime Minister or Chief Minister.
- Who is an asylum seeker? An asylum-seeker is someone who has left their country in search of international protection, but is yet to be recognized as a refugee.

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**Acquisition of Citizenship**

- ✓ By birth but not diplomats' children
- ✓ By descent –born outside and either of parent's Indian citizen but, registration with consulate/embassy
- ✓ By registration –to person like a person married to a citizen of India, resided in India for some years...Oath
- ✓ By naturalization –to any person with some conditions [the applicant is not a citizen of a country that denies citizenship for Indians, renounce his/her citizenship, adequate knowledge of a language specified in the Eighth Schedule of the Constitution] & distinguished person of science, philosophy, art, literature, world peace & human progress ...Oath
- ✓ By incorporation of territory

**Mrs. Sonia**

- ✚ 1968, they ear she married Rajiv Gandhi
- ✚ ShesurrenderedherItalianpassporton1983[therebyrelinquishingherItaliancitizenship]
- ✚ 1983 chose to acquire Indian citizenship–for citizenship by registration-only people of Indian origin, if they had resided in India for six months before the date of their application, qualified-So, by naturalization as provided for under Section 6 of the Citizenship Act,1955. Section 6 of the Citizenship Act, 1955: enables any person not born in India or having Indian parents to become An Indian citizen if he or she has resided in the country for at least (14years) on the date of application
- ✚ •1986 when Section5(c) was inserted in the CitizenshipAct,1955,through an amendment-enables a foreign spouse marrying an Indian citizen to acquire Indian citizenship by registration

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## **Loss of Citizenship**

- ✚ By Renunciation –renounced one 's child can resume citizenship
- ✚ By Termination –Voluntarily accept citizenship of another country
- ✚ By Deprivation –Compulsory termination –7 years continuously out of country

## **Exceptions to non-discrimination**

- ✚ For certain state/UT employment, education –residence
- ✚ Interest of tribals
- ✚ Jammu & Kashmir -the state Govt

NRIs -Indian citizens not residing in India -vote through electronic-ballots or through proxy

PIOs -Persons of Indian Origin

OCI -Overseas Citizenship of India

- ➡ The PIO-OC I merger comes close on the heels of promulgation of an ordinance on January 6 amending the Citizenship Act, 1955. The ordinance incorporated the eligibility and additional benefits of PIO card in OCI card and provided certain other relaxations to OCI card-holders. These relaxations include allowing breaks not exceeding 30 days in the one-year continuous stay required before applying for Indian citizenship and registration as an OCI by a minor born to Indian parents or by the spouse of an Indian citizen or OCI after two years of marriage.

## **Art 11: Parliament to regulate Citizenship**

- ▶ India grants asylum and provides direct assistance to some 200,000 refugees from neighboring countries. As the country lacks a national legal framework for asylum, UNHCR conducts registration and refugee status determination (RSD).

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- ▶ The established position of New Delhi on refugees is that once normality returns in their respective home countries, such persons should go back.
- ▶ India has not ratified the 1951 U.N. Convention and 1967 U.N. Protocol on Refugees.
- ▶ The Indian Penal code, in its basic form, is a document that lists all the cases and punishments that a person committing any crimes is liable to be charged with.
- ▶ A criminal code will contain offences which are recognized in the jurisdiction, penalties which might be imposed for these offences-It provides the machinery for the investigation of crime, apprehension of suspected criminals, collection of evidence, determination of guilt or innocence of the accused person and the determination of punishment of the guilty.
- ▶ **Poll tax:** tax of a uniform amount levied on each individual, or —head. I
- ▶ You pay for your visit —a capitation tax of Rs 20.-Matheran

### **The Constitution of Jammu and Kashmir, 1956**

We, the people of the State of Jammu and Kashmir, having solemnly resolved, in pursuance of 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.

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### **PRELIMINARY**

1. (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 et 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. (I) 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 based, 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.
- (II) 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 Sadar-i-Riya sat.

### **THE STATE**

- (1) The State of Jammu and Kashmir is and shall be an integral part of the Union of India.
- (2) 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.
- (3) 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.

### **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 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 the State Notification No I-L/84 dated the twentieth April, 1927, read with State Notification No 13/L dated the twenty- seventh June, 1932.
- (4). Unless the context otherwise requires, all references in any existing law to hereditary State subject 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.
- (5). Nothing in foregoing provisions of this part shall derogate from the power of the State legislature to make any law defining the classes the persons who are, or shall be permanent residents of the State.
- (6). A Bill marking 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;
  - (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.
- (7). The permanent residents of the State shall have all the rights guaranteed to them under the

Constitution of India.

### **DIRECTIVE PRINCIPLES OF STATE POLICY**

1. 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.
2. 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.
3. The prime object of the State consistent with the ideals and objectives of the freedom movement envisaged in "New Kashmir" shall be the pro-motion 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.
4. Consistently with the objectives outlined in the foregoing section, the State shall develop in a planed 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.
5. The State shall endeavour to organise and develop agriculture and animal husbandry by bringing to the aid of the cultivator tile 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.
6. The State shall take steps to organise village panchayats and endow them with such powers and

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authority as may be necessary to enable them to function as units of self-government.

7. The State shall, in order to rehabilitate, 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 Else fullest scope is provided for the encouragement and development of individual talent and initiative.
8. The State shall lake 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.
9. The State shall, within the limits of its economic capacity and development, make effective provision for securing:
  - (a) That all permanent residents, man and women equally, have the right to work, that is, the right to receive guaranteed work with payment for labor 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 or otherwise have reasonable, just and humane conditions of work with full enjoyment of leisure and social and cultural opportunities, and
  - (d) that all permanent residents have adequate maintenance in old age as well as in the event of sickness, disablement unemployment and other cases of undeserved want by providing social insurance, medical aid, hospitals, sana-toria and health resorts at State expense.
10. The State shall endeavor:
  - (a) To secure to every permanent resident the right to free education up to the University standard;
  - (b) To provide, within a period often years from the commencement of this constitution,



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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.

11. 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.

12. The State shall endeavor to secure to all women:

- (a) the right to equal pay for equal work;  
(b) the right to maternity benefits as well as Ade-quate medical care in all employments;

13. the right 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; and  
(e) Special protection against discourtesy, defamation, hooliganism and other forms of misconduct.

14. 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.

15. 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.

16. 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.

**THE EXECUTIVE  
THE SADAR-I-RIYASAT**

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- (1) The Head of the State shall be designated as the Sadar-i-Riya sat.
- (2) The executive power of the State shall be vested in the Sadar-i-Riya sat and shall be exercised by him either directly or through officer's subordinate to him in accordance with this Constitution.
- (3) Nothing in this Section shall:
  - (a) be deemed to transfer to the Sadar-i-Riya sat any functions conferred by any existing law on any other authority; or
  - (b) prevent the State legislature from confer-ring by law functions on any authority subordinate to the Sadar-i-Riya sat.
- (4). The Sadar-i-Riya sat shall be the person who for the time being is recognized by the President as such:
 

Provided that no person shall be so recognized unless he:

  - (a) is a permanent resident of the state;
  - (b) is not less than twenty-five years of age; and
  - (c) has been elected as Sadar-i-Riya sat by a majority of the total membership of the Legislative Assembly in the manner set out in the First Schedule.
- (5). The Sadar-i-Riya sat shall hold office during the pleasure of the President.
- (6). The Sadar-i-Riya sat may, be writing under his hand addressed to the President, resign his office.
- (7). Subject to the foregoing provision of this section, the Sadar-i-Riya sat 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 off lee.
- (8). A person who holds or has held office as Sadar-i-Riya sat shall, subject to the other provisions of this Constitution, be eligible for reselection to that office.
- (9). (1) The Sadar-i-Riya sat shall not be a member of either House of Legislature and if a member of either House be elected and recognized as Sadar-i-Riya sat, he shall be deemed to have vacated his seat in the House on the date on which he enters upon his office as Sadar-I-Riya sat.
  - (2) The Sadar-i-Riya sat shall not hold any other office of profit.
  - (3) The Sadar-i-Riya sat shall be entitled to such emoluments, allowances and privileges as are specified in the second schedule.



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(4) The emoluments and allowances of the Sadar-i-Riya sat shall not be diminished during his term of office.

- (10). The Sadar-i-Riya sat and every person acting as Sadar-i-Riya sat 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 seniormost judge of the High Court available, in an oath or affirmation in the following form that is to Sayed "I, A. B., do swear in the name of God that I will faithfully discharge the functions of the Sadar-I-Riya sat 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 State."
- (11). The Sadar-i-Riya sat may be removed from his office by the President if an address by the Legis-lative Assembly supported by a majority of not less than two-thirds of its total membership is presented to the president praying for such removal on the ground of violation of the Constitution.
- (12). When a vacancy occurs in the office of the Sadar-i-Riya sat by reason of his death, resignation or removal or when the Sadar-i-Riya sat is unable to discharge his functions owing to absence, illness or or any other cause, the functions of the office shall, until the assumption of office by a newly elected Sadari-Riyasat or the resumption of duties by the Sadar-i-Riya sat, as the case may be, dis-charged by such person as the President may on the recommendation of the Council of Ministers of the State, recognise as the acting Sadar-i-Riya sat.
- (13). The Sadar-i-Riya sat 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 offense against any law relating to a matter to which the executive power of the State extends.

### **THE COUNCIL OF MINISTERS**

1. There shall be a council of Ministers with the Prime Minister at the head to aid and advise the Sadar-i-Riya sat in the exercise of his functions.
2. All functions of the Sadar-i-Riya sat except those under sections 36, 38 and 92 shall be exercised by him only on the advice of the Council of Ministers.

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3. The question whether any, and if so what, advice was tendered by Ministers to the Sadar-i-Riya sat shall not be inquired into in any court.
4. The Prime Minister shall be appointed by the Sadar-i-Riya sat and the other Ministers shall be appointed by the Sadar-i-Riya sat on the advice of The Prime Minister.
5. The Council of Ministers shall be collectively responsible to the Legislative Assembly.
6. A Minister who for any period of six consecutive months is not a member of either House of
7. Legislature shall upon the expiry of that period cease to be a Minister.
8. The Sadar-i-Riya sat may on the advice of the Prime Minister appoint from amongst the members of either House of Legislature such number of Deputy Ministers as may be necessary.
9. The Ministers and the [Deputy Ministers shall hold office during the pleasure of the Sadar-i--Riya sat.
10. Before a Minister or a Deputy Minister enters upon his office, the Sadar-i-Riya sat or, in his absence, any person authorized 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.
11. 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' Salaries Act, 1956 (Act VI of 1956) the Jammu and Kashmir Minister's Travelling Allowances Rules for the time being in force, and the Jammu and Kashmir Deputy Ministers Salaries and Allowances Act, 2010 (Act VIII of 2010)

### **THE ADVOCATE GENERAL**

1. The Sadar-i-Riya sat 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.

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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 Sadar-i-Riya sat and receive such remuneration as the Sadar-i-Riya sat may determine.

### **CONDUCT OF GOVERNMENT BUSINESS**

1. The Sadar-i-Riya sat 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.
2. It shall be the duty of the Prime Minister
  - (a) To communicate to the Sadar-i-Riya sat all decisions of the council of Ministers relating to the administration 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 Sadar-i-Riya sat may call for; and
  - (c) If the Sadar-i-Riya sat 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.
3. All executive action of the Government shall be expressed to be taken in the name of the Sadar-i-Riya sat of the Jammu and Kashmir.
4. Orders and other instruments made and executed in the name of the Sadar-i-Riya sat 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 Sadar-i-Riya sat, 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 Sadar-i-Riya sat or as the case may be, by the Government of Jammu and Kashmir.

### **THE STATE LEGISLATIVE COMPOSITION OF THE STATE LEGISLATURE**

1. There shall be Legislature for the State which shall consist of the Sadar-i-Riya sat and two Houses be

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known respectively as the Legislative Assembly and the Legislative Council.

2. The Legislative Assembly shall consist of one hundred members chosen by direct election from territorial constituencies in the State; Provided that the Sadar-i-Riya sat 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.
3. For the purposes of sub-section (I), the State shall be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State. Explanation: In this sub-section, the expression.
4. "Population" means the population as ascertained at the last preceding census of which the relevant figures have been published.
5. 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 be law determine:
6. Provided that such readjustment shall not affect representation in the Legislative Assemble until the solution of the then existing Assembly.
7. Notwithstanding anything contained in section 47, until the area of the State under the occupations of Pakistan ceases to so occupied and the people residing in that area elect their representatives
  - (a) Twenty-five seats in the Legislative Assembly shall remain vacant and shall not be taken into account for reckoning the total member-ship of the Assembly; and the said area shall be excluded in delimiting the territorial Constituencies Under Section 47.
8. 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.
9. Explanation: In this sub-section:
  - (a) "population" has the same meaning as in sub-section (2) of section 47; and
  - (b) "Scheduled Castes" means the caste, races or tribes or part of, or groups within castes, races or tribes

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which are for the purposes of the Constitution of India deemed to be Scheduled Casts in relation to the

10. State under the provisions of article 341 of that Constitution.
11. The provisions of sub-section (1) shall cease to have effect on the expiration of a period of five years from the commencement of this Constitution:
12. Provided that such cesser shall not affect any representation in the Legislative Assembly until the dissolution of the then existing Assembly:
13. The Legislative Council shall consist of thirty six members, chosen in the manner provided in this section.
14. 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.
15. 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.
16. 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.
17. 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 **(b) Province of Jammu;**
  - (c) permanent residents who have been for at least three years engaged in teaching in educational institutions recognized by the Government in the Province of Kashmir; and
  - (d) permanent residents who have been for at least three years engaged in teaching in educational institutions recognized by the Government in the Province of Jammu.
18. 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 Sadar-i-Riyasat may by order specify; and
  - (b) The members of the Panchayats and such other local bodies in the Province of Jammu as the Sadar-i-

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Riyasat may by order specify.

19. Six members shall be nominated by the Sadar-i-Riya sat, not more than three of whom shall be person 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.
20. Elections under sub-section (2) and (3) shall be held in accordance with the system of proportional representation by means of the single transferable vote.

### **GENERAL PROVISIONS**

- ❖ A person shall not be qualified to be chosen to fill a seat in the Legislature unless he:  
Is a permanent resident of the State;
- ❖ 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 possesses such other qualifications as may be prescribed in that behalf by or under any law made by Legislature.
- ❖ The Legislative Assembly, unless sooner dis-solved, shall continue for five years from the date pointed for its first meeting and not longer, and the expiration of the said period of five 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.
- ❖ 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 year in accordance with the provisions made in that behalf by Legislature by law.
- ❖ The Sadar-i-Riya sat shall from time to time summon each House of the Legislature to meet at such time and place as he think 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.
- ❖ The Sadar-i-Riya sat may from time to time...  
prorogue the House or either house (b) dissolves the Legislative Assembly.

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- ❖ The Sadar-i-Riya sat may address either House of Legislature, or both Houses assembled together, and may for that purpose require the attendance of members.
- ❖ The Sadar-i-Riya sat 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 dispatch consider any matter required by the message to be taken into consideration.
- ❖ 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 Sadar-i-Riya sat shall address both Houses of Legislature assembled together and inform the Legislature of the cause of its summons.
- ❖ 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.
- ❖ 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**

- 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 at 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.
- A member holding office as Speaker or Deputy Speaker of the Legislative Assembly: shall vacate his office if he ceases to be a member of the Assembly; 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 may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly;

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- 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.
- 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 Speaker may appoint for the purpose.
- 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.
- 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 sub-section (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.
- 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.
- 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 the Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.
- 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

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"Speaker" and "Assembly" respectively wherever they occur in those provisions, and with the omission of the further proviso to section 58.

- There shall be pay 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.
- Each House of the Legislature shall have a separate secretarial Staff:
- Provided that nothing in this sub-section shall be construed as preventing the creation of posts common to both Houses.
- The Legislature may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of each House.
- Until provision is made by the Legislature under sub-section (2), the Sadar-i-Riyasat 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**

- ✓ Every member of the Legislative Assembly or the Legislative Council shall before taking his seat, make and sub-scribe before the Sadar-i-Riyasat 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.
- ✓ 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.
- ✓ 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.

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- ✓ 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.
- ✓ 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**

- ✓ 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.
- ✓ 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, his seat shall thereupon become vacant.
- ✓ 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:
  - such absence caused by reason beyond his control; or any period during which the House is prorogued or is adjourned for more than four consecutive days.
- ✓ A person shall be disqualified for being chosen and for being a member of the Legislative Assembly or Legislative Council:
  - ✓ If he holds any office of profit under the Government of India or the State Government within the Union of India, other than an office declared by Legislature by law not to disqualify its holder;
  - ✓ If he is of unsound mind and stands so declared by a competent court;
  - ✓ If he is an undischarged insolvent;
  - ✓ 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 to adherence to a foreign State;
  - ✓ If he is so disqualified by or under any law made by the Legislature.

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- ✓ For the purposes of this section, 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.
- ✓ 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 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 decision and its decision shall be final.

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