

DRAFT PROPOSED BY
GOVERNMENT OF AZAD
JAMMU AND KASHMIR

1. **Short title and commencement.**- (1) This Act may be called the Azad Jammu and Kashmir Interim Constitution (Fourteenth Amendment) Act, 2020.

(2) It shall come into force at once.

2. **Amendment of Article 4 of the Interim Constitution, 1974.**- In the Azad Jammu and Kashmir Interim Constitution, 1974, hereinafter referred to as the Interim Constitution, in Article 4, in sub-Article (4),-

(a) paragraph 7 shall be substituted as follows:-

“7 Freedom of association.- (1) Every State Subject shall have the right to form association or union, subject to any reasonable restrictions imposed by law in the interest of **sovereignty of Pakistan or integrity of Pakistan** or Azad Jammu and Kashmir and morality or public order.

(2) Ever State Subject, not being in the Service of Pakistan or Azad Jammu and Kashmir, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the **interest of the sovereignty of Pakistan or integrity of Pakistan** or Azad Jammu and Kashmir and such law shall provide that where the Government of Pakistan declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty of Pakistan or integrity of Pakistan or Azad Jammu and Kashmir, the Government of Pakistan shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.

(3) No person or political party in Azad Jammu and Kashmir shall be permitted to propagate against, or take

part in activities prejudicial or detrimental to, the ideology of the State accession to Pakistan.

(4) Every political party shall account for the source of its funds in accordance with law.”

(b) in paragraph 17, for the words “**State**”, the words “**Azad Jammu and Kashmir**” shall be substituted.

3. Amendment of Article 19 of the Interim Constitution.- In the Interim Constitution, in Article 19, sub-Article (1) shall be substituted as follows:-

“(1) The executive authority of the Government shall extend to the matters with respect to which the Assembly has power to make laws including the Council Legislative List as set out in the Third Schedule and shall be so exercised as,-

(a) not to impede or prejudice the responsibilities of Government of Pakistan in relation to the matters specified in sub-Article (4) of Article 31; and

(b) to secure compliance with the laws made in relation to matters specified in the Council Legislative List.

4. Amendment of Article 21 of the Interim Constitution.- In the Interim Constitution, in Article 21,-

(a) for sub-Article (8) following shall be substituted:-

“(8) The Council shall have Legislative powers in respect of matters and subjects as set out in the Third Schedule.”

(b) After sub-Article (8), as substituted above, following new sub-Article (9), (10), (11) and (12) shall be added:-

“(9) The Executive authority in respect of subjects and matters as specified in the Third Schedule shall be exercise by the Government in the manner as provided in Article 19 sub-Article (1).

(10) The Council may make rules for regulating its procedures and of its business, and shall have power to act notwithstanding any vacancy in the membership thereof, any proceeding of the Council shall not be invalid on the ground that a person who was not entitled to do so sat, voted or otherwise took part in the proceedings.

(11) The Chairman may regulate the allocation and transaction of the business of the Council and may, for the convenient transaction of that business, delegate any of its function to officers and authorities subordinate to it.”

Explanation:

In this Article, Chairman means Chairman of the Council.

(12) The words “**The Prime Minister of Pakistan**” wherever occurring in this Article shall be deemed to include the person for the time being exercising the powers and performing the function of the **Chief Executive of Pakistan.**”

5. Amendment of Article 22 of the Interim Constitution.- In the Interim Constitution, in Article 22,-

(a) in sub-Article (1), for the words “**fifty three**” the words “**sixty five**” shall be substituted; and

(b) at the end of clause (e), full stop shall be substituted by a semicolon, and thereafter following new clause (f) shall be added.-

“(f) twelve members from following areas of the State of Jammu and Kashmir presently under the control of India,-

(i) five from Valley;

(ii) five from Jammu; and

(iii) two from Ladkh

Provided that members referred in this clause shall not be elected or taken into account for reckoning the total membership of the Assembly, until the area of the State of Jammu and Kashmir under the occupation of India ceases to be so occupied and the people residing in that area elect their representatives.”

Explanation:

The twelve seats shall not be taken into account in the legislative process as well as election for the office of President, Prime Minister, Speaker or Deputy Speaker, as the case may be.

(c) in sub-Article (4), for the word “**sixty**” the word “**ninety**” shall be substituted

6. Amendment of Article 30-A of the Interim Constitution.- In the Interim Constitution, in Article 30-A, after the words “**No discussion shall take place in the Assembly**”, the words “**or the Council**” shall be added.

7. Amendment of Article 31 of the Interim Constitution.- In the Interim Constitution, for Article 31, for sub-Article (2), (3) & (4) the following shall be substituted,-

“(2) The Assembly shall have exclusive power to make laws on any matter not enumerated in the Third Schedule.

(3) The Council shall have exclusive powers to make laws with respect to any matter enumerated in the Third Schedule.

(4) Neither the Council nor the Assembly shall have the power to make any law concerning:-

- (a) the responsibilities of the Government of Pakistan under the UNCIP Resolutions;
- (b) the defence and security of Azad Jammu and Kashmir;
- (c) the current coin or the issue of the bills, notes or other paper currency; or

(d) the external affairs of Azad Jammu and Kashmir including foreign trade and foreign aid.”

8. Amendment of Article 34 of the Interim Constitution.- In the Interim Constitution, the Article 34,-

(a) after the word “**Assembly**” wherever occurring, the words “**or the Council**” shall be inserted.

(b) after the word “**Speaker**” the words “**or the Chairman Kashmir Council**”, **as the case may be**” shall be inserted.

9. Addition of new Article 35 of the Interim Constitution.- In the Interim Constitution, after Article 34, the following new Article 35 shall be inserted, namely:-

“35. Authentication of Bills passed by the Council.- A Bill passed by the Council shall not require the assent of the President and shall, upon its authentication by the Chairman of the Council, become law and be called an Act of the Council.”

10. Amendment of Article 41 of the Interim Constitution.- In the Interim Constitution, in Article 41, after sub-Article (3), the following new sub-Article (4) shall be added:-

“(4) The President shall likewise, except when the Council is in session, if so advised by the Chairman of the Council, make, promulgate and withdraw an Ordinance as the circumstances may require, and the provisions of sub-Article (2) and sub-Article (3) shall apply to the Ordinance so made as if references therein to ‘Act of the Assembly’ and, ‘Assembly’ were references respectively to ‘Act of the Council’ and ‘Council’.”

11. Addition of Article 41-A of the Interim Constitution.- In the Interim Constitution, after existing Article 41, as amended above, a new Article 41-A, shall be added as under:-

“41-A. Appointment of Judges to the Supreme Court and the High Court.- (1) There shall be a Judicial Commission of Azad Jammu and Kashmir, hereinafter referred to as the

Commission, for appointment of Judges of the Supreme Court and the High Court as hereinafter provided.

(2) For appointment of Judges of the Supreme Court, the Commission shall consist of-

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| (i) | Chief Justice of Azad Jammu and Kashmir | Chairman |
| (ii) | Senior Most Judge of Supreme Court | Member |
| (iii) | 2 nd Senior Most Judge of Supreme Court | Member |
| (iv) | Minster for Law, Azad Government of State of Jammu and Kashmir | Member |
| (v) | A Senior Advocate to be Nominated by AJ&K Bar Council for a term of one year | Member |

(3) Notwithstanding anything contained in sub-Article (1) or sub-Article (2), the President shall appoint the most senior Judge of the Supreme Court as the Chief Justice of Azad Jammu and Kashmir.

(4) The Commission may make rules regulating its procedure.

(5) For appointment of Judges of the High Court, the Commission in sub-Article (2) shall also include the following, namely:-

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| (i) | Chief Justice of the High Court; | Member |
| (ii) | Senior most Judge of the High Court | Member |

Provided that for appointment of the Chief Justice of the High Court, the most Senior Judge mentioned in S. No. (ii) of sub-Article (5) shall not be member of the Commission.

(6) The Commission, by majority of its total membership shall draw a panel of three persons for each vacancy of a Judge in the Supreme Court or the High Court, as the case may be

and shall forward the panel to the Prime Minister of Azad Jammu and Kashmir.

12. Amendment of Article 42 of the Interim Constitution.- In the Interim Constitution, in Article 42,-

(a) sub- Article (4) shall be substituted as under.-

“(4) The Chief Justice of Azad Jammu and Kashmir and each of the other Judge of Supreme Court shall be appointed by the President on the advice of the Prime Minister of Azad Jammu and Kashmir and in accordance with Article 41-A.”

(b) in sub-article (5), clause (b) along with explanation shall be omitted; and

(c) in sub-Article (8-A) in clause (c), full stop at the end shall be substituted by a colon and thereafter following proviso shall be added:-

Provided that the appointment of ad-hoc Judge in the Supreme Court shall be purpose and time specific.

13. Amendment of Article 43 of the Interim Constitution.- In the Interim Constitution, in Article 43,-

(a) sub-Article (2-A) shall be substituted as under,-

“(2-A) The Chief Justice of High Court and each of the other Judge of High Court shall be appointed by the President on the advice of Prime Minister of Azad Jammu and Kashmir and in accordance with Article 41-A.”

(b) in sub-Article (3),-

(i) in clause (a), for the word “**ten**” the words “**fifteen**” shall be substituted;

(ii) in clause (a), after existing proviso, the following new provisos shall be added.

“Provided further that no person shall be appointed as a Judge of the High Court, unless he is having in his credit at least twenty five judgments of Supreme Court or High Court duly reported in national law journal:

Provided further that no person shall be appointed as Judge of the High Court who is less than fifty years of age:

- (iii) in clause (b) for the word “**ten**”, the word “**fifteen**” and for the word “**three**”, the word “**five**” shall respectively be substituted.
- (iv) after sub-Article (3), as amended above, following new sub-Article (3-A) shall be added,-

“(3-A) For the appointment of Judges of the High Court, seventy percent induction shall be made from amongst advocates and thirty percent from judicial officers”

14. Amendment of Article 50 of the Interim Constitution.- In the Interim Constitution, in Article 50, in sub-Article (3), for the words “**Chairman of the Council**” the words “**Prime Minister of Azad Jammu and Kashmir**” shall be substituted.-

15. Substitution of Third Schedule of the Interim Constitution.- In the Interim Constitution, Third Schedule Shall be substituted as under,-

“THIRD SCHEDULE

[See Article 31 (3)]

1. Post and Telegraphs, including Telephones, Wireless, Broad- Casting and other like forms of communications; post office saving Bank.
2. Nuclear energy, including,-
 - (a) mineral resources necessary for the generation of nuclear energy;

- (b) the production of nuclear fuels and the generation and use of nuclear energy; and
 - (c) ionizing radiations.
3. Aircraft and air navigation; the provision of aerodromes; regulation and organization of air traffic and of aerodromes.
 4. Beacons and other provisions for safety of aircraft.
 5. Carriage of passengers and goods by air.
 6. Copyright, inventions, designs, trademarks and merchandise marks.
 7. Opium so far as regards sale for export.
 8. State Bank of Pakistan; banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by Azad Jammu and Kashmir and carrying on business only within the Azad Jammu and Kashmir.
 9. The law of insurance, except as respects insurance undertaken by Azad Jammu and Kashmir and the regulation of the conduct of insurance business, except as respects business undertaken by Azad Jammu and Kashmir.
 10. Stock exchanges and future markets with objects and business not confined to Azad Jammu and Kashmir.
 11. Planning for economic coordination including planning and coordination of scientific and technological research.
 12. Highways, continuing beyond the territory of Azad Jammu and Kashmir and also roads declared by the Government of Pakistan to be of strategic importance.
 13. External affairs; the implementing of treaties and agreements, including educational and cultural pacts and agreements, with other countries; extradition, including the surrender of criminals and accused persons to Governments outside Pakistan.
 14. Foreign exchange; cheques, bills of exchange, promissory notes and other like instruments.
 15. Libraries, museums, and similar institutions controlled or financed by the Government of Pakistan.

16. Government of Pakistan agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.
17. Education as respects Azad Jammu and Kashmir students in foreign countries and foreign students in Azad Jammu and Kashmir.
18. Import and export across customs frontiers as defined by the Government of Pakistan.
19. International treaties, conventions, agreements and International arbitration.
20. Surveys including geological surveys and meteorological organizations.
21. Establishment of standards of weights and measures.
22. Duties of customs, including export duties.
23. Railways.
24. Mineral oil and natural gas; liquids and substances declared by Government of Pakistan to be dangerously inflammable.
25. National planning and national economic coordination, including planning and coordination of scientific and technological research.
26. Supervision and management of public debt.
27. Boilers.
28. Census.
29. Terminal taxes on goods or passengers carried by railway or air, taxes on their fares and freights.
30. Prevention of the extension from Azad Jammu and Kashmir to Pakistan or from Pakistan to Azad Jammu and Kashmir of infections of contagious diseases or pests affecting men; animals or plants.
31. Medical and other professions excluding legal profession.
32. Offences against laws with respect to any of the matters in this list.
33. Inquiries and statistics for the purposes of any of the matters in this list.”

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