

**AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW AND PARLIAMENTARY AFFAIRS SECRETARIAT,
MUZAFFARABAD**

Dated the 21st March, 1993.

No. 383-88/LD/Leg/93. The following Act of Assembly Azad Jammu and Kashmir, received the assent of the President on 20th March, 1993 is hereby published for general information:-

(ACT XX OF 1993)

AN

ACT

to amend the Azad Jammu and Kashmir Interim Constitution Act, 1974

WHEREAS it is expedient to amend the Azad Jammu and Kashmir Interim Constitution Act, 1974 (Act VIII of 1974) for the purposes hereinafter appearing:

It is hereby enacted as follows:-

1. **Short title and Commencement.**- (1) This Act may be called the Azad Jammu and Kashmir Interim Constitution (Tenth Amendment) Act, 1993.
(2) It shall come into force at once.
2. **Amendment of Section 2, Act VIII of 1974.**- In the Azad Jammu and Kashmir Interim Constitution Act, 1974 (Act VIII of 1974), hereinafter referred to as the said Act, in Section 2, in sub-section (1), in the definition of "Service of Azad Jammu and Kashmir" between the figure and comma "21" and the word "or" the words "Parliamentary Secretary, Advisor to the Prime Minister" shall be inserted:-
3. **Amendment of Section 10, Act VIII of 1974.**- In the said Act, in Section 10:-
 - (a) for the word "has" the words "shall have", shall be substituted; and
 - (b) for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:-

"Provided that this power shall not be exercised in respect of sentences of "hadd", "qisas" and "Diyyat".
4. **Amendment of Section 13, Act VIII of 1974.**- In the said Act, in Section 13, in sub-section (2), after the word "Speaker" the words "and the Deputy Speaker", shall be inserted.

5. **Amendment of Section 14, Act VIII of 1974.**- In the said Act, in Section 14 in Sub-section (1) the full stop at the end shall be substituted by a colon and thereafter the following proviso be added, namely:
- Provided that a Minister may be appointed from amongst the elected members of the Council".
6. **Addition of Section .14 -A, Act VIII of 1974.**- In the said Act, after Section 14, the following new Section shall be inserted, namely:-
- “14 - A. **Parliamentary Secretaries:-**(1)The Prime Minister may appoint Parliamentary Secretaries from amongst the members of the Assembly to perform such functions as may be prescribed.
- (2) A Parliamentary Secretary may, by writing under his addressed to the Prime Minister, resign his office or may be removed from office by the Prime Minister."
7. **Amendment of Section 27, Act VIII of 1974.**- In the said Act, in Section 27. in sub-section (3) for the words "two" and "six" the words "Four" and "three" shall respectively be substituted.
8. **Amendment of Section 29, Act VIII of 1974.**- In the said Act, in Section 29, in sub-section (7), in clause (b) for the words "eleven Member" the words "one fourth of total membership of the Assembly" shall be substituted.
9. **Amendment of Section 30, Act VIII of 1974.**- In the said Act, in Section 30, in sub-section (2);-
- (a) for the words "less than fourteen members are present" the words "number of the members is less than one third of the total membership of the Assembly" shall be substituted; and
- (b) for the words "until fourteen" the words "till such number of the" shall be substituted.
10. **Amendment of Section 42, Act VIII of 1974.**- In the said Act, in Section 42;-
- (a) for sub-section (3), the following shall be substituted, namely:-
- "(3) The Supreme Court shall consist of a Chief Justice to be known as Chief Justice of Azad Jammu and Kashmir and two other Judges".
- (b) for sub-section (13) the following shall be substituted:-

- "(13) (a) An appeal to the Supreme Court shall be heard by a Bench consisting of not less than two judges to be constituted or reconstituted by the Chief Justice;
- (b) If the Judges hearing a petition or an appeal are divided in opinion, the opinion of majority shall prevail.
- (c) If there is no such majority as aforesaid, the petition or appeal, as the case may be, shall be placed for hearing and disposal before another Judge to be nominated by the Chief Justice:

Provided that if there is no other Judge, or if no other Judge is able to hear the case, the judgement, decree, order or sentence appealed from shall be deemed to be the judgment, decree, order or sentence, as the case may be, of the Supreme. Court:

Provided further that in case of difference of opinion as aforesaid, if the difference is only in respect of the nature, quantum or extent of the relief; liability, penalty or punishment to be granted or imposed, the decision of the supreme Court shall be expressed in terms of opinion of the senior of the two Judges."

11. **Addition of Section 42 -C to 42 -G, Act VIII of 1974.**- In the said Act, after Section 42-B, the following new Sections shall be inserted, namely:-

"42 -C. **Seat of the Supreme Court:-** (1) The seat of the Supreme Court shall be at Muzaffarabad.

(2) The Supreme Court may sit at such other place or places as the Chief Justice of Azad Jammu and Kashmir, with the approval of the President, may appoint.

42-D. **Review of judgment or Order by the Supreme Court:-**
The Supreme Court shall have powers, subject to the provisions of an Act of the Assembly or the Council and of any rules made by the Supreme Court, to review any judgement pronounced or any order made by it.

- 42-E. **Supreme Judicial Council:** - (1) There shall be a Supreme Judicial Council of Azad Jammu and Kashmir.
- (2) The Supreme Judicial Council shall consist of:
- (a) the Chief Justice of Azad Jammu and Kashmir who shall be its Chairman.
 - (b) the Senior Judge of the Supreme Court; and
 - (c) the Chief Justice of the High Court.
- (3) A Judge of the Supreme Court or of the High Court shall not be removed from office except as provided by this Section.
- (4) If, on information received from the Supreme Judicial Council or from any other source, the Chairman of the Azad Jammu and Kashmir Council or the President is of the opinion that a Judge of the Supreme Court or of the High Court—
- (a) may be incapable of properly performing the duties of his office by reason of physical or mental incapacity; or
 - (b) may have been guilty of misconduct, the Chairman or the President, as the case may be, shall direct the Supreme Judicial Council to inquire into the matter.
- (5) If, upon any matter inquired into by the Supreme Judicial Council, there is a difference of opinion amongst its members, the opinion of the majority shall prevail, and the report of the Supreme Judicial Council shall be expressed in terms of the view of the majority.
- (6) If, after inquiring into the matter, the Supreme Judicial Council reports to the Chairman of the Azad Jammu and Kashmir Council that it is of the opinion—
- (a) that the Judge is incapable of performing the duties of his office or has been guilty of misconduct, and
 - (b) that he should be removed from office, the Chairman shall advise the President to remove the Judge from his office and the President shall pass orders accordingly.
- (7) The Supreme Judicial Council shall issue a Code of conduct to be observed by Judges of the Supreme Court, and of the High Court.
- (8) If at any time the Supreme Judicial Council is inquiring into the conduct of a Judge who is a member of the Supreme Judicial Council, or a member of the Supreme Judicial Council

is absent or is unable to act due to illness or any other cause, than;

- (a) If such member is the Chief Justice or the Judge of the Supreme Court, the Judge of the Supreme Court who is next in seniority;
- (b) if such member is the Chief Justice of High Court, the senior most of the other Judges of the High Court; shall act as a member of the Supreme Judicial Council in his place.
- (9) If, upon any matter inquired in to by the Supreme Judicial Council, there is a difference of opinion amongst its members, the opinion of the Supreme Judicial Council shall be expressed in terms of the view of the majority.

42-F. **Power of Supreme Judicial Council to enforce Attendance of persons etc:-** (1) For the purpose of inquiring into any' matter, the Supreme, Judicial Council shall have the same powers as has the Supreme Court, to issue directions or orders for securing the attendance of any person or the discovery or production of any document and any such direction or order shall be enforceable as if it has been issued by the Supreme Court.

(2) The Provisions of Section 45 shall apply to the Supreme Judicial Council as they apply to the Supreme Court and the High Court.

42-G. **Bar of Jurisdiction:-** The proceedings before the Supreme Judicial Council, and the removal of a Judge under Section 42-E shall not be called in question in any Court.”

12. **Amendment of Section 43, Act VIII of 1974.-** In the said Act, in Section 43, after sub-section (1) the following new sub-section (1-A) shall be inserted, namely:-

"1-A. (a) The functions of the High Court may be performed by a Single Bench, a Division Bench or Full Bench:

Provided that the Chief Justice may recall a case pending before a Bench and make it over to another Bench or constitute a larger Bench for the purpose;

- (b) In case of difference of opinion in a Full Bench, the opinion of the majority shall prevail;
 - (c) in case of difference of opinion in a Division Bench, the matter shall be referred to a third judge and the decision of the High Court shall be expressed in terms of judgment of the majority."
- 13. **Addition of Section 43 -A Act VIII of 1974.-** In the said Act, after Section 43, the following new Section 43-A shall be inserted, namely:-

"43-A. Acting Chief Justice:- At any time when:-

 - (a) The Office of Chief Justice of High Court is vacant; or
 - (b) The Chief Justice of High Court is absent or is unable to perform the functions of his office due to any other cause the President shall appoint the senior most of the other judges of the High Court to act as Chief Justice.
- 14. **Addition of Section 44 -C, Act VIII of 1974.-** In the said Act, after Section 44-B, the following new Section 44-C shall be added, namely:-

"44-C. Seat of High Court: - (1) The permanent seat of the High Court shall be at Muzaffarabad.

 - (2) The High Court may, from time to time, sit at such other places as the Chief Justice of the High Court, with the approval of the President, may appoint.
- 15. **Insertion of Section 47 -A, Act VIII of 1974.-** In the said Act, after Section 47, the following new section shall be inserted, namely:-

"47-A. Employees of Court:- The Supreme Court and High Court, with the approval of the President, may make rules providing for the appointment of employees of the Court and for their terms and conditions of employment."
- 16. **Amendment of Fourth Schedule, Act VIII of 1974.-** In the said Act, for Fourth Schedule, the following shall be substituted and shall be deemed to have taken effect from the 1st day of July 1990, namely:-

"FOURTH SCHEDULE"

(See Section 42 (9))

The Chief Justice and the Judges of the Supreme Court of Azad Jammu and Kashmir shall be entitled to the same Salary, Allowances, Privileges and pension as are admissible to the Chief Justice and the Judges of the Supreme Court of Pakistan."

17. **Amendment of Fifth Schedule, Act VIII of 1974.**- In the said Act, for Fifth Schedule, the following shall be substituted and shall be deemed to have taken effect from the 1st day of July 1990, namely:-

"FIFTH SCHEDULE"

(See Section 43 (9))

The Chief Justice and the Judges of the High Court of Azad Jammu and Kashmir shall be entitled to the same Salary, Allowances, Privileges and pension as are admissible to the Chief Justice and Judges of the High Court in Pakistan."

Sd/-

(Syed Shakir Shah)

Deputy Secretary Law