

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

Dated the 17th May, 1989.

No. 1/12/Leg/89. The following Act of the Assembly received the assent of the President on 15th day of May, 1989, is hereby published for general information.

(ACT VIII OF 1989)

AN

ACT

for the enforcement of Shariah

WHEREAS sovereignty over the entire universe belongs to Almighty Allah, alone, the Authority to be exercised by the people of Azad Jammu and Kashmir within the limits prescribed by Him is a sacred trust;

AND WHEREAS sub-section (5) to section 31 of the Azad Jammu and Kashmir Interim Constitution Act, 1974, provides that no law shall be repugnant to the teaching and requirements of Islam as set out in the Holy Quran and Sunnah;

AND WHEREAS it is necessary to carry out the purposes of the Interim Constitution and to provide that all existing laws shall be brought in conformity with the Holy Quran and Sunnah;

It is hereby enacted as follows:-

1. **Short title, extent and Commencement.** - (1) This Act may be called the Azad Jammu and Kashmir Enforcement of Shariat Act, 1989.
 - (2) It extends to the whole of Azad Jammu and Kashmir. And it shall have effect notwithstanding anything contained in any other law, or any custom or usage having the force of law.
 - (3) Nothing contained in this Act shall affect the personal laws of the non-Muslims.
 - (4) It shall come into force at once.
2. **Definitions.**- In this Act, unless there is anything repugnant in the subject or context,-

- (a) “Government” means the Azad Government of the State of Jammu and Kashmir;
 - (b) “Court” means a court subordinate to High Court and includes a tribunal or an authority established by or under any law for the time being in force.
 - (c) “Mufti” means a Muslim scholar well-versed in shari’ah appointed under this Act to assist the Supreme Court, High Court or the Shariat Court in the interpretation of Shari’ah;
 - (d) “Shari’ah” means the Injunctions of Islam as laid down in the Holy Quran and Sunnah;
 - (e) “Supreme Court” means the Supreme Court of Azad Jammu and Kashmir;
 - (f) “High Court” means the High Court of Azad Jammu and Kashmir;
 - (g) “Shariat Court” means Shariat Court constituted under Shariat Court Ordinance; and
 - (h) “Council of Islamic Ideology” means Council of Islamic Ideology constituted under the Azad Jammu and Kashmir Council of Islamic Ideology Ordinance.
3. **Supremacy of Shari’ah.**- Shari’ah shall be the supreme law in Azad Jammu and Kashmir and Ground Norm for guidance for policy making by the State and shall be enforced in the manner and as envisaged hereunder.
4. **Court to decide cases according to Shari’ah.**- (1) If a question arises before a Court that a law or provision of law is repugnant to Shari’ah, the court shall , if it is satisfied that the question needs consideration, make a reference to the Shariat Court in respect of matters which fall within the jurisdiction of the Shari’ah Court under the Shariat Court Ordinance and that court may call for and examine the record of the case and decide the question within sixty day :

Provided that, if the question relates to Muslim personal law, any fiscal law or any law relating to the levy and collection of taxes and fees or banking or insurance practice and procedure, the court shall refer the question to High Court which shall decide the question within sixty days :

Provided further that no question as to the repugnancy or otherwise to Shari’ah shall be entertained by the Court in respect of a law or provision of law already examined by the Shari’at

Court or Supreme Court and found not to be repugnant to Shari'ah.

(2) The second proviso to sub-section (1) shall not affect the jurisdiction of the Sharia'at Court and the Supreme Court to review any decision given or order made by it.

(3) The High Court may, either of its own motion or on the petition of a citizen of Azad Jammu and Kashmir or Government or on a reference made to it under the first proviso to sub-section (1), examine and decide the question whether or not any law relating to Muslim Personal Law, any fiscal law or any law relating to the levy and collection of taxes and fees or banking or insurance practice and procedure, or any provision of such law, is repugnant to Shari'ah :

Provided that while examining and deciding the question, the High Court shall call for and hear the views of experts having specialized knowledge in the field to which the question relates and of such other persons as the High Court may deem fit.

(4) Where the High Court takes up the examination of a law or provisions of law under sub-section (3), and such law or provision of law appears to it to be repugnant to Shari'ah the High Court shall cause to be given to the Government a notice specifying the particular provisions that appear to it to be so repugnant, and afford to Government adequate opportunity to have its point of view placed before the High Court.

(5) If the High court decides that any such law or provision of law is repugnant to Shari'ah, it shall set out in its decision –

- (a) the reasons for its holding the 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:

Provided that no such decision shall take effect before expiration of the period within which an appeal therefrom may be preferred to the Supreme Court or, where an appeal has been preferred, before the disposal of such appeal:

Provided further that the decision of the High court shall not take effect until the expiration of the period of at least sixty days from the date of the decision:

Provided further that the High Court may, on the petition of Government showing sufficient cause for not implementing

the decision, extend the time for a period not exceeding thirty days.

(6) The High Court shall have power to review any decision given or order made by it under this Section.

(7) The jurisdiction conferred on the High Court by this Section shall be exercised by a Full Bench.

(8) Where a question referred to in sub-section (1) or sub-section (3) arises before a Single or Division Bench of the High Court, it shall be referred to the Full Bench.

(9) Any party aggrieved by the final decision of the High Court in any proceedings under this Section may, within sixty days of such decision, prefer an appeal to the Supreme Court:

Provided that an appeal on behalf of the State may be preferred at any time after the decision but not later than sixty days of the day on which the decision shall take effect and such extended period as may be allowed by the High Court under sub-section (5).

(10) Nothing contained in this Act nor decision made thereunder shall affect any sentences passed or orders made, judgments, pronounced, decrees passed, liabilities incurred, rights accrued, assessments made, amounts recovered or declared payable under any law by any Court or Tribunal or Authority before the commencement of this Act.

Explanation .- For the purposes of this sub-section, the word “Court” or “Tribunal” shall mean any Court or Tribunal established by or under any law or the Constitution at any time before the commencement of this Act and the word “Authority” shall mean any authority established under any law for the time being in force.

5. **Decisions on matters relating to different Muslim Sects.-** In matters relating to Muslim Personal Law of any Sect, the decision shall be in accordance with the Fiqh of that Sect.
6. **Appointment of Amicus curiae etc. .-** (1) Persons well-versed in Shari’ah from reputable institutions of Islamic learning and Deeni Madaris in Pakistan or abroad, recognized by the Government for this purpose shall, notwithstanding anything contained in any other law for the time being in force, be eligible for appearing before the court for interpretation of Shari’ah in accordance with the rules to be framed for this purpose.

(2) The President shall, in consultation with the Chief Justice of the Azad Jammu and Kashmir, the Chief Justice of the Shariat Court and the Chairman of the Council of Islamic Ideology, make rules for the purpose of sub-section (1) specifying the qualifications and experience required for appointment of amicus curiae in the court.

(3) Persons holding graduate and post-graduate degrees in law and Shari'ah from the universities including International Islamic University, Islamabad, shall notwithstanding anything contained in any other law for the time being in force, be eligible for being enrolled as advocates in accordance with the rules to be framed for this purpose.

(4) The provisions of this Section shall not affect in any manner whatsoever the rights of the advocates enrolled under the law relating to legal practitioners and Bar Councils to appearing various courts, tribunals and other authorities including the Supreme, the High Court or the Shariat Court.

7. **Appointment of Muftis.**- (1) The President shall, in consultation with the Chief Justice of Azad Jammu and Kashmir, the Chief Justice of the Shariat Court and the Chairman of the council of Islamic Ideology, appoint in his individual judgment as many Muftis as he may deem fit for rendering such assistance as may be required of them by the Supreme court, the High Court and the Shariat Court.

(2) A Mufti appointed under sub-section (1) shall hold office during the pleasure of the President and shall receive such remuneration as is for the time being admissible to Additional Advocate General of Azad Jammu and Kashmir.

(3) It shall be duty of a Mufti to give advice to the Government upon such legal matters involving interpretation of Shari'ah and perform such other duties as may be referred or assigned to him by the Government; and in the performance of his duties he shall have the right of audience in the Supreme Court, and the high Court while exercising jurisdiction under this Act and in the Shariat Court.

(4) A Mufti shall not plead for any party but shall state, expound and interpret Shari'ah relevant to the proceedings as far as may be known to him and submit to the court a written statement of his interpretation of Shari'ah.

(5) The Law and Parliamentary Affairs Department in the Government of Azad Jammu and Kashmir shall deal with the administrative matters relating to the Muftis.

8. **Teaching of and training in Shari'ah.**- (1) The Government shall make effective arrangements for the teaching of, and training in, Shariah in the Federal Judicial Academy, Islamabad or other similar institutions for the members of the subordinate judiciary.
- (2) The Government shall make arrangements for providing education and training in various branches of Islamic Law in order to ensure the availability of manpower trained in the administration of justice according to Shari'ah.
- (3) The Government of Azad Jammu and Kashmir shall make rules for the participation of the Judges of Superior Courts in seminars and programmes connected with Shari'ah.
9. **Laws to interpreted in the light of Shari'ah .-** (i) For the purpose of this Act, while interpreting the statute law, if more than one interpretation is possible, the one consistent with the Islamic Principles and jurisprudence shall be adopted by the Court; and
- (ii) Where two or more interpretations are equally possible, the interpretation which advances the principles of Islam shall be adopted by the Court.
10. **Expeditions codification of Islamic Law.**- (i) The Council of Islamic Ideology shall take urgent steps to fulfill its functions.
- (2) The Government shall take early steps to place the recommendations made to it by the Council of Islamic Ideology, before the Legislative Assembly.
11. **Fulfillment of existing obligations.**- Nothing contained in this Act or any decision rendered thereunder shall affect the validity of any financial obligations incurred including under any instruments, whether contractual or otherwise, promises to pay, or any other financial commitment made by or on behalf of Government or a financial or statutory corporation or other institution to make payment envisaged therein, and all such obligations, promises and commitments shall continue to remain valid, binding and operative.
12. **Rules.**- The Government may, by notification in official Gazette, make rules for carrying out the purposes of this Act.

(Raja Bashir Ahmad Khan)

Secretary

Law and Parliamentary Affairs