

AZAD GOVT. OF THE STATE OF JAMMU AND KASHMIR
LAW AND PARLIAMENTARY AFFAIRS SECRETARIAT,
MUZAFFARABAD.

Dated: November 12, 1975

No. 3485/SL/75. The following Act of the Joint Sitting of the Legislative Assembly and Council received the assent of the President Azad Jammu and Kashmir on the 7th day of November 1975 is hereby published for general information.

(ACT IX OF 1975)

AN ACT to amend the Azad Jammu and Kashmir Interim Constitution Act 1974

WHEREAS, it is expedient to amend the Azad Jammu and Kashmir Interim Constitution Act 1974 (Act VIII of 1974), for the purposes hereinafter appearing;

AND WHEREAS, in the discharge of its responsibilities under the UNCIP Resolutions, the Government of Pakistan has authorized the introduction of the present Bill in the Assembly for consideration and passage;

It is hereby enacted as follows:-

1 Short title and commencement: (1) This Act may be called the Azad Jammu and Kashmir Interim Constitution (First Amendment) Act, 1975.

(2) It shall come in to force at once.

2. Substitution of section 2, Act VIII of 1974: In the Azad Jammu and Kashmir Interim Constitution Act, 1974 (Act VIII of 1974), hereinafter referred to as the said Act, for section 2 the following shall be substituted and shall be deemed always to have been so substituted, namely:-

“2. Definitions: (1) In this Act, unless there is anything repugnant in the subject or context,-

‘Agricultural income’ means agriculture income as defined for the purposes of the law relating to income-tax-

‘Assembly’ means the Legislative Assembly of Azad Jammu and Kashmir

'Azad Jammu and Kashmir' means _ the territories of the State of Jammu and Kashmir which have been liberated by the people of that state and are for the time being under the administration of Government and such other territories as may hereafter come under its administration;

'Corporation tax' means any tax on income that is payable by companies and in respect of which the following conditions apply:-

(i) The tax is not chargeable in respect of agricultural income-;

(ii) No deduction in respect of the tax paid by companies is, by any law which may apply to the tax authoresses to be made form dividends payable by the companies to individuals;

(iii)No provision exists for taking the tax so paid into account in computing or the purposes of income-tax the total income of Individuals receiving such dividends, or in computing the income tax payable, or refundable to, such individual;

'Council' means the Azad Jammu and Kashmir Council constituted under this Act.

'Financial year' means the year commencing on the first day of July and ending on he thirtieth day of June;

'Joint Sitting' means a joint sitting of the Assembly and the elected member of the Council;

'Government' means the Azad Government of the State of Jammu and Kashmir;

'Judge' in relation to the Supreme Court of Azad Jammu and Kashmir or the High Court includes the Chief Justice of the supreme Court of Azad Jammu and Kashmir or, as the case may be, High court and also includes an additional Judge of the high Court;

'Muslim' means a person who believes in the

Unity and ones of Almighty Allah, His angles, the Books of Allah. The Holy Quran being the last of them, His prophets, the absolutes finality of the Prophet hood of Muhammad (P.B.U.H), the day of judgment and all the requirements and teaching of the Holy Quran Sunnah;

'Person' includes any body politic or corporate;

'President' means the President of Azad Jammu and Kashmir and includes a person for the time being acting as, or performing the functions of, the President of Azad Jammu and Kashmir;

'Prescribed' means prescribed by law or rules made there under;

'Property' includes any right, title or interest in property, movable or immovable, and any means and instruments of production;

'Remuneration' includes salary and pension;

'Service of Azad Jammu and Kashmir' means any service, post or office in connection with the affairs of Azad Jammu and Kashmir, including the Council, but does not include service as Chairman of the Council, President, Speaker, Deputy Speaker, Prime Minister, Minister Federal Minister in Charge of the council Secretariat or Advisor appointed under section 21, or member of the Assembly or member of the Council;

'Speaker' means Speaker of the Assembly and includes any person acting as the Speaker of the Assembly;

'State Property' means any movable or immovable property as belonged to the State of Jammu and Kashmir or its former Ruler or a Raja and is within the territories of Pakistan;

'State Subject' means a person for the time being residing in Azad Jammu and Kashmir or Pakistan who is a State Subject as defined in the late Government of the State of Jammu and Kashmir Notification No I-L/84 dated the 20th April 1927 as amended form time to time;

Amendment of Section 4, Act VIII of 1974: In the said Act, in

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'Taxation' means the imposition of any tax or duty, whether general, local or special, and tax shall be construed accordingly;

'Tax on income' includes a tax in the nature of an excess profit tax or a business profits tax.

(2) In this Act, 'act of the Assembly' or 'act of the Council' shall include an ordinance promulgated by the President under sub-section (1) of Section 41, or as the case may be under sub-section (4) of that Section.

section 4,-

(a) In sub-section (2), for the words 'The Government shall not make any law' the words 'No Law shall be made' shall be substituted; and

(b) In sub-section (4):-

(i) In paragraph 8, in the proviso, for clause (c) the following shall be substituted, namely:-

[(c) The carrying on, by Government or the Council, or by a corporation controlled by Government or the Council, of any trade business, industry or service, to be exclusion, complete or partial, or other persons]; and

(ii) In paragraph 14 in sub-paragraphs (3), for clauses (c) and (d) the following shall be substituted, namely:-

[(c) any law permitting the taking over of any property which has been acquired by, or come into the possession of, any person by any unfair means, or in any manner, contrary to law; or]

(d) Any law providing for the taking over of the management of any property by the Government for a limited period, either in the public interest or in order to secure the proper management of the property, or for the benefit of its owner; or

(e) Any law providing for the acquisition of any class of

property for the purposes of-

- (i) Providing education and medical aid to all or any specified class of State Subject; or
- (ii) Providing housing and public facilities and services such as road, water supply, sewerage, gas and electric power to all or any specified class of State Subjects; or
- (iii) Providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves; or

Any law in force immediately before the coming into force of this Act.

Amendment of section 5, Act VIII of 1974: In the said Act, in section 5,-

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(b)

For sub-section (1) the following shall be substituted, namely:-

There shall be a president of Azad Jammu and Kashmir, who shall be elected by the members of the joint sitting by the votes of majority of the total membership of the joint sitting in such manner as may be prescribed;

Provided that if no person secures such majority in the first poll, a second poll shall be held between the persons who secure the two highest numbers' of votes in the first poll and the person who secures a majority of votes of the member present and voting shall be declared to have been elected as President:

Provided further that, if the number of votes secured by two or more persons securing the highest number of votes is equal, further poll shall be held between them until one of them secure a majority of votes of the members present and voting.”

after sub-section (3) the following new sub-section shall be inserted namely:-

“3-A The election to the office of President shall be

held not earlier than sixty days and not later than thirty days before the expiration of the term of the president in office or, if the election cannot

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be held within that period because the Assembly is dissolved, within thirty days of the general election to the Assembly."

(bb) In sub-section (6), for the words 'the high Court' the words "Azad Jammu and Kashmir shall be substituted."

(c) In sub-section (7), the words and commas or, in the absence of the Speaker, to the chief justice of High Court, shall be omitted; and

(d) For sub-section (8) the following shall be substituted, namely (8) the President shall not be a member, or a candidate for election as a member, of the Assembly and if a member of the Assembly is elected as President his seat in the Assembly shall become vacant on the day he enters upon his office.

Amendment of section 6, Act VIII of 1974: In the said Act, in section 6, for the word Assembly, wherever occurring except in the expression 'Speaker of the Assembly' the word Joint sitting shall be substituted.

Amendment of section 7, Act VIII of 1974: In the said Act, in section 7, in sub-section (1), for the words "Subject to this Act, the words 'Subject to an express provision to the contrary in this Act' shall be substituted.

Amendment of section 8, Act VIII of 1974: In the said Act, in section 8, the words and commas or, in his absence, the Chief Justice of the High Court of Azad Jammu and Kashmir shall be omitted.

Amendment of section 9, Act VIII of 1974: In the said Act, in section 9,-

(a) The words and commas 'or in his absence, the Chief Justice of the High Court of Azad Jammu and Kashmir' shall be omitted;

(c) In clause (b),-

(i) For the words, 'three months' the words 'thirty days' shall be substituted; and

(ii) After the word 'vacant' at the end, the words and commas or, if the election cannot be held

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with in the period because the Assembly is dissolved, within thirty days of the general election to the Assembly' shall be added.

Amendment of section 12, Act VIII of 1974: In the said Act, in section 12, after sub-section (3), the following new sub-section shall be added, namely:-

(4) Orders and other instrument made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the Government, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(5) The Government may regulate the allocation and transaction of its business and may for the convenient transaction of that business delegate any of its functions to officers or authorities subordinate to it;

Amendment of section 19, Act VIII of 1974: In the said Act, in section 19, in sub-section (2), in clause (a), for the words and letters "under the UNCIP Resolutions or for the defense and security of Azad Jammu and Kashmir the words brackets and figures in relation to the matters specified in sub-section (3) of section 31; shall be substituted.

Amendment of section 21, Act VIII of 1974: In the said Act, in section 21,-

(a) After sub-section (4), the following new sub-section shall be inserted, namely:-

(4A) The seat of a member of the Council elected by the Assembly, hereinafter referred to as an elected member, shall become vacant if-

(a) He resigns his seat by notice in writing under his hand addressed to the Chairman or, in his absence, to the Secretary of the Council;

(b) If he is absent, without the leave of the Chairman, from thirty consecutive sittings of the Council;

(c) He fails to make the oath referred to in sub-section (6) within a period of ninety days after the date of his election, unless the

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Chairman, for good cause shown, extends the period; or

(d) He ceases to be qualified for being a member under any provision of this Act or any other law.

If any question arises whether a member has, after his election, become disqualified from being a member of the Council, the Chairman shall refer the question to the Chief Election Commissioner and, if the Chief Election Commissioner is of the opinion that the member has become disqualified, the member shall cease to be a member and his seat shall become vacant.

An election to fill a vacancy in the office of a elected member shall be held not later than thirty days from the occurrence of the vacancy or, if the election cannot be held within that period because the Assembly is dissolved, within thirty days of the general election to the Assembly.

The manner of election of elected members and filling of a causal vacancy in the office of an elected member shall be such as may be prescribed;

(b) In sub-section (5)-

(i) For the words 'A member of the Council elected by the Assembly' the words 'An elected member' shall be substituted; and

(ii) For the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:-

'Provided that an elected member shall, notwithstanding — the expiration of his term, continue to hold office until his successor enters upon his office.'

(c) In sub-section (6), for the words 'A member of the Council elected by the Assembly' the words An_ elected member shall be substituted and

(d) For sub-section (7) and (8) the following shall be substituted, namely:-

"(7) The executive authority of the council shall extent to all matters with respect to which the council has power to make laws and shall be exercised in the name of the Council, by the Chairman who may act either directly or through the secretariat of the Council of which a Federal Minister nominated by the Chairman from amongst the members of the Council and not more than three advisors appointed by the Chairman shall be in charge.

Provided that Council may direct that, in respect of such matters as it may specify, its authority shall be exercisable by the Vice-Chairman of Council subject to the such conditions if any, as the Council may specified.

(8) An Adviser may be appointed form amongst the elected members or the members of the Assembly.

(9) An Advisor shall, before entering upon officer, makes before the Chairman oath in the form set out in the First Schedule.

(10) | An Advisor who is a member of the Assembly shall have the right to speak in, and otherwise take part in the proceedings of the Council, but shall not by virtue of this sub-section be entitled to vote.

(11) ~The Council may makes rules for regulating in procedure and the conduct of its business and shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings of the Council shall not be invalid on the ground that a person who was not entitled to do so sat, voted or otherwise took part in the proceedings.

(12) — Orders and other instruments made and executed in the name of the council shall be authenticated in such manner as may be specified in rules to be made by the Council and the Validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made executed by the Council.

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(13) The Chairman may regulate the allocation and transaction of the business of the Council and may, for the convenient transaction of that business, delegate any of its functions to officers and authorities subordinate to it.

Amendment of section 25, Act VIII of 1975: In the said Act, in section 25,-

(a) In sub-section (1), in clause (c), for the figure "21" the figure '(23)4' shall be substitute;

(b) After sub-section (1) amended as aforesaid, the following new sub-section shall be inserted, namely:-

"(1-A) If a member of the Assembly is elected to more than one seat, he shall, within a period of thirty days after the declaration of the result for the last such seat, resign all but one of his seat, and if he does not so resign, all the seat to which he has been elected shall become vacant at the expiration of the said period of thirty days except the seat to which he has been last elected or, if he has been elected to more than one seat on the same day, the seat for election to which his nomination was filled last.

Amendment of section 27, Act VIII of 1974: In the said Act, in section 27, after sub-section (3), the following new sub-section shall be added, namely:-

"(4) | On a requisition signed by not less than one- fourth of the total membership of the Assembly the Speaker shall summon the Assembly to meet, at such time and place as he thinks fit, within fourteen days of the receipt of the requisition; and when the Speaker has summoned the Assembly, only he may prorogue it.'

Amendment of section 29, Act VIII of 1974: In the said Act, in section 29,-

(a) In subsection (1), after the word Speaker" the words 'and a Deputy Speaker' shall be inserted;

(b) In sub-section (2) after the word 'Speaker' the words 'or Deputy Speaker' shall be inserted;

(c) For sub-section (4) and (5) the following shall be

substituted, namely:-

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"(4) | The Speaker shall preside at the meetings of the Assembly and when the office of the Speaker is vacant or the Speaker is absent or is unable to perform his functions due to any cause, the Deputy Speaker shall act as Speaker, and if at that time, the Deputy Speaker is also absent or is unable to act as Speaker due to any cause, such member of the Assembly present as may be determined by the Rules of procedure of the Assembly shall preside at the meeting of the Assembly.

(5) So often as the office of Speaker or Deputy Speaker becomes vacant, the assembly shall elected one of its members to fill the office.'

(d) After sub-section (6), the following new sub-section shall be inserted, namely:-

'(6A) The Deputy Speaker may resign his office by writing under his hand addressed to the Speaker, and

(e) In sub-section (7), after the word 'Speaker' the words 'or Deputy Speaker' shall be inserted.

Amendment of section 30, Act VIII 1974:

In the said Act, in section 30,-

(a) For the heading the following shall be substituted, namely:-

"Voting in Assembly and quorum; and

(b) In sub-section (2), for the word 'Seventeen': occurring twice, the word 'fourteen' shall be substituted.

Insertion of new section 30A, 30B and 30C, Act VIII of 1974:

In the said Act, after section 30, amended as aforesaid, the following new section shall be inserted, namely:-

"30-A Restriction on discussion in Assembly etc:- No discussion shall take place in the Assembly or the Council or the joint sitting with respect to the conduct of any judge of the Supreme Court of Azad Jammu and Kashmir or the High Court in the discharge of his duties.

30-B_ Finance Committee:-

qd) The expenditure of the Assembly within authorized appropriation shall be controlled by the Assembly acting on the advice of the Finance

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Committee.

(2) The Finance Committee shall consist of the Speaker, the Finance Minister and such other members as may be elected thereto by the Assembly.

(3) The Finance Committee may make rules for regulating its procedure.

30C Secretariat of assembly:-

qd) The Assembly shall have a separate Secretariat.

(2) The Assembly may by laws regulate the recruitment and conditions of service of persons appointed to the secretarial staff of the Assembly.

(3) Until provision is made by the Assembly under sub-section (2), the person appointed to the secretariat staff of the Assembly shall continue to be governed by the conditions of service for the time being applicable to them.'

Amendment of section 32, Act VIII of 1974: In the said Act, in section 32, after the word 'Assembly' wherever occurring the words and commas 'or as the case may be the Council' shall be inserted.

Amendment of Section 33, Act VIII of 1974.- In the said Act in Section 33,

(a) For sub-section (1) the following shall be substituted, namely:-

'(1) _ The provisions of this Act may be amended in accordance with the following provisions:

Provided that no amendment shall be made in section 31, this section or section 56 save with the prior approval of the Government of Pakistan; and

(b) In sub-section (3),-

(i) The words 'of the Council and the Assembly' shall be omitted; and

(ii) For the words 'of the aggregate of the total membership of the Assembly and the elected members of the Council' the words of the total

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membership 'of the joint sitting' shall be substituted.

Insertion of new section 33A, Act VIII of 1974: In the said Act, after section 33 amended as aforesaid, the following new section shall be inserted, namely:-

"33A Procedure at joint sitting,-

qd) The President may after consultation with the Chairman of the Council and the Speaker make rules as to the procedure with respect to the joint sittings.

(2) At a Joint sitting, the Speaker or, in his absence, such person as may be determined by the rules made under sub-section (1) shall preside.

(3) The President may address a joint sitting and send message in a joint sitting.

(4) The Advocate -General shall have the right to speak in, and otherwise take part in the proceedings of, a joint sitting or of any of its committee, but shall not by virtue of this section have the right to vote.

Amendment of section 37, Act VIII of 1974: In the said Act, in

section 37,-

(a) In sub-section (1) the words 'or otherwise' shall be omitted;

(b) For sub-section (2) the following shall be substituted, namely:-

"(2) All other moneys-

(a) Received by or on behalf of the council; or

(b) Received by or deposited with the supreme Court of Azad Jammu and Kashmir or any other court establishment under the authority of the council; Shall be credited to the Public Account of the Council;

(2A) The custody of the Council consolidated Fund, the

payment of moneys into that Fund, the withdrawal of moneys there from, the custody of other moneys received by or on behalf of the council, their payment

into, and withdrawal form, the Public Account of the

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(c)

(5)

(a)

(b)

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Council, and all matters connected with or ancillary to the matters aforesaid, shall be regulated by Act of the Council or, until provision in that behalf is so made, by rules made by the Chairman of the Council; and

After sub-section (4), the following new sub-section shall be added, namely:-

If in respect of any financial year it is found-

That the amount authorized to be expended for a particular service for the current financial year is insufficient, or that need has arisen for expenditure upon some new service not included in the statement referred to in sub-section (3) for that year; or

That any money has been spent on any service during a financial year in excess of the amount granted for that service for the year;

The Chairman of the Council shall have power to authorized expenditure from the council consolidated Fund and shall cause to be laid before the council a supplementary statement or, as the case may be, an excess statement, setting out the amount of that expenditure, and the provisions of sub-section (3) and (4) shall apply to those statement as they apply to the statement referred to in sub-section (3).

Notwithstanding anything contained in the foregoing

provisions of this section, the Council shall have power to make any grant in advance in respect of the estimated expenditure for a part of any financial year, not exceeding four months, pending completion of the procedure prescribed in sub-section (3) and

(4);

Insertion of new section 37A, Act VIII of 1974: In the said Act, after section 37 amended as aforesaid, the following new section shall be inserted, a namely:-

A Azad Jammu and Kashmir Consolidated Fund.-

qd) All revenue received by the Government, all loans raised by the Government, and all moneys received by it in repayment of any loan, shall form part of a consolidated fund, to be known as the Azad Jammu and Kashmir consolidated Fund.

(2) All other money-

(a) Received by or on behalf of the Government; or

(b) Received by or deposited with the High Court or any other Court established under the authority of the Government shall be credited to the Public Accounts of government.

(3) The custody of the Azad Jammu and Kashmir consolidated Fund the payment of money into that Fund, the withdrawal of moneys therefore, the custody of other moneys received by or on behalf of the Government, their payment into, and withdrawal from, public Account of the Government, and all matters connected with or ancillary to the matters aforesaid, shall be regulated by Act of the Assembly or, until provision in that behalf is so made, by rules made by the president, B.

Amendment of section 38, Act VIII of 1974: In the said Act, in

section 38-

(a) In sub-section (1), for the word 'President' the word 'Government shall be substituted;'

(b) In sub-section (3), for the word "President" the word 'Government' shall be substituted, and

(c) For sub-section (5) the following shall be substituted, namely

"(5) If in respect of any financial year it is found-

(a) That the amount authorized to be expended for a particular service for the current financial year is insufficient, or that need has arisen for expenditure upon some new service not included in the Annual Budget for that year; or

(b) That any money has been spent on any service during a

financial year in excess of the amount granted for that service during a financial year in excess of the amount granted for that service for that year;

The Government shall have power to authorize expenditure from the Azad Jammu and Kashmir Conciliated Fund and shall cause to be laid before the Assembly a Supplementary Budget or, as the case may

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be, an Excess Budget, setting out the amount of that expenditure, and the provision of this section shall apply to those budgets as they apply to the Annual Budget.

(6) Notwithstanding anything contained in the foregoing provisions of this section, the Assembly shall have power to make any grant in advance in respect of the estimated expenditure for a part of any financial year, not exceeding four months, pending completion of the procedure prescribed in sub-section (2) for the voting of such grant and the authentication of the Budget as passed by the Assembly in accordance with the provisions of sub-section (4) in relation to the expenditure.

Amendment of section 39, Act VIII of 1974: In the said Act, in section 39-

(a) For the heading the following shall be substituted namely:-

“Special provisions regarding budget, etc.’ and

(b) in sub-section (1) and sub-section (2) for the word “President” the words “Prime Minister” shall be substituted.

Amendment of Section 41, Act VIII of 1974.- In the said Act, in Section 41, in sub-section (4),-

(a) for the word ‘may’ occurring for the first time, the word ‘shall’ shall be substituted; and

(b) for the words ‘promulgate and with draw’ shall be substituted.

Substituted of section 42, Act VIII of 1974: In the sand Act, for section 42 the following shall be substituted, namely:-

“42. Supreme Court of Azad Jammu and Kashmir;

qd) There shall be constituted a Supreme Court of Azad Jammu and Kashmir to be the highest Court of appeal.

(2) Subject to the provisions of this Act, the Supreme Court of Azad Jammu and Kashmir shall have such jurisdiction as is or may be conferred on it by this act or by or under any law.

(3) The Supreme Court of Azad Jammu and Kashmir shall consist of a Chief Justice to be known as Chief Justice of Azad Jammu and Kashmir, and so many other Judges as may be determined by an Act of the Council or, until so determined, as may be fixed by the President on the advice of the Council.

(4) The Chief Justice of Azad Jammu and Kashmir shall be appointed by the president on the advice of the Council and each of the other Judges of the Supreme Court of Azad Jammu and Kashmir shall be appointed by the President on the advice of the Council after consultation with the said Chief Justice.

(5) A person shall not be appointed a Judge of the Supreme Court of Azad Jammu and Kashmir unless he has-

(a) For a period, of, or for periods aggregating, not less than five years been a Judge of a High Court, or

(b) For a period of, or for periods aggregating, not less than fifteen years, been an advocate or pleader or a High Court.

Explanation: In this sub-section 'High Court' includes-

(a) The High Court of Azad Jammu and Kashmir and a High Court or an equivalent Court that existed in Azad Jammu and Kashmir before the fourteenth day of August 1947; and

(b) A High Court in Pakistan, including a High Court that existed in Pakistan at any time before the fourteenth days of August 1973.

(6) Before entering upon office, the Chief Justice of Azad Jammu and Kashmir shall make before the president and any other Judge Supreme Court of Azad Jammu and Kashmir shall make before the Chief Justice, oath in the form set out in the First Schedule.

(7) A Judge of the Supreme Court of Azad Jammu and Kashmir shall hold office until he attains the age of sixty-five years, unless he sooner resigns or is removed from office in accordance with law.

(8) At any time when the office of Chief Justice of Azad Jammu and Kashmir is vacant, or the Chief Justice, is absent or unable to perform the functions of his office due to any other cause, the President shall appoint the most senior of the other Judge of the Supreme Court of Azad Jammu and Kashmir to act as Chief Justice of Azad Jammu and Kashmir.

(8-A) If at any time it is not possible for want of quorum of Judges of the Supreme Court to hold or continue any sitting of the Court, or for any other reason it is necessary to increase temporarily the number of Judges of the Supreme Court, the Chief Justice of Azad Jammu and Kashmir may, in writing,-

(a) With the approval of the president, request any person who has held the office of a Judge of that Court and since whose ceasing to hold that office three years have not elapsed; or

(b) With the approval of the President and with the consent of the Chief Justice of High Court, requires a Judge of that Court qualified for appointment as a judge of the Supreme Court to attend sittings of the supreme Court as an and ad-hoc Judge for such period as may be necessary and while so attending an ad-hoc Judge shall have the same power and jurisdiction as a Judge of Supreme Court. Acquittal of an accused person and sentenced him of or to imprisonment for life; or, on revision, has enhanced a sentence to a sentence as aforesaid; or

(b) If the High Court has withdrawn for trial before itself any case from any court subordinate to it and has in such trial convicted that accused person and sentence him as aforesaid; or

(c) If the High Court has imposed any punishment on any person for contempt of the High Court; or

(d) If the amount or value of the subject-matter of the dispute in the court of first instance was, and also in dispute in appeals is, not less than fifty thousand rupees or such other sum as may be

specified in that behalf by act of the Council and the Judgment, decree or final order appealed from has varied or set aside the Judgment, decree or final order the court immediately below, or

(e) If the Judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value and the Judgment, decree or final order appealed from has varied or set aside the Judgment, decree or final order of the court immediately below; or

(f) If the High Court certifies that the Case Involve a substantial question of law as to the interpretation of this Act.

(12) — An appeal to the Supreme Court of Azad Jammu and Kashmir order or sentence of the High court in a case to which sub-section (11) does not apply shall lie only if the supreme court of Azad Jammu and Kashmir grants leave to appeal;

25. Amendment of section 43, Act VIII of 1974: In the said Act, in section 43:-

(a) After sub-section (2), the following new sub-section shall be inserted, namely:-

“(2A) A Judge of the High Court shall be appointed by the President on the advice of the Council and after consultation-

(a) With the Chief Justice of Azad Jammu and Kashmir; and

(b) Except where the appointment is that of Chief Justice, with the Chief Justice of the High Court’;

(b) In sub-section (3), for the words ‘The Chief Justice and other Judge of the High Court shall be appointed by the President, but a person shall not be so appointed’ the words ‘A person shall not be appointed’ shall be substituted;

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(c) In sub-section (9) for the words 'Fourth Schedule' the words "Fifth Schedule" shall be substituted.

Amendment of section 44, Act VIII of 1974.- In the said Act, in section 44, in sub-section (2) -

(a)

(b)

(c)

After the words 'High Court' occurring for the first time, the word "may" shall be inserted;

In clause (a), in sub clause (ii), the words 'in Azad Jammu and Kashmir' shall be omitted;

In clause (b), in sub-clause (ii)-

(i) The words "in Azad Jammu and Kashmir" shall be omitted; and

(ii) After the words 'Public office' the words 'in concoction with the affairs of Azad Jammu and Kashmir' shall be inserted.

Insertion of new section 46A, Act VIII of 1974: In the said Act, after section 46-A Advisory Jurisdiction:-

qd)

(2)

If, at any time, the Chairman of the Council or the President desires to obtain the opinion of the Supreme Court of Azad Jammu and Kashmir on any question of law which he considers of public importance, he may refer the question to the supreme Court of Azad Jammu and Kashmir for consideration.

The Supreme Court of Azad Jammu and Kashmir shall consider a question so referred and report its opinion on the question to the Chairman of the Council or, as he case may be, the President.

Amendment of section 47, Act VIII of 1974: In the said Act, in section 47, in sub-section (1);-

(a)

(b)

For the word 'Assembly' the words and commas 'Council in respect of matters to which its executive authority extends, and the Assembly in respect of matters to which the executive authority of the Government extends' shall be substituted;

In clause (a), for the word 'Government' the words "Azad Jammu and Kashmir" shall be substituted; and

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(c) In clause (b) —

(i) After the words 'acts of? the words 'the Council or the' shall be inserted; and

(ii) For the word 'Government, occurring for the second time,' the words 'Azad Jammu and Kashmir' shall be substituted.

Amendment of section 49 Act VIII of 1974: In the said Act, in section 49, for sub-section (2) and (3) the following shall be substituted and shall be deemed always to have been so substituted, namely:-

(2) Until an Act of the Council in respect of persons in the service of Azad Jammu and Kashmir employed in connection with the affairs of the Council, or an Act of the Assembly in respect of such persons employed in connection with that affairs of the Government, makes provisions for the matter referred to in sub-section (1), all rules and orders in force immediately before the commencement of this Act, shall continue in force and may be amended from time by the Council or, as the case may be, the Government.

Amendment of section 50, Act VIII of 1974: In the said Act, in section 50, in sub-section (1), after the word "President" the words 'on the advice of the Council' shall be inserted.

Insertion of new section 50-A, Act VIII of 1974: In the said Act, after section 50 amended as aforesaid the following new section shall be inserted, namely:-

"50-A. Auditor-General:-

qd) There shall be an Auditor-General of Azad Jammu and Kashmir who shall be appointed by the president on the advice of the council.

(2) Before entering upon office, the Auditor-General shall make before the Chief Justice of Azad Jammu and Kashmir oath in the form set out in the First Schedule.

(3) The terms and conditions of service, including the term of office, of the Auditor-General shall be determined by act of the Council and, until so determined, by rules made by the Council.

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(4) The Auditor-General shall, in relation to-

(a) The accounts of the Council and any authority or body established by the council; and

(b) The accounts of the Government and any authority or body established by the Government; perform such functions and exercise such powers as may be determined by or under Act of the council and, until so determined, by rules made by the Council.

(5) The accounts of the Council and of the Government shall be kept in such form and in accordance with such principles and methods as may be determined by the Auditor General with the approval of the Council.

(6) The reports of the Auditor-General relating to the accounts of the Council shall be submitted to the chairman of the Council who shall cause them to be laid before the Council and the reports of the Auditor-General relating to the accounts of the Government shall be submitted to the President, who shall cause them to be laid before the Assembly'.

Amendment of section 51, Act VIII of 1974: In the said Act, in section 51, the following explanation shall be added at the end, namely:-

Explanation: In this section;

(a)

(b)

'Law' includes Ordinance, Order, rules, bye-laws, regulations and any notification and other legal instruments having the force of Law, and

'In force' in relation to any law, means having effect as law whether or not the law has been brought into operation.

Amendment of section 52, Act VIII of 1974: In the said Act, in section 52-

(a)

In sub-section (1),-

(i) For the words 'Neither the President nor a Minister shall' the words and commas 'The

President, the Prime Minister, a Minister or an Advisor shall not' shall be substituted; and

(ii) For the words 'or a Minister'? the commas and words 'the Prime Minister' a Minister or an Advisor' shall be substituted;

(b) In sub-section (2), (3) and (4), after the word "President" the words "or the Chairman of the council" shall be inserted; and

(c) In sub-section (5)-

(i) For the words 'neither the President nor a Minister shall' the words and commas 'the President' the Prime Minister' the "hairman the Council', the Federal Minister who is a member of the council, a Minister or an Advisor shall not' shall be substituted; and

(ii) After the words 'Against the Words and commas' council or, as the case may be, the shall be inserted.

Insertion of new section 52-A, Act VIII of 1974.- In the said Act, after section 52 amended as aforesaid, the following new section shall be inserted, namely:-

'52A Power to acquire property and to make contracts, etc.- (1) The executive authority of the Government and of the Council shall extend, subject to any Act, of the appropriate authority, to the grant, sale, disposition or mortgage of any property vested in, and to the purchase or acquisition of property on behalf of, the Government of, as the case may be, the council, and to the making of contracts.

(2) All property acquired for the purposes of the Government or of the Council shall vest in the President or, as the case may be, in the Council.

(3) All contracts made in the exercise of the executive authority of the Government or of the Council shall be expressed to be made in the name of the President or, as the case may be, the council and all such contracts and all assurances of property made in the exercise of the authority shall be executed on behalf of the President or the Council by such persons and in such manner as the President or, as the case may be, the Council may direct or authorize.

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(4) Neither the President, nor the chairman of the Council, shall be personally liable in respect of any contract or assurance made or executed in the exercise of the executive authority of the Government or, as the case may be, the Council, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof,

(5) Transfer of land by the Government or the Council shall be regulated by law.'

Amendment of section 53, Act VIII of 1974: In the said Act, in section 53,-

(a) In sub-section (1), for the words 'If the President is satisfied' the words and commas 'The President, is so advised by the Chairman of the Council' and for the word 'may' the word 'Shall' shall be substituted; and

(b) For sub-section (2), the following shall be substituted namely:-

(2) A proclamation shall be laid before a joint sitting which shall be summoned by the President to meet within thirty days of the Proclamation being issued and-

(a) Shall cease to be in force at the expiration of two months unless before the expiration of that period it has been approved by a resolution of the Joint sitting; and

(c) Shall, subject to the provisions of clause (a), cease to be in force upon a resolution disapproving the resolution being passed by the votes of the majority of the total membership of the joint sitting.

(2A) Notwithstanding anything contained in sub-section (2), if the Assembly stands dissolved at the time when the proclamation is issued, the proclamation shall continue in force for a period of four months but, if a general election to the Assembly is not held before the expiration of that period, it shall cease to be in force at the expiration of that period unless it has earlier been approved by a resolution of the council.

Amendment of section 56, Act VIII of 1974: In the said Act, in section 56, for the words and letters 'State of Jammu and Kashmir' under the UNCIP Resolutions the words, brackets and figures Matters specified in sub-section (3), of section 31' shall

be substituted.

Insertion of new section 56A, 56B and 56C, Act VIII of 1974:

In the said Act, after section 56, the following new sections shall be inserted, namely:-

'56A

56B

56C

Failure to comply with requirement as to time does not render an act invalid.- When any act or thing is required by this Act to be done with a particular period and it is not done within that period, the doing of the act or thing shall not be invalid or otherwise ineffective by reason only that it was not done within that period.

Oath of office:-

qd) An oath required to be made by a person under this Act shall be made in a language that is understood by that person.

(2) Where, under this Act, an oath is required to be made before a specified person, and for any reason, it is impracticable, for the oath to be made before that person, it may be made before such other person as may be nominated by that person.

(3) Where, under this Act, a person is required to make an oath before he enters upon an office, he shall be deemed to have entered upon the office on the day on which he makes the oath.

Effect of repeal of laws:- Where a law is repealed, or is deemed to have been repealed, by under or by virtue of this Act, the repeal shall not, except as otherwise provided in this Act,-

(a) Revive any thing not in force or existing at the time at which the repeal takes effect;

(b) Affect the previous operation of the law or anything duly done or suffered under the law;

(c) Affect any right, privilege, obligation or liability acquired, accrued or incurred under the law;

(d) Affect any penalty, forfeiture or punishment

incurred in respect of any offence committed
against the law; or

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(e) Affect any investigation, legal proceeding or remedy in respect or any such right, privilege, obligation, liability, penalty, forfeiture or punishment.

And any such investigation, legal proceedings or remedy may be instituted, continued, or enforced and any such penalty, forfeiture or punishment may be imposed, as if the law had not been repealed.'

Amendment of section 57, Act VIII of 1974: In the said Act, in section 57, in sub-section (2);-

(a)

(b)

After the word 'including' the words 'the Supreme Court of Azad Jammu and Kashmir' shall be inserted; and

After the word 'Act' at the end, the words 'or an Act to amend it' shall be added.

Amendment of section 59, Act VIII of 1974: In the said Act, in section 59, sub-section (2) shall be omitted.

Amendment of the First Schedule, Act VIII of 1974: In the said Act, in the First Schedule:-

(a)

(b)

In the oath of Speaker of Legislative Assembly, after the word "Speaker" wherever occurring, including the heading, the brackets, and words, (or Deputy Speaker) shall be inserted.

after the oath of member of Legislative Assembly or Council the following new oath shall be inserted namely:-

Chief Justice of Azad Jammu and Kashmir-
Judge of Supreme Court of Azad Jammu and Kashmir
/See Section 42(6)/

LT nneenennnnnn nn nnn nanan nanan nnn nnn nn nnn nn ene nnen= having
been appointed Chief Justice of Azad Jammu and
Kashmir (or Judge of the Supreme Court of Azad
Jammu and Kashmir) do Solemnly swear that I owe
allegiance to Allah and that I will faithfully perform the
duties of my office to the best of my ability, knowledge
and judgment and will administer Justice according to the

law in force in Azad Jammu and Kashmir, without fear or favour, affection or ill-will; and

(c) After the oath of Chief Justice-Judge High court, the following new oaths shall be added, namely:-

OATH OF ADVISOR

See Section 21 (9)

I -----, do hereby Solemnly swear in the name of

That I will remain loyal to the country and the cause of accession of the State of Jammu and Kashmir to Pakistan:

That I will perform my functions as Advisor honestly and faithfully; and

That I will not directly or indirectly communicate or reveal to any person any official secret which may come to my knowledge as Advisor;

So help me Allah;

41.

42.

I, ----
name of Allah;

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AUDITOR-GENERAL

See Section 51 (2)

wenn n anne nen nnn do hereby solemnly swear in the

That, as Auditor-General of Azad Jammu and Kashmir,

I will perform my functions honestly, faithfully, in accordance with the Azad Jammu and Kashmir Interim Constitution Act, 1974, and the law and to the best of my knowledge, ability and judgment, without fear or favour, affection or ill-will.

Amendment of the Third Schedule, Act VIII of 1974.- In the said Act, in the Third Schedule,-

(a)

(b)

In entry 26, for the words 'Special Assistants' the words "Advisor" shall be substituted; and

In entry 31, after the word "purpose" at the end, the words, 'or the extension to Azad Jammu and Kashmir of the Jurisdiction of a Police force established in Pakistan for the investigation of offences committed in connection with matters concerning the Government of Pakistan' shall be added.

Insertion of new Schedule, Act VIII of 1974: In the said Act, after the Third Schedule, the following new schedule shall be inserted, namely:-

43.

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'FOURTH SCHEDULE'

See Section 42 (9)

There shall be paid to the Chief Justice of Azad Jammu and Kashmir a salary of Rs, 5,500 per mensem and to every other Judge of the Supreme Court of Azad Jammu and Kashmir a salary of Rs, 5,100 per mensem.

Every Judge of the Supreme Court of Azad Jammu and Kashmir privileges and allowance, and to such rights in respect of leave of absence and pension, as may be determined by the council, and until so determined, to be privileges, allowance and rights to which, immediately, before the commencement of this Act, the Judges of the Court were entitled.

The pension payable to a retired Judge of the Supreme Court of Azad Jammu and Kashmir shall not be less than Rs, 1,500 per mensem, or more than Rs, 1,950 per mensem, depending on the length of his service as Judge in the Court or a High Court.'

Amendment of the Fourth Schedule Act VIII of 1974: In the said Act, in the Fourth Schedule-

(a)

(b)

For the heading 'Fourth Schedule' the heading 'FIFTH SCHEDULE' shall be substituted; and

In paragraph 2, for the word 'President' the word 'Council' shall be substituted.

General Amendment, Act VIII of 1974: In the said Act, and in this Act, for the words 'Judicial Board' wherever occurring, the words 'Supreme Court of Azad Jammu and Kashmir' shall be substituted.

(Mohammad Akram Shah)

Deputy Secretary Law and Parliamentary Affairs
Azad Government of the State of Jammu and Kashmir