

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

Dated the 5th February, 1980.

No. 782/SL/80. The following Ordinance made by the President on the 4th day of February, 1980, is hereby published for general information:-

(ORDINANCE XXII OF 1980)

AN

ORDINANCE

to make the provisions for the establishment of conciliation courts in Azad Jammu and Kashmir

WHEREAS the Local Government Institutions have been set up and it is expedient to make provisions for the establishment of conciliation courts to enable the people to settle certain disputes through conciliation, and for matters ancillary thereto;

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 sub-section (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, Extent and Commencement.**- (1) This Ordinance may be called the Azad Jammu and Kashmir Conciliation Courts Ordinance, 1980.
 - (2) It extends to the whole of Azad Jammu and Kashmir.
 - (3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint in this behalf.
2. **Definitions:-** In this Ordinance, unless there is anything repugnant in the subject or context,-
 - (a) 'Cognizable offence' means a cognizable offence as defined in Section 4 of the Code of Criminal Procedure, 1898 (Act V of 1898) as in force in Azad Kashmir;
 - (b) 'Conciliation Court' means a Conciliation Court constituted under this Ordinance;
 - (c) 'Appellate Authority' means in the cases of Criminal and Civil nature the District Magistrate and District Judge respectively of the concerned District;

VOLUME VI (1980)

- (d) 'Degree' means a decree as defined in Section 2 of the Code of Civil Procedure, 1908 (Act of 1908) as in force in Azad Kashmir;
- (e) 'District Judge' shall include as Additional District Judge, a Subordinate judge and a Civil Judge;
- (f) 'Government' means the Azad Government of the State of Jammu and Kashmir;
- (g) 'Party' shall include any person whose presence as such is considered necessary for a proper decision of the dispute and whom the Conciliation Court adds as party to such dispute;
- (h) 'Union' means an area declared to be a Union under the Azad Jammu a Kashmir Local Government Ordinance, 1979;
- (i) 'Union Council' means a Union Council constituted under the aforesaid Ordinance.

3. **Cases Referable to Conciliation.**- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), or in the Code of Civil Procedure, 1908 (Act V of 1908):-

- (a) all cases falling under Part I of the Schedule shall, save as otherwise provided hereinafter, be referred to conciliation under this Ordinance, and no civil or criminal Court shall have jurisdiction to try any such case ; and
 - (b) any of the cases falling under Part II of the Schedule may be so referred if all the parties thereto agree to such a reference.
- (2) The following cases relating to matters falling under Section B of Part I of the Schedule or under Section B of Part II thereof shall be excluded from conciliation, namely:-
- (a) Cases in which the interest of a minor is involved;
 - (b) cases where provision for arbitration has been made in a contract between the parties;
 - (c) cases by or against the Government or a public corporation or local bodies Bank or a Public servant acting in the discharge of his duty ;
 - (d) cases which according to the customary law of a community are referable to a community panchayat.
- (3) Government may, by notification in the Official Gazette, add to the Schedule any class of cases relating to such disputes

between private parties as are of a local nature and are capable of settlement by compromise.

(4) Nothing in this Section shall apply to cases relating to an offence specified in the Schedule if the accused had previously been convicted of a cognizable offence.

4. **Application for Constitution of a Conciliation Court.-** (1) Where a case is, under this Ordinance referable to conciliation, any party to the dispute may, in the prescribed manner, and on payment of the prescribed fee, apply to the Chairman of the Union Council concerned for the constitution of a Conciliation Court for the settlement of a dispute, and unless the Chairman, for reasons to be recorded in writing, rejects the application, he shall proceed to constitute, in the prescribed manner, a Conciliation Court for the purpose:

Provided that no application under this Section shall be made against a person of unsound mind.

(2) Any person aggrieved by an order of rejection under sub-section (1) may, on the ground that the order is mala-fide or substantially unjust, prefer, in the prescribed manner and within the prescribed time, an application for revision to the appellate Authority, or to such other authority as may be prescribed.

5. **Conciliation Courts, their Composition, etc.,** (1) A Conciliation Court shall be a body consisting of a Chairman and two representatives to be nominated, in the prescribed manner, by each of the parties to the dispute:

Provided that one of the two representatives so nominated shall be a member of the Union Council concerned.

(2) The Chairman of the Union Council shall be the Chairman of the Conciliation Court, but where he is, owing to illness or any other cause, unable to act as Chairman, or does not, on account of any personal consideration, wish to do so, or his impartiality is challenged by any party to the dispute, any other person appointed in the prescribed manner, not being a person nominated by any party, shall be the Chairman of the Court.

(3) If either party to the dispute consists of more than one person, the Chairman shall call upon the person constituting that party to nominate the two representatives, on its behalf, and if they fail to nominate, shall authorise any one of the such persons to do so, and thereupon the person so authorised shall alone have the right to nominate such representatives.

(4) Where representatives required under this section to be nominated are not nominated within the prescribed time, then -

(a) If the case falls under part I of the schedule, the Conciliation Court shall, without such representatives, for the purpose of this Ordinance and Conciliation shall proceed accordingly; and

(b) If the case falls under Part II of the Schedule, the Chairman shall issue a certificate that conciliation has failed.

6. **Jurisdiction of Conciliation Courts, etc.-** A Conciliation Court shall be constituted and shall have jurisdiction to try a case only when the parties to the dispute ordinarily reside within the limits of the Union in which the offence has been committed or the cause of action arisen.

7. **Power of Conciliation Courts to Award Compensation.-** (1) Save as other provided in this Ordinance, a Conciliation Court shall have no power to pass a sentence of imprisonment or fine, but if it holds a person guilty of an offence specified in the Schedule, it may order the accused to pay to the aggrieved person compensation the amount of which may not exceed two hundred and fifty rupees, but if the offence is one punishable under Section 428 or Section 429 of the Penal Code (Act XLV of 1860) in force in Azad Kashmir the amount of compensation may exceed two hundred and fifty rupees but not five hundred rupees.

(2) In a case relating to a matter falling under Section B of Part I of the Schedule or under Section B of Part II thereof, the Conciliation Court shall have the power to order payment of money up to the amount specified therein in respect of such matter or delivery of property to the person entitled thereto.

8. **Finality of the Decisions of Conciliation Courts. -**

(1) Where in a case referred to conciliation under this Ordinance the decision of the Conciliation Court is unanimous, or, if the case falls under Part I of the Schedule, the decision is by a majority of four to one, the decision shall be binding on the parties and shall be enforceable in accordance with the provision of this Ordinance:

Provided that such decision may be set aside by the Appellate Authority if it is of the opinion that the Conciliation Court does not have the jurisdiction to try the case.

(2) If the decision of a Conciliation Court is by majority of three to two, and the case falls under Part I of the Schedule, any

party may, within thirty days of the decision, apply, in the prescribed manner,-

- (a) to the Appellate Authority, if the case relates to matter falling under Section A of that part, or
- (b) (b) to the District Judge if the case relates to a matter falling under Section B thereof, and Appellate Authority or the District Judge, as the case may be, if satisfied that there has been a failure of justice, may set aside or modify the decision, or direct that the dispute be referred back to the Conciliation Court for reconsideration.

(3) If the decision of Conciliation Court is not unanimous, and the case falls under Part II of the Schedule, the Court shall issue a certificate that conciliation has failed.

(4) Notwithstanding anything in any law any matter decided by a Conciliation Court in accordance with the provisions of this Ordinance shall not be tried in any Court, including a Conciliation Court.

9. **Enforcement of Decree.-** (1) Where a Conciliation Court decides to award compensation to a person or to order the delivery of property, it shall pass a decree in such form and in such manner as may be prescribed, and shall enter the particulars thereof in the prescribed register.

(2) If any money is paid or any property is delivered in the presence of the Conciliation Court in satisfaction of the decree, it shall enter the fact of payment or delivery, as the case may be, in the aforesaid register.

(3) Where a decree relates to payment of compensation and the decretal amount is not paid within the prescribed time, the same shall, if the Chairman of the Conciliation Court so directs, be recovered as arrears of land revenue, and on a recovery, shall be paid to the decree-holder.

(4) Where the satisfaction of a decree can be had otherwise than by payment of compensation, the decree may be presented for execution to such Civil Court as the District Judge may, by special or general order, direct, and such court shall thereupon proceed to execute the decree as if it were a decree passed by itself.

(5) A Conciliation Court may, if thinks fit, direct that the amount of compensation be paid in such installments as it may fix.

10. **Procedure on Failure of Conciliation .-** Where a certificate is issued that conciliation has failed, either under clause (b) of sub-

section (4) of Section 5 or under sub-section (3) of Section 8, any party to the dispute may seek its remedy in the Court in which it would in law be entitled to seek such remedy- if this Ordinance had not been promulgated.

11. **Power of Conciliation Courts to Summon Witnesses etc.-** (1)

A Conciliation Court may issue summons to any person to appear and give evidence, or to produce or cause the production of any document:

Provided that --

- (a) no person who is exempt from personal appearance in Court under sub-section (1) of Section 133 of the Code of Civil Procedure, 1908 (Act V of 1908), shall be required to appear in person;
- (b) a Conciliation Court may refuse to summon a witness or to enforce a summon already issued against a witness when in the opinion of the Court the attendance of the witness cannot be procured without such delay, expense or inconvenience as in the circumstances would be unreasonable;
- (c) a conciliation Court shall not require any person living beyond its jurisdiction to give evidence or to produce or cause the production of a document unless such sum of money is deposited for payment to him as he would think sufficient for defraying his travelling and other expenses.

(2) If any person to whom a Conciliation Court has issued summons to appear and give evidence or to produce or cause the production of any document before it willfully disobeys such summons, the Conciliation Court may take cognizance of such disobedience, and, after giving such person an opportunity to explain, sentence him to a fine not exceeding twenty-five rupees.

12. **Contempt of Conciliation Courts.-** A person shall be guilty of contempt of Conciliation Court if he, without lawful excuse, -

- (a) offers any insult to the Conciliation Court or any member thereof while the Court is functioning as such; or
- (b) causes any interruption in the work of the Conciliation Court; or
- (c) fails to produce or deliver a document when ordered by the Conciliation Court to do so; or
- (d) refuses to answer any question of the Conciliation Court which he is bound to answer; or

- (e) refuses to take oath to state the truth or to sign any statement made by him when required by the Conciliation Court to do so; and the Conciliation Court, may, without any complaint having been made to its forthwith try such person for such contempt and sentence him to a fine not exceeding fifty rupees.
13. **Recovery of Fine.-** (1) Where a Conciliation Court imposes a fine under Section 11 or Section 12 and such fine is not immediately paid, it shall record an order stating the amount of fine imposed and the fact that it has not been paid, and shall forward the same to the nearest Magistrate who shall proceed to recover it in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), as if it were fine imposed by himself, and such Magistrate may also sentence the accused to imprisonment in default of payment of such fine.
- (2) All fines paid to a Conciliation Court under Section 11 and 12 or collected on behalf of a Conciliation Court under this Section shall form part of the funds of the Union Council concerned.
14. **Limitation etc. in Certain Cases.-** Where a case relating to a matter falling under Section B of Part II of the Schedule is referred to Conciliation and conciliator fails, and the case is subsequently taken to a Civil Court, in computing the period of limitation prescribed therefore by or under any law for the time being in force the time spent on conciliation proceedings, commencing from the date of the application made under Section 4 and ending on the day the certificate of failure of conciliation is issued, shall, notwithstanding anything in the Limitation Act, 1908 (IX of 1908), be excluded.
15. **Procedure.-** (1) Save as otherwise expressly provided by or under this Ordinance the provisions of the Evidence Act, 1872 (1 of 1872), the Code of Criminal Procedure, 1898 (Act, V of 1898) and of the Code of Civil Procedure, 1908 (Act, V of 1908) as in force in Azad Kashmir shall not apply to proceedings before any Conciliation Court.
- (2) Sections 8 to 11 of the Oaths Act, 1873 (X of 1873), shall apply to all proceedings before Conciliation Courts.
16. **No Appearance Through Counsel.-** (1) Notwithstanding anything contained in the Legal Practitioners Act, 1879 (XVIII of 1879), no legal practitioner shall be permitted to appear on behalf of any party to a dispute before any Conciliation Court or other authority exercising powers under this Ordinance.

(2) If a person required under this Ordinance to appear before a Conciliation Court is a pardanashin lady, the Conciliation Court may permit her to be represented by a duly authorised agent who shall in no case be a paid agent.

17. **Transfer of certain cases.-** (1) Where the Appellate Authority, is of the opinion that the circumstances of a case relating to a matter falling under Section A of Part I of the Schedule or under Section A of Part II thereof and pending before a Conciliation Court are such that the public interest and the ends of justice demand its trial in a Criminal Court, the said Authority may, notwithstanding anything contained in this Act withdraw the same from the conciliation Court and direct that it be referred to the Criminal Court for trial and disposal.

(2) A conciliation Court may, if it is of the opinion that in a case relating to a matter as aforesaid and pending before it the ends of justice demand a punishment for the accused, forward the case to the Criminal Court for trial and disposal.

(3) The District Judge may, for reasons to be recorded, withdraw any civil case from a Conciliation Court and direct that it be referred to a Civil Court for disposal.

18. **Investigation by Police.-** Nothing in this Ordinance shall prevent the police from investigation of a cognizable case by reason of the fact that the case relates to an offence specified in Section A of Part I of the Schedule, but if any such case is taken to a Criminal Court, Court may, if it thinks fit, direct that it be referred to conciliation under this Ordinance.

19. **Pending Cases.-** This Ordinance shall not apply to cases referable under this Ordinance to conciliation which, immediately before the coming into force of this Ordinance are pending in any Civil or Criminal Court, and such cases shall be disposed of by those Courts as if this Ordinance had not been promulgated:

Provided that if all the parties to any such case agree to have the same decided by a Conciliation Court, the proceedings thereof shall terminate, and the case shall be referred to conciliation in accordance with the provisions of this Ordinance.

20. **Power to Exempt.-** Government may, by notification in the Official Gazette exempt any area or areas, or any case or class of cases, or any community from the operation of all or any of the provisions of this Ordinance.

21. **Power to Make Rules.-** Government may, by notification in the Official Gazette make rules to carry into effect the provisions of this Ordinance.

VOLUME VI (1980)

22. **Repeal.-** The Azad Jammu and Kashmir Conciliation Courts Act, 1962 (Act II of 1962) is hereby repealed.

(Mohammad Hayat Khan
President
Azad Jammu & Kashmir

Sd/-
(Khalil Ahmed Qureshi)
Secretary Law.