

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

MUZAFFARABAD

Dated the 16th March, 1993.

No.312-16/LD/Leg/93. The following Act of the Assembly received the assent of the President on the 13th day of March, 1993, is hereby published for general information:-

AN
ACT

‘TACT IX OF 1993]

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

WHEREAS it is expedient to amend the Azad Jammu and Kashmir Shariat Court, in the manner hereinafter appearing;

It is hereby enacted as follows;-

1. Short title, Extent and Commencement.~ (1) This Act may be called the Azad Jammu and Kashmir Shariat Court Act, 1993.

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It extends to the whole of Azad Jammu and Kashmir.

It shall come into force.atonce and shall be deemed to

have taken effect from 28th.day of December, 1992.

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context.+

- (a)
- (b)
- (c)
- (d)
- (e)

“Council”, means the Azad Jammu and Kashmir Council;

“Chief Justice” means the Chief Justice of the Court;

“Court” means the Azad Jammu and Kashmir Shariat

Court constituted under this Act;

“Government” means the Azad Government of the State of Jammu and Kashmir;

“High Court” means the Azad Jammu and Kashmir High Court;

“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

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Repealed vide the Azad Jammu and Kashmir Constitution of Shariat

Appellate Bench of the High Court Act, 2017 (XL of 2017) dt. 19.09.2017

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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 purposes of exercising jurisdiction under Section 6 does not include the Azad Jammu and Kashmir Interim Constitution Act, 1974 Muslim Personal Law, any Law relating to the procedure of any court or tribunal or any law relating matters in the Council Legislative list;

(h) "Judge of Shariat Court" means a Judge of the Shariat Court and includes an ad-hoc judge and except for the purpose of 1st proviso to sub-section 40 of Section 3, the Chief Justice of the Shariat Court;

(i) "State Subject" means State Subject as defines in the Azad Jammu and Kashmir Interim Constitution Act, 1974; and

Gg) Supreme Court means the Supreme Court of Azad Jammu and Kashmir.

The Azad Jammu _ and Kashmir Shariat Court.- (1) There shall be constituted for the purpose of this Act a Court to be called the Azad Jammu and Kashmir Shariat Court.

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Section 3 has been amended/substituted four times.

Sub-sections (8)*and (9) is subs. by the AJ&K Shariat Court (Amdt.) Act, 1994 (XXX of 1994) dt. 31.10.1994. The extract of sub-section (8) and (9) of Section 3 Act VIII of 1993 is reproduced as under:-

"(8) At any time when the Chief Justice or a Judge 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 Chief Justice or, as the case may be, the judge.

(9) At any time when the Court is not complete or it is not possible for want of quorum of judges of the Court to hold or continue any sitting of the Court or for any other reasons it is necessary to increase temporarily the number 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 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 an adhoc judge shall have the same powers and jurisdiction as are vested in the judge of the Court.”

The extract of sub-section (8) and (9) of Section 3 Act XXX of 1994 dt. 31-10-1994 is reproduced as under:-

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“(8) At any time when the Chief Justice or a Judge is absent or is unable to perform the functions of his office, or it is necessary to increase the number of judges temporarily, the President shall appoint another person, qualified for the purpose, for such period as the President may determine, to act as Chief Justice or, as the case may be, the judge.

(9) The President may, at any time, in consultation with the Chief Justice, by order in writing:-

(a) Modify the period of the office of a Judge;

(b) Require a judge to perform such other functions as the President may deem fit.”

Section 3 of Act IX is further amended by Act XVI of 1995 dt. 23-7-1995 in the following manners:-

(i) after sub-section (2), fullstop at the end subs. by colon and thereafter following new proviso added:-

“Provided that a Judge of the High Court may be appointed as judge or Chief Justice of Shariat Court for a period not exceeding three years.”

(ii) sub-section (4) of Section 3 subs. by, Act XVI of 1995 dt. 23-7-1995. The extract of sub-section (4) of Section 3, Act VIII of 1993 dt. 16-3-1993 is as reproduced as under?+

“(4) The Chief Justice and a Judge shall hold office for a period not exceeding three years:

Provided that a retired judge appointed as Chief Justice or Judge shall not hold office later than three years from the date of his retirement:

Provided further that the President may re-appoint the Chief Justice or the Judge, as the case may be, for a period of two years:

Provided further that the Chief Justice appointed beyond the aforesaid period shall be deemed to have been validly appointed.”

(iii) extract of sub-section (4) subs. Vide Act XVI of 1995 dt. 23-7-1995 is reproduced as under:-

“(4) | The Chief Justice who is not a Judge of the Supreme Court shall hold office until he attains the age of sixty five years and a Judge who is not a Judge of the High Court shall hold office until he attains the age of sixty two years, unless he sooner resigns or is removed from office in accordance with law.”

(iv) After sub-section (4) a new sub-section (4-A) added by Act XVI of 1995 dt. 23-7-1995. The extract of sub-section (4-A) of Section 3 is reproduced as under:-

“(4-A). The Chief Justice who is not a Judge of the Supreme Court and the Judge, other than Judge of the High Court, holding office at the time of commencement of this Act shall be deemed to have been

appointed under sub-section (2) and in terms of sub-section (4) of Section 3 of this Act.”

(v) The full stop at the end of sub-section (6) omitted and thereafter following words added by Act XVI of 1995 dt. 23-7-1995. The extract is as under:-

“and it may hold sittings at other District Headquarters from time to time as the Chief Justice may appoint.”

(vi) For cl. (a) of sub-section (9) of Section 3, the following subs. by Act XVI of 1995 dt. 23-7-1995:-

“(a) modify the period of the office of a Judge, who is appointed from Judges of the High Court.”

(vii) In cl. (i) of sub-Section (10) of Section 3, for the words “and privileges” the comma and the words “, privileges and pension” subs. by Act XVI of 1995 dt. 23-7-1995.

C. Section 3 subs. (third time) by the AJ&K Shariat Court (Amdt.) Act, 1998, (Act I of 1998) dt. 12.08.1998. The extract is as under:

“3. The Azad Jammu and Kashmir Shariat Court.- (1) There shall be constituted for the purposes of this Act a Court to be called the Azad Jammu and Kashmir Shariat Court.

(2) The Court shall consist of two Muslim judges

including the Chief Justice to be appointed by the President: Provided that. a Judge of High Court may be appointed as a Judge or Chief Justice of Shariat Court for a period not exceeding three years.

(3) The Chief Justice shall be a person who is, or has been or is qualified to be a judge of the Supreme Court and a judge shall be a person who is, or has been or is qualified to be a judge of High Court.

(4) The Chief Justice who is not a judge of the Supreme Court shall hold office until he attains the age of 65 years and a judge who is not a judge of the High Court shall hold office until he attains the age of 62 years unless he sooner resigns or is removed from office in accordance with law.

(4-A). The Chief Justice who is not a Judge of the Supreme Court and the Judge, other than Judge of the High Court, holding office at the time of commencement of this Act shall be deemed to have been appointed under sub-section (2) and in terms of sub-section (4) of Section 3 of this Act.

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

'(2) | The Court shall consist of the Chief Justice and two or more Muslim Judges to be appointed by the President on the

(6) The Principle seat of the Court shall be at Muzaffarabad and it may hold sitting at other Districts Headquarters from time to time as the Chief Justice may appoint.

(7) Before entering upon office, the Chief Justice and a Judge 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 Chief Justice or a Judge is absent or is unable to perform the functions of his office, or it is necessary to increase the number of judges temporarily, the President shall appoint another person, qualified for the purpose, for such period as the President may determine, to act as Chief Justice or, as the case may be, the judge.

(9) The President may, at any time, in consultation with the Chief Justice, by order in writing:+

(a) Modify the period of the office of a Judge, who is appointed from judges-of the High Court.

(b) Require a judge to perform such other functions as the President may deem fit.

(10) (i) A Chief Justice who is not a Judge of the Supreme

Court shall be entitled to the same salary, allowances, privileges and pension as are admissible to a judge of the Supreme Court and a Judge who is not a Judge of the High Court shall be entitled to the same salary, allowances, privileges and pension as are admissible to a Judge of High Court.

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

'Sub-section (2) of Section 3 is substituted by the AJ&K Shariat Court (Amendment) Act, 2016 (Act XXIII of 2016) dt. 09.02.2016. the extract of sub-section (2) of Section 3 of Act I of 1998 dt. 12-8-1998 is reproduced as under:-

"(2) The Court shall consist of the Chief Justice and one or more Muslim Judges to be appointed by the President:

Provided that a Judge of High Court may be appointed as a Judge of Shariat Court for a period not exceeding three years."

advice of Prime Minister after consultation with the Chief Justice of Azad Jammu and Kashmir and the Chief Justice of Shariat Court:

Provided that a Judge of High Court in addition to his duties as such, may be appointed as a Judge of Shariat Court for a specific case or for a period not exceeding three years.]

(3) The Chief Justice of the High Court shall be the Ex-officio Chief Justice of the Shariat Court.

'(4) A person shall not be appointed as a Judge of Shariat Court unless,

(a) he has for a period, or for periods aggregating, not less than ten years, been an advocate or pleader of the High Court or High Court in Pakistan, or

(b) he has for a period of not less*than ten years held a judicial office out of which not less than three years shall-have been as District and Sessions Judge:]

*[(4-A) One shall be an Aalim Judge\who shall be appointed on contract basis for a period of three years, at least fifteen years experience in Islamic Law, tesearch or instruction and L.L.M Degree in Shariah]

(5) A Judge of Shariat Court who is not a Judge of High Court shall hold office until he attains the age of sixty two years, unless he sooner resigns or is removed from office in accordance ith law.

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Sub-section (4) substituted by the AJ&K Shariat Court (Amendment) Act, 2016 (Act XXIII of 2016) dt. 09.02.2016. The extract of sub-section (4) of Section 3 of Act I of 1998 dt. 12-8-1998 reproduced as under:-

"A person shall not be appointed as a Judge of Shariat Court, unless:-

(a)

(b)

he has for a period, or for periods aggregating not less than ten years, been an advocate or Pleader of the High Court of Azad Jammu and Kashmir or High Court in Pakistan.

he has for a period of not less than ten years held a Judicial office of which not less than three years shall have been as District and Session Judge."

After sub-section (4), a new sub-section (4-A) is added by the Azad Jammu and Kashmir Shariat Court (Amendment) Act, 2016 (Act XXIII of 2016) dt. 09.02.2016.

'1(5-A) A Judge of Shariat Court shall not be removed from his office except in the like manner and on the same grounds as a Judge of the High Court under the Interim Constitution Act, 1974.]

(6) The Judge of Shariat Court, other than the Judge of High Court, holding office at the time of Commencement of this Act shall be deemed to have been appointed under sub-section (2) and in terms of sub-section (5).

(7) The principal seat of the Court shall be at Muzaffarabad and it may hold sitting at other District Headquarters from time to time as the Chief Justice may appoint.

(8) Before entering upon office, the Chief Justice and a Judge of the Shariat Court shall make before the President or a person nominated by him, oath in the form set out in the schedule.

(9) At any time when the Chief Justice or Judge is absent or is unable to perform the function of his office, or it is necessary to increase the number of Judges temporarily, the President shall appoint another person qualified for the purpose, for such period as the president may determine, to-act as Chief Justice or, as the case may be, Judge.

(10) The President may, at any time, in consultation with the Chief Justice, by order in writing modify the period of office of a Judge, who is appointed from Judges of the High Court.

(11) — A Judge of Shariat Court who is not a Judge of the High Court shall be entitled to the same salary, allowances, pension and privileges as are admissible to a Judge of High Court in Pakistan.

4. Panel of Ulema.- (1) The President may, in consultation with the

Chief Justice draw up a panel of Ulema who are well vested in Islamic Laws for being associated with the Court in cases before it.

(2) The Chief Justice may, in any case before the Court request any Alim, borne on the aforesaid panel to assist Court. The Alim who has rendered such assistance to Court shall be paid a fee as may be prescribed.

| After sub-section (5), a new sub-section (5-A) is added by the AJ&K Shariat Court (Amdt) Act, 2016 (Act XXIII of 2016) dt. 09.02.2016.

Further Jurisdiction of the Court.- The Court shall have such other jurisdiction as may be conferred on it by or under any law.

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 Holy 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 injunctions 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 Injunctions 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.

Powers and procedure of the Court.- (1) For the purposes 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 powers 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 Act may be represented by a legal practitioner who is a Muslim and has been enrolled as an Advocate of a High Court '[xxx] or as an Advocate of the Supreme Court or by a Jurisconsult selected by the party from out of a penal of jurisconsults maintained by the Court for the purpose.

(6) For being eligible to have his name borne on the penal of jurisconsults referred to in clause (5), a person shall be an Aalim 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 Act.

(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), and _amendment.- The provisions of the Code of Criminal procedure, 1898 (Act V of 1898), shall apply, mutatis

mutandis, in respect of cases under this Act;

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 Act.

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.

' In sub-section (5) of Section 7, the words "for a period of not less than five years" omitted by the AJ&K Shariat Court (Amdt.) Act, 2000 (Act VI of 2000) dt. 11.10.2000.

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(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.

Bar of jurisdiction.- Save as provided under this Act 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.

Pending proceedings to continue _etc.- (1) Subject to sub-section (2) nothing in this Act shall be deemed to require any proceedings pending in any court or tribunal immediately before the Commencement of this Act 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 Act 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 Act shall not grant an injunction or make any interim order in relation to any proceedings pending in any other Court or tribunal.

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

function of the Court.

Power to make rules.- (1) The Court may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

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(2) In particular and without prejudice to the generality of the forgoing power, such rules may make provision in respect, of all or any of the following matter, 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 the 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 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 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 Court Rules, 1980 shall with the necessary modifications and so far as they are not inconsistent with the provisions of this Act, continue in force. The Chief Justice or Judge shall take oath as prescribed in the Schedule.

Savings.- Notwithstanding any judgment, decree or order of any court including High court, everything done, all actions taken, Notification issued, orders or appointments 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 Act. Repeal.- The Azad Jammu and Kashmir Shariat Court Ordinance, 1993 (Ordinance X of 1993) is hereby repealed.

SCHEDULE

'Chief Justice or Judge of Azad Jammu and Kashmir Shariat Court, under Section 3 of Azad Jammu and Kashmir Shariat Court Act, 1933.

I, , do solemnly swear that, as the Chief Justice (or a Judge) of 'the Azad Jammu and Kashmir Shariat Court, I 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 not allow my personal interest to influence my official conduct or my official decisions.

Sd/-
(Syed Shakir Shah)
Deputy Secretary Law