

**AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW AND PARLTAMENTARY AFFAIRS DEPARTMENT
MUZAFFARABAD**

Dated the 30th September, 1985.

No. 2067/LD/85. The following Ordinance made by the President on the 30th day of September, 1985, is hereby published for general information:-

(ORDINANCE CCXLI OF 1985)

AN

ORDINANCE

to provide for law relating to the constitution of Azad Jammu and Kashmir Shariat Court

WHEREAS in pursuance of Section 31, sub-section (5) Interim Constitution Act, 1974, the existing laws are to be brought in conformity with Quran and Sunnah.

WHEREAS it is expedient to provide for law relating to the constitution of Azad Jammu and Kashmir Shariat Court, in the manner hereinafter appearing;

AND WHEREASE 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 Shariat Court Ordinance 1985.
 - (2) It shall come into force at once.
2. **Definitions.**- In this Ordinance, unless there is anything re-pungent in the subject or context,-
 - (a) "Council" means the Azad Jammu and Kashmir Council;
 - (b) "Chief Justice" means the Chief Justice of the Court;
 - (c) "Court" means the Azad Jammu and Kashmir Court constituted under this Ordinance;
 - (d) "Government" means the Government of the State of Jammu and Kashmir;
 - (e) "High Court" means the Azad Jammu and Kashmir High Court;
 - (f) "Judge" in relation to the Supreme Court of Azad Jammu and Kashmir or the High Court includes the Chief Justice of Supreme Court or as the case may be High Court and also includes Additional Judge of the High Court;
 - (g) "Law" includes any custom or usage having the force of law but for the purpose of exercising jurisdiction under section 4 does not include the Azad Jammu and Kashmir Interim

Constitution Act, 1974, Muslim Personal Law or any law relating to the procedure of any Court or Tribunal or any law relating to the matters in the Council Legislative List;

- (h) "Member" means the Member of the Court;
- (i) "State Subject" means the State Subject as defined in the Azad Jammu and Kashmir Interim Constitution Act, 1974; and
- (j) "Supreme Court" means the Supreme Court of Azad Jammu and Kashmir.

3. **The Azad Jammu and Kashmir Shariat Court.**- There shall be constituted for the purposes of this Ordinance a Court to be called the Azad Jammu and Kashmir Shariat Court.

(2) The Court shall consist of two Muslim Member including the Chairman to be appointed by the President.

(3) The Chairman shall be a person who is, or has been or is qualified to be a Judge of the Supreme Court and member shall be a person who is, or has been or is qualified to be a Judge of a High Court.

(4) The Chairman and a member shall hold office for a period not exceeding three years:

Provided that a retired Judge appointed as Chairman or member shall not hold office latter than three years from the date of his retirement.

(5) The Chairman if he is not a Judge of the Supreme Court, and a member who is not Judge of the High Court, may, by writing under his hand addressed to the President resign his office.

(6) The principal seat of the Court shall be at Muzaffarabad.

(7) Before entering upon office, the Chairman and a member shall make before the President or a person nominated by him oath in the form set out in the Schedule.

(8) At any time when the Chairman or a member is absent or is unable to perform the functions of his office, the President shall appoint another person qualified for the purpose to act as Chairman or, as the case may be, the member.

(9) Member of Judges of the Court the Chief Justice may in writing with the approval of the President request a person who is duly qualified for appointment as a Judge of the Court, to attend the sitting of the Court as an adhoc Judge for such period or such cases as may be necessary and while so attending and an adhoc Judge shall have the same powers and jurisdiction as are vested in the Judge of the Court.

(10) (i) A Chief Justice who is not a Judge of the Supreme Court shall be entitled to the same salary, allowances and privileges as are admissible to a Judge of the Supreme Court and a Judge who is not a Judge of a High court shall be entitled to the

same salary, allowances and privileges as are admissible to a Judge of a High Court.

- (ii) A sitting Judge if appointed as Chief Justice or Judge the Shariat Court shall be entitled to the same salary, allowances, privileges as are admissible to such Judge, before appointment as Chief Justice or as the case may be, the Judge in the Shariat court.

4. **Penal of Ulema and Ulema Judges.**- (1) The President may, in consultation with the Chief Justice draw up a penal or Ulema who are well versed in Islamic Laws for being associated with the Court in cases before it.

(2) The Chief Justice shall, in all cases before the Court, request to One Alim, borne on the aforesaid penal to attend the sittings of the Court as Alim Judge and, while so sitting, he shall have the same power and jurisdiction, and be entitled to that same privileges, as a Judge and such allowances as may be determined by the President.

5. **Further jurisdiction of the Court.**- (1) The Court shall have such other jurisdiction as may be conferred on it by or under any Law.

6. **Powers, jurisdiction and functions of the Court.**- (1) The Court may, on the petition of a citizen of Azad Jammu and Kashmir or the Azad Jammu and Kashmir Government , 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 Holly Prophet, hereinafter referred to as the Injunctions of Islam.

(2) If the Court decides that any law or provision of law is repugnant to the Injunction 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) If any law or provision of law is held by the Court to be repugnant to the Injunction of Islam.

- (a) the President in the case of law with respect to a matter not enumerated in Council List, shall take steps to amend the Law so as to bring such law or provision 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 Court takes effect.

7. **Powers and procedure of the Court.**- (1) For the purpose of the performance of its functions, the Court shall have the powers as are vested in the High Court while exercising revisional, appellate and original civil and criminal jurisdiction.
- (2) All directions and orders passed or process issued by the Court shall be enforceable and executed in Azad Jammu and Kashmir as if it has been issued by the High Court.
- (3) The Court shall have power to conduct its proceedings and regulate its procedure in all respects as it deems fit.
- (4) The Court shall have the power of a High court to punish its own contempt.
- (5) A party to any proceedings before the Court under this Ordinance may be represented by a legal practitioner who is a Muslim and 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 mentioned by the Court for the purpose.
- (6) For being eligible to have his name borne on the panel of jurisconsults referred to in clause (5), a person shall be an 'allim' who in the opinion of the Court is well-versed in Shariat.
- (7) A legal practitioner or jurisconsult representing a party before the 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 Court may invite any person in Azad Jammu and Kashmir or abroad whom the 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 to the Court under this Ordinance.
- (10) The Court shall have power to review any decision given or order made by it.
8. **Application of Code of Criminal Procedure, 1898 (Act V of 1898).**- The provisions of the Code of Criminal Procedure, 1898, (Act V of 1898) shall apply, mutatis mutandis, in respect of cases under this Ordinance:
- Provided that in the said Code the words High Court, Sessions Court, and Magistrate First Class wherever occurring, shall be construed to mean the Azad Jammu and Kashmir Shariat Court, district criminal Court and Tehsil Criminal Court as the case may be, for the purposes of this Ordinance.
9. **Appeal to the Supreme Court.**- (1) Any party to any proceedings before the Court under Section 6 aggrieved by the final decision of the Court in such proceedings may, within sixty days of such decision, prefer an appeal to the Supreme Court.

(2) The provisions of sub-section (3) of Section 6 and sub-section (4) to (8) of Section 7 shall apply to and in relation to the Supreme Court, as if reference to the provisions to 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 two Muslim Judges of the Supreme Court to be called the Shariat Appellate Bench, and reference in the preceding clauses to "Supreme Court", shall be construed as a reference to the Shariat Appellate Bench.

10. **Bar of Jurisdiction.-** Save as provided under this Ordinance no Court or tribunal, including the Supreme Court and a High Court shall entertain any proceedings or exercise any power or jurisdiction in any matter when the Shariat Court has the power to adjudicate and determine.

11. **Pending proceedings to continue, etc.-** (1) Subject to sub-section (2) nothing in this Ordinance shall be deemed to required 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 only of a petition having been made to the 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 all such proceedings shall continue, and the point in issue therein shall be decided, in accordance with the law for the time being in force.

(2) All proceedings pending before any High Court, Shariat Bench or in the Appellate Shariat Bench immediately before the commencement of this Ordinance shall stand transferred to the court and shall be dealt with by the court from the stage from which they are so transferred.

(3) The court in the exercise of its jurisdiction under this Ordinance shall not grant an injunction or make any interim order in relation to any proceedings pending in any other court or tribunal.

12. **Administrative arrangements, etc.-** The Government shall make all such administrative arrangements, and make available to the Court to the services of such officers and experts, as it may consider necessary for the convenient performance of the functions of the Court.

13. **Power to make rules.-** (1) The Court may, by notification in the official Gazette, make rules for carrying out the purpose 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, namely:-

- (a) the scale of payment of honoraria to be made to jurisconsults, experts and witnesses summoned by the Court to defray the expenses, if any, incurred by them in attending for the purposes of proceedings before the Court;

- (b) the form of oath to be made by a jurisconsult, expert or witness appearing before the Court.
 - (c) the powers and Functions of the Court being exercised or performed by the Benches of consisting of one or more Judges constituted by the Chief Justice:
 - (d) the decision of the Court being expressed in terms of the opinion of the majority of its Judges or, as the case may be, of the Judges constituting a Bench; and
 - (e) the decision of cases in which the Judges constituting a Bench are equally divided in their opinion.
- (3) Until rules are made under sub-section (1) of this Section the Shariat Benches of Superior Courts Rules, 1980, shall with the necessary modifications and so far as they are not inconsistent with the provisions of this Ordinance, continue in force.
14. The Chief Justice or Judge shall take oath as prescribed in the Schedule.
15. **Repeal.**- The Azad Jammu and Kashmir Shariat Court Ordinance, 1985 (Ordinance CXL of 1985) is hereby repealed.
16. **Savings.**- Notwithstanding any judgment, decree or order of any court including High Court, every thing done, all actions taken, notifications issued, orders or appointment made, proceedings initiated, jurisdiction or powers exercised under the provision of the Azad Jammu and Kashmir Shariat Court Ordinance, 1980 (Ordinance CLXXII of 1980) 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.

SCHEDULE

“Chief Justice or Judge of Azad Jammu and Kashmir Shariat court, under section 3 of Azad Jammu and Kashmir Shariat Court Ordinance, 1980.

I,.....do solemnly swear that, as the Chief Justice (or a Judge) of the Azad Jammu and Kashmir Shariat Court will discharge my duties, and perform my functions honestly to the best of my ability and faithfully in accordance with law;

And that I will allow my personal interest to influence my official conduct or my official decisions.

Sd/-
(Major General (R) Abdul Rehman Khan)
President,
Azad Jammu & Kashmir.
