

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

Dated the 25th January, 1994.

No. 110-115/LD/94. The following Act of the Assembly received the assent of the President on 19th January, 1994, is hereby published for general information:-

(ACT XI OF 1994)

**AN
ACT**

to make provision for the establishment of Family Courts

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

It is hereby enacted as follows:-

1. Short title, extent and commencement:- (1) This Act may be called the Azad Jammu and Kashmir Family Courts Act, 1993.

(2) It extends to the whole of the Azad Jammu and Kashmir.

(3) It shall come into force on such date as the Government, may be notification in the Official Gazette, appoint.

2. Definitions:- ¹[(1)] In this Act, 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 Act;

¹ The existing Sec. 2 re-numbered as subsection (1) by the AJ&K Family Courts (Amdt.) Act, 1995 (Act II of 1995) dt. 19.04.1995.

- (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 Act¹;

[xxx]

- (f) “Supreme Court” means the Supreme Court of Azad Jammu & Kashmir.”]

²“(2) Words and expressions used in this Act but not defined, shall have the meanings respectively assigned to them in the Code of Civil Procedure, 1908.”]

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.

³[4. Qualifications of Judge:- No person shall be appointed as Judge of a Family Court, unless,-

1 The cl. (e) amended / subs. Two time.

A. The full stop at the end of cl. (d) Sec. 2 subs. by a colon and thereafter cl. (e) and (f) added by the AJ&K Family Courts (Amdt.) Act, 1998 (Act II of 1998) date. 12.08.1998.

B. Cl. (e) of subsection (2) omitted by the AJ&K Family Courts (Amdt.) Act, 2017 (Act XLVI of 2017) dt. 19.09.2017. The original extract of cl. (e) of Sec. 2 (Act II of 1998) dt. 12.08.1998 is reproduced as under:-

“(e) “Shariat Court” means the Shariat Court of Azad Jammu and Kashmir;

2 Added by the AJ&K Family Court (Amdt.) Act, 1995 (Act II of 1995) dt. 19.04.1995.

3 Sec. 4 subs. /amended four times. The Original extract of Sec. 4 is reproduced as under.

- (i) he is or has been or is qualified to be a District Qazi or an Additional District Judge; or
- (ii) he is or has been or is qualified to be a District Qazi or Additional District Qazi, is graduate and qualified in Law or shariah; or
- (iii) he has been an Advocate of High Court for not less than five years [;
- “(iv) he has the experience as a Judicial Officer for a period of not less than five years [;

Provided that in case of any hardship, the Chief Justice High Court [xxx] shall have the powers to authorize any Judge or Qazi to exercise the power under the Azad Jammu & Kashmir Family Court Act 1994.”]

- 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 sitting at such place or places within the districts as may be specified by the Government.

“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 Judge or has been an Advocate of High Court for five years.”

- A. Subs. by the AJ&K Family Court (Amdt.) Act, 1994 (Act XXVI of 1994) dt. 01.06.1994, and shall be deemed always to have been so subs.
- B. After cl. (iii) of Sec. 4 the full stop at the end subs. by a colon and thereafter cl. (iv) added by the AJ&K Family Court (Amdt.) Act, 1995 (Act II of 1995) dt. 19.04.1995.
- C. The full stop at end cl. (iv) Sec. 4 subs. by a colon and thereafter a proviso added by the AJ&K Family Court (Amdt.) Act, 2004 (Act X of 2004) dt. 30.12.2004.
- D. In the proviso of cl. (iv) of Sec. 4 the sign oblique and the words “/Shariat Court” omitted by the AJ&K Family Courts (Amdt.) Act, 2017 (Act XLVI of 2017) dt. 19.09.2017.

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 ¹[material] 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 address 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 interest of Justice.

²“(3) (i) where a plaintiff sues or relies upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time, deliver document or a copy thereof to be filed with the plaint;

(ii) Where he relies on any other document not in his possession or power, as evidence in support of his claim, he shall enter such document in a list to 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 suits, 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

1 Ins. by the AJ&K Family Court (Amdt.) Act, 1995 (Act II of 1995) dt. 19.04.1995.

2 Subs. by Ibid. The original extract of subsection (3) Sec. 7 is reproduced as under:-

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

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 précis 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 ¹:

¹ In subsection (4) of Sec. 9 the full stop at the end subs. by a colon and thereafter a proviso added by the AJ&K Family Court (Amdt.) Act, 2017 (Act IX of 2017) dt. 21.03.2017.

“Provided that court shall be satisfied before initiating such proceedings that defendant is either willfully avoiding the receipt of the notice or is not appearing before the court deliberately inspite of receipt of notice.”]

- 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 précis of evidence and document 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 reconciliations 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 smmons for the appearance of any witness unless, within three days of the framing of issues, any party intimates the Court that, it desires as 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.

¹“(3) The witnesses shall give their evidence in their own words:

Provided that the parties or their counsel may further examine, cross-examine or re-examine the witnesses:

Provided further that the Family Court may forbid any question which it regards as indecent, scandalous or frivolous or which appear to it to be intended to insult or annoy any one or is needlessly offensive in form.”]

²“(3-A) The Family 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 sub-section (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:

1 Subs. by the AJ&K Family Court (Amdt.) Act, 1995 (Act II of 1995) dt. 19.04.1995. The original extract of subsection (3) Sec. 11 is reproduced as under:-

“(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.”

2 Added by *Ibid.*

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 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 by 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.

¹“**14. Appeals:-** (1) Any party aggrieved by a decision or decree passed by a Family Court under this Act may, within

1 Sec. 14 amended / subs. three times. The original extract of Sec. 14 is reproduced as under:-

“**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 Azad Jammu and Kashmir Shariat 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;

thirty days of the date of such decision or decree, prefer and appeal to the shariat appelat Bench of the High Court.

(2) No Appeal shall lie from a decree passed by a Family Court:-

- (a) for dower, not exceeding rupees one thousand;
- (b) for maintenance, rupees seventy-five or less per month.

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

(b) for dower not exceeding rupees one thousand;

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

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

(4) Subject to the provisions of sub-section (5) the order of the Azad Jammu and Kashmir Shariat Court shall be final.

(5) An appeal to the Supreme Court of Azad Jammu and Kashmir from a Judgment, decree or order of the Shariat Court shall lie only, if the Supreme Court of Azad Jammu and Kashmir being satisfied, that the case involves a substantial question of law of public importance grants leave to appeal.”

- A.** In subsection (1) of Sec. 14, between the words “appealable” and “to” the words “within thirty days” ins. by the AJ&K Family Court (Amdt.) Act, 1995 (Act II of 1995) dt. 19.04.1995.
- B.** Sec. 14 subs. by the AJ&K Family Courts (Amdt.) Act, 1998 (Act II of 1998) dt. 12.08.1998
- C.** for the words “Shariat Court” the words “High Court”, were subs. in 2017 by Ordinance VII of 2017, whereas during the period of Ordinance this Sec. was further amended and for the words “High Court” the words “shariat appelat Bench of the High Court” subs. by the AJ&K Family Courts (Amdt.) Act, 2017 (Act XLVI of 2017) dt. 19.9.2017.

(4) Subject to the provisions of sub-section (5) the order of the shariat appelat Bench of the High Court shall be final.

(5) An Appeal to the Supreme Court from Judgment, degree or order of the shariat appelat Bench of the High Court.

shall lie only if the Supreme Court being satisfied, that the case involves a substantial question of law of public importance, grants leave to appeal.”]

15. Power of Family Court to summon witnesses:- (1) 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 or 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, willfully 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. **Provision of Evidence Act and Code of Civil Procedure not to apply:-** (1) Save as otherwise expressly provided by or under this Act, the provisions of the Qannon-e-Shahadat as enforced 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 Act 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 authorized 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 magistrates on Judges:-** 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 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 Act, shall in

dealing with matters specified in that Act, follow the procedure prescribed in that Act.

¹**["21-A. Transfer of pending cases:-** On commencement of this Act,-

(a) all suits and applications pending before any Court regarding any matter which hitherto fore are within the jurisdiction of a Family Court, shall stand transferred to the Family Court concerned and the Family Court shall start proceedings from the stage which the case has reached.

[(b) All appeals etc., in respect of family matters pending before Azad Jammu and Kashmir High Court under the Azad Jammu and Kashmir Family Courts (Amendment) Ordinance 2017, (Ordinance VII of 2017) shall stand transferred to the "Shariat Appellate Bench of the High Court."]

²**["21-B. General power of Transfer:-** (1) On the application any of the parties and after notice to the parties and after hearing such of them as desire to be heard or of its own motion without such notice, the Shariat Court may at any stage transfer any suit, application or other proceeding pending before any Family court to another Family Court for trial or disposal."]

1 Sec. 21-A, Ins. by the AJ&K Family Court (Amdt.) Act, 1995 (Act II of 1995) dt. 19.04.1995 and cl. (b) subs. by the AJ&K Family Court (Amdt.) Act, 2017 (Act XLVI of 2017) dt. 19.09.2017. The original extract of cl. (b) Sec. 21-A is reproduced as under:-

"(b) all appeals in respect of any matter falling within the purview of this Act, pending before Additional District Judge or District Judge or High Court, shall stand transferred to Azad Jammu and Kashmir Shariat Court"

2 Added by the AJ&K Family Courts (Amdt.) Act, 1998 (Act II of 1998) dt. 12.08.1998.

- 22. Power to make rules:-** (1) Government may, by notification in the Official Gazette, make rules to carry into effect the provisions of this Act.
- (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 Act, to be followed by the Family Courts.
- 23. Repeal:-** The Azad Jammu and Kashmir Family Courts (Amendment) Ordinance, 1993 (Ordinance LVI of 1993), is hereby repealed.

SCHEDULE
(See Section 5)

1. Dissolution of marriage
2. Dower.
- ¹[“3. Maintenance, including the maintenance of dependent partents”].
4. Restitution of conjugal rights.
5. Custody of Children.
6. Guardianship.
- ²[“7. Jactitation of marriage”]
- ³[“7-A. Custody of childerns in presence of Hague Convention of 25th October, 1980 on the civil aspects of International child abduction.”]

1 Subs. by the Azad Jammu and Kashmir Family Courts (Amdt.) Act, 2019 (Act XV of 2019) dt. 24.06.2019. The original extract of entry No. 3 is reproduces as under:

“3. Maintenance”

2 Added by the AJ&K Family Courts (Amdt.) Act 1996 (Act II of 1997) dt. 23.01.1997.

3 Added by the AJ&K Family Courts (Amdt.) Act 2019 (Act XV of 2019) dt. 24.06.2019.

¹["8. Dowry"]

Sd/-
(Syed Shakir Shah)
Deputy Secretary Law

1 Added by the AJ&K Family Courts (Amdt.) Act, 1998 (Act II of 1998) dt. 12.08.1998.