

**THE AZAD GOVT. OF THE STATE OF JAMMU & KASHMIR,
LAW & PARLIAMENTARY AFFAIRS SECRETARIAT,
MUZAFFARABAD.**

Dated the 22nd, October, 1979.

No. 5090/SL/79. The following Ordinance made by the President on the 20th day of October, 1979, is hereby published for general information:-

(ORDINANCE CXLVI OF 1979)

AN

ORDINANCE

to provide for law relating to the constitution of the Shariat Benches of Superior Courts

WHEREAS it is expedient to provide for law relating to constitution of Shariat Benches of Superior Courts, in the manner hereinafter appearing;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by subsection (1) of Section 41 of the Azad Jammu and Kashmir Interim Constitution Act, 1974, the President is pleased to make and promulgate the following Ordinance :-

1. **Short title and commencement.**- (1) This Ordinance may be called the Constitution of Shariat Benches of Superior Courts Ordinance, 1979.
(2) It shall come into force at once.
2. **Definitions.**- In this Ordinance, unless there is anything repugnant in the subject or context,-
 - (a) 'Council' means the Azad Jammu and Kashmir Council;
 - (b) 'Government' means the Azad Government of the State of Jammu and Kashmir ;
 - (c) 'High Court' means the High Court of Azad Jammu and Kashmir;
 - (d) 'State Subject' means the State Subject as defined in the Azad Jammu and Kashmir Interim Constitution Act, 1974; and
 - (e) 'Supreme Court' means the Supreme Court of Azad Jammu and Kashmir.

3. **Ordinance to override other Laws.-** This Ordinance shall have effect notwithstanding anything contained in any other laws for the time being in force.
4. **Conferment of jurisdiction on High Court.-** (1) The High Court may, on the petition of a State subject of Azad Jammu and Kashmir or the Government or the Council, examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam as laid down in the Holy Quran and the Sunnah of the Holy Prophet, hereafter in this Ordinance referred to as the Injunctions of Islam.

Explanation.- In this Ordinance, 'Law' includes any custom or usage having the force of law but does not include the Constitution, Muslim personal law, any law relating to the procedure of any court or tribunal, or, until the expiration of three year from the commencement of this Ordinance, any fiscal law, any law relating to the collection of taxes and fees or banking or insurance practice and procedure.

(2) If the High Court decides that any law or provision of law is repugnant to the Injunctions of Islam, it shall set out in its decision –

- (a) the reasons for its holding that opinion ; and
- (b) the extent to which such law or provision is so repugnant and specify the day on which the decision shall take effect.

(3) Every decision of the High Court shall be published in the official Gazette.

(4) If any law or provision of law is held by the High Court to be repugnant to the Injunctions of Islam,-

- (a) the President shall take steps to amend the law so as to bring such law or provisions into conformity with the Injunctions of Islam; and
- (b) such law or provision shall, to the extent to which it is held to be so repugnant, cease to have effect on the day on which the decision of the High Court takes effect.

(5) A party to any proceedings before the High Court under sub-section (1) may be represented by a legal practitioner who is a Muslim who has been enrolled as an advocate of a High Court for a period of not less than five years or as an advocate of the Supreme Court or by a jurisconsult selected by the party from out of a panel of jurisconsults maintained by the High Court for the purpose.

(6) For being eligible to have his name borne on the panel of jurisconsults referred to in sub-section (5), a person shall be as aalim who, in the opinion of the High Court, is well-versed in Shariat.

(7) A legal practitioner or jurisconsult representing a party before the High Court shall not plead for the party but shall state, expound and interpret the Injunctions of Islam relevant to the proceedings so far as may be known to him and submit to the Court a written statement of his interpretation of such injunctions of Islam.

(8) The High Court may invite any person in Azad Jammu and Kashmir or Pakistan whom the High Court considers to be well-versed in Islamic law to appear before it and render such assistance as may be required of him.

(9) No Court fee shall be payable in respect of any petition or application made to a High Court under this section.

(10) For the purpose of the exercise of the jurisdiction conferred by this Section there shall be constituted in the High Court a Bench consisting of three Muslim Judges of the High Court, to be called the Shariat Bench; and reference in the preceding sub-sections to the High Court shall be construed as a reference to the Shariat Bench.

5. **Appeal to Supreme Court.**- (1) Any party to any proceedings before the High Court under Section 4 aggrieved by the final decision of the High Court in such proceedings may, within sixty days of such decision, prefer an appeal to the Supreme Court.

(2) The provisions of sub-sections (2) to (9) of Section 4 shall apply to and in relation to the Supreme Court as if reference in those provisions to High Court were a reference to the Supreme Court.

(3) For the purpose of the exercise of the jurisdiction conferred by this Section there shall be constituted in the Supreme Court, a Bench consisting of three Muslim Judges of the Supreme Court, to be called the Shariat Appellate Bench; and reference in the proceeding sub-sections to the Supreme Court shall be construed as a reference to the Shariat Appellate Bench.

6. **Pending proceedings to continue.**- Nothing in Section 4 or section 5 shall be deemed to require any proceedings pending in any court or tribunal immediately before the commencement of this Ordinance or initiated after such commencement, to be adjourned or stayed by reason of a petition having been made to the High Court or the Supreme Court for a decision as to whether

or not a law or provision of law relevant to the decision of the point in issue in such proceedings is repugnant to the Injunctions of Islam; and such proceedings shall continue, and the point in issue therein shall be decided, in accordance with the law for the time being in force.

7. **Power to make rules.**- (1) The Supreme Court, in consultation with the High Court, may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may make provision in respect of all or any of the following matters:-

- (a) regulation of the practice and procedure of the High Court and the Supreme Court in the exercise of jurisdiction under this Ordinance;
- (b) the maintenance by the High Court and the Supreme Court of a panel of jurisconsults and of ulama who may be invited by the High Court or, as the case may be, Supreme Court to appear before it and render assistance to it in the performance of its functions under this Ordinance and the qualifications of such ulama; and
- (c) the scale of payment of the honorarium, traveling allowance and daily allowance to be paid to ulama, jurisconsults, experts and witnesses summoned by the High Court or the Supreme Court in the performance of its functions under this Ordinance.

8. **Savings.**- Notwithstanding any judgment, decree or order of any court including High Court, every thing done, all actions taken, notifications issued, orders or appointments made, proceedings initiated, jurisdiction or power exercised under the provisions of the Constitution of Shariat Benches of Superior Courts Ordinance, 1979 (Ordinance XXIV of 1979) or its succeeding Ordinances issued from time to time shall be deemed to have been validly done, taken, issued, made, initiated or exercised under this Ordinance.

(Brigadier Mohammad Hayat Khan)
President,
Azad Jammu & Kashmir.

Sd/- (Khalil Ahmed Qureshi)
Secretary Law