

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

Dated: 19th September, 2017

No. LD/Legis-Act/686-702/2017. The following Act of Assembly received the assent of the President on the 18th day of September 2017, is hereby published for general information.

(ACT XL OF 2017)

An

Act

to provide a law for the constitution of Shariat Appellate Bench of the High Court

WHEREAS, it is expedient to provide a law for the constitution of Shariat Appellate Bench of the High Court and for other ancillary matters;

It is hereby enacted as follows:-

1. Short title and Commencement.- (1) This Act may be called the Azad Jammu and Kashmir Constitution of Shariat Appellate Bench of the High Court Act, 2017.

(3) It shall come into force at once.

2. Definitions.- In this Act, unless there is anything repugnant to

the subject or context,-

(a) "Aalim" means a person appointed as judge of the Shariat Appellate Bench under sub-section (3) of the Section 4;

(b) "Council" means the Azad Jammu and Kashmir Council;

(c) "Government" means the Azad Government of the State of Jammu and Kashmir;

(d) "High Court" means the High Court of Azad Jammu and Kashmir;

(e) "Judge" in relation to the Supreme Court of Azad Jammu

and Kashmir or the High Court includes the Chief Justice of the Supreme Court as the case may be, High Court and also includes the Additional Judge of the High Court;

(f) "Law" includes any custom or usage having the force of law but 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 fiscal law or any law relating the levy and collection of the taxes and fees or banking or insurance practice and procedure;

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

(h) "Shariat Appellate Bench" means the Shariat Appellate Bench of the High Court; and

(i) "Supreme Court" means the Supreme Court of Azad Jammu and Kashmir.

Act _to_override other _laws.- This Act shall have overriding effect notwithstanding anything contained in any other law for the time being in force.

Shariat Appellate Bench of the High Court.- (1) There shall be constituted for the purpose of this Act, a bench in the High Court to be called the Shariat Appellate Bench of the High Court.

(2) The Shariat Appellate Bench shall consist of Chief Justice of High Court and all the Muslim judges of High Court.

(3) There shall be an Aalim Judge who shall be appointed by the President on the advice of the Prime Minister after consultation with the Chief Justice of the Supreme Court and the Chief Justice of High Court.

(4) The Aalim Judge shall have same powers and jurisdiction as of a Judge of Shariat Appellate Bench.

(5) No person shall be appointed as Aalim Judge unless he has at least fifteen years experience in Islamic Law, research or instruction.

(6) The Aalim Judge shall be entitled to such salary, allowances and privileges as are admissible to a Judge of High Court.

(7) The Aalim Judge shall not be removed from office except in the like manner and on the same grounds as a Judge of the High Court under the Interim Constitution Act, 1974.

(8) The principal seat of the Shariat Appellate Bench shall be at Muzaffarabad. The Shariat Appellate Bench shall sit at such other place or places as the Chief Justice of High Court, with the approval of the President may appoint.

(9) Before entering upon his office, the Aalim Judge shall make before the President, or a person nominated by him, an oath in the form set out in the Schedule to this Act.

(10) The Chief Justice may constitute a bench including Aalim Judge wherever requires.

Powers, Jurisdiction and functions of the Shariat_ Appellate Bench.- (1) Shariat Appellate Bench may, on the petition of a

State Subject or the Government or the Council, 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 Shariat Appellate Bench 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 Shariat Appellate Bench to be repugnant to the Injunctions of Islam,-

(a) the President in the case of a law with respect to a matter not enumerated in Council Legislative List, shall take steps to amend the law so as to bring such law or provision into conformity with the Injunctions of Islam and the Chairman Kashmir Council, in the case of a law with respect to a matters enumerated in Council Legislative 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 Shariat Appellate Bench takes effect.

(4) The Shariat Appellate Bench shall exercise the appellate jurisdiction against the final judgment of the District Criminal Court and limitation for preferring an appeal shall be sixty days.

(5) The Shariat Appellate Bench shall exercise the appellate jurisdiction against the acquittal order of District Criminal Court

and Tehsil Criminal Court and limitation for preferring an appeal shall be sixty days:

Provided that the limitation for the Government for preferring an appeal under this sub-section shall be six months.

(6) The Shariat Appellate Bench shall exercise the power of revision against the order of District Criminal Court and Tehsil Criminal Court and limitation for filing revision shall be sixty days.

(7) The Shariat Appellate Bench shall exercise the appellate jurisdiction against the judgment of the Family Court and limitation for preferring an appeal shall be thirty days.

(8) Section 5 and 12 of the Limitation Act, 1908 as adopted and enforced in Azad Jammu and Kashmir shall apply on the proceedings under this Act.

Powers and procedure of the Shariat Appellate Bench.- (1)
For the purposes of the performance of its functions, the Shariat Appellate Bench 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 Shariat Appellate Bench shall be enforceable and executed in Azad Jammu and Kashmir as if it has been issued by the High Court.

(3) The Shariat Appellate Bench shall have power to conduct its proceedings and regulate its procedure in all respects as it deems fit.

(4) The Shariat Appellate Bench shall have the power of a High Court to punish for its own contempt.

(5) A party to any proceedings before the Shariat Appellate Bench under this Act may be represented by a legal practitioner who is a Muslim and has been enrolled as an Advocate of the High Court or as an Advocate of the Supreme Court or by a jurisconsult selected by the party from out of a panel of jurisconsults maintained by the Shariat Appellate Bench for the purpose.

(6) For being eligible to have his name borne on the panel of jurisconsults referred to in clause (5), a person shall be an "Aalim" who in the opinion of the Shariat Appellate Bench, 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 Shariat Appellate Bench may invite any person in Azad Jammu and Kashmir or abroad whom the Shariat Appellate Bench considers to be well-versed in Islamic Law to appear before it and render such assistance as may be required by him.

(9) No fee shall be payable in respect of any petition or application to the Shariat Appellate Bench under this Act.

(10) — The Shariat Appellate Bench shall have power to review any decision given or order made by it.

Application of Code of Criminal Procedure, 1898 (Act V of 1898).- The provisions of the Code of Criminal procedure, 1898 (Act V of 1898), shall apply, mutatis mutandis, in respect of cases under this Act:

Provided that in the said Code the words High Court, Session Court, and Magistrate First Class wherever occurring, shall be construed to mean the Azad Jammu and Kashmir Shariat Appellate Bench, District Criminal Court and Tehsil Criminal Court, as the case may be, for the purposes of this Act.

Appeal _to the Supreme Court.- (1) Any party to any proceedings before the Shariat Appellate Bench aggrieved by the final decision of the Shariat Appellate Bench in such proceedings may, within sixty days of such decision, prefer an appeal to the Supreme Court.

(2) The Supreme Court shall also exercise the powers of revision against any order of the Shariat Appellate Bench, to be filed within sixty days.

(3) The provisions of sub-section (3) of Section 5 and sub-section (4) to (8) of Section 6 shall apply to and in relation to the Supreme Court, as if reference to the provisions to Court were a reference to Supreme Court.

(4) 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 all Muslim Judges of the Supreme Court to be called the Shariat Appellate Bench of the Supreme Court, which shall be constituted by the Chief Justice of

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Azad Jammu and Kashmir and reference in the preceding clauses to "Supreme Court" shall be construed as a reference to the Shariat Appellate Bench of the Supreme Court:

Provided that the Chief Justice of Azad Jammu and Kashmir may constitute a bench wherever required.

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

Administrative arrangements etc.- (1) The Government shall make all such administrative arrangements and make available to the Shariat Appellate Bench the services of such officers and experts as it may consider necessary for the convenient performance of the Shariat Appellate Bench.

(2) On the commencement of this Act, the employees of the Shariat Court shall stand transferred to Shariat Appellate Bench on the same terms and conditions.

Power to make Rules.- (1) The Shariat Appellate Bench may after approval of the Government make rules for carrying out the purposes of this Act.

(2) Until the rules under this Act are framed, the Azad Jammu and Kashmir Shariat Court Procedure Rules, 1982 shall mutatis mutandis apply to the proceedings of Shariat Appellate Bench with the modification that the words "Shariat Court" wherever occurring shall be read as "Shariat Appellate Bench".

Pending Cases.- All the cases pending before the Azad Jammu and Kashmir Shariat Court under any law, and all appeals, revision or any other petition pending before the High Court under the below mentioned Ordinances shall stand transferred to the Shariat Appellate Bench.

(i) 2017 (17) of the Azad Jammu and Kashmir Shariat Court Procedure Rules, 1982 (2017 4) XTV Gait J)

(ii) The Prohibition (Enforcement of Hadd) (Amendment) Ordinance, 2017 (Ordinance XIII of 2017).

(iii) The Offences Against Property (Enforcement of Hudood) (Amendment) Ordinance, 2017 (Ordinance XI of 2017).

(iv) The Offence of Zina (Enforcement of Hudood)
(Amendment) Ordinance, 2017 (Ordinance IX of 2017).

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(v) The Offence of Qazaf (Enforcement of Hudood)
(Amendment) Ordinance, 2017 (Ordinance XII of 2017).

(vi) The Azad Jammu and Kashmir Family Courts
(Amendment) Ordinance, 2017 (Ordinance VII of 2017).

Savings.- Notwithstanding any judgment of Supreme Court or High Court, all actions taken, decisions made, orders passed, proceedings initiated, powers exercised, powers conferred etc., which have been taken etc., under the Ordinances mentioned in Section 12 of this Act or under the laws mentioned in Section 14 and visualized by this Act, shall be deemed to have been validly taken, made, passed, issued, initiated, exercised and conferred etc., under this Act.

Repeal.- The Azad Jammu and Kashmir Shariat Court Act, 1993 (Act IX of 1993) and Azad Jammu and Kashmir Shariat Court Ordinance, 2017 (Ordinance XVII of 2017), are hereby repealed.

Sd/-
(Muhammad Idrees Tabassum)
Secretary Law

SCHEDULE

Aalim Judge of Shariat Appellate Bench

I , do solemnly swear that, as
the Aalim Judge of the Shariat Appellate Bench, I will discharge
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 decisions.