

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

Dated the 16th November, 1991.

No. 1168-73/LD/91. The following Ordinance made by the President on the 16th day of November, 1991, is hereby published for general information:-

(ORDINANCE CIII OF 1991)

AN

ORDINANCE

to make provision for the establishment of Family Courts

WHEREAS it is expedient to make provision for the establishment of Family Courts for the expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith;

AND WHEREAS the Legislative Assembly is not in session and 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 Family Courts Ordinance, 1991.
 - (2) It extends to the whole of the Azad Jammu and Kashmir.
 - (3) It shall come into force at once.
2. **Definitions.**- In this Ordinance, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-
 - (a) "Family Court" means a Court constituted under this Ordinance;
 - (b) "Government" means the Azad Government of the State of Jammu and Kashmir;
 - (c) "Party" shall include any person whose presence as such is considered necessary for a proper decision of the

dispute and whom the Family Court adds as a party to such dispute;

(d) "Prescribed" means prescribed by rules made under this Ordinance.

3. **Establishment of Family Courts.**- Government shall establish one or more Family Courts in each District or at such other place as it may deem necessary and appoint a Judge in each of such Courts.

4. **Qualifications of Judge.**- No person shall be appointed as a Judge of a Family Court unless he is or has been or is Qualified to be a District Judge or an Additional District and Session Judge.

5. **Jurisdiction.**- The Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in the Schedule.

6. **Place of sitting.**- Subject to any general or special orders of Government in this behalf, a Family Court shall hold its sittings at such place or places within the districts as may be specified by the District Judge.

7. **Institution of suits.**- (1) Every suit before a Family Court shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

(2) The plaint shall contain all facts relating to the dispute and shall contain a Schedule giving the number of witnesses intended to be produced in support of the plaint, the names and addresses of the witnesses and a brief summary of the facts to which they would depose:

Provided that the parties may, with the permission of the Court, call any witness at any later stage, if the Court considers such evidence expedient in the interests of Justice.

(3) All documents which the plaintiff intends to rely upon in respect of his claim shall be appended to the plaint.

(4) The plaint shall be accompanied by as many duplicate copies thereof (including the Schedule and the lists of documents referred to in sub-section (3), as there are defendants in the suit, for service upon the defendants.

8. **Intimation to defendants.** - (1) Within three days of the presentation of the plaint to a Family Court the plaintiff shall send to each defendant by registered post, a copy of the plaint

together with a copy of the Schedule as mentioned in Section 7 (2) and copies of all documents mentioned in Section 7 (3).

(2) Save as may otherwise be prescribed, the plaintiff shall also, within the time specified in sub-section (1), cause notice to be published in a newspaper approved by the Family Court of the fact of his having filed the plaint.

9. **Written statement.**- (1) Within fifteen days of the service of notice upon him by registered post or the appearance of a notice in a newspaper, whichever is earlier, the defendant shall appear in Court and file his written statement.

(2) With the written statement the defendant shall attach-

(a) Copies of the entire documentary evidence that he wishes to Produce in the case; and

(b) a list of the names and addresses of his witnesses along with a precis of the evidence that each witness is expected to give,

(3) Copies of the written statement and the documents referred to in sub-section (2) shall be sent by registered post by defendant to the plaintiff within three days of his filing the written statement:

Provided that if there are several defendants and they file a joint written statement, only one of them shall send a copy of the written statement with the documents mentioned in sub-section (2).

(4) If the defendant fails to appear within the time specified in sub-section (1), the Family Court may proceed against him ex parte.

10. **Pre-trial proceeding.**- (1) As soon as may be, after the written statement has been filed, the Court shall fix a date for pre-trial hearing of the case and issue notices to the parties for attending the Court on the date so fixed.

(2) On the date so fixed, the Court shall examine the plaint, the written statement (if any) and the precis of evidence and documents filed by the parties and shall also, if it so deems fit, record the statement of parties or their counsel.

(3) At the pre-trial hearing, the Court shall ascertain the points at issue between the parties and attempt to effect a compromise or reconciliation between the parties, if this be possible.

(4) If no compromise or reconciliation is possible, the Court shall frame the issues in the case and fix a date for evidence.

11. **Recording of evidence.**- (1) On the date fixed for recording of evidence, the Family Court shall examine the witnesses produced by the parties in such order as it deems fit.

(2) The Court shall not issue any summons for the appearance of any witness unless, within three days of the framing of issues, any party intimates the Court that it desires a witness to be summoned through the Court and the Court is satisfied that it is not possible or practicable for such party to produce the witness.

(3) The witnesses shall give their evidence in their own words and no question shall be put to them by any party or any counsel of a party by way of examination-in-chief, cross-examination or re-examination:

Provided that the Court may, if it so deems fit, put any question to any witness for the purpose of elucidation of any point which it considers material in the case.

(4) The Family Court may permit the evidence of any witness to be given by means of an affidavit:

Provided that if the Court deems fit it may call such witness for the purpose of examination in accordance with subsection (3).

12. **Conclusion of trial.**- (1) After the close of evidence of both sides, the Family Court shall make another effort to effect a compromise or reconciliation between the parties.

(2) If such compromise or reconciliation is not arrived at, the Family Court shall announce its judgment and give a decree.

Provided that a Family Court shall finally decide a case before it, within a period of four months from the date of the presentation of the plaint.

13. **Enforcement of decrees.**- (1) The Family Court shall pass a decree in such form and in such manner as may be prescribed, and shall enter its particulars in the prescribed register.

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

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

(4) The decree shall be executed by the Court passing it or by such other Civil Court as the District Judge may, be special or general order, direct.

(5) A Family Court may, if it so deems fit, direct that any money to be paid under a decree passed by it be paid in such instalments as it deems fit.

14. **Appeals.-** (1) Notwithstanding anything provided in any other law for the time being in force, a decision or a decree passed by a Family Court shall be appealable to the High Court only.

(2) No appeal shall lie from a decree passed by a Family Court.

(a) for dissolution of marriage, except in the case of dissolution for reasons specified in clause (d) of item (viii) of Section 2 of the Dissolution of Muslim Marriages Act, 1939:

(b) for dower not exceeding rupees one thousand:

(c) for maintenance of rupees seventy-five or less per month.

(3) Every appeal under this ordinance shall be decided by the appellate Court within a period of sixty days, from the date of presentation of appeal.

15. **Power of Family Court to summon witnesses.** - (1) A Family 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 a Court under sub-section (1) of Section 133 of the Code of Civil Procedure, 1908, shall be required to appear in person;

(b) a Family Court may refuse to summon a witness or to enforce a summons already issued against a witness when, in the opinion of the Court, the attendance of the witness cannot be procured without such delay, expense

inconvenience or in the circumstances would be unreasonable.

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

16. **Contempt of Family Courts.**- A person shall be guilty of contempt of the Family Court if he, without lawful excuse-
- (a) offers any insult to the Family Court; or
 - (b) causes an interruption in the work of the Family Court; or
 - (c) refuses to answer any question put by the Family Court, which he is bound to answer; or
 - (d) refuses to take oath to state the truth or to sign any statement made by him in the Family Court; and the Family Court may forthwith try such person for such contempt and sentence him to a fine not exceeding rupees two hundred.
17. **Provisions of Evidence Act and Code of Civil Procedure not to apply.**- (1) Save as otherwise expressly provided by or under this Ordinance, the provisions of the Qanon-e-Shahadat as in force in Azad Kashmir and the Code of Civil Procedure, 1908, shall not apply to proceedings before any Family Court.
- (2) Sections 8 to 11 of the Oaths Act, 1873, shall apply to all proceedings before the Family Courts.
18. **Appearance through agents.**- If a person required under this Ordinance to appear before a Family Court, otherwise than as a witness, is a pardahnashin lady, the Family Court may permit her to be represented by a duly authorised agent.
19. **Court-fees.**- Notwithstanding anything to the contrary contained in the Court Fees Act, 1872, No court-fees shall be charged on any plaint filed before a Family Court.
20. **Investment of powers of Magistrate on Judges.**- The Government may invest any Judge of a Family Court with powers of Magistrate First Class to hear the case under Section, 488 of the Code of Criminal Procedure, 1898.

21. **Family Court deemed to be a District Court for purposes of Guardians and Wards Act, 1890.**- A Family Court shall be deemed to be a District Court for the purposes of the Guardians and Wards Act, 1890, and notwithstanding anything contained in this ordinance, shall in dealing with matters specified in that Act, follow the procedure prescribed in that Act.
22. **Power to make rules.**- (1) The Government may, by notification in the Official Gazette, make rules to carry into effect the provisions of this Ordinance.
- (2) Without prejudice to the generality of the provisions contained in sub-section (1), the rules so made may, among other matters, provide for the procedure, which shall not be inconsistent with the provisions of this Ordinance, to be followed by the Family Courts.

AJK LAW Department (Library)

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SCHEDULE

(See Section 5)

1. Dissolution of marriage.
2. Dower.
3. Maintenance.
4. Restitution of conjugal rights.
5. Custody of children.
6. Guardianship.

Sd/-
(Sardar Sikandar Hayat Khan)
President
Azad Jammu and Kashmir

Sd/-
(Syed Mohammad Akram Shah)
Additional Secretary Law

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