Azad Jammu and Kashmir and Gilgit-Baltistan

Proposals for enhanced autonomy and empowerment



ARJK

Association for the Rights of the People of Jammu and Kashmir®
June 2012
Website: www.arjk.org E-mail: info@arjk.org

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Proposals for enhanced autonomy and empowerment

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June 2012

ARJK is an independent, non-partisan and non-profit association with the mission to secure the right of self-determination for the people of the State of Jammu and Kashmir and, pending the achievement of this right, to secure full political and constitutional rights for the people of the liberated territories of the State comprising Azad Jammu and Kashmir and Gilgit-Baltistan.

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Contents

1.	Foreword *by Inam-ul-Haque*	01
2.	Introduction *by Manzoor Gilani*	13
3.	Time for change for the people of AJK and Gilgit-Baltistan *by Afzal Ali Shigri*	41
4.	Defining the constitutional status of Jammu and Kashmir *by Asif Ezdi*	50
5.	The case for the people of Azad Jammu and Kashmir *by S. M. Junaid*	63
6.	A crisis of identity *by Masood Akhtar*	74
5.	Proposed amendments to the Constitution of the Islamic Republic of Pakistan *Attachment - A*	83
6.	Proposed amendments to the Jammu and Kashmir Interim Constitution Act, 1974 *Attachment - B*	88
7.	Proposed amendments to the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 *Attachment - C*	190
	Appendix: Federal Legislative List	283

FOREWORD

Inam ul Haque

The book in your hands has been compiled by the Association for the Rights of the People of Jammu and Kashmir (ARJK). The Association is a non-governmental, non-profit voluntary organisation, dedicated to work for the achievement of the inalienable right of the people of Jammu and Kashmir to self-determination as pledged to them by the United Nations Security Council as well as India and Pakistan and, pending the exercise of their right to determine their own future, through a fair and impartial plebiscite under UN auspices, to secure full political and constitutional rights for the people of the liberated territories of the State of Jammu and Kashmir, comprising Azad Jammu and Kashmir and Gilgit-Baltistan.

Accordingly, since its establishment in June 2010, the Association has been promoting the reinforcement of Pakistan's commitment to the settlement of Jammu and Kashmir in accordance with the resolutions of the UN Security Council and the United Nations Commission for India and Pakistan (UNCIP). It has also sought to prepare specific proposals which would, pending a UN plebiscite to determine the future of Jammu and Kashmir as a whole, place Azad Jammu and Kashmir and Gilgit-Baltistan at a par with the provinces of Pakistan in respect of their political and constitutional rights and privileges. To this end the Association has organized several seminars and discussions with civil society representatives from Azad Jammu and Kashmir, Gilgit-Baltistan and Pakistan with a view to evolving an approach that enjoys broad consensus.

The Seminars and discussions elicited a positive response

and a number of constructive ideas and suggestions were put forward by the participants. On the basis of these discussions the Association elaborated and refined proposals in the form of suggested amendments to the Constitution of Pakistan, the Azad Jammu and Kashmir Interim Constitution Act, 1974 and the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009. These constitute the main body of this book.

The Association, and in particular the Chairman of ARJK, Justice (Retd) Manzoor Gilani, an eminent Jurist and a former Chief Justice of Azad Jammu and Kashmir, and Ambassador Asif Ezdi, a member of the Executive Committee of ARJK, are to be commended for producing this book which offers specific legal texts to address the concerns of the people of Azad Jammu and Kashmir and Gilgit-Baltistan.

It is possible and indeed likely that some sincere and principled supporters of the cause of the Kashmiri people may feel that the proposals made in the book, if implemented, could be interpreted by interested parties as a de facto acceptance of the status quo by Pakistan. They could argue that the proposed amendments would in effect convey the impression that Pakistan had, for all intents and purposes, accepted the division of Jammu and Kashmir along the present Line of Control.

I believe that such an argument would not be valid and would be unfair since the primary objective of the ARJK is to work for the achievement of the right to self-determination for the people of Jammu and Kashmir in accordance with the resolutions of the United Nations Security Council. The arrangements being proposed are purely interim in nature

and would be reviewed, revised or completely rewritten in accordance with the wishes of the people of Jammu and Kashmir, expressed through a plebiscite to be held under UN auspices. The proposals contained in this book in no way militate against the right to self-determination of the people of Jammu and Kashmir as pledged to them by the UNSC. In order to remove any ambiguity or misgiving on this score specific additions to this effect have been proposed to Article 257 of the Constitution of Pakistan.

An important issue that must be addressed is whether the adoption of the proposals made by the ARJK could adversely impact Pakistan's consistent and staunch support for the right of the Kashmiri people to determine their own future or result in a dilution of Pakistan's stance on Kashmir at the United Nations.

To my mind the grant of political and constitutional rights to the people of Azad Jammu and Kashmir and Gilgit-Baltistan will not have any negative impact on Pakistan's position internationally. In fact such a measure will enable Pakistan to speak with greater authority and force at the United Nations about the continuing illegal and forcible occupation of Kashmir by India, the draconian laws imposed on the hapless Kashmiri people, massive Indian military and security presence in Indian Occupied Jammu and Kashmir and the blatant and violent repression of the Kashmiri people by India through mass murder, torture, disappearances, extra-judicial killings, illegal detentions and economic strangulation.

Notwithstanding the false and indefensible Indian claim that Jammu and Kashmir is an integral part of India, the fact remains that Kashmir is a multi-dimensional international

issue which remains on the agenda of the UN Security Council. Some of these dimensions are:

- Kashmir is an issue of illegal occupation by the use of force and the enslavement of a freedom loving people through massive and brutal repression.
- Kashmir is an issue of the denial by India of the fundamental human rights of the Kashmiri people including their right to self-determination.
- Kashmir is an issue of crimes against humanity and war-crimes committed by the Indian army and security forces as evidenced by the killing of more than a hundred thousand innocent Kashmiri men, women and children over the last two and a half decades, systematic resort to torture, rape, arbitrary arrests, disappearances, extra judicial killings exposed through the discovery of mass graves in Kashmir, destruction of the homes and livelihood of the people and grave damage to the ecology of the territory. All of these crimes are well documented by international humanitarian organisations like the Amnesty International, Human Rights Watch and numerous others.
- Kashmir is an issue of the violation of the UN Charter, which upholds the right to self-determination of all peoples, and non-implementation of specific UNSC resolutions by a country that has the pretension to aspire to a permanent seat on that august body.
- Kashmir also impinges on the existential issue of water rights and water security of Pakistan, which is already a water scarce country. The very survival of the people of Pakistan is at stake because of reduced water availability. The reduction of water flows into Pakistan is due to the damage being done by India to the watershed areas of the rivers as well as the

building of numerous dams on rivers which flow through Indian occupied Kashmir and fall to the share of Pakistan under the Indus Waters Treaty. India is also planning to divert the water from these rivers away from Pakistan.

None of these or any other international dimensions of the issue of Jammu and Kashmir will be impacted by the grant of political and constitutional rights to the people of Azad Jammu and Kashmir and Gilgit-Baltistan.

The empowerment of the people of Azad Jammu and Kashmir and Gilgit-Baltistan would have a salutary effect on the resentment felt by many in Azad Jammu and Kashmir and in Gilgit-Baltistan over their limited participation in decisions about their own affairs.

I would also like to note that the proposed texts presented in this book are not being offered as the only or the best way to empower the people of Azad Jammu and Kashmir and Gilgit-Baltistan and to devolve to them political and constitutional rights to which they are entitled. The Association is proposing a path to achieve that objective. It is possible to argue that there may be other and perhaps better ways. This book is designed to start a debate on this subject which has long been due.

The Association plans to provide copies of the book to the Federal Government and to the governments of Azad Jammu and Kashmir and Gilgit-Baltistan, members of the legislatures, leaders of political parties, the media, civil society organisations, constitutional and legal experts, think tanks and political commentators and analysts for their views, comments and specific suggestions.

I would hope that all those who believe in the empowerment of the Kashmiri people will engage in an open, friendly and constructive public debate on this detailed proposal to provide fundamental political and constitutional rights to the People of Azad Jammu and Kashmir and Gilgit-Baltistan as the Kashmiris in Indian Occupied Jammu and Kashmir valiantly wage their noble struggle to secure their right to self-determination.

Inam ul Haque is a former Foreign Minister of Pakistan.

پیش لفظ

انعام الحق
سابق وزیر خارجہ پاکستان

ا۔ آپ کے ہاتھوں میں موجود کتاب ایسوسی ایشن فار دی رائٹس آف دی پیپل آف جموں اینڈ کشمیر (اے۔آر۔جے ۔کے) نے تالیف کی ہے۔جو ایک غیر سرکاری، غیر کاروباری رضا کارانہ تنظیم ہے اور ریاست جموں وکشمیر کے لوگوں کے ناقابل تنسیخ حق خودارادیت کے حصول کے لیئے قائم کی گئی ہے جس کا وعدہ اقوام متحدہ کی سلامتی کونسل اور ہندوستان و پاکستان نے کر رکھا ہے۔اقوام متحدہ کے زیر اہتمام آزادانہ اور غیر جانبدارنہ رائے شماری کے زریعہ اس حق کے حصول تک یہ تنظیم ریاست کے آزاد حصوں آزاد جموں وکشمیر اور گلگت بلتستان کے لیئے مکمل سیاسی اور آئینی حقوق حاصل کرنے کے لیئے کوشاں ہیں۔

چنانچہ جون 2010 میں اپنے قیام سے لے کر یہ تنظیم پاکستان کے ریاست جموں وکشمیر سلامتی کونسل اور یو۔این کمیشن برائے ہندوستان و پاکستان کی قراردادوں کے تحت حل کے وعدہ کا اعادہ کرتی چلی آ رہی ہے۔اس نے ایسی مخصوص تجاویز بھی مرتب کی ہیں جو اقوام متحدہ کے زیر اہتمام پوری ریاست کے فیصلہ ہونے تک آزاد کشمیر اور گلگت بلتستان کو سیاسی اور آئینی حقوق و مراعات کی حد تک پاکستان کے باقی صوبوں کے برابر بنایا جائے اس مقصد کے حصول کے لیئے اس تنظیم نے پاکستانی، آزاد کشمیر اور گلگت بلتستان کی سول سوسائیٹی کے نمائندوں کے ساتھ مل کر متعدد سیمینارز اور مباحثوں کا اہتمام بھی کیا ہے تا کہ وسیع البنیاد اتفاق

رائے کو پروان چڑھایا جائے۔

سیمنارز اور مباحثوں میں مثبت خیالات کا اظہار کیا گیا ہے اور شرکاء نے بہت سے تعمیری خیالات اور تجاویز پیش کیں۔ ان مباحثوں کی بناء پر ایسوی سی ایشن نے آئین پاکستان، آزاد جموں وکشمیر کے عبوری آئین ایکٹ 1974 اور گلگت بلتستان (ایمپاورمنٹ اور سیلف گورنمنٹ) آرڈر 2009 میں مجوزہ ترمیمات کی صورت سب تجاویز کی وضاحت کے ساتھ بہتر صورت گری کی ہے جو اس کتاب کا (اہم حصہ آئین پر مشتمل ہے) مخصوص حصہ ہے۔

ایسوسی ایشن اور خاص طور پر اس کے چیئرمین جسٹس (ر) سید منظور حسین گیلانی جو کہ ایک جسٹس اور آزاد جموں وکشمیر کے سابق چیف جسٹس ہیں، اور اے آر جے کے کی مجلس عاملہ کے رکن سفیر آصف ایزدی قابل ستائش ہیں۔ جنہوں نے یہ کتاب تخلیق کی ہے جو آزاد جموں وکشمیر اور گلگت بلتستان کے عوام کے تحفظات کو دور کرنے کے لیئے مخصوص قانونی متن فراہم کرتی ہے۔

یہ ممکن ہے بلکہ غالب امکان ہے کہ کشمیر کاز کے کچھ مخلص اور اصول پسند حمایتی یہ محسوس کریں کہ اگر کتاب میں دی گئی تجاویز پر عمل درآمد کیا گیا تو مسئلہ میں دلچسپی رکھنے والے فریق اسے پاکستان کی طرف سے جوں کی توں پوزیشن برقرار رکھنے سے تعبیر کریں گے۔ وہ دلیل دے سکتے ہیں کہ حقیقتاً مجوزہ ترامیم یہ تاثر قائم کریں گی کہ پاکستان نے عملاً لائن آف کنٹرول کے ساتھ جموں وکشمیر کی تقسیم کو تسلیم کرلیا ہے۔

مجھے یقین ہے کہ ایسی دلیل درست نہیں بلکہ غیر منصفانہ ہوگی اس لیئے کہ اے آر جے کے کا بنیادی مقصد اقوام متحدہ کی سلامتی کونسل کی قراردادوں کے مطابق جموں کشمیر کے عوام کے لیئے حق خودارادیت کے حصول کے لیئے کام کرنا ہے۔تجویز کیئے گئے انتظامات اپنی حقیقت میں خالصتاً عبوری ہیں اور اقوام متحدہ کے زیر اہتمام استصواب رائے کے زریعہ ظاہر ہونے والی جموں وکشمیر کے عوام کی خواہشات کے مطابق ان پر نظر ثانی کی جائے گی ،تبدیل کیا جائے گا یا ان کو مکمل طور پر از سر نو تحریر کیا جائے گا۔اس کتاب میں شامل تجاویز کسی صورت اقوام متحدہ کی سیکورٹی کونسل کی طرف سے موجودہ جموں کشمیر کے عوام کے حق خودارادیت سے متصادم نہیں ۔اس سلسلہ میں کسی ابہام اور غلط فہمی کو دور کرنے کے لیئے آئین پاکستان کے آرٹیکل 257 میں خصوصی اضافے تجویز کیئے گئے ہیں۔

ایک اہم مسئلہ جس کی طرف توجہ دینی لازمی ہے وہ یہ ہے کہ آیا اے آر جے کے کی تخلیق کردہ تجاویز کشمیری عوام کے اپنے مستقبل کا خود فیصلہ کرنے کے حق کے لیئے پاکستان کی مسلسل اور پختہ حمایت پر برا اثر تو نہیں ڈالیں گی یا اقوام متحدہ میں کشمیر پر پاکستان کے موقف کو کمزور تو نہیں کریں گی؟

میرے خیال میں آزاد جموں وکشمیر اور گلگت بلتستان کے عوام کو ان کے سیاسی اور آئینی حقوق کی فراہمی سے بین الاقوامی سطح پر پاکستان کے موقف پر کوئی منفی اثر نہیں ڈالے گی۔حقیقت یہ ہے کہ اس طرح کا اقدام انڈیا کی طرف سے کشمیر پر غیر قانونی اور بزور قبضہ بے بس کشمیری عوام پر عائد سخت قوانین، انڈیا کے زیر قبضہ جموں کشمیر میں بھارتی فوجی سیکورٹی فورسز کی موجودگی اور انڈیا کی طرف سے وسیع پیمانہ پر قتل، ازیت، اغوا، ماورائے قانون قتل،

غیر قانونی راستوں اور اقتصادی حقوق کی عدم فراہمی کے زریعہ کشمیر عوام کو واضح اور پر تشدد طریقہ پر مغضوب کرنے کی کوشش کے بارے میں پاکستان کو اقوام متحدہ میں زیادہ اختیار اور قوت کے ساتھ بولنے کے قابل بنائے گا۔

حقیت یہ ہے کہ انڈیا کے غلط اور نا قابل دفاع وعدے کے برعکس کہ کشمیر انڈیا کا ایک لازمی حصہ ہے، کشمیر ایک ہمہ جہتی بین الاقوامی مسئلہ ہے جو کہ اقوام متحدہ کی سلامتی کونسل کے ایجنڈا پر موجود ہے۔ اس کے کچھ پہلو یہ ہیں۔

۱۔ کشمیر طاقت کے استعمال کے زریعہ غیر قانونی قبضہ اور آزادی پسند کشمیری عوام پر وسیع اور حشیانہ مظالم کے زریعہ غلام بنانے کا مسئلہ ہے۔

۲۔ کشمیر انڈیا کی طرف سے کشمیریوں کے بنیادی حقوق بشمول حق خودارادیت کے انکار کا مسئلہ ہے۔

۳۔ کشمیر انسانیت کے خلاف جرائم اور انڈین افواج اور سیکورٹی فورسز کی طرف سے جنگی جرائم جن کا ثبوت گزشتہ اڑھائی دہائیوں میں ایک لاکھ سے زائد معصوم کشمیری مردوں، عورتوں اور بچوں کے قتل، منظّم طریقہ سے اذیت رسانی، زنا بالجبر، من مانی گرفتاریاں، اغواء کشمیر میں اجتماعی قبروں کی دریافت سے ظاہر ہونے والے ماورائے قانون قتل، لوگوں کے گھروں اور زوزگار کی تباہی اور علاقہ کی ماحولیات کو شدید نقصان پہنچانے کا مسئلہ ہے۔ یہ سارے جرائم ایمنسٹی انٹرنیشنل اور ہومین رائٹس واچ جیسی انسانی حقوق کی تنظیموں کے پاس دستاویزی شکل میں محفوظ ہیں۔

۴۔ کشمیر میثاق اقوام متحدہ کی خلاف ورزی کا مسئلہ ہے جو کہ تمام قوموں کے حق

خودارادیت کی حمایت کرتا ہے اور یہ ایک ایسے ملک کی طرف سے اقوام متحدہ کی سلامتی کونسل کی خاص قرارداد پر عمل درآمد نہ کرنے کا مسئلہ ہے جو اس ذی وقار ادارے میں مستقل نشست حاصل کرنے کی خواہش کا دعویدار ہے۔

۵۔ کشمیر پاکستان کے پانی کے حقوق اور پانی کے تحفظ کے مسائل پر بھی اثر انداز ہے جو کہ پہلے ہی پانی کی کمی کا شکار ملک ہے۔ پانی کی کم فراہمی کے باعث پاکستانی عوام کی بقاء ہی خطرے سے دوچار ہے۔ پاکستان کی طرف بہنے والے پانی کی کمی کے سبب پانی کے بہاؤ کے حامل دریائی علاقوں کو انڈیا کی طرف سے نقصان پہچایا جا رہا ہے۔ اس نقصان کی وجہ انڈیا کے زیر قبضہ کشمیر میں سے بہتے ہوئے ان دریاوں پر بے شمار ڈیموں کی تعمیر ہے جن کے بہاؤ سے انڈس معاہدے کے تحت پاکستان کو حصہ ملتا ہے۔ انڈیا ان دریاؤں کے پانی کا رخ پاکستان سے دور موڑنے کی منصوبہ بندی بھی کر رہا ہے۔

آزاد جموں وکشمیر اور گلگت بلتستان کے عوام کو پاکستان میں سیاسی اور آئینی حقوق دینے سے جموں کشمیر کے مسئلہ کے ان پہلووں یا کسی بھی اور بین الاقوامی پہلو پر کوئی اثر نہیں پڑے گا۔

آزاد جموں وکشمیر اور گلگت بلتستان کے عوام کو بااختیار بنانے کا عمل آزاد جموں کشمیر اور گلگت بلتستان میں بہت سے لوگوں کی ان کے اپنے معاملات کے فیصلوں میں ان کی محدود شرکت پر محسوس کی جانے والی خفگی کے خلاف دورس اور مفید اثر پڑے گا۔

میں اس بات پر بھی توجہ دلانا چاہوں گا کہ اس کتاب میں پیش کردہ متن آزاد جموں و کشمیر اور گلگت بلتستان کے عوام کو بااختیار بنانے کے حق کے واحد اور بہترین حل کے طور پر پیش نہیں کیئے جا رہے۔

ایسوسی ایشن تو مقصد کے حصول کے لیئے ایک راستہ تجویز کر رہی ہے۔ یہ دلیل پیش کی جا سکتی ہے کہ اس کے علاوہ بھی دوسرے اور شاید بہتر راستے ہو سکتے ہیں۔ اس کتاب کو اس موضوع پر مباحثہ کا آغاز کرنے کے لیئے ترتیب دیا گیا ہے جو کہ طویل عرصہ سے ہونا باقی ہے۔

ایسوی ایشن اس کتاب کی نقول وفاقی حکومت، آزاد جموں و کشمیر اور گلگت بلتستان کی قانون اساز اسمبلیوں کے ارکان، سیاسی جماعتوں کے رہنماؤں، میڈیا، سول سوسائٹی کی تنظیموں، آئینی اور قانونی ماہرین، تھنک ٹینکس اور سیاسی تبصرہ کاروں اور تجزیہ نگاروں کو ان کے خیالات، تبصرہ اور خاص تجاویز کے لیئے فراہم کرنے کا اہتمام کر رہی ہے۔

مجھے یقین ہے کہ وہ سب افراد اور ادارے جو کشمیری عوام کو اختیار دینے پہ یقین رکھتے ہیں آزاد جموں و کشمیر اور گلگت کے عوام کو بنیادی سیاسی اور آئینی حقوق فراہم کرنے کے لیے ان تفصیلی تجاویز پر کھلے، دوستانہ اور تعمیری مباحثہ میں شامل ہوں گے جبکہ انڈیا کے زیر قبضہ جموں و کشمیر کے عوام اپنے لیے حق خودارادیت کے حصول کے لیے ایک شاندار بہادرانہ جدوجہد کر رہے ہیں۔

☆☆☆☆☆

INTRODUCTION

Justice (Retd.) Syed Manzoor Hussain Gilani

When British rule in India ended in August 1947, Jammu and Kashmir was a State with a Muslim majority under the rule of a Hindu Maharaja. He "acceded" to India in October 1947 against the spirit of the partition plan and the Indian Independence Act 1947 and in defiance of the wishes of the overwhelming majority of the people of the state.

2. The state had a total area of 84,471 square miles. Nearly one-third of the territory, an area of 33,958 square miles, was liberated by the people in 1947. The liberated territory comprises two parts: Azad Jammu and Kashmir; and Gilgit-Baltistan, respectively. Azad Jammu and Kashmir has an area of 4,144 square miles and a resident population of 3.5 million, with 1.6 million living in the rest of the country and overseas. Gilgit-Baltistan has an area of 29,814 square miles and a resident population of 1.4 million. In addition 1.5 million people from Gilgit-Baltistan reside in the rest of Pakistan and in foreign countries.

3. After liberation, an independent revolutionary Government was set up in Azad Jammu and Kashmir through a proclamation on 24 October 1947 and Gilgit-Baltistan acceded to Pakistan. But under resolutions of the United Nations Commission for India and Pakistan (UNCIP), the administration of these territories was entrusted to the Pakistan high command pending the achievement of the right of self-determination under UN resolutions. The territories of the state under the control of Pakistan and India, respectively, were demarcated through the cease-fire agreement of July 1949 between the two countries.

4. Although the liberated territories of the state are not expressly named in Article 1 of the Constitution of Pakistan which defines the country's territories, they form part of Pakistan under clause (2) (d) of this Article which states that Pakistan's territories include "*such States and territories as are or may be included in Pakistan, whether by accession or otherwise.*" Both Azad Jammu and Kashmir and Gilgit-Baltistan are territories "otherwise" included in Pakistan. For administrative purposes, they are treated at par with provinces under Cabinet Division's Notification dated 11 May 1971. But they cannot formally accede to Pakistan as provinces in view of Pakistan's commitment to and obligations under the resolutions of UNCIP and the UN Security Council which declare that the final status of Jammu and Kashmir is to be determined through a plebiscite held under UN auspices.

5. The UNCIP Resolutions do not visualise any particular mechanism for the governance of these territories. There is only a vague reference to their administration in the resolution adopted by UNCIP on 13 August 1948. Para 3, section A of Part II (Truce Agreement) of that resolution states as follows: "Pending a final solution, the territory evacuated by the Pakistani troops will be administered by the local authorities under the surveillance of the Commission." But the Governments of Azad Jammu and Kashmir and Gilgit-Baltistan cannot be considered to be such "local authorities" because they can attain that status only when Pakistani troops have evacuated the liberated territory under arrangements for holding a plebiscite. Pakistan has not withdrawn its troops because India at first stalled and later reneged completely on its international commitment to allow an impartial plebiscite under UN auspices.

6. Till the time that the plebiscite is held, Azad Jammu and Kashmir and Gilgit-Baltistan are territories of Pakistan for all practical purposes. Every mode of democratic governance which empowers the people of these territories can be adopted. It is against this background that the governance of these territories has been undergoing change since 1947.

7. The Government of Pakistan has governed Azad Jammu and Kashmir through different enactments promulgated from time to time: Acts of 1960, 1964, 1968 and 1970. The latest enactment which is presently in force is the Azad Jammu and Kashmir Interim Constitution Act, 1974, which was passed by the Legislative Assembly of Azad Jammu and Kashmir and approved by the Government of Pakistan.

8. The governance of Gilgit-Baltistan, formerly known as the Northern Areas, was regulated through the Frontier Crimes Regulation (FCR) 1901 and the Legal Framework Order 1994. It is now being governed under the Gilgit-Baltistan (Empowerment and Self Governance) Order 2009, which was issued by the President of Pakistan after a process of informal consultation with local leaders. This Order is similar to the Azad Jammu and Kashmir Interim Constitution Act, 1974, with the difference that the President and Prime Minister under the AJK constitution have been designated as Governor and Chief Minister in Gilgit-Baltistan.

9. The Interim Constitution Act of AJK can be amended by a majority of the total membership of the Council and the Legislative Assembly in a joint sitting but two sections which guarantee certain powers to the Pakistan Government can

only be amended with its prior consent. As regards the Gilgit-Baltistan (Empowerment and Self-Governance) Order, the sole power of amendment vests in the Pakistan Government.

10. The AJK Interim Constitution Act 1974 and the Gilgit-Baltistan (Empowerment and Self Governance) Order 2009 formally visualise a three-tier constitutional structure:

- The first tier is the Government of Pakistan which is vested with all executive and legislative authority in matters of defence, foreign affairs (including foreign trade and foreign aid), currency, and the implementation of UNCIP Resolutions.
- The Azad Jammu and Kashmir Council and the Gilgit-Baltistan Council, respectively, form the second tier. They have exclusive legislative and executive authority over matters included in the "Council Legislative List" which comprises largely subjects that under the Constitution of Pakistan belong to the Federation. The Council for both the territories functions in effect as the Federal Legislature as well as the Federal Government.
- The third tier consists of the Legislative Assemblies and Governments of Azad Jammu and Kashmir and Gilgit-Baltistan, respectively. The AJK Legislative Assembly has exclusive power to make laws on matters not listed in the Council Legislative List, while the Gilgit-Baltistan Assembly has legislative power over the "Assembly Legislative List," all residuary powers belonging to the Pakistan Government.

11. Although there is a formal division of powers between the first two tiers, i.e. Government of Pakistan and the Councils of AJK and Gilgit Baltitsan, the powers of the Councils are also for all practical purposes exercised by the Government of Pakistan. There are three main reasons for this:

a) The Pakistan Government virtually controls the Councils because it has seven of the fifteen votes in this body and only needs the support of one other member for a majority; and
b) The executive authority of the Council is exercised by the Prime Minister of Pakistan as Chairman of the Council.
c) Decision-making by the Council is routed through the Government of Pakistan, which under the Rules of Business of 1973 means the Ministry of Kashmir and Gilgit-Baltistan Affairs.

Besides, the Chairman of the Council (i.e. the Prime Minister of Pakistan) is not answerable before the Parliament or the judiciary of Pakistan or any other institution of the country.

12. As a result, elected representatives of Azad Jammu and Kashmir and Gilgit-Baltistan have little say in policy and decision-making on subjects controlled by the Council, i.e. the Council Legislative List. This List, in any case, includes not just those subjects which are truly federal in nature such as posts and telegraph and banking, but several others that can best be handled locally by AJK and Gilgit-Baltistan, such as the development of industries, tourism and the jurisdiction of courts.

13. Even with respect to matters which fall within the

responsibility of the Government of Azad Jammu and Kashmir or Gilgit-Baltistan, effective authority is exercised to a large extent by senior members of the civil service appointed directly by the Government of Pakistan, such as the Chief Secretary, Additional Chief Secretary (Development), Inspector General of Police, Finance Secretary, Health Secretary, Auditor General and Accountant General.

14. Although Azad Jammu and Kashmir and Gilgit-Baltistan are treated in many respects as administrative units of Pakistan, they do not have many of the constitutional rights and powers enjoyed by the provinces. The two territories do not have any seats in the Pakistan Parliament or in the institutions established by the Constitution for consultation and coordination between the Federation and its component units, such as the Council of Common Interests, the National Economic Council and the National Finance Commission. This means that although Azad Jammu and Kashmir and Gilgit-Baltistan are stake-holders in all matters falling within the ambit of these bodies and are affected by their decisions and policies, they have no say in their decisions. Similarly, Azad Jammu and Kashmir and Gilgit-Baltistan are also not represented on the Indus River System Authority (IRSA) and unlike the Provinces, they do not get any share of the profits earned from the hydro-electric power stations located in their territory.

15. To sum up, the present constitutional and administrative system of Azad Jammu and Kashmir and Gilgit-Baltistan is such that it has retarded the development of representative institutions, made local governments largely irrelevant and concentrated a lot of power in the hands of non-representative and non-accountable

authorities. The two territories have fallen a long way behind the provinces in the development of democratic and representative government. They have also not benefited from the Eighteenth Amendment to the Constitution of Pakistan which has set new standards for enhanced local autonomy and parliamentary control over the government. This has generated resentment in the two liberated territories and led to intensified calls for enhanced local autonomy and more robust representative institutions. Meeting this demand is imperative not only to ensure the democratic rights of the local population but also because of the need to provide a model for territories still under Indian occupation.

16. The sole reason for the "democratic deficit" in Azad Jammu and Kashmir and Gilgit-Baltistan is that the Government of Pakistan has throughout scrupulously refrained from taking any steps that could be seen as in any way altering the international status of the State of Jammu and Kashmir as disputed territory whose final status is yet to be determined in accordance with the relevant resolutions of the UN Security Council and UNCIP, or as affecting Pakistan's obligations and commitments under those resolutions. This policy has also resulted more or less in "freezing" the constitutional and democratic evolution of the liberated territories.

17. The Association for the Rights of the people of Jammu and Kashmir (ARJK) was set up in June 2010 with the aim of promoting the achievement of self-determination by the people of the state in accordance with UN resolutions; and, pending the attainment of that goal, to secure full constitutional and democratic rights for the people of the liberated territories. The Association is of the considered

opinion that a way can be found to give these rights to the people of AJK and Gilgit-Baltistan without altering the current international status of the state of Jammu and Kashmir, without diluting Pakistan's commitments and obligations under the UN resolutions and without compromising the right of the people of the state to self-determination. In the view of the Association, it would be necessary for this purpose to make constitutional amendments that would, pending the achievement of the right of self-determination by the State as a whole as provided in the United Nations resolutions:

a) Place Azad Jammu and Kashmir and Gilgit-Baltistan at par with the provinces of Pakistan in respect of their autonomy and other powers and privileges, including representation in the Parliament of Pakistan; and
b) Reinforce Pakistan's commitment to the settlement of Kashmir in accordance with the resolutions of the UN Security Council and UNCIP.

These constitutional amendment would be of a purely interim nature and would be reviewed in accordance with Article 257 of the Constitution of Pakistan, which states that "when the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and that State shall be determined in accordance with the wishes of the people of that State."

18. ARJK has held several meetings with different segments of the civil society, especially from Azad Jammu and Kashmir and Gilgit-Baltistan, to discuss these issues and to devise appropriate measures to guarantee to the people of

these territories greater autonomy and a full opportunity to participate in national decision-making. The following broad views have emerged from these discussions:

- Until a final settlement of Jammu and Kashmir in accordance with UN resolutions, the status of Azad Jammu and Kashmir and Gilgit-Baltistan as separate entities within the State of Jammu and Kashmir, as well as the international status of the State as disputed territory whose final status is yet to be determined, should remain unchanged and the two territories should not be made provinces of Pakistan.
- Pending the implementation of the UN resolutions and the exercise by the people of Jammu and Kashmir of their right to self-determination through a plebiscite under UN auspices, Azad Jammu and Kashmir and Gilgit-Baltistan should provisionally be given at least the same quantum of autonomy as given to the provinces of Pakistan, as well as other constitutional powers and privileges enjoyed by the provinces, including representation in the Parliament, due representation in the Council of Common Interests, NEC and NFC, and rights over water and hydro-electric power.
- An amendment should be made in the Constitution of Pakistan to enshrine Pakistan's commitment to respect and implement UN Security Council Resolutions, including Security Council Resolutions of 30 March 1951 and 24 January 1957 which declared that "the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the

people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations".

19. ARJK has has already circulated a paper on proposed amendments in the Constitution of Pakistan for empowering the liberated territories at the Federal level and for bringing them in the mainstream of national life pending a final resolution of the Kashmir issue. These proposed amendments are reproduced as Attachment "A".

20. The salient features of the proposed amendments in the Pakistan Constitution are the following:

- It should be expressly stated in the constitution that the final disposition of the State of Jammu and Kashmir shall be made in accordance with UN Security resolutions calling for a free and impartial plebiscite. In addition, a new Article may be added in the Chapter on Principles of Policy stating that the State should make all necessary endeavours at the international level for a settlement of Kashmir in accordance with the UN resolutions.
- AJK and Gilgit-Baltistan should be given the rights and powers enjoyed by the provinces but without making them provinces. For this purpose, the President should be empowered to extend the relevant provisions of the Constitution to these territories with the concurrence of the Governments of AJK and Gilgit-Baltistan.
- AJK and Gilgit-Baltistan should have seats in the Parliament of Pakistan and should participate in the election of the President of Pakistan. Members

representing the two territories in the Parliament could be elected indirectly by the respective Assemblies.

- AJK and Gilgit-Baltistan should be given representation in the National Economic Council, the National Finance Commission and the Council of Common Interests and should get royalty and a share of net profit on the generation of hydro-electricity and natural gas.

21. ARJK is of the view that in addition to amendments in the Constitution of Pakistan, several changes are also required in the internal governance of Azad Jammu and Kashmir and Gilgit-Baltistan to give them enhanced executive and legislative powers on the lines of the Eighteenth Amendment. As the two parts of the liberated territories of the disputed state of Jammu and Kashmir require separate but similar constitutional and governance systems, proposed amendments in the Azad Jammu and Kashmir Interim Constitution Act 1974 and the Gilgit-Baltistan (Empowerment and Self Governance) Order are listed separately in Attachments "B" and "C".

22. The salient features of the proposed amendments in the Azad Jammu and Kashmir Interim Constitution Act 1974 and the Gilgit-Baltistan (Empowerment and Self Governance) Order are the following:

- The current three-tier constitutional structure consisting of the Government of Pakistan, the Council and the Assembly / Government of AJK / Gilgit-Baltistan should be replaced by a two-tier federal system comprising the Federal Government/Parliament and the Assembly /

Government of the two liberated territories. This would entail the abolition of the Council and the transfer of its legislative and executive powers to the Federal Government and the Parliament, respectively.

- The Federation should have powers over the subjects contained in the Federal Legislative List as amended by the Eighteenth Amendment, while other powers would belong to the two territories respectively.
- With the abolition of the Council, the President of Azad Jammu and Kashmir will be elected by the members of the Assembly.
- The directly elected members of the Assembly will elect the refugee State Subjects for their reserved seats in the Assembly.
- If the Speaker is unable to act as President of AJK in the President's absence, the Chief Justice of Azad Jammu and Kashmir should act in that capacity.
- The President/Governor may ask the Prime Minister/Chief Minister to obtain a vote of confidence, if he appears to have lost the confidence of the Assembly.
- The number of Ministers should not exceed eleven percent of the total membership of the Assembly.
- Provision may be made for the appointment of two Advisors to the Prime Minister/Chief Minister, with the right to speak on the floor of the Assembly.
- A caretaker Government should be appointed before each election to the Assembly.
- All judicial appointments at the high level should be made through a Judicial Commission.

- The Council of Islamic Ideology and the Shariat Court are to be given constitutional protection.
- To ensure parliamentary supremacy, the President/Governor would be bound to act on the advice of Prime Minister/Chief Minister within a stipulated time. The President/Governor would similarly have to act upon the advice given by the Supreme Judicial Council.
- The acquisition of immovable property for purposes of the Federal Government should have effect subject to final determination of the Kashmir issue.
- The pay, privileges and tenure of the judges of superior Courts of Gilgit-Baltistan should be made secure.
- The Gilgit-Baltistan Assembly should be empowered to amend the Gilgit-Baltistan Governance Order, 2009 with a two-thirds majority. Amendment of those provisions which relate to the Government of Pakistan should only be made after approval of the Government of Pakistan.
- Two new fundamental rights (right to information and right to education) should be added in the list of fundamental rights.

The rest are minor amendments in other provisions of the Constitution to make them compatible with the major amendments.

23. I would like to place on record my profound thanks for the many valuable ideas and suggestions I have received in the course of my discussions, both formal and informal, with the members of the civil society, legal experts, and

political analysts. Their input has been of immense help in preparing the proposals being presented in this book. I am also grateful for the unstinting cooperation that I have received at all times from the members of the Executive Committee of the ARJK, particularly Ambassador Asif Ezdi for his availability in providing thoughtful insight at all stages of drafting, Sheikh Muhammad Junaid for arranging the Urdu translation of English articles, Mr Afzal Ali Shigri for making the printing of this book possible and Syed Salahuddin for developing the Association's website. I look forward to their continued support in carrying forward the task that the Association has undertaken.

24. The Association hopes that these proposals will initiate a debate in the political parties and the civil society on restructuring the constitutional system and improving governance of the two territories in accordance with the aspirations of the people. The aim of the Association is to facilitate the emergence of a consensus on these issues which can then be given legal effect through appropriate legislation.

Justice (Retd.) Syed Manzoor Hussain Gilani is Chairman of the Association for the Rights of the People of Jammu and Kashmir (ARJK).

تعارف

جسٹس (ریٹائرڈ) سید منظور حسین گیلانی

1947 میں جب انڈیا سے برطانوی راج ختم ہوا تو اس وقت جموں وکشمیر ایک مسلم اکثریتی ریاست تھی جس کا حکمران ہندو مہاراج تھا جس نے اکتوبر 1947 میں ایک واضح اکثریتی ریاستی عوام کی خواہشات کے برعکس اور تقسیم ہند ایکٹ 1947 کی صریحاً خلاف ورزی کرتے ہوئے ریاست کا الحاق انڈیا کے ساتھ کر دیا۔

ریاست جموں وکشمیر کا مجموعی رقبہ 84471 مربع میل ہے جس کے 33958 مربع میل میں سے تقریباً ایک تہائی علاقہ تو 1947 میں عوام نے آزاد کرا لیا یہ آزاد علاقہ دو حصوں آزاد جموں وکشمیر اور گلگت بلتستان پر مشتمل ہے۔ آزاد کشمیر کا رقبہ 4144 مربع میل ہے جس کی رہائشی آبادی 3.5 ملین ہے۔ جن میں سے 1.6 ملین لوگ ملک کے دیگر حصوں اور سمندر پار رہائش پذیر ہیں جبکہ گلگت بلتستان کا رقبہ 29814 مربع میل ہے جس کی رہائشی آبادی 1.4 ملین ہے۔ گلگت وبلتستان کے مزید 1.5 ملین لوگ پاکستان و دیگر بیرونی ممالک میں رہائش پذیر ہیں۔

آزادی کے بعد 24/اکتوبر 1947 کو ایک اعلامیہ کے زریعے آزاد جموں وکشمیر میں ایک آزاد انقلابی حکومت قائم کر دی گئی۔ جبکہ گلگت بلتستان کا الحاق پاکستان کے ساتھ کر دیا گیا لیکن اقوام متحدہ کے کمیشن برائے انڈیا و پاکستان (UNCIP) کی قراردادوں کے مطابق

ان علاقوں کا نظم ونسق پاکستان کے ہائی کمان کے سپرد کر دیا گیا جبکہ حق خودارادیت کا حصول ملتوی رہا۔ پاکستان اور ہندوستان کے زیر انتظام ان علاقوں کے مابین 1949 کے جنگ بندی کے معائدے کے تحت حد بندی کر دی گئی۔

اگر چہ آئین پاکستان کے آرٹیکل (1) جو ملک کی علاقائی حدود کی تعریف بیان کرتا ہے نے آزاد شدہ علاقوں کا واضح طور پر نام نہیں لیا گیا ہے لیکن وہ اس آرٹیکل کی کلاز (2)(d) کے تحت پاکستان کا حصہ ہیں جس کے مطابق ''پاکستان کی علاقائی حدود میں ایسی ریاستیں اور علاقے شامل ہیں جو کہ پاکستان میں شامل ہیں یا الحاق پاکستان یا دیگر صورتوں میں شامل ہو سکتے ہیں''۔ آزاد کشمیر اور گلگت بلتستان دونوں وہ علاقے ہیں جو ''دیگر صورتوں'' میں پاکستان کے ساتھ شامل ہیں۔ انتظامی مقاصد کے لیئے کیبنٹ ڈویژن کے نوٹیفکیشن محررہ 11 رمئی 1971 کے تحت ان کا درجہ صوبوں کے برابر ہے۔ لیکن اقوام متحدہ کے کمیشن برائے انڈیا و پاکستان اور سلامتی کونسل کی قراردادوں کے تحت ریاست جموں وکشمیر کی حیثیت کا حتمی تعین اقوام متحدہ کے زیر انتظام استصواب رائے سے ہونا باقی ہے۔ اس لیئے ان کا الحاق رسمی طور پر پاکستان کے ساتھ نہیں ہوسکتا۔

(UNCIP) کی قراردادیں ان علاقوں کی حکومت کے لیئے کسی خاص طریقہ کار کو بیان نہیں کرتی ہیں۔ 13 راگست 1948 کو پاس کی گئی (UNCIP) کی قراردادوں میں ان علاقوں کے لیئے محض ایک مبہم سا حوالہ ہے۔ قراردادوں کے پارٹ II کے پیرا گراف 3، سیکشن A معائدہ جنگ بندی کے مطابق:

''حتمی حل کے زیر التو ہونے کی وجہ سے پاکستانی فوجیوں کے خالی کردہ علاقوں کا نظم

ونسق کمیشن کے زیرنگرانی مقامی حکام چلائیں گے'' لیکن آزاد جموں وکشمیر اور گلگت بلتستان کی حکومتوں کو مقامی حکام قرار نہیں دیا جا سکتا کیونکہ انہیں یہ حیثیت اسی وقت حاصل ہوگی جب استصواب رائے کے انعقاد کے لیئے ہونے والے انتظامات کے تحت پاکستان آزاد علاقوں سے اپنی فوج ہٹالے گا۔ پاکستان نے اپنی افواج واپس نہیں بلائیں اس لیئے کہ انڈیا نے پہلے اقوام متحدہ کے زیر اہتمام غیر جانبدارنہ استصواب رائے کی اجازت دینے کے بین الاقوامی وعدے کی تکمیل میں رکاوٹ ڈالی اور پھر اس سے یکسر انکار کر دیا۔

جب تک استصواب رائے ہو نہیں جاتا آزاد جموں وکشمیر اور گلگت بلتستان کے علاقے عملاً پاکستانی علاقے ہیں اور ہر وہ جمہوری طرز حکومت جو ان علاقوں کے عوام کو بااختیار بنائے اختیار کیا جا سکتا ہے۔ اس پس منظر میں ان علاقہ جات میں 1947 سے مختلف طریقہ کار کے تحت نظم حکومت تبدیل ہوتا چلا آ رہا ہے۔

حکومت پاکستان نے آزاد جموں وکشمیر کا حکومتی نظم ونسق وقتاً فوقتاً نافذ کیئے گئے مختلف ایکٹس 1960، 1964، 1968 اور 1970 کے زریعہ قائم رکھا۔ آخری ایکٹ جو اس وقت نافذ العمل ہے وہ آزاد جموں وکشمیر اسمبلی کا پاس کردہ اور حکومت پاکستان کا منظور کردہ آزاد جموں وکشمیر کا عبوری ایکٹ 1974 ہے۔

گلگت وبلتستان جسے شمالی علاقہ جات کہا جاتا ہے کو FCR، 1901 اور L.F.O، 1994 کے زریعے چلایا جا رہا تھا اب اس کا حکومتی نظم نسق صدر پاکستان کی طرف سے مقامی رہنماوں کے ساتھ غیر رسمی مشاورت کے ساتھ جاری کیئے جانے والے گلگت

بلتستان ایمپاورمنٹ اینڈ سیلف گورننس آرڈر 2009 کے تحت چلایا جارہا ہے۔فرق صرف اتنا ہے کہ آزاد جموں وکشمیر کے عبوری آئین کے تحت صدر اور وزیراعظم کے عہدے ہیں جبکہ اس آرڈر کے تحت گلگت بلتستان میں انہیں گورنر اور وزیراعلیٰ کے ناموں سے موسوم کیا گیا ہے۔

آزاد جموں وکشمیر کے عبوری آئینی ایکٹ میں ترمیم کونسل اور قانون اساز اسمبلی کے مشترکہ اجلاس میں مجموعی طور پر ارکان کی اکثریت سے کی جاسکتی ہے۔لیکن دو سیکشنز جو حکومت پاکستان کو کچھ خاص اختیارات دیتے ہیں اس کی پیشگی منظوری کے بغیر ترمیم نہیں ہو سکتی جبکہ گلگت بلتستان ایمپاورمنٹ اینڈ سیلف گورننس آرڈر میں ترمیم کا کلی اختیار حکومت پاکستان کو حاصل ہے۔

آزاد جموں وکشمیر عبوری آئینی ایکٹ 1974 اور گلگت بلتستان (ایمپاورمنٹ اینڈ سیلف گورننس) آرڈر 2009 رسمی طور پر تین درجاتی آئینی ڈھانچے کا تصور دیتے ہیں،

☆ پہلا درجہ حکومت پاکستان جس کو دفاع، خارجہ امور (بشمول غیر ملکی تجارت اور غیر ملکی امداد) کرنسی اور (UNCIP) کی قراردادوں پر عمل درآمد ہے کہ معاملات کا کلی اختیار ہے۔

☆ آزاد جموں وکشمیر کونسل اور گلگت بلتستان بالترتیب دوسرا درجہ ہیں۔ انہیں کونسل کی قانون اساز لیجسلیٹو فہرست میں شامل ان معاملات میں مکمل قانونی و انتظامی اختیارات حاصل ہیں جو کہ زیادہ طور پر ایسے امور پر مشتمل ہے جو پاکستان کے آئین کے تحت فیڈریشن سے تعلق رکھتے ہیں دونوں علاقوں کے لیئے کونسل عملی طور

پر وفاقی قانون ساز ادارے اور وفاقی حکومت کے متبادل ہے۔

☆ تیسرا درجہ آزاد جموں وکشمیر اور گلگت بلتستان کی قانون اساز اسمبلیاں اور حکومتیں ہیں۔ آزاد جموں وکشمیر کی قانون ساز اسمبلی کو ان تمام معاملات میں قانون سازی کرنے کے مکمل اختیارات حاصل ہیں جو کونسل لیجسلیٹو فہرست میں شامل نہیں ہیں۔ جبکہ گلگت بلتستان اسمبلی کو اسمبلی لیجسلیٹو فہرست پر قانون سازی کے اختیارات حاصل ہیں۔ جبکہ باقی ماندہ اختیارات حکومت پاکستان کو حاصل ہیں۔

☆ اگر چہ یہاں پر پہلے دو درجات حکومت پاکستان اور آزاد جموں وکشمیر کونسل اور گلگت و بلتستان کونسل میں رسمی طور پر اختیارات کی تقسیم ہے۔ لیکن عملاً کونسلز کے اختیارات حکومت پاکستان استعمال کرتی ہے اس کی تین بڑی وجوہات ہیں۔

(اے) عملاً کونسل کو حکومت پاکستان ہی کنٹرول کرتی ہے اس لیئے کہ وہ اس ادارہ میں 15 میں سے 7 ووٹ اس کے پاس ہیں اور اکثریت کے لیئے اسے صرف مزید ایک رکن کی حمایت کی ضرورت درکار ہوتی ہے۔

(بی) کونسل کے انتظامی اختیارات کو وزیر اعظم پاکستان بحیثیت چیئرمین کونسل استعمال کرتا ہے۔

(سی) کونسل کی فیصلہ سازی کا راستہ حکومت پاکستان ہی ہے۔ جس کا مفہوم 1973 کے رولز آف بزنس کے مطابق وزارت امور کشمیر اور گلگت و بلتستان ہے۔ علاوہ ازیں چیئرمین کونسل (وزیر اعظم پاکستان) پاکستان

کی پارلیمنٹ، عدلیہ یا کسی بھی اور ادارے کے سامنے جوابدہ نہیں ہیں۔

نتیجتاً آزاد جموں وکشمیر اور گلگت بلتستان کے منتخب نمائندوں کو کونسل کے زیر انتظام آنے والے امور یعنی لیجلیٹو لسٹ پر پالیسی بنانے اور فیصلہ کرنے کا کوئی اختیار نہیں ہے۔ یہ فہرست بہر طور صرف ان امور کو شامل نہیں کرتی ہے جو اپنی نوعیت کے اعتبار سے حقیقتاً وفاقی ہیں مثلاً ڈاک، ٹیلی گراف، اور بینکنگ بلکہ ان امور کو بھی شامل کرتی ہے کہ جن سے آزاد جموں وکشمیر اور گلگت بلتستان کی حکومتیں احسن انداز میں نمٹا سکتی ہیں مثلاً صنعتی ترقی، سیاحت، اور عدالتوں کا دائرہ اختیار وغیرہ۔

حتیٰ کہ ایسے امور جو آزاد جموں کشمیر اور گلگت بلتستان کی حکومتوں کے دائرہ اختیار میں آتے ہیں ان پر بڑی حد تک موثر اختیارات پاکستان کی طرف سے براہ راست تعینات کیے گئے سینئر ارکان سول سروس استعمال کرتے ہیں جیسے کہ چیف سیکرٹری، ایڈیشنل چیف سیکرٹری (ترقیات)، انسپکٹر جنرل پولیس، سیکرٹری مالیات، آڈیٹر جنرل، اور اکاوٹنٹ جنرل ہیں۔

اگرچہ آزاد جموں وکشمیر اور گلگت بلتستان بہت سے حوالوں سے پاکستان کے انتظامی یونٹس کے طور پر مانے جاتے ہیں لیکن ان کو صوبوں جیسے آئینی حقوق و اختیارات حاصل نہیں ہیں۔ دونوں علاقہ جات کی پاکستان کی پارلیمنٹ اور اس کے اجزائے ترکیبی کے درمیان مشاورت یا رابطہ کے لیے آئینی طور پر قائم کیے گئے اداروں مثلاً مشترکہ مفاداتی کونسل، قومی اقتصادی کونسل اور کئی دیگر مالیاتی کمشن میں کوئی نمائندگی نہیں ہے۔ اس کا مطلب یہ ہے کہ اگرچہ آزاد جموں کشمیر ان اداروں کے دائرہ کار میں آنے والے تمام ضروری معاملات کا

ذمہ دار فریق ہے جن کے فیصلے اور حکمت عملیوں کے نتائج ان پر مرتب ہوتے ہیں، مگر ان فیصلہ جات میں ان کی کوئی آراء شامل نہیں ہیں۔ اسی طرح آزاد جموں وکشمیر اور گلگت و بلتستان کو انڈس ریور سسٹم اتھارٹی (IRSA) میں بھی کوئی نمائندگی نہیں ہے اور صوبوں کی طرح اُنہیں اپنے ان علاقوں میں واقع ہائیڈرل پاور سٹیشنز سے حاصل ہونے والے منافع سے کبھی کوئی حصہ نہیں ملتا ہے۔

مختصراً آزاد جموں وکشمیر وگلگت بلتستان کا موجودہ آئینی وانتظامی نظام کچھ ایسا ہے کہ اس نے نمائندہ اداروں کی ترقی کو روک رکھا ہے۔ مقامی حکومتوں کو غیر متعلق بنا کر رکھ دیا ہے اور غیر نمائندہ اور غیر جوابدہ قوتوں کے ہاتھوں میں بہت زیادہ اختیارات دے دیے گئے ہیں۔ اس لئے دونوں علاقہ جات جمہوری اور نمائندہ حکومت کے فروغ میں صوبوں سے کئی زیادہ پیچھے رہ گئے ہیں۔ انہیں آئین پاکستان میں ہونے والی اس 18 ترمیم سے بھی کوئی فائدہ نہیں پہنچا ہے جس کے تحت صوبوں کو وسیع مقامی خود اختیاری اور حکومت پر پارلیمانی گرفت قائم کی ہے۔ اس نے ان دو آزاد علاقوں میں خفگی کو جنم دیا ہے اور مقامی خود اختیاری اور زیادہ طاقتور نمائندہ اداروں کے مطالبات کو تقویت دی ہے۔ اس مطالبہ کو پورا کرنا صرف مقامی آبادی کے جمہوری حقوق کو یقینی بنانے کے لئے ہی نہیں بلکے ان علاقوں کے لئے بھی مثالی نمونہ فراہم کرنا ہے جو ابھی تک ہندوستان کے زیر تسلط ہیں۔

آزاد جموں وکشمیر وگلگت بلتستان میں اس جمہوری خسارہ کو واحد وجہ یہ ہے کہ حکومت پاکستان نے اس سارے عرصہ میں سنجیدہ کاوش سے ایسے تمام اقدامات کرنے سے گریز کیا ہے جس سے کسی بھی طرح جموں وکشمیر کی متنازعہ حیثیت کو ختم کیا جائے یا پاکستان کی ذمہ

داریوں پر حرف آئے جس کا حتمی تعین اقوام متحدہ کی سلامتی کونسل اور UNCIP کی متعلقہ قراردادوں سے ہونا ہے۔اس پالیسی نے ان آزاد علاقوں میں آئینی و جمہوری ارتقاء کو کم و بیش منجمد کر دیا ہے۔

ایسوسی ایشن فار دی رائیٹس آف پیپل آف جموں اینڈ کشمیر کا قیام جون 2010 میں اس مقصد کے ساتھ عمل میں لایا گیا تا کہ ریاستی عوام کے حق خودارادیت کے حصول کو اقوام متحدہ کی قراردادوں/ چارٹر کے مطابق قریب لایا جا سکے۔اور اس مقصد کے چارٹر حصول کے زیر التواء ہوتے ہوئے آزاد علاقوں کے مکمل آئین و جمہوری حقوق کو حاصل کیا جا سکے۔ایسوسی ایشن کی یہ کامل رائے ہے کہ جموں و کشمیر کی بین الاقوامی حیثیت کو تبدیل کرنے ،اقوام متحدہ کی قراردادوں کیمطابق پاکستان کی وابستگی اور ذمہ داریوں کو کمزور کرنے اور ریاستی عوام کے حق پر سمجھوتہ کیئے بغیر آزاد جموں و کشمیر و گلگت بلتستان کے عوام کو حقوق فراہم کرنے کے لیئے راستہ نکالا جا سکے۔ایسوسی ایشن کی رائے میں اقوام متحدہ کی قراردادوں کے مطابق ریاست کے حق خودارادیت کے زیر التواء ہوتے ہوئے آئین میں ایسی ترامیم لانا ضروری ہیں جو۔

(الف) آزاد جموں و کشمیر و گلگت بلتستان کو ان کی خود اختیاری اور دوسرے اختیارات و مراعات بشمول پاکستان کی پارلیمنٹ میں نمائندگی کے ، پاکستانی صوبوں کے مساوی اختیارات دیئے جائیں۔

(ب) اقوام متحدہ کی سلامتی کونسل اور UNCIP کی قراردادوں کے مطابق کشمیر کے مسئلے

پر پاکستان کی ذمہ داریوں کا واضح اعادہ کرنا ہے۔ یہ آئینی ترامیم مکمل طور پر عبوری نوعیت کی ہونگی اور پاکستان کے آئین کے آرٹیکل 257 کے مطابق ان پر نظر ثانی کی جائے گی۔ جس کے مطابق جب ریاست جموں وکشمیر کے عوام پاکستان کے ساتھ الحاق کا فیصلہ کریں گے تو پاکستان اور ریاست کے درمیان تعلقات کا تعین ریاستی عوام کی خواہشات کے عین مطابق ہوگا۔

ARJK نے ان مسائل پر بحث کرنے کے لیئے سول سوسائٹی کے مختلف طبقوں کے ساتھ بالعموم اور آزاد جموں وکشمیر وگلگت بلتستان کے مختلف لوگوں کے ساتھ بالخصوص بہت سی مجالس کا انعقاد کیا تا کہ مناسب اقدامات اٹھائے جائیں تا کہ ان علاقوں کے عوام کو مکمل خودمختاری کے مواقع فراہم کیئے جائیں جو کہ قومی فیصلے میں ممدود معاون ہوسکیں۔ ان علاقوں سے مندرجہ ذیل وسیع البنیاد خیالات سامنے آئے ہیں۔

☆ جب تک مسئلہ کشمیر اقوام متحدہ کی قراردادوں کے مطابق حل نہیں ہو جاتا، اس وقت تک آزاد جموں وکشمیر وگلگت بلتستان کی حیثیت کا تعین، الگ الگ اکائیوں کے طور پر اور ریاست کی بین الاقوامی متنازعہ حثیت کے طور پر، ان کی حیثیت کسی بھی تبدیلی کے بغیر ایسے ہی رہنی چاہیئے اور دونوں اکائیوں کو پاکستان کے صوبے نہیں بنانا چائیں۔

☆ اقوام متحدہ کی قراردادوں کے حتمی حل تک، جموں وکشمیر کے عوام کے حق خودارادیت کے التواء میں ہوتے ہوئے، آزاد جموں وکشمیر وگلگت بلتستان کے عوام کو عبوری طور

پر کم از کم پاکستان کے صوبوں کے برابر خود اختیار اور پارلیمنٹ میں نمائندگی، مشترکہ مفاداتی کونسل، NEC اور NFC میں مناسب رائلٹی اور پانی و ہائیڈرو الیکٹرک پاور کے حقوق سمیت پاکستانی صوبوں کو حاصل آئینی اختیارات و مراعات دے دی جائیں۔

☆ پاکستان کے آئین میں ایک ترمیم لائی جائے جو اقوام متحدہ کی قراردادوں کے احترام اور ان پر عملدرآمد کے ساتھ پاکستان کی وابستگی کی عکاسی کرے ان میں سلامتی کونسل کی 30/مارچ 1991 اور 24/جنوری 1997 کی قراردادیں بھی شامل ہیں۔ جو اس بات کا اعادہ کرتی ہیں کہ ریاست جموں وکشمیر کا آخری حل اقوام متحدہ کے زیر انتظام منعقدہ آزادنہ اور منصفانہ استصواب رائے کے زریعے ظاہر کی گئی عوام کی خواہشات کے مطابق کیا جائے گا۔

ARJK پہلے ہی ایک قرطاس کار جاری کر چکی ہے جس میں اس بات کا اعادہ کیا گیا ہے کہ مسئلہ کشمیر کے آخری حل تک آئین پاکستان میں مجوزہ آئینی ترامیم کے زریعے آزاد علاقہ جات کو وفاقی سطح پر لاتے ہوئے انہیں قومی زندگی کے دھارے میں شامل کیا جائے یہ مجوزہ ترامیم مشمولہ (A) کے طور پر شامل ہذا ہیں۔

پاکستان کے آئین میں ان مجوزہ ترامیم کے نمایاں خدوخال بذیل ہیں:

☆ آئین میں یہ واضح طور پر بیان کیا جائے کہ مسئلہ کشمیر کا حتمی حل اقوام متحدہ کی سلامتی کونسل کی قراردادوں کے مطابق کیا جائے گا جو کہ غیر جانبدارانہ اور آزادنہ

استصواب رائے کا تقاضا کرتی ہیں۔

☆ مزید برآں ''حکمت عملی کے اصول'' کے باب میں ایک نئے آرٹیکل کا اضافہ کیا جائے جو یہ بیان کرتا ہو کہ ریاست کے اقوام متحدہ کی قراردادوں کے مطابق حل کے لیئے بین الاقوامی سطح پر تمام ضروری اقدامات کیئے جائیں۔

☆ آزاد جموں وکشمیر وگلگت بلتستان کو صوبہ بنائے بغیر صوبے کے تمام حقوق دیئے جائیں۔ اس مقصد کے لیئے صدر پاکستان کو اختیارات دیئے جائیں کہ وہ آزاد جموں وکشمیر وگلگت بلتستان کی حکومتوں کے اتفاق رائے سے آئین پاکستان کی متعلقہ دفعات کو ان علاقوں تک توسیع دیں۔

☆ آزاد جموں وکشمیر وگلگت بلتستان کو پارلیمینٹ میں نشستیں ہونا چاہیں اور اس طرح انہیں صدر پاکستان اور وزیراعظم پاکستان کے انتخابات میں حصہ دار بنایا جائے۔ ان دونوں علاقوں کے نمائندہ ارکان کا انتخاب بالواسطہ طور پر متعلقہ اسمبلیوں کے زریعے ہوسکتا ہے۔

☆ آزاد جموں وکشمیر وگلگت بلتستان کو قومی اقتصادی کونسل، قومی مالیاتی کمیشن اور مشترکہ مفادات کی کونسل میں نمائندگی دی جانی چاہیئے اور انہیں ہائیڈرو الیکٹرک سٹی اور قدرتی گیس کی پیداوار کے کل منافع سے حصہ ملنا چاہیئے۔

ARJK کی رائے ہے کہ آئین پاکستان میں ترمیم کے علاوہ اٹھارویں ترمیم کے طرز پر زیادہ انتظامی امور اور قانونی اختیارات دینے کے لیئے آزاد جموں وکشمیر وگلگت بلتستان کے نظم حکومت میں بہت سی تبدیلیوں کی ضرورت ہے اور متنازعہ ریاست کے دونوں حصوں کو الگ مگر ملتے جلتے آئینی نظام کی ضرورت ہے۔ اس مقصد کے لیئے آزاد جموں وکشمیر کے

عبوری ایکٹ 1974 اور گلگت بلتستان (ایمپاورمنٹ اور سیلف گورننس) آرڈر 2009 میں مجوزہ ترامیم کی الگ الگ فہرستیں مشمولہ ''B'' اور ''C'' کے طور شامل ہذا ہیں۔

آزاد جموں وکشمیر کے عبوری آئینی ایکٹ 1974 اور گلگت و بلتستان (ایمپاورمنٹ وسیلف گورننس) آرڈر 2009 میں مجوزہ ترامیم کے نمایاں خدوخال یہ ہیں۔

☆ حکومت پاکستان، کونسل اور اسمبلی/حکومت آزاد کشمیر اور گلگت و بلتستان پر مشتمل سہہ درجاتی آئینی ڈھانچے کو وفاقی حکومت/ پارلیمنٹ اور اسمبلی دونوں آزاد علاقوں کی حکومت پر مشتمل دو درجاتی وفاقی نظام سے بدل دینا چاہیئے۔ اس سے کونسل کا خاتمہ اور اس کے قانون سازی اور انتظامی اختیارات پارلیمنٹ اور وفاقی حکومت کو منتقل ہو جائیں گے۔

☆ فیڈریشن کے پاس صرف اٹھارویں ترمیم کے مطابق ترمیم شدہ فیڈرل لیجسلیٹو لسٹ میں شامل امور کے اختیارات ہونے چاہیں۔ جبکہ باقی اختیارات دونوں علاقہ جات کے پاس بالترتیب ہوں۔

☆ کونسل کے خاتمے کے بعد صدر ریاست کا انتخاب اسمبلی کے دیگر ارکان کے زریعے ہوگا۔

☆ براہ راست منتخب شدہ اراکین اسمبلی مہاجرین ریاستی باشندوں کو ان کی اسمبلی میں مختص شدہ نشستوں پر منتخب کریں گے۔

☆ اگر سپیکر صدر ریاست کی عدم موجودگی میں قائمقام صدر کے فرائض انجام نہ دے سکے تو چیف جسٹس آزاد کشمیر کو اس حیثیت میں فرائض سرانجام دینے چاہیں۔

☆ اگر وزیراعظم/ وزیراعلیٰ اسمبلی کا اعتماد کھوتے ہوئے محسوس ہوں تو صدر/ گورنر انہیں

اسمبلی سے اعتماد کا ووٹ لینے کے لیئے کہہ سکتے ہیں۔

☆ وزراء کی تعداد اسمبلی کے کل اراکین کی تعداد کے 11 فیصد سے زیادہ نہیں ہونی چاہیئے۔

☆ وزیراعظم/ وزیراعلیٰ کے لیئے دو مشیروں کے تقرر کا اختیار اور ان کو اسمبلی میں بولنے کے حق کی دفعہ بھی شامل ہونی چاہیئے۔

☆ اسمبلی کے ہر الیکشن سے قبل نگران حکومت قائم کی جانی چاہیئے۔

☆ اعلیٰ سطح کی ساری عدالتی تعیناتیاں عدالتی کمیشن کے زریعے کی جانی چائیں۔

☆ پارلیمانی بالادستی کے لیئے صدر/ گورنر معینہ وقت کے اندر وزیراعظم/ وزیراعلیٰ کے مشورے پر عمل کرنے کے پابند ہونگے۔ اس طرح صدر/ گورنر سپریم جوڈیشل کونسل کے مشورے پر عملدرآمد کے پابند ہونگے۔

☆ وفاقی حکومت کے مقاصد کے لیئے غیر منقولہ جائیداد کا حصول مسئلہ کشمیر کے حتمی حل کے تابع ہونا چاہیئے۔

☆ گلگت و بلتستان کے اعلیٰ ججز کی تنخواہیں/ مراعات اور مدت ملازمت کو آئینی تحفظ ہونا چاہیئے۔

☆ گلگت و بلتستان اسمبلی کو دو تہائی اکثریت کے ساتھ گلگت وبلتستان گورننس آرڈر 2009 میں ترمیم کا اختیار ہونا چاہیئے۔ جن دفعات کا تعلق حکومت پاکستان سے ہے ان میں ترمیم کی اجازت صرف حکومت پاکستان کی اجازت سے ہونی چاہیئے۔

☆ بنیادی حقوق کی فہرست میں دو نئے بنیادی حقوق (معلومات کا حق اور تعلیم کا حق) شامل کیئے جانے چاہیں۔ ان کے علاوہ آئین کی دوسری دفعات میں معمولی ترامیم ہیں تاکہ انہیں بڑی ترامیم کے موافق بنایا جائے۔

میں سول سوسائٹی کے اراکین، ماہرین قانون اور سیاسی تجزیہ نگاروں کے ساتھ اپنی رسمی اور غیر رسمی بات چیت کے دوران حاصل ہونے والی قابل قدر خیالات وتجاویز کے لیئے دل کی اتھاہ گہرائیوں سے ممنون ہوں کہ جن سے اس کتاب میں پیش کی گئی تجاویز کی تیاری میں ان کی آراء نے میری بہت زیادہ معاونت کی ہے۔ میں ARJK کی مجلس عاملہ کے ارکان خاص طور پر سفیر آصف ایزدی جو کہ تالیف کے سارے مرحلوں میں گہری فکر انگیز مدد فراہم کرنے کے لیئے ہمہ وقت موجود رہے، شیخ محمد جنید جنہوں نے مضامین کے اردو ترجمے کا اہتمام کیا، جناب افضل علی شگری جنہوں نے اس کتاب کی طباعت کو ممکن بنایا سید صلاح الدین جنہوں نے ایسوسی ایشن کی ویب سائیٹ کو تخلیق کیا، کا ہمہ وقتی تعاون پر شکر گزار ہوں امید کرتا ہوں کہ ایسوسی ایشن کے کام کے لیئے اپنا تعاون جاری رکھیں گے۔

ایسوسی ایشن امید کرتی ہے کہ یہ تجاویز آئینی نظام کی تشکیل نو اور دونوں علاقوں کے نظم حکومت کو بہتر بنانے کے موضوعات پر سول سوسائٹی اور سیاسی جماعتوں میں ایک نئے مباحثے کا آغاز کرے گی۔ ایسوسی ایشن کا مقصد ان مسائل پر اتفاق رائے پیدا کرنے کی راہ ہموار کرنا ہے جسے مناسب قانون سازی کے زریعے قانونی حیثیت دی جاسکتی ہے۔

جسٹس (ریٹائرڈ) سید منظور حسین گیلانی،
چیئرمین، ایسوسی ایشن فار دی رائٹس آف پیپل
آف جموں اینڈ کشمیر (اے آر جے کے)
مظفر آباد۔

☆☆☆☆☆

TIME FOR CHANGE FOR THE PEOPLE OF AZAD JAMMU AND KASHMIR AND GILGIT-BALTISTAN

Afzal Ali Shigri, QPM, PPM

Consisting of many small states ruled by local Rajas and Mirs, Gilgit and Baltistan were subjugated in the 19th century by the Dogra rulers of Kashmir through deceit and division and integrated into the state of Jammu and Kashmir. In 1947 when great changes were taking place in united India and the Muslims were struggling for a separate homeland, the people of Gilgit and Baltistan also realized the importance of the opportunity presented to them by history in the wake of Pakistan's inception. They seized the moment and revolted against the repressive Dogra rule.

As in the case of the 1857 War of Independence, the soldiers of Gilgit Scouts led the revolt, and unlike that ill-fated, earlier event succeeded in overthrowing the Dogra raj. Governor Ghansara Singh surrendered and was arrested. On 1st November, 1947 Gilgit declared its independence and a Revolutionary Council was established. There then ensued a prolonged struggle for liberating the entire area of Gilgit and Baltistan. Following a year-long struggle marked by a scarcity of resources, Baltistan was also liberated. During this period of time, the people of Gilgit and Baltistan fully participated and actively supported the soldiers who were leading the war of liberation.

After successful liberation of their areas, the people of Gilgit and Baltistan unanimously opted to join Pakistan. Unfortunately, the Government of Pakistan neither merged Gilgit and Baltistan with Jammu and Kashmir, which would have been a logical outcome of its official stand, nor announced the territories' formal accession to Pakistan.

Instead, the Government of Pakistan preferred to assume full powers to run the affairs of Gilgit and Baltistan through the infamous Karachi Accord reached with the Muslim Conference of AJK. Although no representative from Gilgit and Baltistan had been present at the signing of the Accord, the people of Gilgit and Baltistan, presented with the outcome as a fait accompli, accepted this arrangement in the hope of getting a fair deal from the Government of Pakistan. However, being a constituent of Jammu and Kashmir through subjugation, they continued to be linked with the Kashmir dispute. Their fate remained undecided because of the non-implementation of UN resolutions on Kashmir and they were left at the mercy of the Ministry of Kashmir and Northern Areas (KANA), which exercised full administrative control over the territory without any checks and without the participation of the people that they governed.

Despite this unjust and discriminatory treatment, the people of Gilgit and Baltistan have demonstrated their commitment to and love for Pakistan again and again whenever put to test. The prolonged war of liberation and the sacrifices in the 1965, 1971 and 1999 wars with India showed their loyalty to the motherland that they had chosen at great cost and spilling of their blood. In the villages of Gilgit and Baltistan, the graves of the Shaheeds of Kargil marked by the fluttering national flags bear fresh testimony to the devotion of the local people to Pakistan. Add to this the recent incident in the Giari sector of Siachen and we cannot help but see a pattern of unwavering dedication to the motherland.

Unfortunately, successive governments showed a lack of empathy for these people while dealing with the issues of their rights, despite the UN resolutions and judgment of the Supreme Court of Pakistan. Meaningless legal framework

orders without giving any real powers to the elected representatives led to the KANA Ministry micromanaging the area to the exclusion of the locals. This charade continued for more than sixty one years. It was only in 2009 that the Gilgit Baltistan (Empowerment and Self Governance) Order brought some meaningful reforms and delegated powers to the locally elected representatives on a number of subjects. It was a big step but it still fell short of bringing it on par with the citizens in other parts of the country.

The Association for the Rights of the People of Jammu and Kashmir (ARJK) has worked on these issues and studied the 2009 Order for Gilgit and Baltistan and the Interim Constitution of Azad Jammu and Kashmir. The people of both the regions face similar dilemmas and challenges. Their political status remains in a limbo due to the un-resolved Kashmir dispute. They are denied any representation in the Federal structures and institutions where vital issues of governance and their rights are considered and decided by a bureaucracy that has no stake in the area. AJK continues to be denied any royalty or profit on hydro-electric power generation in their area in violation of constitutional provisions.

There is little prospect of a solution to the Kashmir problem in the foreseeable future. The people of these two regions have Pakistani National Identity Cards and passports and are internationally recognized as Pakistanis. They deserve a better deal. Pending the implementation of UN resolution for a plebiscite, it is unfair to deny them participation in governance on key issues or treatment at par with other Pakistani citizens. ARJK has comprehensively addressed this issue and proposed to provisionally give them their full constitutional and democratic rights through amendments in the Constitution of Pakistan and the laws governing the

two regions. It will not only mainstream these areas but also give them the opportunity to be represented in all institutions and governance structures where decisions are taken with direct impact on their lives. The country's experts on foreign affairs are of the opinion that such amendments will have no bearing whatsoever on the status of these areas, and will in no way compromise the principled stand of Pakistan on Kashmir issue in line with the UN resolutions. The step will rather strengthen the Pakistani stance and will also be greatly appreciated by the people of Gilgit and Baltistan and Azad Jammu and Kashmir.

The draft document not only sets the parameters for such an initiative but also provides a meaningful framework for dialogue involving all stakeholders for a just and consensus-based decision that will address the governance issues for both the regions and bring relief to the common people of these areas who have long been exploited by the lower tiers of the existing field administrative structures in Pakistan. The time is ripe for change and a bold step forward.

There is reason to hope that a government responsible for four major amendments to the constitution can take advantage of these fair winds to write a more fitting coda to this crisis than the years of injustice and discrimination inflicted upon these disempowered communities by the pen-strokes of the babus in the concerned Ministries. Not only will the redress of these wrongs mark the start of an epoch unmarred by regional uncertainty, in itself a feat of immeasurable value, but history will also rank with other luminaries of principle and moral courage those who use their mandate and power to give voice to the aspirations of the people of these two regions.

Afzal Ali Shigri is a former Inspector General of Police

آزاد کشمیر اور گلگت بلتستان کے عوام کے لیے تبدیلی کا وقت

افضل علی شگری

مقامی راجاؤں اور میروں کے زیر نگین بہت سی چھوٹی چھوٹی ریاستوں پر مشتمل گلگت بلتستان کو 19 ویں صدی میں کشمیر کے ڈوگرا حکمرانوں نے فریب دہی اور تقسیم کرو کی حکمت عملی کے ساتھ محکوم بنا کر اسے ریاست جموں وکشمیر میں شامل کر لیا۔ 1947 میں جبکہ متحدہ ہندوستان میں بڑی تبدیلیاں رونما ہو رہی تھیں اور مسلمان ایک علیحدہ ملک کے لئے جدوجہد کر رہے تھے تو گلگت بلتستان کے عوام نے بھی قیام پاکستان کی تخلیق کے فراہم کردہ موقعہ کی اہمیت کا احساس کرتے ہوئے وقت کو گرفت میں لیا اور ظالمانہ ڈوگرا راج کے خلاف بغاوت کر دی۔

1857 کی جنگ آزادی کی طرز پر گلگت سکاوٹس کے سپائیوں نے بغاوت کی قیادت سنبھالی اور جنگ آزادی کے بدقسمت واقعہ کے برعکس، ڈوگرا راج کا تختہ الٹنے میں کامیاب ہو گئے ۔ گورنر گھنسارہ سنگھ نے ہتھیار ڈال دیے اور اسے گرفتار کر لیا گیا۔ یکم نومبر 1947 کو گلگت نے اپنی آزادی کا اعلان کر دیا اور ایک انقلابی کونسل قائم کر دی گئی۔ پھر گلگت بلتستان کے پورے علاقے کو آزاد کرنے کی طویل جدوجہد شروع ہو گئی۔ ایک سال کی طویل جدوجہد کے بعد، جس میں وسائل کی کمی خاص بات تھی بلتستان بھی آزاد ہو گیا۔ اس دوران میں گلگت بلتستان کے عوام نے سپائیوں کی بھرپور حمایت کی جو کہ جنگ آزادی کی قیادت کر رہے تھے۔

ان علاقوں کے کامیاب حصول آزادی کے بعد، گلگت بلتستان کے عوام نے متفقہ طور پر پاکستان کے ساتھ شامل ہونے کا فیصلہ کیا۔ بدقسمتی سے حکومت پاکستان نے نہ تو گلگت بلتستان کو کشمیر کے ساتھ ضم کیا جو کہ اس کے سرکاری موقف کا منطقی نتیجہ تھا اور نہ ہی ان علاقوں کا پاکستان کے ساتھ باقاعدہ الحاق کا اعلان کیا۔

اس کے بجائے حکومت پاکستان نے آزاد جموں وکشمیر مسلم کانفرنس کے ساتھ کیئے گئے رسواء زمانہ معائدہ کراچی کے تحت گلگت بلتستان کے امور کو چلانے کے مکمل اختیارات اپنے پاس رکھنے کو ترجیح دی۔ اگرچہ معائدہ پر دستخط کرنے کے لیئے گلگت بلتستان کا کوئی نما ئندہ موجود نہیں تھا، لیکن گلگت بلتستان کے عوام نے، جنہیں اس کے نتائج بندگلی کی صورت میں پیش کر دیئے گئے، اس انتظام کو حکومت پاکستان کی طرف سے منصفانہ سلوک کی امید پر قبول کر لیا۔ بہرکیف جموں وکشمیر کے مقبوضہ حصہ کے طور پر ان کو ہمیشہ تنازعہ کشمیر سے منسلک سمجھا گیا۔ کشمیر پر اقوام متحدہ کی قراردادوں پر عمل درآمد نہ ہونے کے باعث ان کی قسمت غیر طے شدہ رہی۔ اوران کو وزارت امور کشمیر اور شمالی علاقہ جات کے رحم وکرم پر چھوڑ دیا گیا، جس نے بغیر کسی روک، اور محکوم عوام کی بغیر کسی طرح کی شرکت کے، علاقے پر مکمل انتظامی کنٹرول قائم رکھا۔

اس غیر منصفانہ اور امتیازی سلوک کے باوجود گلگت بلتستان کی عوام نے آزمائش کے ہر موقعہ پر بار بار پاکستان کے ساتھ اپنی وابستگی اور محبت کا مظاہرہ کیا ہے۔ طویل جنگ آزادی اور انڈیا کے ساتھ 1965، 1971 اور 1999 کی جنگوں میں ان کی قربانیاں اپنی مادر وطن کے ساتھ جس کو انہوں نے بھاری قیمت دے کر اور خون بہاء کر چنا تھا، اپنی وفاداری

کا اظہار کرتی رہی۔ گلگت بلتستان کے دیہات میں کارگل کے شہدا کی قبریں، جن پر قومی پرچم لہرا رہے ہیں مقامی لوگوں کے پاکستان کے لیئے ایثار کی نئی شہادت پیش کر دی ہیں۔ اگر اس میں سیاہ چین کے گیاری سیکٹر کے حالیہ واقع کو شامل کر لیں تو ہم مادر وطن کے لیئے غیر متزلزل ااایثار کا مشاہدہ کیئے بغیر نہیں رہ سکتے۔

بدقسمتی سے مسلسل آنے والی حکومتوں نے اقوام متحدہ کی قراردادوں اور پاکستان کی عدالت عظمیٰ کے فیصلہ کے باوجود ان کے مسائل کے حقوق سے نمٹتے وقت ان لوگوں کے جذبات و احساسات کو سمجھنے کی صلاحیت کا مظاہر نہیں کیا۔ منتخب نمائندوں کو حقیقی اختیارات دیئے بغیر بننے والی بے معنی لیگل فریم ورک آرڈرز وزارت امور کشمیر اور شمالی علاقہ جات کو مقامی لوگوں کے اخراج کی حد تک چپہ چپہ پر کنٹرول کی طرف ہی لے کر گئے ہیں۔ یہ سلسلہ اکسٹھ سال تک جاری رہا۔ یہ 2009 میں ہوا، کہ گلگت بلتستان (ایمپاورمنٹ اینڈ سیلف گورننس) آرڈر کچھ بامعنی اصطلاحات لے کر آیا اور اس نے بہت سے امور پر مقامی منتخب نمائندوں کو اختیار منتقل کیئے۔ یہ بڑا قدم تھا لیکن اس میں بھی اس کے شہریوں کو ملک کے دوسرے حصوں کے شہریوں کے برابر لانے کی کمی رہی۔

ایسوسی ایشن فار دی رائٹس آف دی پیپل آف جموں اینڈ کشمیر (ARJK) نے ان مسائل پر کام کیا ہے اور گلگت بلتستان 2009 کے آرڈر اور آزاد جموں و کشمیر کے عبوری آئین کا مطالعہ کیا ہے۔ دونوں علاقوں کے عوام کو ایک جیسی مشکلات اور چیلنجز کا سامنا ہے۔ غیر حل شدہ مسئلہ کشمیر کے باعث ان دونوں کی قسمت غیر یقینی صورتحال سے دوچار ہے۔ ان کو وفاقی نظم اور اداروں میں کوئی نمائندگی حاصل نہیں ہے، جہاں منظّم حکومت کے مسائل اور ان کے

حقوق پر ایک ایسی بیوروکریسی غور اور فیصلہ کرتی ہے، کہ جس کا علاقے میں کوئی مفاد نہیں ہوتا۔ آئینی دفعات کی مکمل خلاف ورزی کرتے ہوئے ان کو ان علاقوں میں پیدا ہونے والی ہائیڈرو الیکٹرک پاور پہ منافع یا رائلٹی دینے سے مکمل انکار کیا جاتا ہے۔

مستقبل قریب میں مسئلہ کشمیر کے حل کا کوئی امکان نہیں ہے۔ان دونوں علاقوں کے عوام پاکستانی قومی شناختی کارڈ اور پاسپورٹ رکھتے ہیں اور انہیں بین الاقوامی طور پر پاکستانی تسلیم کیا جاتا ہے یہ بہتر سلوک کے مستحق ہیں۔استصواب رائے کے لیئے اقوام متحدہ کی قراردادوں کے زیرالتواء ہوتے ہوئے انہیں اہم مسائل پر حکومتی نسق میں شرکت اور دوسرے پاکستانیوں کے برابر سلوک سے انکار کرنا غیر منصفانہ عمل ہے۔ARJK نے جامعیت کے ساتھ اس مسئلے پر توجہ دی ہے اور انہیں آئین پاکستان اور علاقوں کا نظم ونسق چلانے والے قوانین میں ترامیم کے زریعے عبوری طور پر کامل آئینی اور جمہوری حقوق دینے کی تجویز دی ہے۔اس سے نہ صرف یہ علاقے قومی دھارے میں آجائیں گے بلکہ اس سے انہیں تمام اداروں اور حکومتی ڈھانچوں میں نمائندگی کا موقع بھی مل جائیگا۔ جہاں ان کی زندگیوں پر براہ راست اثر انداز ہونے والے فیصلے ہوتے ہیں ۔ ملک کے خارجہ امور کے ماہرین کی رائے ہے کہ اس طرح کی ترامیم کا ان علاقوں کی حیثیت پر کوئی اثر نہیں پڑے گا اور ان سے اقوام متحدہ کی قراردادوں کے مطابق مسئلہ کشمیر پر پاکستانی موقف پر بھی کوئی سمجھوتہ نہیں ہوگا۔ بلکہ یہ اقدام پاکستانی موقف کو مضبوط کرے گا اور گلگت بلتستان اور آزاد جموں وکشمیر کے عوام اس کو بہت پسند کریں گے۔

دستاویز کا مسود نہ صرف ایسے اقدام کے معیارات طے کرتا ہے بلکہ تمام سٹیک

ہولڈرز کو شریک کرتے ہوئے ایک منصفانہ اور اتفاق رائے پر مبنیٰ فیصلے کے لیئے بامعنی فریم ورک فراہم کرتا ہے جو کہ دونوں علاقوں کے لیئے حکومتی نظم کے مسائل کو حل کرئے گا اورس ملک کے عوام کو سکون فراہم کرے گا۔جن کا پاکستان کے موجودہ انتظامی ڈھانچے کا زیریں درجہ،طویل عرصہ سے استحصال کرتا رہا ہے۔تبدیلی اور آگے کی طرف جرات مندانہ اقدام کے لیئے یہ موزوں ترین وقت ہے۔

بوجوہ یہ امید کی جاسکتی ہے کہ ایسی حکومت جو چار اہم ترامیم کی ذمہ داری کی حامل ہے،متعلقہ وزارتوں کے بابوں کی جنبش قلم سے ان بے اختیار عوام پر برسوں تک مسلط کی گئی ناانصافی اور امتیاز کے مقابلہ میں اس بحران کے لیئے ایک بہتر ضابطہ تحریر کرنے کے لیئے موافق ہواؤں کا فائدہ اٹھاسکتی ہے۔

ان زیادتیوں کا ازالہ نہ صرف علاقائی بے یقینی سے پاک دور کے آغاز کی نشاندہی کرئے گا جو بجائے خود ایک قابل قدر کارنامہ ہے، بلکہ تاریخ ان افراد کو جو اپنے مینڈیٹ اور اقتدار کو ان دونوں علاقوں کی خواہشات کی آواز بن جانے کے لیئے کام میں لائیں گے، اخلاقی جرات اور اصول پسندی کے روشن میناروں کی صف میں شامل کرئے گی۔

(منصف پاکستان پولیس کے سابق انسپکٹر جنرل ہیں)

☆☆☆☆☆

DEFINING THE CONSTITUTIONAL STATUS OF JAMMU AND KASHMIR

Asif Ezdi

The state of Jammu and Kashmir has a special if not unique status under international law. It is neither a separate state, nor is it a part of any existing state. This uniqueness arises from the fact that its international status is defined by resolutions of the United Nations Security Council calling for a plebiscite to determine whether it is to accede to Pakistan or India and that these resolutions have not been implemented because of India's refusal to comply with them.

2, The Security Council has never accepted the Indian claim that the state "acceded" to India in October 1947. In its resolution 122 (1957), the Security Council also rejected the decision of the so-called "Constituent Assembly" of Occupied Kashmir on "accession" to India and reiterated that the final disposition of the state of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the UN. Kashmir remains on the agenda of the Security Council and UN maps continue to show the state as disputed territory.

3. While the status of Jammu and Kashmir as disputed territory whose final disposition is yet to be made is clearly established by the relevant Security Council resolutions, the Pakistan constitution is largely silent on this question. The only constitutional provision on Kashmir is Article 257 which is not about its *current* relationship with Pakistan but about its *future* relationship with the country once the state decides to accede to Pakistan. This Article, which is a reproduction of identical provisions in Article 203 of the 1956

constitution and Article 221 of the 1962 constitution, reads as follows: "When the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and that state shall be determined in accordance with the wishes of the people of that state."

4. Earlier, the Report of the Basic Principles Committee which was adopted by the Constituent Assembly of Pakistan in October 1954 had also contained provisions dealing only with the *future* relationship of the state with Pakistan. Article 48 (1) of that Report stated as follows: "Suitable provisions with regard to the State of Jammu and Kashmir will be made in the Constitution at the appropriate time and in accordance with the wishes of the people of that State."

5. There are three main reasons why Pakistan has not taken any steps so far to define expressly the *current* status of Kashmir in the country's constitution:

a) First, when the language presently contained in Article 257 was first adopted in the 1956 constitution, the UN was still engaged in working out arrangements for a plebiscite in Kashmir. There was therefore no obvious need for a constitutional provision to define Kashmir's relationship with Pakistan before the holding of the plebiscite. In the two subsequent constitutions of 1962 and 1973, the language of the 1956 constitution was incorporated verbatim without any change.

b) Second, Pakistan did not want to take any constitutional steps that could compromise its demand for a plebiscite in accordance with UN resolutions. In particular, Pakistan was careful to refrain from actions that could even remotely lay it open to the charge that it had altered the

conditions under which those resolutions had been adopted and, by doing so, give India an excuse, however implausible, for wriggling out of its commitments under these resolutions.

c) Third, Pakistan has been cautious not to take steps that could imply that it accepts the current territorial status quo dividing the state into two parts, with India illegally occupying about two-thirds of the territory, as a permanent solution.

6. However valid Pakistan's reasons for not defining the *current* constitutional status of Jammu and Kashmir pending the holding of a plebiscite might have been at that time, one consequence of this policy has been to consign AJK and Gilgit-Baltistan to a kind of constitutional limbo. This has hampered their political and constitutional development for more than six decades. Until the promulgation of the Gilgit-Baltistan (Empowerment and Self-Governance) Order 2009, the people of the territory lacked representative government. In both AJK and Gilgit-Baltistan, democratic government is circumscribed by outdated bureaucratic constraints and the people of the two territories are not represented on federal bodies like the Council of Common Interests, the National Economic Council and the National Finance Commission. They also do not participate in government at the national level because they have no representation in Parliament.

7. This state of affairs has engendered a sense of grievance in AJK and Gilgit-Baltistan which is not conducive to national harmony. There is therefore an urgent need to devise steps, pending the determination of the final status of Jammu and Kashmir under Security Council resolutions, to

define provisionally the *current* constitutional status of AJK and Gilgit-Baltistan and give them enhanced autonomy as well as full representative government backed by constitutional guarantees, while at the same time preserving their special status as entities distinct from the provinces of Pakistan and protecting Pakistan's long-standing position that the final status of Jammu and Kashmir has to be determined through a plebiscite under UN resolutions.

8. The Pakistan-China boundary agreement of 1963 already provides a precedent of an interim measure relating to Jammu and Kashmir taken by Pakistan with the express declaration that it is provisional in nature and will not affect a final settlement of the Kashmir dispute. Article 6 of the agreement states: "The two parties have agreed that after the settlement of the Kashmir dispute between Pakistan and India, the sovereign authority concerned will reopen negotiations with the Government of the People's Republic of China on the boundary … so as to sign a formal boundary treaty to replace the present agreement, provided that in the event of the sovereign authority being Pakistan, the provisions of the present agreement … shall be maintained in the formal boundary treaty to be signed between the People's Republic of China and the Islamic Republic of Pakistan." This Agreement did not in any manner affect Pakistan's commitments and obligations under the Security Council resolutions. Similarly, Pakistan's position on these resolutions will also remain unchanged by any amendments in the Constitution to guarantee democratic and constitutional rights to the people of Azad Jammu and Kashmir and Gilgit-Baltistan, if it is explicitly stated that the amendments are provisional in nature.

9. Accordingly, the following guiding principles need

to be kept in view in making any amendments in the Constitution of Pakistan concerning Jammu and Kashmir:

a) Any amendment to the constitution of Pakistan defining the current status of Azad Jammu and Kashmir and Gilgit-Baltistan must explicitly be provisional in character and must reiterate Pakistan's commitment to the Security Council resolutions calling for a plebiscite under UN auspices to determine the final status of the state. This should set at rest any misgivings that the step might be construed as legitimising the present *de facto* division of the state or as Pakistan's acquiescence in the status quo. It would also be in full conformity with resolutions 91 (1951) and 122 (1957) of the UN Security Council, which declare that the "final disposition" of the state would be made through a plebiscite, but do not prohibit any interim steps to enhance autonomy or to ensure the full exercise of democratic rights.

b) The constitutional amendment should also recognise that the liberated territory of Jammu and Kashmir comprises two distinct entities within the state - Azad Jammu and Kashmir, and Gilgit-Baltistan - and should provide for separate systems of governance for the two.

c) Needless to say, the constitutional amendment must be adopted only with the concurrence of the Governments of AJK and Gilgit-Baltistan.

10. The proposed amendments to the constitution of Pakistan contained in Attachment "A" have been drafted in consonance with these principles. They provide for (a) a formal reaffirmation of Pakistan's commitment to a resolution of the Kashmir dispute in accordance with the resolutions of the UN Security Council; (b) the

representation of AJK and Gilgit-Baltistan in the Parliament of Pakistan, in the electoral college for the election of the President and in federal bodies for policy co-ordination between the Federation and the provinces; and (c) the application of those parts of the constitution of Pakistan to the two liberated territories to which they concur. The proposed allocation of seats in the National Assembly is in proportion to their population. In the Senate, their share of seats is half of that given to provinces, in consideration of the fact that part of the state is under Indian occupation and cannot elect any representatives. Out of the Senate seats, AJK and Gilgit-Baltistan would each get half of the allotted number.

11. It is hoped that these proposals will stimulate a debate among all stakeholders, especially in Azad Jammu and Kashmir and Gilgit-Baltistan, and facilitate the adoption of the necessary constitutional amendments by consensus.

Asif Ezdi is a former Ambassador of Pakistan

جموں و کشمیر کی آئینی حیثیت کا تعین

آصف ایزدی، سابق سفیر

بین الاقوامی قانون کے تحت اگر کشمیر کی منفرد نہیں تو خصوصی حیثیت ضرور ہے۔ یہ نہ تو ایک علیحدہ ریاست ہے اور نہ ہی کسی موجودہ ریاست کا حصہ ہے۔ یہ انفرادیت اس حقیقت سے جنم لیتی ہے کہ اس کی بین الاقوامی حیثیت کا تعین اقوام متحدہ کی قراردادوں کے زریعہ استصواب رائے سے ہونا ہے کہ اسے پاکستان کے ساتھ الحاق کرنا ہے یا انڈیا کے ساتھ انڈیا کی طرف سے ان پر عمل کرنے سے انکار کی بناء پر ان قراردادوں پر ابھی تک عمل نہیں ہوا۔

سلامتی کونسل نے انڈیا کے اس دعوے کو کبھی تسلیم نہیں کیا کہ ریاست کا اکتوبر 1947 میں انڈیا کے ساتھ الحاق ہو گیا تھا۔ اپنی قرارداد 122 (1957) میں سلامتی کونسل نے مقبوضہ کشمیر کے نام نہاد ''دستور ساز اسمبلی'' کے انڈیا کے ساتھ ''الحاق'' کے فیصلے کو بھی مسترد کر دیا تھا۔ اور اس بات کا اعادہ کیا تھا کہ ریاست جموں و کشمیر کے مسئلہ کا حل اقوام متحدہ کے زیر اہتمام جمہوری طریقہ سے منعقدہ آزادانہ اور غیر جانبدرانہ استصواب رائے کے زریعہ ظاہر کی گئی عوام کی خواہشات کے مطابق کیا جائے گا۔ کشمیر اب بھی سلامتی کونسل کے ایجنڈے پر ہے اور اقوام متحدہ کے نقشے ابھی تک ریاست کو متنازعہ ریاست ظاہر کرتے ہیں۔

جبکہ سلامتی کونسل کی قراردادوں نے متنازعہ علاقے کے طور جس کا حتمی حل ابھی ہونا ہے، کشمیر کی حیثیت کا واضح تعین کرتی ہیں، پاکستان کا آئین اس سوال پر زیادہ تر خاموش ہے۔ کشمیر پر واحد آئین آرٹیکل دفعہ 257 ہے جو کہ پاکستان کے ساتھ اس کے موجود تعلق

کے بارہ میں نہیں ہے بلکہ ملک کے ساتھ اس کے مستقبل کے تعین کے بارے میں ہے جب ریاست پاکستان کے ساتھ الحاق کا فیصلہ کرئے گی۔اس آرٹیکل کی جو کہ 1956 کے آرٹیکل203اور1962 کے آئین کے آرٹیکل221 کے ہو بہو مشابہ دفعات کی تخلیق نو ہے عبارت یوں ہے:

''جب ریاست جموں وکشمیر کے عوام پاکستان کے ساتھ الحاق کا فیصلہ کریں گے تو اس ریاست اور پاکستان کے ساتھ تعلق کا تعین اس ریاست کے عوام کی خواہشات کے مطابق کیا جائے گا''۔

اس سے پہلے بیسک پرنسپلز کمیٹی کی رپورٹ، جسے پاکستان کی دستور ساز اسمبلی نے 1956 میں پاس کیا، میں بھی ایسی دفعات تھیں جو کہ ریاست کے پاکستان کے ساتھ صرف مستقبل کے تعلق کے بارے میں تھیں۔اس رپورٹ کا آرٹیکل48(1) یہ بیان کرتا ہے:

'' ریاست جموں وکشمیر کے بارے میں مناسب دفعات موزوں وقت پر اور ریاست کے عوام کی خواہشات کے مطابق آئین میں شامل کی جائیں گی''

پاکستان نے ملکی آئین میں کشمیر کی موجودہ حیثیت کا اب تک واضح تعین کیوں نہیں کیا،اس کی تین وجوہات ہیں:

(الف) اولاً، جب آرٹیکل257 کے الفاظ کو پہلی بار1956 کے آئین میں شامل کیا گیا تو اس وقت اقوام متحدہ کشمیر میں استصواب رائے منعقد کروانے کے انتظامات واضح

کرنے میں مصروف تھی۔لہذا استصواب رائے کے انعقاد سے پہلے ظاہر طور پر کشمیر کے پاکستان کے ساتھ تعلق متعین کرنے کے لیئے کسی آئینی دفعہ کی ضرورت نہیں تھی۔اس کے بعد آنے والے 1962 اور 1973 کے آئین میں 1956 کے آئین کو اسی طرح بغیر کسی تبدیلی کے شامل کرلیا گیا۔

(ب) ثانیاً، پاکستان ایسے کوئی آئینی اقدامات نہیں اٹھانا چاہتا تھا جو اقوام متحدہ کے تحت استصواب رائے کے مطالبے پر کوئی سمجھوتہ کرلے۔خاص طور پر پاکستان نے ایسے اقدامات سے گریز کرنے کے لیئے بہت محتاط تھا جو اس پر ایسے کسی دوراز کار الزام کا بھی باعث بنیں کہ پاکستان نے اس صورتحال کو تبدیل کر دیا ہے جس کے تحت یہ قراردادیں منظور کی گئی تھیں۔اور ایسا کرنے سے انڈیا کو خواہ کتنا ہی ناقابل یقین کیوں نہ ہو،ان قراردادوں کے تحت اپنے وعدے سے ہٹنے کا کوئی بہانہ مل جائے۔

(ج) پاکستان ایسے کوئی بھی اقدامات کرنے سے محتاط رہا ہے جس کا مفہوم یہ ہو کہ پاکستان نے موجودہ علاقائی سٹیٹسکو کو تبدیل کرلیا ہے۔جس میں ریاست دو حصوں میں منقسم ہے اور انڈیا نے مستقل حل کے طور پر دو تہائی علاقے پر ناجائز قبضہ کر رکھا ہے۔

اس وقت استصواب رائے کے انعقاد کے معرض التواء میں ہونے کی بناء پر پاکستان کی کشمیر کی موجودہ آئینی حیثیت کا تعین نہ کرنے کی وجوہات کتنی بھی درست کیوں نہ ہوں اس حکمت عملی کا ایک نتیجہ آزاد کشمیر اور گلگت بلتستان کو آئینی خلاء میں پھینک دینے کی صورت میں نکلا ہے۔اس حیثیت نے ان کے سیاسی اور آئینی ترقی کو چھ سے زیادہ دہائیوں سے روک رکھا ہے۔گلگت بلتستان (ایمپارمنٹ اینڈ سیلف گورننس) آرڈر کے نفاذ تک علاقے کے لوگ

نمائندہ حکومت سے محروم تھے۔ آزاد جموں وکشمیر اور گلگت بلتستان دونوں میں فرسودہ بیورو کریٹ رکاوٹوں کی وجہ سے جمہوری حکومت کی پرواز رک جاتی ہے۔ اور دونوں علاقوں کے عوام مشترکہ مفاد کی کونسل، قومی اقتصادی کونسل اور قومی مالیاتی کمیشن جیسے وفاقی اداروں میں نمائندگی نہیں رکھتے اور وہ قومی سطح پر حکومت میں بھی شریک نہیں ہیں اس لیئے کہ ان کی پارلیمنٹ میں کوئی نمائندگی نہیں ہے۔

اس صورتحال نے آزاد جموں وکشمیر اور گلگت بلتستان مین دکھ کے احساس کو جنم دیا ہے جو کہ قومی ہم آہنگی کے لیئے مناسب نہیں ہے۔ لہذا اسلامتی کونسل کی قراردادوں کے تحت جموں وکشمیر کی حیثیت کے زیرالتواء ہوتے ہوئے، اس بات کی شدید ضرورت ہے کہ عبوری طور پر آزاد جموں وکشمیر اور گلگت بلتستان کی موجودہ آئینی حیثیت کو متعین کرنے کے لیئے اور انہیں زیادہ خوداختیار اور آئینی تحفظ کی قوت پر کامل نمائندہ حکومت اور اس کے ساتھ پاکستانی صوبوں سے مختلف اس کی خصوصی حیثیت کو محفوظ کرنے اور پاکستان کے طویل موقف کہ کشمیر کی حیثیت کا تعین اقوام متحدہ کی قراردادوں کے تحت استصواب رائے سے ہونا ہے کو محفوظ کرنے کے لیئے اقدامات واضح کیئے جائیں۔

1963 کے پاکستان چین معائدے نے پہلے ہی پاکستان کے طرف سے اٹھائے گئے اقدامات کی ایک نظیر فراہم کردی ہے جس میں یہ واضح اعلان ہے کہ یہ اقدام اپنی ماہیت میں عبوری ہے اور یہ متنازعہ کشمیر کے حتمی حل پر اثر انداز نہیں ہوگا۔ معائدہ کا آرٹیکل 6 یہ بیان کرتا ہے:

''دونوں فریقین اس بات پر اتفاق کرتے ہیں کہ پاکستان اور انڈیا میں متنازعہ کشمیر حل ہو جانے کے بعد مقتدر اعلیٰ سرحدی امور پر عوامی جمہوریہ چین سے دوبارہ مذکرات کا آغاز کریگی۔۔۔۔۔ جہاں تک اس معائدے کی جگہ نئے سرحدی معائدہ پر دستخط کرنے کی بات ہے، اس بارے میں یہ کہا گیا ہے کہ پاکستان کے مقتدر اعلیٰ ہونے کی صورت میں موجودہ معائدے کی دفعات۔۔۔۔۔عوامی جمہوریہ چین اور اسلامی جمہوریہ پاکستان کے درمیان ہا پانے والے معائدہ میں برقرار رہیں گی''۔ اس معائدے نے کسی طور بھی سلامتی کونسل کی قراردادوں کے تحت پاکستان کی وابستگی اور ذمہ داریوں کو متاثر نہیں کیا۔ اسی طرح آزاد جموں وکشمیر اور گلگت بلتستان کے عوام کے لیئے جمہوری اور آئینی حقوق کی ضمانت دینے کے لیئے آئین میں کی جانے والی کسی ترمیم سے ان قراردادوں پر پاکستان کا موقف غیر متبدل رہے گا، اگر یہ بیان کر دیا جائے کہ ترامیم اپنی ماہیت میں عبوری ہیں۔

اس طرح جموں وکشمیر کے بارہ میں کوئی بھی آئینی ترامیم متعارف کرواتے ہوئے درجہ ذیل رہنما اصولوں کو پیش نظر رکھنے کی ضرورت ہے:

(الف) آزاد جموں وکشمیر اور گلگت بلتستان کی موجودہ آئینی حیثیت کا تعین کرنے کے لیئے کوئی بھی ترامیم اپنی ماہیت میں لازمی طور پر عبوری ہونی چاہیئے اور اسے کشمیر کی حتمی حیثیت کو متعین کرنے کے لیئے استصواب رائے کے تقاضے پر مبنیٰ سلامتی کونسل کی قراردادوں کے ساتھ پاکستان کی وابستگی کا اعادہ کرنا چاہیئے۔ اس سے یہ خدشات ختم ہو جائیں گے کہ اس اقدام کا مفہوم ریاست کی موجودہ عملی تقسیم کو جواز فراہم کر لیا جائے گا یا یہ کہ اس سٹیٹسکو کو پاکستان کی حمایت حاصل ہے۔ یہ اقوام متحدہ کی

سلامتی کونسل کی قرارداد 19 (1951) اور 122 (1957) کے ساتھ مطابقت میں ہوگی جو یہ کہتی ہے کہ ریاست کے مسئلے کا حتمی حل استصواب رائے سے کیا جائیگا۔ لیکن یہ خود اختیار کو بڑھانے اور مکمل جمہوری حقوق کے استعمال کو یقینی بنانے سے نہیں روکتی۔

(ب) آئینی ترمیم کو یہ بھی تسلیم کرنا چاہیئے کہ جموں وکشمیر کا آزاد علاقہ ریاست کے اندر ان دونوں کے لیئے الگ الگ منظّم حکومت فراہم کرنا چاہیئے۔

(ج) اس بات کو کہنے کی ضرورت نہیں ہے کہ آئینی ترامیم کو آزاد جموں وکشمیر اور گلگت بلتستان کی حکومتوں کی رضامندی کے ساتھ منظور کیا جانا چاہیئے

مشمولہ ''A'' میں مجوزہ آئینی ترامیم کو ان اصولوں کے ساتھ مطابقت میں تحریر کیا گیا ہے۔

(الف) پاکستان کی طرف سے اقوام متحدہ کی سلامتی کونسل کی قراردادوں کے مطابق مسئلہ کشمیر کے حل کے ساتھ پاکستان کی وابستگی باضابطہ اعادہ

(ب) آزاد جموں وکشمیر اور گلگت بلتستان کی پاکستان کی پارلیمنٹ، صدر کے انتخابات کے الیکٹرول کالج اور فیڈریشن اور صوبوں میں پالیسی رابطے کے لیئے وفاقی اداروں میں نمائندگی اور

(ج) آئین پاکستان کے ان حصوں کے جن پر اتفاق رائے ہو اطلاق کا موقع فراہم کرتی ہیں۔ قومی اسمبلی میں مجوزہ طور پر دی گئی نشستوں کی تعداد ان کی آبادی کے تناسب سے ہے۔ اس خیال کے ساتھ کہ ریاست کا ایک حصہ انڈیا میں ہے اور وہ کوئی نمائندے منتخب نہیں کرسکتا، سینٹ میں ان کی نشستوں کا حصہ صوبوں کو دیئے گئے

حصے سے نصف ہے۔ سینٹ کی سیٹوں میں آزاد جموں وکشمیر اور گلگت بلتستان میں سے ہر ایک دی گئی تعداد کا نصف حاصل کر لیں گے۔

امید کی جاتی ہے کہ یہ تجاویز تمام سٹیک ہولڈرز کے درمیان خاص طور پر آزاد جموں وکشمیر اور گلگت بلتستان میں، مباحثہ کو جنم دیں گی اور ضروری آئینی ترامیم کو اتفاق رائے سے منظور کرنے میں سہولت فراہم کریں گی۔

(مصنف محکمہ خارجہ کے سابق رکن/سفیر ہیں)

☆☆☆☆☆

THE CASE FOR THE RIGHTS OF THE PEOPLE OF AZAD JAMMU AND KASHMIR

Sheikh Muhammad Junaid

When Caliph Umar was returning to Madinah after receiving the surrender of Jerusalem and completing a tour of Syria, he led the prayer at Jabiah. On this occasion he delivered an address which is preserved in history. The major thrust of his address was:

> "Fear Allah (The One True God), and whatever you want seek from Him. All men are equal. Do not flatter those in authority. Do not seek favours from others. By such acts you demean yourself…."
>
> "And speak the truth. Do not hesitate to say what you consider to be the truth. Say what you feel. Let your conscience be your guide. Let your intentions be good, for verily God is aware of your intentions. In your deeds, your intentions count. Fear God, and fear no one else…."

2. Having sought inspiration from the excerpts of Caliph Umar's speech, I venture to pen down my views with "conscience as my guide" and "with good intentions". I was posted as Joint Secretary of the AJK Council from March 1998 to June 2003, a tenure lasting for more than five years which no other bureaucrat has had till date. I was posted in the said position for no special merit of domicile, experience or prior knowledge of the area or the people of AJK. It was only a routine posting. However, having seen things from close quarters, I wish to justify my feelings and sentiments for becoming part of the agenda of ARJK and lending support towards achieving its objectives.

3. The following top-most positions are held by officers of the Government of Pakistan who are almost never state subjects of AJK, although the people of AJK have special quota of seats reserved for them in the CSS examination:

Chief Secretary
Additional Chief Secretary (Planning and Development)
Finance Secretary
Auditor General of AJK
Accountant General of AJK
Inspector General of Police
Secretary Health Department

4. The senior-most bureaucracy of AJK is no less competent and experienced than that of other Provinces and, therefore, justifiably has a very strong feeling of deprivation and of being ruled by Pakistan. They rightly think that they are being treated as citizens who are not competent and don't deserve to have equal rights as Pakistani citizens. This causes frustration, anger and insecurity, as they feel that their political, social and economic rights are being infringed and they are not being treated as full-fledged Pakistani-Kashmiri citizens. The positions being of the highest stature, the officers are entitled to use the best of cars and SUVs, live in the most comfortable houses and are served by battalions of servants and officials. This has wider implications as the AJK people feel they are being ignored and not only maltreated but ruled by Pakistan. The people of AJK also feel that officers from Pakistan cannot understand their administrative problems, because they have no emotional attachment and little knowledge of the area. They feel these bureaucrats cannot protect the Kashmiri people's rights and cause.

5. On the other hand, most officers of Government of

Pakistan, who are posted to the most coveted and privileged positions, have never visited AJK ever in their lives or their careers. They get posted there only as a matter of routine. In fact if somehow they don't manage to get postings on equivalent positions in other Provinces, they prefer to be in AJK from where they know they can build a clout with senior officers of the armed forces sitting in Murree which will help them in their future career progression, postings and perks. All ex-Chief Secretaries get their BS-22 right after completing their tenure or even before. Some even manage to build clout to be able to rise to higher positions after their retirement.

6. There are some other political factors relating to the AJK Council, which breed resentment and grudge in the minds of the people of AJK. By virtue of Section 21 of the Interim Constitution Act 1974, the AJK Council is headed by the Prime Minister of Pakistan and most of the legislative powers of the National Assembly of Pakistan are vested in the AJK Council. The executive authority with respect to these matters is also vested in the AJK Council and is exercised by the Chairman directly or by the AJK Council Secretariat which is headed by the Minister in charge of the Council Secretariat who has traditionally been the Minister for Kashmir Affairs and is never a state subject of AJK. The Secretary of the Kashmir Affairs Ministry is the head of the Secretariat and again is never a state subject of the AJK. It is rare that the Secretary ever visits AJK during his tenure as Secretary of the AJK Council Secretariat. He, therefore, has little or no knowledge of the administrative problems of the people of AJK which are specific to the area. Besides, the Chairman of the Council (i.e. the Prime Minister of Pakistan) is not answerable before the Parliament or the judiciary of Pakistan or any other institution of the country or AJK.

7. The day-to-day business of the Council Secretariat is

run by the Joint Secretary who is again never a state subject of AJK. The AJK Council Secretariat is located in F-5/2, Islamabad and is manned by officials and staff hailing from all over the country but AJK. There may be a few from AJK but that is a matter of coincidence only. The bureaucracy of AJK is answerable to no forum of AJK, nor to Pakistan's National Assembly. Therefore, the bureaucracy of AJK rules unbridled, independent of any checks and balances. The Joint Secretary of the AJK Council is the most coveted and privileged post among Joint Secretaries of the Ministries and Divisions of the Federal Government.

8. The legislative business of the Council is performed by its six elected members, five co-opted members from amongst Federal Ministers, members of parliament nominated by the Prime Minister of Pakistan and three ex-officio members. Most often the co-opted members have a very high political stature, by virtue of their portfolios which is most often the Ministry of Finance, Ministry of Foreign Affairs, Ministry of Interior and Ministry of Kashmir Affairs etc. The elected members are overshadowed by these Ministers and, therefore, carry the day if and when the interest of the people of AJK comes in conflict with that of the Pakistan Government. The people of AJK feel that their elected representatives on the Council who are "indirectly" elected by them are unable to protect the rights and interests of the citizens of AJK. The people also feel aggrieved that as against the laws passed by the Legislative Assembly of AJK, the laws passed by the Council do not require to be ratified by their own President. The legislative business, in other words, is the prerogative of the bureaucracy of the AJK Council Secretariat.

9. From the experience of the author, it was observed that the AJK Council sessions are held only once in a year and

that is when it becomes absolutely necessary to pass the budget of the Council Secretariat and under Section 37 (4) of the of the AJK Interim Constitution Act the Chairman has to authenticate, by his signatures, the statement of estimated receipts and expenditure of the Council. The Chairman of the Council has over-riding powers to spend money from the Consolidated Fund of the Council under the Interim Constitution. The legislative business is also performed in these sessions in the swiftest of ways without any discussion and opportunity being given to the elected representative to debate and brood on matters. These budget sessions are held for 2-3 hours in a year because of the busy schedule of the Prime Minister and other Ministers of Pakistan. The only interest of the elected members of the Council is to seek perks and facilities while in office or development funds for their respective constituencies which are rarely spent for the welfare of the people. The people of AJK are, therefore, wary of the members and consequently of the Council.

10. In the light of experience gained by me during my tenure and first-hand knowledge of various issues, I strongly support the agenda of ARJK and recommend that the constitutional amendments proposed by Justice (Retd.) Manzoor Gilani should be adopted at the earliest, lest the people be compelled to force the Government of Pakistan to take initiatives. That might have negative repercussions on the Kashmir cause. The people of AJK should be given the right to govern themselves and to become part of the decision-making. The proposed amendments will also give them the feeling of sharing the country's assets and enjoying the rights of citizens of Pakistan.

Sheikh Muhammad Junaid, Secretary General of ARJK is a former Federal Secretary

آزاد کشمیر کے عوام کے حقوق کا معاملہ

شیخ محمد جنید
سیکرٹری جنرل
اے۔آر۔جے۔کے

یروشلم کو فتح کرنے اور شام کا دورہ مکمل کرنے کے بعد جب حضرت عمر رضی اللہ عنہٗ مدینہ واپس پلٹ رہے تھے تو آپؓ نے جبیہا میں نماز کی امامت کرائی۔اس موقع پر انہوں نے خطاب جو کیا وہ تاریخ میں محفوظ ہے۔آپؓ کے خطاب کا جوہر یہ تھا۔

''اللہ (معبود حقیقی) کا خوف رکھو اور جو بھی کچھ ہو اس سے مانگو۔تمام انسان برابر ہیں۔اہل اقتدار کی خوشامد نہ کرو۔دوسروں سے رعایت طلب نہ کرو۔اس طرح کے اعمال سے تم اپنے مقام سے گر جاتے ہو''

''اور سچ بولو۔جس بات کو سچ سمجھتے ہو اس کے اظہار میں تامل نہ کرو جو محسوس کرتے ہو کہہ دو۔اپنے ضمیر کو اپنا راہنما بناؤ،اپنی نیتوں کو اچھی رکھو اس لیے کہ یقیناً خدا تمہاری نیتوں سے باخبر ہے۔تمہارے اعمال کا دارومدار نیتوں پر ہے۔صرف خدا کا خوف رکھو اور کسی کا خوف نہ رکھو۔''

2۔ حضرت عمر رضی اللہ کے خطاب کے انتسابات سے تحریک حاصل کرتے ہوئے میں اپنے ضمیر کو راہنما بنا کر اچھی نیت کے ساتھ اپنے خیالات تحریر کرنے کی جسارت کر رہا ہوں۔میں مارچ 1998 سے 3 جون 2003 تک آزاد جموں وکشمیر کونسل کے جوائنٹ سیکرٹیری کے طور تعینات رہا یہ پانچ سال سے زیادہ کا ایسا طویل عرصہ ہے کہ جو کسی اور

بیروکریٹ کو حاصل نہیں رہا۔ میری اس عہدہ پر تعیناتی ڈومی سائل، تجربہ یا آزاد جموں وکشمیر کے علاقے یا عوام کے بارے میں پہلے سے معلومات کے میرٹ کی بنیاد پر نہیں ہوئی تھی۔ یہ ایک معمول کی تعیناتی تھی۔ بہر کیف معاملات کو قریب سے دیکھنے کے بعد میں اپنے احساسات اور جذبات کے پیش نظر اے۔آر۔جے۔کے ایجنڈا کا حصہ بنا اور اس کے مقاصد کے حصول کے لیے اپنی خدمات پیش کرنے کی خواہش رکھتا ہوں۔

3۔ اگرچہ آزاد جموں کشمیر کے لوگوں کو سنٹرل سپیریر سروسز کے امتحانات میں خصوصی نشستوں کا کوٹہ حاصل ہے۔ تاہم درجہ ذیل اعلیٰ ترین عہدوں پر حکومت پاکستان اپنے آفیسرز کا تقرر کرتی ہے جو کہ کبھی آزاد کشمیر کے باشندے نہیں ہوتے۔

- ☆ چیف سیکرٹری
- ☆ ایڈیشنل چیف سیکرٹری (پلاننگ اینڈ ڈویلپمنٹ)
- ☆ فنانس سیکرٹری
- ☆ آڈیٹر جنرل آف اے۔جے۔کے۔
- ☆ اکاونٹنٹ جنرل آف اے۔جے کے۔
- ☆ انسپکٹر جنرل آف پولیس
- ☆ سیکرٹری ہیلتھ ڈیپارٹمنٹ

4۔ آزاد جموں کشمیر کی سینئر بیروکریسی دوسرے صوبوں کی بیروکریسی سے کسی طور کم اہلیت کی حامل یا کم تجربہ کار نہیں ہے، اس وجہ سے انکو احساس محرومی ہے کہ ان پر پاکستان کے لوگ حکومت کرتے ہیں۔۔ وہ بجا طور پر یہ سمجھتے ہیں کہ ان کو نااہل اور پاکستانی شہریوں کے برابر نہیں سمجھا جاتا یہ بات ان میں مایوسی، ناراضگی اور عدم تحفظ کا باعث بن رہی ہے اور وہ یہ

محسوس کرتے ہیں کہ ان کے سیاسی ،سماجی اور اقتصادی حقوق پر تجاوز کیا جارہا ہے اوران سے کامل پاکستانی کشمیری شہریوں جیسا سلوک نہیں کیا جارہا۔ چونکہ یہ عہدے اعلیٰ ترین سطح کے ہیں اس لیے ان آفیسرز کو بہترین ٹرانسپورٹ، رہائش کے لئے پرکشش گھر اور خدمت کے لئے ملازمین کی فوج اور سٹاف میسر ہوتا ہے۔اس کے مضرات وسیع ترین ہیں اس لیے کہ آزاد کشمیر کے عوام سمجھتے ہیں کہ انہیں نظرانداز کیا جارہا ہے اور نہ صرف ان کے ساتھ برا سلوک کیا جارہا ہے بلکہ وہ پاکستان کے محکوم ہیں۔آزاد جموں کشمیر کے عوام یہ بھی محسوس کرتے ہیں کہ پاکستان سے آنے والے آفیسرز ان کے انتظامی مسائل کو نہیں سمجھ سکتے کیوں کہ نہ تو ان کی کوئی جذباتی وابستگی ہے اور نہ وہ اس علاقے کے بارے میں معلومات رکھتے ہیں۔وہ محسوس کرتے ہیں کہ یہ بیروکریٹ کشمیری عوام کے حقوق اور مفادات کا تحفظ نہیں کر سکتے۔

5۔ دوسری طرف حکومت پاکستان کے زیادہ تر آفسرین جو ان اعلیٰ اور مراعات یافتہ عہدوں پر تعینات ہیں نے اپنی زندگی یا کیریئر میں کبھی آزاد کشمیر کا دورہ نہیں کیا ہوتا۔ان کی وہاں تعیناتی بالکل معمول کی کاروئی ہوتی ہے۔حقیقت یہ ہے کہ اگر یہ دوسرے صوبوں میں مساوی عہدوں پر تعیناتی نہیں کرواپاتے تو وہ آزاز کشمیر کو ترجیح دیتے ہیں جہاں سے یہ جانتے ہیں کہ مری میں بیٹھے ہوئے سینئر فوجی افسروں سے تعلقات قائم کر کے اپنی مستقبل کی پیشہ ورانہ ترقی ،تعیناتیوں اور مراعات میں مددگار ہونگے۔سارے سابق چیف سیکرٹریز اپنا بی پی ایس 22 وہاں اپنے عہدہ کی معیاد ختم ہونے یا اس سے بھی پہلے حاصل کر لیتے ہیں ان میں سے بعض تو ایسے تعلقات قائم کرنے کا اہتمام کر لیتے ہیں جو انہیں ریٹائرمنٹ کے بعد پہلے سے برتر عہدوں پر ترقی حاصل کرنے کے قابل بنا دیتے ہیں۔

6۔ آزاد جموں وکشمیر کونسل سے متعلقہ کچھ اور سیاسی عوامل بھی ہیں جو آزاد جموں کشمیر کے عوام کے ذھنوں میں نفرت اور عناد کو جنم دے رہے ہیں۔عبوری آئین ایکٹ 1974 کے سیکشن 21 کی بنیاد پر وزیراعظم پاکستان آزاد جموں کشمیر کونسل کے سربرا ہوتے ہیں۔اور پاکستان کی قومی اسمبلی کو حاصل قانون سازی کے بہت سے اختیارات آزاد جمون کشمیر کونسل کو دیے گئے ہیں۔ان امور سے متعلقہ انتظامی اختیارات بھی آزاد جموں کشمیر کونسل کو سونپ دی گئی ہیں جن کا استعمال یا تو براہ راست چیرمین کرتے ہیں یا آزاد جموں کشمیر کونسل سیکرٹریٹ کرتی ہے جس کے سربراہ کونسل سیکرٹریٹ کے انچارج وزیر ہیں جو کہ روایتی طور پر وزیرامور کشمیر ہوتے ہیں اور وہ کبھی بھی ریاست جموں کشمیر کا باشندہ نہیں ہوتے۔وزات امور کشمیر کے سیکرٹری،سیکرٹریٹ کے سربراہ ہوتے ہیں اور وہ بھی کبھی آزد جموں کشمیر کے باشندہ نہیں ہوتے یہ شاذ و نادر ہی ہوتا ہے کہ سیکرٹری،آزاد جموں کشمیر کونسل سیکرٹریٹ کے سیکرٹری کے طور پر اپنے عہدہ کی مدت کے دوران آزاد جموں کشمیر کا دورہ کریں۔لہذا انہیں آزاد جموں کشمیر کے عوام کے خصوصی مسائل کا یا تو علم نہیں ہوتا یا بہت کم علم ہوتا ہے۔۔علاوہ ازیں کونسل کے چیئرمین (وزیراعظم پاکستان) مملکت پاکستان کی پارلیمنٹ یا عدلیہ یا آزاد جموں کشمیر کے کسی ادار کے سامنے جوابدہ نہیں ہوتے۔

7۔ کونسل سیکرٹریٹ کے روزمرہ کے امور کو جوائنٹ سیکرٹری چلاتے ہیں جو بھی کبھی آزاد کشمیر کے باشندہ نہیں ہوتے۔آزاد جموں کشمیر کونسل سیکرٹریٹ ایف 2/5 اسلام آباد میں واقع ہے اور اس میں شامل آفیشلز اور عملہ کا تعلق بھی ملک کے مختلف علاقوں سے ہوتا ہے لیکن کشمیر سے نہیں ہوتا۔ہوسکتا ہے کہ کبھی چند افراد آزاد جموں کشمیر سے ہوں لیکن یہ محض اتفاق کی بات ہوتی ہے۔آزاد جموں کشمیر کونسل کی بیروکریسی نہ ہی آزاد جموں کشمیر کے کسی فورم اور نہ ہی

پاکستان کی قومی اسمبلی کے سامنے جوابدہ ہوتی ہے۔لہذا آزاد جموں کشمیر کونسل کی بیوروکریسی بے لگام اور کسی بھی چیک اینڈ بیلنس سے آزاد حکمرانی کرتی ہے۔آزاد جموں کشمیر کے جوائنٹ سیکرٹری کا عہدہ وفاقی حکومت کی وزارتوں اور ڈویژنوں کے تمام جوائنٹ سیکرٹریز کے مقابلہ میں سب سے زیادہ پرحرص اور مراعات یافتہ ہوتا ہے۔

8۔ کونسل کے قانون سازی کے امور کو اس کے چھ منتخب ارکان، وزیراعظم پاکستان کی طرف سے وفاقی وزرا یا قومی اسمبلی سے نامزد کردہ پانچ ارکان، اور تین ایکس آفیشو ارکان چلاتے ہیں۔نامزد ارکان عام طورر پر وزارت خزانہ، وزارت خارجہ وزارت داخلہ یا وزارت امور کشمیر وغیرہ کے قلمدان رکھنے کے باعث بہت بلند سیاسی قد وقامت کے حامل ہوتے ہیں۔منتخب ارکان ان وزرا کے سامنے اپنی اہلیت کھو دیتے ہیں اور محض اس وقت کچھ کارکردگی دکھاتے ہیں جب آزاد جموں کشمیر کے عوام کے مفادات پاکستان کے شہریوں سے متصادم ہوتے ہیں۔آزاد جموں کشمیر کے عوام محسوس کرتے ہیں کہ کونسل میں ان کے منتخب نمائندے جن کو وہ بالواسطہ منتخب کرتے ہیں آزاد جموں کشمیر کے شہریوں کے مفادات کا تحفظ نہیں کر سکتے ۔عوام اپنے ساتھ یوں بھی زیادتی محسوس کرتے ہیں کہ آزاد جموں کشمیر کی قانون ساز اسمبلی کے پاس کردہ قوانین کے برعکس کونسل کے پاس کردہ قوانین کو ان کے اپنے صدر کی منظوری کی ضرورت نہیں ہوتی ۔دوسرے الفاظ میں قانون سازی کا کام صرف آزاد جموں کشمیر کونسل سیکرٹیریٹ کی بیوروکریسی کا خصوصی اختیار ہے۔

9۔ راقم نے اپنے تجربہ سے اس بات کا مشاہدہ کیا ہے کہ کونسل کا اجلاس سال میں صرف ایک مرتبہ ہوتا ہے اور وہ بھی جب کونسل سیکرٹرایٹ کے بجٹ کی منظوری لازمی ہو جاتی ہے ۔آزاد جموں کشمیر کونسل کے عبوری آئین کے سیکشن 37(4) کے مطابق چیئرمین اپنے

دستخطوں سے تخمینہ شدہ رسیدوں اور اخراجات کی توثیق کرتا ہے۔ چیئرمین کو عبوری آئین کے تحت کونسل کے کنسالیڈیٹڈ فنڈ سے رقم خرچ کرنے کے ماوراء ائینی اختیارات حاصل ہیں۔ قانون سازی کا کام بھی بغیر بحث وتمحیث کے انتائی تیز رفتاری سے ہوتا ہے۔ یہ بجٹ اجلاس بھی وزیراعظم پاکستان اور دوسرے پاکستانی وزراء کے مصروف نظام الاوقات کے باعث محض 2/3 گھنٹوں تک محدود ہوتے ہیں۔ منتخب ممبران کی دلچسپی اپنے مدت عہدہ کے دوران مراعات اور سہولیات یا اپنے متعلقہ حلقہ ہائے انتخاب کے لیے ترقیاتی فنڈز کا حصول ہوتی ہے جو کبھی بھی عوام کے بہبود کے لیے خرچ نہیں کیے جاتے۔ لہذا آزاد جموں کشمیر کے عوام ارکان اور نتیجتاً کونسل سے نالاں ہیں۔

10۔ اپنے مدت عہدہ کے دوران حاصل ہونے والے تجربہ اور مختلف معاملات پر براہ راست معلومات کی روشنی میں اے۔آر۔جے۔کے۔کے اینجڈا کی پرزور حمایت کرتا ہوں اور سفارش کرتا ہوں کہ جسٹس (ریٹائرڈ) سید منظور حسین گیلانی کی تجویز کردہ ترمیمات کو فوری طور منظور کر لیا جائے، کہیں ایسا نہ ہو کہ عوام حکومت پاکستان کو یہ اقدامات اٹھانے پر زبردستی مجبور کریں اس صورت حال کا کشمیر کاز پر منفی اثرات مرتب ہو سکتے ہیں۔ کشمیر کے عوام کو اپنی حکومت خود چلانے کا حق دیا جانا چاہیئے اور انہیں فیصلہ سازی میں شریک ہونا چاہیئے۔ مجوزہ ترمیمات انہیں ملک کے اثاثوں میں حصہ دار ہونے اور پاکستانی شہریوں کے حقوق حاصل ہونے کا احساس بھی دلائیں گی۔

(مصنف سابق وفاقی سیکرٹری ہیں۔)

☆☆☆☆☆

A CRISIS OF IDENTITY

Air Marshal (Retd.) Masood Akhtar

As Pakistan's difficulties mount, the Kashmir cause suffers. Faced with internal and external problems, Pakistan cannot support the Kashmiri people as much as it would like. But it can certainly do something about the present insecurities of the people in AJK who are tending to get relatively disenchanted with Pakistan. They think that they are being treated as second-class citizens and don't have adequate rights as dignified citizens. This causes unrest, anxiety and insecurity as they feel that their political, social and economic rights are being violated as full-fledged citizens of a Pakistani-Kashmir identity.

This has serious national security implications and weakens our Kashmir case. Outside powers in general and India in particular exploit this. They say that if the AJK people are being ignored, if not maltreated by Islamabad, then why occupied Kashmir should be handed over to an uncaring Pakistan. The 1974 Act under which Azad Jammu and Kashmir is governed adds to the woes because it doesn't protect the Kashmiris' rights as dignified citizens. The solution lies in giving full rights to AJK and Gilgit-Baltistan (GB) in a way that does not prejudice our stand on the dispute.

Let me be honest. Having served in the Pakistan Air force for over 35 years, I am a proud Pakistani-Pakistan citizen. But I also have a secondary identity. As my close relatives live in AJK, I also identify myself with a Pakistani-Kashmir identity. My relatives too pride themselves as Pakistani-Kashmiris. Unfortunately such feelings of pride are eroding. As the AJK citizens feel marginalised and feel totally

dependent upon the largesse from Pakistan, they (especially the youth) think the autonomy and equality due to them is being compromised.

Kashmir (both parts) is indeed disputed territory. But while the status of the state is undecided, the rights of the people living there are certainly not disputed. Be it the Pakistani constitution, the UN charter, or most importantly Islam and the Quran, all assure full and equal rights to all which cannot be denied. Unfortunately the 1974 Act does exactly that and has resulted in huge insecurities for the people of AJK.

I give an example. My ancestors were born and are buried in the Mangla Lake area (erstwhile old Mirpur). Unfortunately, we are not allowed to use the water stored in the reservoir. The AJK government as per the 1974 Act is not entitled to membership in the Council of Common Interests or the Pakistan provincial coordination apparatus and thus has no say in national issues like the apportionment of resources. It also cannot claim any royalty for the electricity produced by Mangla Dam, the way Khyber Pakhtunkhwa claims the same from Tarbela. AJK cannot produce electric power even though there is potential of over 20,000 megawatts at relatively lesser cost.

It was therefore an irony that when the AJK ex-Prime Minister Raja Faroq Haider asked for AJK's share of water from Mangla, the then Pakistan Prime Minister sent the issue to the Provincial Coordination Ministry. Very unfortunately, one province chose to comment that water should not be given to AJK. The AJK Prime Minister aptly commented that being a lower riparian, that province could not deny the water to AJK.

Ironically, the top bureaucracy in Muzaffarabad, which is imposed from Pakistan, adds to the grievances. The people have a feeling that they are being governed by Pakistan through the AJK Council and that their own government is a mere rubber stamp. They think that the AJK administration has no real powers to govern and lead them to a secure and prosperous future.

The Gilgit-Baltistan autonomy model is a small step in the right direction but is not enough. Both AJK and Gilgit-Baltistan must be given autonomy and powers equal to other provinces.

Some analysts opine that recognising AJK and Gilgit-Baltistan as provinces can dilute Pakistan's stand vis-à-vis the UN Resolutions. Let us face the fact that our stand on the dispute has been eroded by economic impoverishment and political isolation of Pakistan because of faulty or non-existent national security policies. Pakistan has now become so weak, impoverished and isolated that it can barely do anything significant for the Kashmir cause.

In the national security paradigms, defence and security is the number one Vital National Interest for most secure nations. If that be so for Pakistan, then Kashmir is vital for both its defence and its security. To strengthen both parameters, it is essential to ensure an adequate supply of water and secure the crucial northern borders. To have any chance of doing that, we must have the people of AJK fully on our side and give them a stake as good as the people of the other provinces. That is the way to strengthen our case at the UN. An alienated populace has an adverse effect on promoting this crucial interest. The more proud they feel as citizens of a Pakistani-Kashmir, greater would be the

strength it will lend to Pakistan.

I therefore fully support the constitutional amendments suggested by Justice (Retd) Gilani. The AJK citizens should be given the political and economic rights due to any honourable citizen of a democratic country. The way forward is to give the same autonomy to Muzaffarabad as other provinces and the time to do that is now. We must give them as good a stake as the other four provinces.

One route to a secure Pakistan is to ensure without delay that the AJK citizens feel they have the same rights as anyone else in a Pakistani-Pakistan environment. The time may be slipping! If we don't stop the erosion of the AJK identity from Pakistani-Kashmir to Kashmiri-Pakistan and then God-forbid a Kashmiri-Kashmir belief, it may be difficult if not impossible to retrieve the situation. That day must not come!

Air Marshal (Retd.) Masood Akhtar is former Air Marshal of the Pakistan Air Force.

تشخص کا بحران

ایئر مارشل (ر) مسعود اختر

جوں جوں پاکستان کی مشکلات میں اضافہ ہوتا جا رہا ہے' کشمیر کاز کو نقصان پہنچ رہا ہے۔ اندرونی اور بیرونی مسائل سے دوچار پاکستان کشمیری لوگوں کی اتنی زیادہ مدد نہیں کر سکتا جتنا اس کو کرنا چاہیئے۔ لیکن یہ آزاد کشمیر کے لوگوں کے عدم تحفظ کے لیئے یقناً کچھ کر سکتا ہے جو پاکستان کے سحر سے نسبتاً سر کستے جا رہے ہیں۔ وہ سوچتے ہیں کہ ان کے ساتھ دوسرے درجے کے شہری جیسا سلوک کیا جا رہا ہے اور ایک باوقار شہری جیسے حقوق حاصل نہیں ہیں۔ اس وجہ سے عدم سکون' بیزاری اور عدم تحفظ پیدا ہو رہا ہے کیونکہ وہ محسوس کرتے ہیں کہ ان کے پاکستان بھر کی شناخت رکھنے والے شہریوں کے جیسے سیاسی' سماجی' اور اقتصادی حقوق سے انحراف ہو رہا ہے۔

یہ حالت قومی سلامتی کے حوالہ سے سنگین مضمرات کی حامل ہے جو ہمارے کشمیر کیس کو کمزور کرتی ہیں۔ بیرونی طاقتیں بالعموم اور ہندوستان بالخصوص اس کو ایکسپلائٹ کرتے ہیں۔ ان کا کہنا ہے کہ اگر آزاد کشمیر کے لوگوں کو نظر انداز کیا جا رہا ہے' اگر چہ استحصال نہ بھی کیا جا رہا ہو' تو مقبوضہ کشمیر کو ایک لا پرواہ پاکستان کو کیوں دیا جائے؟ ایکٹ 1974 جس کے تحت آزاد کشمیر کا نظم و نسق چلایا جا رہا ہے ان کی پریشانیوں میں اضافہ کرتا ہے کیونکہ یہ کشمیریوں کے باوقار شہریوں جیسے حقوق کا تحفظ نہیں کرتا۔ اس کا حل آزاد جموں و کشمیر اور گلگت بلتستان کے لوگوں کو کشمیر کاز کے تنازعے پر اپنے موقف پر قائم رہتے ہوئے مکمل حقوق دینے ہیں۔

میں دیانتداری سے کہتا ہوں کہ پاکستانی فضاء میں پینتیس سال سے زیادہ خدمات انجام دے کر میں پاکستان کا ایک غیور پاکستانی شہری ہوں۔لیکن میں ایک ثانوی شناخت بھی رکھتا ہوں۔ چونکہ میرے قریب ترین رشتہ دار آزاد کشمیر میں رہتے ہیں اس لیئے میں ایک پاکستانی کشمیری کی حیثیت سے بھی شناخت رکھتا ہوں۔میرے رشتہ دار بھی پاکستانی کشمیری کی شناخت پر فخر کرتے ہیں۔ بدقسمتی سے فخر کے یہ احساسات زوال پذیر ہو رہے ہیں۔ چونکہ آزاد کشمیر کے لوگ اپنے آپ کو بے وقعت اور مکمل طور پر پاکستان کی جانب سے خیرات پر منحصر سمجھتے ہیں' اس لیئے وہ (بالخصوص نوجوان) سمجھتے ہیں کہ ان کی خود اختیاری اور مساوی حیثیت پر سمجھوتا کیا جا رہا ہے۔

بلا شبہ کشمیر کے دونوں حصے متنازعہ ہیں اور ریاست کی حیثیت کا فیصلہ ہونا باقی ہے، لیکن اس میں رہنے والے لوگوں کے حقوق یقینی طور پر غیر متنازعہ ہیں۔ پاکستان کا آئین ہو یا یو۔این کا چارٹر ہو یا اہمیت کا حامل اسلام اور قرآن' سب کے سب ہر ایک کو مکمل اور برابر کے حقوق کی ضمانت دیتے ہیں جن سے انکار نہیں کیا جا سکتا۔ بدقسمتی سے ایکٹ 1974 ایسا کرتا ہے اور اس کا نتیجہ آزاد کشمیر کے لوگوں کا انتہائی غیر محفوظ ہونا ہے۔

میں ایک مثال پیش کرتا ہوں۔میرے اجداد منگلہ ڈیم' سابق میر پور کے ایریا میں پیدا ہوئے اور وہیں مدفون ہیں۔لیکن بدقسمی سے ان لوگوں (میر پور) کو منگلہ کے آبی زخیرے کے پانی کو استعمال کرنے کی اجازت نہیں دی جاتی۔ایکٹ 1974 کے تحت حکومت آزاد جموں وکشمیر قومی مفاد کی کونسل یا پاکستان کی صوبائی رابطہ کونسل کی ممبر نہیں ہے اس لیئے اس کو پانی کی تقسیم کے قومی ایشو پر کوئی بات کرنے کا حق نہیں ہے! یہ منگلہ ڈیم سے پیدا

کی جانے والی توانائی سے حصہ نہیں مانگ سکتی۔ جس طرح کے خیبر پختونخوا تربیلہ ڈیم سے حصہ مانگتا ہے۔ یہ بجلی بھی پیدا نہیں کرسکتی جبکہ یہاں نسبتاً کم لاگت پر بیس ہزار میگاواٹ بجلی پیدا کرنے کی گنجائش موجود ہے۔ یہ ایک تلخ ستم ظریفی ہے کہ جب سابق وزیراعظم راجہ محمد فاروق حیدر نے منگلہ ڈیم سے اپنے پانی کا حصہ مانگا تو وزیراعظم پاکستان نے یہ معاملہ صوبائی رابطہ کونسل کی منسٹری کے سپرد کردیا، جہاں بدقسمتی سے سندھ نے آزاد کشمیر کو پانی دینے سے انکار کردیا جبکہ وزیراعظم آزاد کشمیر کا موقف تھا کہ سندھ نشیبی حثیت میں ہونے کی صورت میں آزاد کشمیر کو پانی دینے سے انکار نہیں کرسکتا۔

بدقسمتی سے آزاد کشمیر میں پاکستان سے یکطرفہ طور مسلط کی جانے والی بیوروکریسی شکایات میں اضافہ کے باعث بنتی ہے۔ لوگوں کو یہ احساس ہے کہ ان پر حکومت پاکستان کشمیر کونسل کے نام پر حکومت کررہی ہے اور ان کی اپنی حکومت محض ربر سٹیمپ ہے۔ لوگ یہ سوچتے ہیں کہ آزاد کشمیر حکومت کو یہاں نظم ونسق چلانے' اور محفوظ اور خوشحال مستقبل کی طرف رہنمائی کرنے کا کوئی اختیار حاصل نہیں ہے۔

گلگت و بلتستان کی خوداختیاری کا ماڈل صحیح سمت کی طرف ایک چھوٹا سا راست قدم ہے۔ لیکن یہ یو این سیکورٹی کونسل کی قراردادوں کے حوالہ سے مشکلات پیدا کرسکتا ہے۔ یہ یو۔این میں ہمارے کشمیر کیس کو کمزور کرسکتا ہے کیونکہ اس ماڈل میں گلگت بلتستان کو پاکستان کا حصہ ظہار کیا گیا ہے۔ دونوں حصوں کو خوداختیاری اور باقی صوبوں کے برابر اختیارات ملنے چاہیں۔

کچھ مبصرین کا خیال ہے کہ آزاد کشمیر اور گلگت بلتستان کو صوبے تسلیم کرنے سے یوا۔این قراردادوں کے تحت پاکستان کا موقف تحلیل ہو جائیگا۔ ہمیں اس حقیقت کا سامنا کرنا چاہیئے کہ اس تنازعیہ پر ہمارے موقف کو قومی سلامتی کی ناقص بلکہ معدوم پالسی نے نہیں، بلکہ ہماری اقتصادی زبوں حالی اور سیاسی تنہائی نے کمزور کیا ہے۔ پاکستان اتنا کمزور، مفلس اور تنہا ہو گیا ہے کہ یہ کشمیر کے لیئے اب بمشکل ہی قابل اہمیت کچھ کر سکے۔

قومی سلامتی کے تناظر میں ڈیفنس اور سیکورٹی محفوظ ترین قوموں کا نمبر ایک اہم ترین قومی مفاد ہوتا ہے۔ اگر پاکستان کے لیئے بھی ایسا ہی ہے، تو کشمیر اس کے دفاع اور سیکورٹی کے لیئے اتنا ہی اہم ہے۔ دونوں عوامل کو مضبوط کن بنانے کے لیئے پانی کی مکمل رسد کو یقینی بنانا اور انہتائی اہم شمالی سرحدوں کو محفوظ کرنا ضروری ہے۔ ایسا کرنے کے لیئے آزاد علاقوں کے لوگوں کو مکمل طور اپنا ہمنوا بنانا ضروری ہے یہ اس وقت ممکن ہوسکتا ہے کہ جب ان لوگوں کو اسی اچھے طریقے سے منسلک رکھا جائیگا جس طرح باقی صوبوں کے لوگ ہیں۔ اسی طرح یو۔این میں ہم اپنے کیس کو مضبوط بنا سکتے ہیں۔ نظر انداز کردہ آبادی کا قومی مفاد کو پروان چڑھانے پر یقینی طور مضر اثر ہوگا۔ یہ لوگ پاکستانی کشمیری شہری ہونے پر جتنا زیادہ فخر کریں گے، پاکستان کو اتنا ہی زیادہ طاقت فراہم کریں گے۔ اس لیئے میں جسٹس (ر) سید منظور حسین گیلانی کی مجوزہ آئینی ترامیم کی مکمل حمایت کرتا ہوں کہ آزاد علاقوں کے شہریوں کو اسی طرح مکمل سیاسی اور اقتصادی حقوق دیئے جانے چاہیں جس طرح کسی بھی جمہوری ملک میں معزز شہریوں کا حق ہے۔ پیش رفت کے لیئے ضروری ہے کہ مظفر آباد کو اسی طرح کی خود اختیاری دینی چاہیئے جیسی دوسرے صوبوں کو حاصل ہے اور اس کے کرنے کا یہی وقت ہے۔ ہمیں ان کو وہی کچھ عمدہ طریقے سے دینا چاہیئے جس طرح باقی چار صوبوں کو دیا گیا ہے۔

پاکستان کو محفوظ بنانے کا ایک یقینی راستہ یہ ہے کہ کسی دن (امید کرنی چاہیئے کہ بہت جلدی) آزاد علاقوں کے لوگ یہ محسوس کر سکیں کہ وہ اتنے ہی معزز ہیں جتنے پاکستان کے ماحول میں باقی پاکستانی ہیں۔ اگر ہم آزاد علاقوں کے تشخص کو مجروح کرنے اور پاکستانی کشمیر کو کشمیری پاکستان اور پھر خدانخواستہ ایک کشمیری کشمیر کے نظریئے سے نہ روک سکے، تو اس صورتحال سے نکلنا اگرچہ ناممکن نہیں لیکن مشکل ضرور ہوگا۔ ایسا دن نہیں آنا چاہیئے۔

(مصنف پاکستان ایئر فورس کے سابق ایئر مارشل ہیں)

☆☆☆☆☆

Attachment - A
PROPOSED AMENDMENTS TO THE CONSTITUTION OF PAKISTAN

Part II
Fundamental Rights and Principles of Policy

CHAPTER 2- PRINCIPLES OF POLICY

(1) Insertion of new Article 40A
The following new Article shall be inserted after Article 40:

"Plebiscite to make final disposition of Jammu and Kashmir
40A. The State shall make all necessary endeavours at the international level for a free and impartial plebiscite conducted under the auspices of the United Nations to make a final disposition of the State of Jammu and Kashmir in accordance with the relevant resolutions of the United Nations Security Council and the United Nations Commission for India and Pakistan."

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Part III
The Federation of Pakistan

CHAPTER 1.- THE PRESIDENT

(2) Amendment to Article 41 (The President)
In Article 41, clause (3), the word "and" shall be deleted at the end of paragraph (a) and added at the end of paragraph (b) and the following new paragraph shall be inserted:

"(c) pending the final disposition of the State of Jammu and

Kashmir in accordance with clause (1) of Article 257, the members of the Legislative Assemblies of Azad Jammu and Kashmir and Gilgit-Baltistan, respectively, from such date as the President may by order specify under clause (3) of that Article."

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CHAPTER 2.- THE MAJLIS-E-SHOORA

(3) Amendment to Article 51 (National Assembly)
In Article 51, the following proviso shall be added at the end of Clause (1):

"Provided that pending the final disposition of the State of Jammu and Kashmir in accordance with clause (1) of Article 257, there shall in addition be eight seats for Azad Jammu and Kashmir and three seats for Gilgit-Baltistan, to be filled from such date and in such manner as the President may by order specify under clause (3) of that Article."

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(4) Amendment to Article 59 (The Senate)
In Article 59, the following further proviso shall be added at the end of clause (1):

"Provided further that pending the final disposition of the State of Jammu and Kashmir in accordance with clause (1) of Article 257, there shall in addition be five seats each for Azad Jammu and Kashmir and Gilgit-Baltistan, respectively, to be filled from such date and in such manner as the President may by order specify under clause (3) of that Article."

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Part XII
Miscellaneous

CHAPTER IV.-GENERAL

(5) Replacement of Article 257
Article 257 shall be substituted by the following:

"**Provision relating to the State of Jammu and Kashmir**
257. (1) The final disposition of the State of Jammu and Kashmir shall be made in accordance with the will of the people of the State expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations in accordance with the relevant resolutions of the United Nations Security Council and the United Nations Commission for India and Pakistan.

(2) When the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and that State shall be determined in accordance with the wishes of the people of that State.

(3) Pending the final disposition of the State of Jammu and Kashmir in accordance with clause (1) of this Article and notwithstanding anything in this Constitution, such provisions of this Constitution shall apply to Azad Jammu and Kashmir and Gilgit-Baltistan, respectively, from such date and subject to such exceptions and modifications, if any, as the President may by order specify;

Provided that no such order shall be issued except with the concurrence of the Governments of Azad Jammu and Kashmir and Gilgit-Baltistan, respectively.

(4) Azad Jammu and Kashmir and Gilgit-Baltistan shall

be deemed to be provinces for the purpose of those provisions of the Constitution which apply to them.

(5) Pending the final disposition of the State of Jammu and Kashmir in accordance with clause (1) of this Article and notwithstanding anything in this Constitution, no Federal law shall apply to Azad Jammu and Kashmir or Gilgit-Baltistan unless the President so directs, subject to such exceptions and modifications, if any, as he may specify.

(6) In its application to Azad Jammu and Kashmir, the words "Province", "Provincial Assembly", "Provincial Government", "the Governor", "the Chief Minister", "Provincial Minister", "citizen of Pakistan", wherever used, shall respectively be read as "Azad Jammu and Kashmir", "Legislative Assembly of Azad Jammu and Kashmir", "Government of Azad Jammu and Kashmir", "President of Azad Jammu and Kashmir", "Prime Minister of Azad Jammu and Kashmir", "Minister of the Government of Azad Jammu and Kashmir", and "State subject of Jammu and Kashmir".

(7) In its application to Gilgit-Baltistan, the words "Province", "Provincial Government", "Provincial Minister" and "Provincial Assembly" wherever used, shall respectively be read as "Gilgit-Baltistan", "Government of Gilgit-Baltistan", "Minister of the Government of Gilgit-Baltistan", and "Gilgit-Baltistan Legislative Assembly" and the words "citizen of Pakistan" shall mean a citizen of Pakistan who has a domicile in Gilgit-Baltistan.

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(6) Amendment to Second Schedule (Election of President)
In paragraph 18, sub-paragraph (1) of the Second Schedule,

the following proviso shall be added at the end of clause (b):

"Provided that the number of votes cast in the Legislative Assembly of Azad Jammu and Kashmir and Gilgit-Baltistan, respectively, in favour of each candidate shall be multiplied by the total number of seats in the Provincial Assembly for the time being having the smallest number of seats and divided by four times the total number of seats in the Legislative Assembly in which votes have been cast;"

Attachment - B*

PROPOSED AMENDMENTS TO THE AZAD JAMMU AND KASHMIR INTERIM CONSTITUTION ACT, 1974

An Act to repeal and, with certain modifications, re-enact the Azad Jammu and Kashmir Government Act, 1970.

WHEREAS the future status of the State of Jammu and Kashmir is yet to be determined in accordance with the freely expressed will of the people of the State through the democratic method of free and fair plebiscite under the auspices of the United Nations as envisaged in the UNCIP Resolutions adopted from time to time;

AND WHEREAS a part of the territories of the State of Jammu and Kashmir already liberated by the people are known for the time being as Azad Jammu and Kashmir;

AND WHEREAS it is necessary to provide for the better Government and administration of Azad Jammu and Kashmir until such time as the status of Jammu and Kashmir is determined as aforesaid and for that purpose to repeal and re-enact the Azad Jammu and Kashmir Government Act, 1970, with certain modifications;

AND WHEREAS in the discharge of its responsibilities under the UNCIP Resolutions, the Government of Pakistan has approved of the proposed repeal and re-enactment of the said Azad Jammu and Kashmir Government Act, 1970, and authorized the president of Azad Jammu and Kashmir to introduce the

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* This Attachment reproduces the full text of the Azad Jammu and Kashmir Interim Constitution Act, 1974. The proposed amendments are shown in italics.

present Bill in the Legislative Assembly of Azad Jammu and Kashmir for consideration and passage;

It is hereby enacted as follows:-

1. <u>Short title and commencement, etc</u>.-

(1) This Act may be called the Azad Jammu and Kashmir Interim Constitution Act, 1974.

(2) It shall come into force on the day on which the Azad |Jammu and Kashmir Government Bill, 1974, is assented to, or is deemed to have been assented to, by the President.

(3) This Bill shall not be presented to the President for assent unless it has been passed by the votes of not less than two-thirds of the total number of members of the Assembly.

(4) The President shall assent to this Bill within three days after it has been presented to him for assent under sub-section (2) and, if the President fails to do so, he shall be deemed to have assented to this Bill at the expiration of the said period.

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

'**Agricultural income**' means agricultural 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, authorized to be made from dividends payable by the companies to individuals;

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

'**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 the thirtieth day of June;

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

'**Joint sitting**' means a joint sitting of the Assembly, [the Federal Minister in-charge of the Council Secretariat] and the elected members of the Council;

'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 oneness of Almighty Allah, His angels, the Books of Allah, the Holy Quran being the last of them, His prophets, the absolute finality of the prophet hood of Muhammad (Peace be upon him), the day of Judgement, and all the requirements and teachings of the Holy Quran and 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 thereunder;

'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 Incharge of the Council Secretariat or Advisor appointed

under Section 21, [1][Parliamentary Sectary, Advisor to the Prime Minister] or a 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 the20th April,1927 as amended from time to time;

'**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 profits 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.

(3) [A person who does not believe in the absolute and unqualified finality of the Prophet hood of Muhammad (Peace be upon him) the last of the Prophets or claims to be prophet, in any sense of the word or of any description whatsoever, after Muhammad (Peace be upon him), or recognises such a claimant as a prophet or a religious

reformer, is not a Muslim for the purposes of this Act or law.]

1. <u>Proposed Amendment to Section 2 (Definitions)</u>
(1) In sub-section (1) of section 2, the definitions of ***"Council"*** *and* ***"Joint Sitting"*** *shall stand deleted and the definition of* ***"Service of Azad Jammu and Kashmir"*** *shall be substituted by the following:-*

"Service of Azad Jammu and Kashmir" *means any service, post or office in connection with the affairs of Azad Jammu and Kashmir but does not include service as President, Speaker, Deputy Speaker, Prime Minister, Minister, Parliamentary Secretary, Advisor to the Prime Minister or a Member of the Assembly."*

(2) The following sub-section (2A) shall be inserted after sub-section (2) of section 2:

"(2A) The following words shall have the same meanings as under the Constitution of the Islamic Republic of Pakistan: "Act of Majlis-e-Shoora (Parliament)", "Federal Consolidated Fund", "Federal Government", "Federal law", "Federal Legislative List", "Federal Minister", "Federation", "Majlis-e-Shoora (Parliament)" and "President of Pakistan".

3. Islam to be state religion. - Islam shall be the State religion of Azad Jammu and Kashmir.

4. Fundamental Rights.- (1) Any law or any custom or usage having the force of law in so far as it is inconsistent with the rights conferred by this section, shall, to the extent of such inconsistency, be void.

(2) [No law shall made] which takes away or abridges the rights so conferred and any law made in contravention of this sub-section shall, to the extent of such contravention, be void.

(3) The Provisions of this section shall not apply to any law relating to the members of the defense services or of the forces charged with the maintenance of public order for the purpose of ensuring proper discharge of their duties or the maintenance of discipline among them.

(4) The Rights

1. **Security of person**.- No person shall be deprived of liberty save in accordance with law.

2. **Safeguard as to arrest and detention**.- (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate, and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

(3) Nothing in sub-paragraphs (1) and (2) shall apply to any person-

(a) Who for the time being is an enemy alien, or

(b) Who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a period exceeding

three months unless the review board set up by the Government has reported before the expiration of the said period of three months that there is, in its opinion, sufficient cause for such detention.

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall as soon as may be, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order:

Provided that the authority making any such order may refuse to disclose facts which such authority considers it to be against the public interest to disclose.

2. Proposed addition of paragraph 2-A in section 4(4) (The Rights)

> ***"2-A. Right to fair trial:*** *For the determination of his civil rights and obligations or in any criminal charge against him, a person shall be entitled to fair trial and due process."*

3. Slavery and forced labour prohibited.- (1) No person shall be held in slavery, and no law shall permit or in any way facilitate the introduction into Azad Jammu and Kashmir of slavery in any form.

(2) All forms of forced labour are prohibited.

(3) Nothing in this paragraph shall be deemed to affect compulsory service-

(a) by persons undergoing punishment for offences against any law; or

(b) required by any law for a public purpose.

4. Protection against retrospective Punishment.- No law shall authorise the punishment of a person.

(a) for an act or omission that was not punishable by law at the time of the act or omission; or

(b) for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.

*3. **Proposed addition of paragraph 4-A in section 4(4) (The Rights)***

*"**4-A. Protection against double punishment and self incrimination**: No person*

(a) shall be prosecuted or punished for the same offence more than once; or

(b) shall, when accused of an offence, be compelled to be a witness against himself."

5. Freedom of movement.- Subject to any reasonable restrictions imposed by law in the public interest, every State subject shall have the right to move freely throughout Azad Jammu and Kashmir territory and to reside and settle in any part thereof.

6. Freedom of assembly.- Every State Subject shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of public order.

7. Freedom of association.- (1) Subject to this Act, every State subject shall have the right to form association or unions, subject to any reasonable restrictions imposed by law in the interest of morality or public order.

(2) No person or political party in Azad Jammu and Kashmir shall be permitted to propagate against, or take part in activities prejudicial or detrimental to, the ideology of the State's accession to Pakistan.

8. Freedom of trade, business or profession.- Every State Subject possessing such qualifications, if any , as may be prescribed by law in relation to his profession or occupation shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Provided that nothing in this paragraph shall prevent-

(a) the regulation of any trade or profession by a licensing system; or
(b) the regulation of trade, commerce or industry in the interest of free competition therein; or
(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 the exclusion, complete or partial, or other persons.

9. Freedom of Speech.- Every State subject shall have the right to freedom of speech and expression, subject to any reasonable restrictions imposed by law in the interest of the security of Azad Jammu and Kashmir, friendly relations with Pakistan, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an

offence.

4. <u>Proposed addition of paragraph 9-A in section 4(4) (The Rights)</u>

> ***"9-A. Right to information:*** *Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law."*

10. Freedom of religion.- Subject to law, public order and morality-

(a) Every state subject has the right to profess and practice his religion; and
(b) Every religious denomination and every sect thereof has the right to establish, maintain and manage its places of worship:

Provided that nothing contained in sub-paragraphs (a) and (b) shall be so construed as to abridge the authority to promulgate laws which may prescribe prohibition or penalty for conversion from Islam or the act of converting or the attempt of converting a Muslim to some other religion.

11. Safeguard against taxation for purposes of any particular religion.- No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own.

12. Safeguard as to educational institutions in respect of religion etc.- (1) No person attending any educational institution shall be required to receive religious instructions or take part in any religious ceremony, or attend religious

worship, if such instruction, ceremony or worship relates to a religion other than his own.

(2) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination.

(3) No state subject shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth.

(4) In respect of any religious institution , there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation.

(5) Every religious community or denomination shall have the right to establish and maintain educational institutions of its own choice, and the Government shall not deny recognition to any such institution vests in that community or denomination.

(6) Nothing in this paragraph shall prevent any public authority from making provision for the advancement of any society or educationally backward class of state Subjects.

13. Provision as to property.- Subject to any reasonable restrictions imposed by law in the public interest, every State Subject shall have the right to acquire, hold and dispose of property.

14. Protection as to property.- (1) No person shall be deprived of his property save in accordance with law.

(2) No Property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation thereof and either fixes the amount of compensation or specifies the principles on which and the manner in which compensation is to be determined and given.

(3) Nothing in this paragraph shall, affect the validity of.

(a) any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health; or

(b) any law relating to the acquisition, administration or disposal of any property which is or is deemed to be evacuee property under any law; or

(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 purpose of-

i) providing education and medical aid to all or any specified class of State Subjects; or

ii) providing housing and public facilities and services such as roads, 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

(f) any law in force immediately before the coming into force of this Act.]

Explanation.- In sub-paragraphs (2) and (3), 'property' shall mean immovable property, or any commercial or industrial undertaking, or any interest in any undertaking.

15. Equality of state subjects.- All state subjects are equal before law and are entitled to equal protection of law.

5. ***Proposed addition of paragraph 15-A in section 4(4) (The Rights)***

*"**15-A. Right to education:** The state shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law."*

16. Non- discrimination in respect of access to public places,- In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any state subject on the ground only of race, religion, caste, sex or place of birth, but nothing herein shall be deemed to prevent the making of any special provision for women.

17. Safeguard against discrimination in service.- No State Subject otherwise qualified for appointment in the service of Azad Jammu and Kashmir shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste or sex;

Provided that, in the interest of the said service, specified posts or services may be reserved for members of either sex.

18. Abolition of untouchability.- Untouchability is abolished and its practice in any form is forbidden and shall be declared by law to be an offence.

5. President.- [(1) 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 members 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 secures a majority of votes of the members present and voting.]

(2) The election to the office of President shall be conducted under the control and supervision of the Chief

election Commissioner.

(3) The election of the President under sub-section (2) shall not be called in question in any Court or before any Tribunal or other authority.

(3-1) 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 be held within that period because the Assembly is dissolved, within thirty days of the general election to the Assembly.]

(4) No person shall be qualified for election as President unless.-

(a) he is Muslim;

(b) he has attained the age of thirty-five years;

(c) his name appears on the electoral roll prepared for election of the members of the Assembly; and

(d) he is qualified to be elected as member of the Assembly.

(5) Subject to the provisions of this Act, the president shall hold office for a period of five year from the date on which he enters upon his office and shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(6) Before he enters upon his office, the president shall make

before the Chief Justice of [Azad Jammu and Kashmir] an oath in the form set out in the First Schedule;

Provided that this provision will not apply to a person acting as president;

Provided further that the oath made or deemed to have been made under the provisions of Azad Jammu and Kashmir Government Act, 1970 shall be deemed to have been made under this Act.

(7) The President may resign his office by writing under his hand addressed to the Speaker of the Assembly.[----------]

[(8) The President shall not be a member, or a candidate for election as 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.]

6. <u>Proposed amendment to Section 5 (President)</u>

In sub-section (1) of section 5, the words "Joint Sitting" twice used shall stand deleted and substituted by the word "Assembly".

6. Removal of President.- (1) if one-third of the total number of members of the [5][Joint Sitting] give a notice in writing to the Speaker of the Assembly of their intention to move a resolution of no confidence against the President, the Speaker shall convene a meeting of the [Joint Sitting] not later than two weeks from the date of receipt of the notice.

(2) The President shall have the right to appear before the [Joint Sitting] during the consideration of the resolution under sub-section(1) and to make a statement if he so desires.

(3) If the resolution under sub-section (1) is passed by the [Joint sitting] by the votes of not less than two-thirds of the

total number of members of the [Joint sitting,] the President shall forth with cease to hold office.

7. Proposed amendment to Section 6 (Removal of President)

In Section 6, the words "Joint Sitting", wherever occurring, shall be substituted by the word "Assembly".

7. President to act on advice, etc.- (1) [Subject to an express provision to the contrary in this Act,] in the performance of his functions, the President shall act] on and in accordance with the advice of the Prime Minister and such advice shall be binding on him.

(2) The question whether any, and if so what, advice was tendered to the President by the Prime Minister shall not be enquired into any Court.

8. Proposed Amendment to Section 7 (President to act on advice)

In section 7, the following proviso shall be inserted at the end of clause (1);

> *"Provided that the President may within fifteen days refer back any such advice to the Prime Minister for reconsideration and shall within ten days after such reconsideration act or deemed to have acted in accordance with the advice tendered."*

8. Acting President.- At any time when the President is unable to perform the functions of his office due to absence, illness or any other cause, the Speaker of the Assembly shall act as President and shall perform the functions of President.

9. <u>Proposed amendment to Section 8 (Acting President)</u>

In section 8, the following words shall be inserted after "Speaker of the Assembly";

> *"or if he too is absent or unable to perform the functions of the office of President, the Chief Justice of Azad Jammu and Kashmir."*

9. Casual vacancy in the office of President.- Where the office President falls vacant due to death, resignation or any other cause the Speaker of the Assembly [----]shall.

> (a) perform the functions of President till such time as a new President is elected; and
>
> (b) cause an election to the office of President to be held within a period of [thirty days] from the date on which the office falls vacant [or, if the election cannot be held within that period because the Assembly is dissolved, within thirty days of the general elections to the Assembly.]

10. <u>Proposed amendment to Section 9 (Casual vacancy in the office of President)</u>

In section 9, the following words shall be inserted after "Speaker of the Assembly."

> *"or if he too is absent or unable to perform the functions of the office of President, the Chief Justice of Azad Jammu and Kashmir."*

10. President's power of pardon and reprieve.- The President [shall have] power to grant pardons, reprieves and

respites and to remit, suspend or commute any sentence passed by any Court, Tribunal or other authority;

[Provided that this power shall not be exercised in respect of sentences of 'hadd' qisas and 'Diyyat'.]

11. Plebiscite Adviser.- The President may appoint a Plebiscite Adviser to advise the Government in relation to the holding of a plebiscite in the State of Jammu and Kashmir in terms of the UNCIP Resolutions.

12. The Government.- (1) Subject to this Act, the executive authority of Azad Jammu and Kashmir shall be exercised in the name of the President by the Government, consisting of the Prime Minister and the Ministers, which shall act through the Prime Minister who shall be the Chief executive of Azad Jammu and Kashmir.

(2) in the performance of his functions under this Act, the Prime Minister may act either directly or through the Ministers.

(3) The Prime Minister and the Ministers shall be collectively responsible to the Assembly.

(4) Order and other instruments 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.

13. The Prime Minister.- (1) The Assembly shall meet on the thirtieth day following the day on which a general election to the Assembly is held, unless sooner summoned by the President.

(2) After the election of the Speaker, [and the Deputy Speaker] the Assembly shall, to the exclusion of any other business, proceed to elect, without debate one of its Muslim members to be the Prime Minister.

(3) The Prime Minister shall be elected by the votes of the majority of the total membership of the Assembly;

Provided that, if no member secures such majority in the first poll, a second poll shall be held between the members who secure the two highest numbers of votes in the first poll and the member who secures a majority of votes of the members present and voting shall be declared to have been elected as Prime Minister;

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

(4) The member elected under sub- section(3) shall be called upon by the President to assume the office of Prime Minister and he shall, before entering upon the office make before the President oath in the form set out in the First Schedule.

11. Proposed addition of sub-section (5) in section 13 (The Prime Minister)

The following sub-section (5) shall be added to section 13:

"(5) The President shall, if he is satisfied that the Prime Minister has lost the confidence of the majority of the members of the Assembly, summon the Assembly and require the Prime Minister to obtain a vote of confidence from the Assembly."

14. Ministers.- (1) The Prime Minister shall appoint Ministers from amongst the members of the Assembly;

Provided that a Minister may be appointed from amongst the elected members of the Council].

(2) Before entering upon office, a Minister shall make before the President oath in the form set out in the First Schedule.

(3) A Minister may, by writing under his hand addressed to the Prime Minister, resign his office or may be removed from office by the Prime Minister.

12. Proposed amendment in Section 14 (Ministers)

The proviso in sub-section (1) of section 14 shall be substituted by the following:

> *"Provided that the total number of Ministers shall not exceed eleven percent of the total membership of the Assembly."*

13. <u>Proposed addition of new section 14-A (Advisors)</u>

The following new section shall be inserted after section 14:-

> *"14-A. (1) The President may, on the advice of the Prime Minister, appoint not more than two advisors on such terms and conditions as he may determine.*
>
> *(2) The Advisor shall have the right to speak and otherwise take part in the proceedings of the Assembly or any Committee thereof of which he may be named a member but shall not by virtue of this section be entitled to vote."*

"14.A Parliamentary Secretaries.- (1) The Prime Minister may appoint Parliamentary Secretaries from amongst the members of the Assembly to perform such functions as may be prescribed.

(2) A Parliamentary Secretary may , by writing under his hand addressed to the Prime Minister, resign his office or may be removed from office by the Prime Minister."]

15. Prime Minister continuing in office.- (1) The Prime Minister shall continue to hold office until his successor enters upon the office of Prime Minister.

(2) Nothing in section 13 or section 14 shall be construed to disqualify the Prime Minister or a Minister from continuing in office during the period the Assembly stands dissolved.

16. Resignation of Prime Minister.- (1) subject to sub-section (2) the Prime Minister may, by writing under his hand addressed to the President, resign his office and, when the Prime Minister resigns, the Ministers shall cease to hold office.

(2) The Prime Minister, and at the request of the Prime Minister, a Minister shall continue to perform the functions of the office of Prime Minister or, as the case may be, Minister until a new Prime Minister has been elected and has entered upon his office.

(3) If the Assembly is in session at the time when the Prime Minister resigns his office, the Assembly shall forthwith proceed to elect a Prime Minister, and if the Assembly is not in session the President shall for that purpose summon it to meet within fourteen days of the resignation.

17. Minister Performing functions of Prime Minister.- (1) In the event of the death of the Prime Minister or the office of the Prime Minister becoming vacant by reason of his ceasing to be a member of the Assembly the most senior minister for the time being shall be called upon by the President to perform the functions of that office and the Ministers shall continue in office until a new Prime Minister has been elected and has entered upon his office.

(2) If the Assembly is in session at the time when the Prime Minister dies or the office of the Prime Minister becomes vacant the Assembly shall forthwith proceed to elect a Prime Minister, and if the Assembly is not in session the President shall for that purpose summon it to meet within fourteen days of the death of the Prime Minister or, as the case may be, of the office becoming vacant.

(3) When, for any reason, the Prime Minister is unable to perform his functions, the most senior Minister for the time being shall perform the function of Prime Minister until the Prime Minister resumes his functions.

(4) In this section, most senior Minister, means the Minister for the time being designated as such by the Prime Minister.

18. Vote of no-confidence against Prime Minister.- (1) A resolution for a vote of no-confidence (hereinafter in this section referred to as the resolution) may be passed against the Prime Minister by the Assembly.

(2) A resolution shall not be moved in the Assembly unless, by the same resolution the name of another member of the Assembly is put forward as the successor.

(3) A resolution shall not be moved in the Assembly while the Assembly is considering demands for grants submitted to it in the Annual Budget.

(4) A resolution shall not be voted upon before the expiration of three days, or later than seven days, from the date on which it is moved in the Assembly.

(5) If the resolution is passed by majority of the total membership of the Assembly, the President shall call upon the person named in the resolution as the successor to assume office and, on his entering upon office his predecessor and the Minister appointed by him shall cease to hold office.

(6) If a resolution is not passed another such resolution shall not be moved until a period of six months has elapsed.

14. Proposed addition of new section 18A (Caretaker cabinet)

The following new section shall be added after section 18:

"(1) On dissolution of the Assembly on completion of its term, or in case it is dissolved under section 28, the President shall appoint a care-taker cabinet in accordance with the provisions of this section.

(2) The care-taker Prime Minister shall be appointed by the President in consultation with the outgoing Prime Minister and the Leader of the Opposition in the outgoing Assembly;

Provided that if the outgoing Prime Minister and the Leader of the Opposition in the outgoing Assembly do not agree on any person to be appointed care-taker Prime Minister within three days of the dissolution of the Assembly, the most senior retired judge of the Supreme Court or the High Court shall be appointed by the President as the care-taker Prime Minister.

(3) The members of the care-taker cabinet other than the care-taker Prime Minister shall be appointed by the President on the advice of the care-taker Prime Minister.

(4) Members of the care-taker Cabinet including the care-taker Prime Minister and their spouses and children shall not be eligible to contest the immediately following election to the Assembly."

19. Extent of executive authority of Government.- (1) Subject to this Act, the executive authority of the Government shall extend to the matters with respect to which the Assembly has power to make laws.

(2) The executive authority of the Government shall be so exercised as:-

(a) not to impede or prejudice the responsibilities of the Government of Pakistan in relation to the matters specified in sub-section (3) of section 31; and

(b) to secure compliance with the Laws made by the Council.

(3) Notwithstanding anything contained in this Act, the Government may, with the consent of the Council, entrust, either conditionally or unconditionally, to the Council, or to its officers functions in relation to any matter to which the executive authority of the Government extends.

15. <u>Proposed amendment to section 19 (Executive authority of the Government)</u>

(1) In clause (a) of sub-section (2) of section 19, the words "sub-section (3)" shall be substituted by the words "sub-section (5)".

(2) In clause (b) of sub-section (2) of section 19, the words "laws made by the Council" shall be substituted by the words "Federal Laws".

(3) In sub-section (3) of section 19, the word "Council" occurring twice shall be substituted by the words "Federal Government."

(4) The full stop at the end of sub-section (3) shall be deleted and the following words shall be added: "and the Federal Government may, with the consent of the Government, entrust, either conditionally or unconditionally, to the Government, or to its officers functions in relation to which the executive authority of the Federal Government extends".

20. Advocate- General.- (1) The President shall appoint a person, being a person qualified to be appointed a Judge of the High Court to be the Advocate General for Azad Jammu and Kashmir.

(2) It shall be the duty of the Advocate-General to give advice

to Government upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Government.

(3) The Advocate-General shall hold office during the pleasure of the President.

(4) The Advocate-General may, by writing under his hand addressed to the President resign his office.

(5) The person holding the office as advocate-General immediately before the commencement of this Act shall be deemed to be the Advocate-General, appointed under this Act.

21. Azad Jammu and Kashmir Council.- (1) There shall be an Azad Jammu and Kashmir Council consisting of

(a) The Prime Minister of Pakistan;

(b) The President;

(c) Five Members to be nominated by the Prime Minister of Pakistan from time to time from amongst Federal Minister and members of Parliament;

(d) The Prime Minister of Azad Jammu and Kashmir or a person nominated by him; and

(e) Six members to be elected by the Assembly from amongst state subjects in accordance with the system of proportional representation by means of the single transferable vote.

(2) The Prime Minister of Pakistan shall be the Chairman of the Council.

(3) The President shall be the vice-Chairman of the Council.

[(3-A) The Federal Minister of State for Kashmir Affairs and Northern Affairs shall be an ex-officio member of the Council.]

(4) The qualifications and disqualification for being elected, as and for being, a member of the Council shall, in the case of a member referred to in clause (e) of sub-section (1), be the same as these for being elected as, and for being a member of the Assembly.

[(4-A) 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 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.

(4-B) 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.

(4-C) An election to fill a vacancy in the office of an 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.

(4-D) The manner of election of elected members and filling of a casual vacancy in the office of an elected member shall be such as may be prescribed.]

(5) [An elected member] shall hold office for a term of five years from the day he enters upon his office;

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

[(6) An elected member] shall, before entering upon office, make before the Chairman oath in the form set out in the First Schedule.]

(7) [The executive authority of the Council shall extend 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 the Council may direct that, in respect of such matters as it may specify, its authority shall be exercisable by the Vice-Chairman of the Council, subject to such conditions, if any, as the Council may specify.

(8) An advisor may be appointed from amongst the elected members or the members of the Assembly.

(9) An advisor shall, before entering upon office, make before the Chairman oath in the form set out in the First Schedule.

(10) An Advisor who is a member of the Assembly [and the Federal Minister of the State for Kashmir Affairs and Northern Affairs] 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 make rules for regulating its 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) Order 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 or executed by the Council.

(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.]

Explanation: In this section, 'chairman' means Chairman of the Council.

[(14) The words 'The Prime Minister of Pakistan' wherever occurring in this section shall be deemed to include the person for the time being exercising the powers and performing the functions of the Chief Executive of Pakistan.

16. Proposed deletion of section 21 (Azad Jammu and Kashmir Council)

Section 21 shall be deleted.

22. Legislative Assembly.- (1) The Legislature of Azad Jammu and Kashmir shall consist of legislative Assembly consisting of [forty nine] members of whom.

(a) [forty one] shall be elected directly on the basis of adult franchise;

(b) [Five], who shall be women, shall be elected by the directly elected members;

[(c) One, who shall be from amongst the Ulema-e- Din or Mushaikh and well-versed with the teachings of Islam, shall be elected by the directly elected members;

(d) One, who shall be from amongst the Jammu and Kashmir State Subjects residing abroad, shall be

elected by the directly elected members; and

(e) One, who shall be from amongst the technocrats and other professionals, shall also be elected by the directly elected members.]

(2) The manner of election of the members of the Assembly and the manner of filling casual vacancies shall be such as may be prescribed.

(3) Every Assembly, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

[(4) A general election to the Assembly shall be held within a period of sixty days immediately preceding the day on which the term of the Assembly is due to expire, unless the Assembly has been sooner dissolved, and the result of the election shall be declared not later than fourteen days before that day.]

17. <u>Proposed amendment to Section 22 (Legislative Assembly)</u>

(1) In clause (a) of sub-section (1) of section 22, the words "forty one" shall be substituted by the words "twenty nine".

(2) In sub-section (1) of section 22, the following new clause shall be added after clause (a):-

> *"(aa) Twelve, who shall be from amongst Jammu and Kashmir State subjects who are refugees from Occupied Jammu and Kashmir, shall be elected by the directly elected members."*

23. Oath of members of the Assembly.-(1) A person elected as member of the Assembly shall not take his seat in the Assembly until he makes before such person as is prescribed by rules of the Assembly an oath in the form set out in the First schedule.

(2) The oath may be made at any time whether or not the Assembly is in session.

(3) if any person sits or votes in the Assembly knowing that he is not qualified to be, or is disqualified from being, a member of the Assembly he shall be liable in respect of every day on which he so sits or votes to a penalty of two hundred rupees a day which may be recovered from him as a debt to the Government recoverable as arrears of land revenue.

24. Qualification of members of the Assembly.- (1) A person shall be qualified to be elected as, and to be, a member of the Assembly if-

(a) He is a Sate Subject;

(b) He is not less than twenty-five years of age; and

(c) His name appears on the electoral roll of any constituency in Azad Jammu and Kashmir or Pakistan.

(2) A person shall be disqualified from being so-elected if-

(a) he is of unsound mind and stands so declared by competent court; or

(b) he is an undischarged insolvent unless a period of

ten years has elapsed since his being adjudged as insolvent; or

(c) he has been on conviction for any offence sentenced to transportation for any term or imprisonment for a term of not less than two years unless a period of five years has elapsed since his release; or

(d) he holds any office of profit in the service of Azad Jammu and Kashmir or in the service of Pakistan other than an office which is not a whole time office remunerated either by salary or by fee other than an office specified in the second Schedule; or

(e) he has been dismissed for miss-conduct from the service of Azad Jammu and Kashmir or the service of Pakistan unless a period of five years has elapsed since his dismissal; or

(f) he is otherwise disqualified from being a member of the Assembly by this Act or by under any other law.

25. Seat in Assembly become vacant under certain circumstances.-

(1) The seat of a member of the Assembly shall become vacant if-

(a) he resigns his seat by notice in writing under his hand addressed to the Speaker, in his absence, to the Secretary of the Assembly; or

(b) he is absent from the Assembly without the leave

of the Assembly for thirty consecutive sitting days of the Assembly; or

(c) he fails to make the oath referred to in section [(23),] within a period of ninety days after the date of his election unless the Speaker for good cause shown extends the period; or

(d) he is elected as a member of the Council; or

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

[(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 seats, and if he does not so resign, all the seats 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 filed last.]

(2) if any question arises whether a member of the Assembly has, after his election become disqualified from being a member of the Assembly, the Speaker 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.

[(3) When except by dissolution of the Assembly, a seat in the Assembly has become vacant not later than one hundred and twenty days before the term of the Assembly is due to expire, an election to fill the seat shall be held within sixty days from

the occurrence of the vacancy.]

26. **Right to address and take part in Assembly Proceedings.-** (1) The President may address the Assembly and send massages to the Assembly.

(2) The Advocate- General shall have the right to Speak, and otherwise take part in the proceeding of, the Assembly or of any of its committees, but shall not by virtue of this section have the right to vote.

27. Meeting of the Assembly.- (1) The Assembly shall assemble at such times and at such places as the President may appoint; and the President may prorogue a session of the Assembly except when the Assembly has been summoned by the Speaker.

(2) Any meeting of the Assembly may be adjourned by the Speaker or other person presiding there at.

(3) There shall be at least [four] sessions of the Assembly every year and [three months] shall not intervene between the first sitting of the Assembly in one session and its first sitting in the next session.

[(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.]

28. Dissolution of Assembly.- [(1)] The President shall dissolve the Assembly if so advised by the Prime Minister, and the Assembly shall, unless sooner dissolved, stand

dissolved at the expiration of forty-eight hours after the Prime Minister has so advised.

Explanation.- Reference in this section to Prime Minister shall not be construed to include reference to a Prime Minister against whom a resolution for a vote of no confidence has been moved in the Assembly but has not been voted upon or against whom such a resolution has been passed or who is continuing in office after his resignation or after the dissolution of the Assembly or a Minister performing the functions of Prime Minister under sub-Section (1) or sub-Section (3) of section 17.

[(2) When the Assembly is dissolved a general election to the Assembly shall be held within a period of ninety days after the dissolution, and the results of the election shall be declared not later than fourteen days after the conclusion of the polls.]

29. Speaker of the Assembly.- (1) The Assembly shall, at its first meeting or as soon thereafter as may be, elect from amongst its members a Speaker [and a Deputy Speaker] of the Assembly.

(2) Before entering upon office, a member of the Assembly elected as Speaker [or Deputy Speaker] shall make before the Assembly an oath in the form set out in the first Schedule.

(3) All proceedings of the Assembly shall be conducted in accordance with Rules of procedure made by the Assembly and approved by the President.

[(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 elect one of its members to fill the office.]

(6) The Speaker may resign his office by writing under his hand addressed to the President.

[(6-A) The Deputy Speaker may resign his office by writing under his hand addressed to the Speaker.]

(7) The office of the Speaker [or Deputy Speaker] shall become vacant if.

(a) Except as provided in sub-section (8) he ceases to be a member of the Assembly; or

(b) He is removed from office by a resolution of the Assembly of which not less than seven day's notice by not less than [onefourth of the total membership of the Assembly] has been given and which is passed by a majority of total membership of the Assembly.

(8) When the Assembly is dissolved, the Speaker shall continue in his office till the person elected to fill the office by the next Assembly enters upon his office.

30. [Voting in Assembly and quorum.-] (1) Subject to this Act,

(a) a decision in the Assembly shall be taken by a majority of the votes of the members present and voting but the Speaker or the person presiding in his absence shall not vote except when there is an equality of votes in which case he shall exercise his casting vote;

(b) the Assembly may act notwithstanding any vacancy in its membership; and

(c) any proceeding in the Assembly shall not be invalid on the ground that some person who was not entitled to do sat, voted or otherwise took part in the proceedings.

(2) If at any time during a meeting of the Assembly the attention of the person presiding at the meeting is drawn to the fact that [number of the members is less than one third of the total membership of the Assembly,] it shall be the duty of the person presiding either to adjourn the meeting or to suspend the meeting [till such number of the members are present.]

[**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.

18. ***Proposed amendment to Section 30-A (Restriction on discussion in Assembly etc.)***

In section 30-A, the words "or the Council or the Joint Sitting" shall be deleted.

30-B. Finance Committee.- (1) The expenditure of the Assembly within authorised appropriation shall be controlled by the Assembly acting on the advice of the Finance Committee.

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

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

30-C. Secretariat of Assembly.- (1) 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 persons appointed to the Secretarial Staff of the Assembly shall continue to be governed by the conditions of service for the time being applicable to them.]

31. Legislative Power.- (1) Subject to the succeeding provisions of this section, both the council and the Assembly shall have the power to make laws-

(a) for the territories of Azad Jammu and Kashmir;

(b) for all state subjects wherever they may be; and

(c) for all officers of the Council or as the case may be, the Government , wherever they may be.

(2) Subject to sub-section (3).

(a) the Council shall have exclusive power to make laws with respect to any matter in the Council Legislative list set out in the Third Schedule, hereinafter referred to as the Council Legislative list; and

(b) the Assembly shall, and the Council shall not, have power to make laws with respect to any matter not enumerated in the Council Legislative list.

(3) Neither the Council nor the Assembly shall have the power to make any law concerning.-

(a) the responsibilities of the Government of Pakistan under the UNCIP Resolutions;

(b) the defence and security of Azad Jammu and Kashmir;

(c) the current coin or the issue of any bills, notes or other paper currency; or

(d) the external affairs of Azad Jammu and Kashmir including foreign trade and foreign aid.

(4) No tax shall be levied for the purposes of the territories of Azad Jammu and Kashmir except by or under the authority of an Act of the Council or the Assembly.

(5) No law shall be repugnant to the teachings and requirements of Islam as set out in the Holy Quran and Sunnah and all existing laws shall be brought in conformity

with the Holy Quran and Sunnah.

19. Proposed substitution of section 31 (Legislative Power)

Section 31 shall be substituted by the following:

"31. (1) Subject to the succeeding provisions of this section, the Assembly shall have the power to make laws-

(a) for the territories of Azad Jammu and Kashmir;

(b) for all state subjects wherever they may be; and

(c) for all persons in the service of Azad Jammu and Kashmir, wherever they may be.

(2) The Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to any matter in the Federal Legislative List.

(3) Both the Majlis-e-Shoora (Parliament) and the Assembly shall have power to make laws with respect to criminal law, criminal procedure and evidence.

(4) Subject to sub-section (4) of this section, the Assembly shall have power to make laws with respect to any matter not included in the Federal Legislative List.

(5) The Assembly shall not have the power to make any law which derogates from the responsibilities of the Federal Government in the conduct of a free and impartial plebiscite under the auspices of the United Nations to make a final disposition of the State of Jammu and Kashmir in accordance with the relevant resolutions of the United Nations Security Council and the United Nations Commission for India and Pakistan.

(6) No tax shall be levied for the purposes of the territories of Azad Jammu and Kashmir except by or under the authority of a Federal law or an Act of the Assembly.

(7) No law shall be repugnant to the teachings and requirements of Islam as set out in the Holy Quran and Sunnah and all existing laws shall be brought in conformity with the Holy Quran and Sunnah."

32. Reference to Council of Islamic Ideology.- (1) If one-third of the total number of members of the Assembly [or, as the case may be, the council] so requires, the Assembly [or as the case may be the Council] shall refer to the council of Islamic Ideology constituted under the constitution of the Islamic Republic of Pakistan (hereinafter referred to as the Islamic Council) for advice any question as to whether a proposed law is or is not repugnant to the injunctions of Islam.

(2) when a question is referred by the Assembly [or as the case may be, the Council] to the Islamic Council, the Islamic Council shall, within fifteen days thereof, inform the Assembly [or, as the case may be, the Council] of the period within which the council expects to be able to furnish that advice.

(3) Where the Assembly [or, as the case may be, the Council] considers that in the public interest, the making of the proposed law in relation to which the question arose should not be postponed until the advice of the Islamic Council is furnished, the law may be made before the advice is furnished;

Provided that, where a law is referred for advice to the Islamic Council and the Council advises that the law is

repugnant to the injunctions of Islam, the Assembly [or, as the case may be, the Council] shall reconsider the law so made.

20. Proposed substitution of Section 32 (Reference to Council of Islamic Ideology)

Section 32 shall be substituted by the following;

"(1) There shall be a Council of Islamic Ideology of Azad Jammu and Kashmir (hereinafter referred to as the Islamic Council) to advise the Government, when it so requests, on any question whether a proposed law is or is not repugnant to the injunctions of Islam.
(2) The composition of the Islamic Council, the terms and conditions of appointment of its members and the manner in which it will exercise its function shall be determined by law."

33. Amendment of this Act.- [(1) The provision 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.]

(2) A bill to amend this Act may originate either in the Council or in the Assembly.

(3) Within fourteen days of the day on which a Bill to amend this Act is introduced in the Council or the Assembly, the president shall summon a Joint sitting [----] and if the Bill is passed in the joint sitting, with or without amendment, by the votes of the majority [of the total membership of the joint sitting,] the Bill shall be presented to the President for assent.

21. <u>Proposed amendment to section 33 (Amendment of this Act)</u>

"(1) In sub-section (1) of section 33, the words "by the Assembly" shall be inserted between the words "amended" and the words "Government of Pakistan" in the proviso of this sub-section shall be substituted by the words "Federal Government".

(2) Sub-section (2) of section 33 shall be deleted.

(3) Sub-section (3) of section 33 shall be substituted by the following:

"Within fourteen days of the day on which a bill to amend this Act is introduced in the Assembly, the President shall summon the Assembly and if the bill is passed with or without amendment by the votes of not less than two-third of the total membership of the Assembly, it shall be presented to the President for assent."

[33-A. Procedure at Joint sitting.- (1) 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 any of its committees, but shall not by virtue of this section have the right to vote.]

22. ***Proposed deletion of section 33-A (Procedure at Joint Sitting)***

Section 33-A shall be deleted.

34. General provisions regarding Council, etc.- (1) The validity of any proceedings in the Council, the Assembly or a joint sitting shall not be questioned in any court.

(2) An officer or member or an authority in whom powers are vested for the regulation of proceedings, conduct of business, maintain order in the Council, the Assembly, or a joint sitting shall not, in relation to the exercise by him of any of those powers, be subject to the jurisdiction of any court.

(3) A member of, or a person entitled to speak in, the Council the Assembly or a joint sitting shall not be liable to any proceedings in any court in respect of anything said by him or any vote given by him in the council, the Assembly or a joint sitting or in any committee thereof.

(4) A person shall not be liable to any proceedings in any court in respect of publication by or under the authority of the Council, the Assembly or a joint sitting of any report, paper, vote or proceedings.

(5) No process issued by a court or other authority shall except with the leave of the Chairman of the Council or the Speaker be served or executed within the precincts of the place where a meeting of the Council or, as the case may be, the Assembly is being held.

(6) Subject to this section, the privileges of the Council, the Assembly, the committees and members of the Council or the Assembly and of the persons entitled to speak in the Council or the Assembly may be determined by law.

23. Proposed amendment of Section 34 (General provisions regarding Council etc.)

"(1) The words "Council etc." in the title of section 34 shall be substituted by the word "Assembly".

(2) The words "the Council, the Assembly, or a Joint Sitting", occurring in sub-sections (1), (2), (3) and (4) of section 34 shall be substituted by the words "the Assembly."

(3) In sub-section (5) of section 34, the words "Chairman of the Council or" and the words "the Council or, as the case may be" shall be deleted.

(4) Sub-section (6) of section 34 shall be substituted by the following:

> *"(6) Subject to this section, the privileges of the Assembly and its Committees and members and of persons entitled to speak in the Assembly may be determined by law."*

35. Authentication of Bills passed by the Council.- A bill passed by the Council shall not require the assent of the President and shall, upon its authentication by the Chairman of the Council, become law and be called an Act of the Council.

24. Proposed deletion of Section 35 (Authentication of Bills passed by the Council)

Section 35 shall be deleted.

36. President's assent to Bill.- (1) Subject to this Act, when a Bill has been passed by the Assembly or a joint sitting, it shall be presented to the President for assent.

(2) The President shall assent to a Bill within seven days after

it has been presented to him for assent under sub-section(1) or under section 33 and if the President fails to do so he shall be deemed to have assented to the Bill at the expiration of the said period.

(3) When the President has assented or is deemed to have assented to a Bill, it shall become law and be called.-

(a) in the case of Bill to amend this Act, an Act of Azad Jammu and Kashmir; and
(b) in the case of a Bill with respect to any other matter, an Act of the Assembly.

25. Proposed amendment to section 36 (President's assent to Bills)

In sub-section (1) of section 36, the words "or a Joint Sitting" shall be deleted.

37. Council Consolidated Fund.- (1) All revenues received by the Council, all loans raised by the Council and all moneys received by it in repayment of any loan[----]shall form part of a consolidated fund, to be known as the Council consolidated Fund.

[(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 established under the authority of the Council shall be credited to the Public Account of the Council.

(2-A) The Custody of the Council consolidated Fund, the

payment of moneys into that Fund, the withdrawal of money therefrom, the custody of other moneys received by or on behalf of the council, their payment into, and withdrawal from the Public Account of the 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.]

(3) The Council shall, in respect of every financial year, cause to be prepared, and approve, a statement of the estimated receipts and expenditure of the Council for that year.

(4) The Chairman of the Council shall authenticate by his signature the statement approved by the Council under sub-section (3); and no expenditure from the Council Consolidated Fund shall be deemed to be duly authorised unless it is specified in the statement so authenticated.

[(5) If in respect of any financial year it is found;

(a) that the amount authorised to be expended for a particular service for the current financial year is insufficient, or that a need has arisen for expenditure upon some new service not included in the statement referred to in sub-section(3) 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 year, the Chairman of the Council shall have power to authorise, 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 statements as they apply to the statement referred to in sub-section (3).

(6) 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).]

26. Proposed deletion of Section 37 (Council Consolidated Fund)

Section 37 shall be deleted.

[37-A. Azad Jammu and Kashmir Consolidated Fund.- (1) 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 moneys;

(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 Account of the Government.

(3) The Custody of the Azad Jammu and Kashmir consolidated Fund, the payment of moneys into that Fund,

the withdrawal of moneys therefrom, the custody of other moneys received by or on behalf of the Government, their payment into, and withdrawal from the 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 by the President.]

38. Budget.- (1) The [Government]shall, in respect of every financial year, cause to be laid before the Assembly a statement of the estimated receipts and expenditure for that year, to be called the Annual Budget.

(2) The Annual Budget shall be submitted to the Assembly in the form of demands, for grants and the Assembly shall have power to assent to, or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein;

Provided that, for a period of ten years from the commencement of this Act or the holding of the second general election to the Assembly after such commencement, whichever occurs later, a demand shall be deemed to have been assented to without any reduction of the amount specified therein, unless, by the votes of a majority of the total reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the [Government.]

(4) The Annual Budget as passed by the Assembly shall be placed before the president who shall authenticate it by his signature.

[(5) If in respect of any financial year it is found;

(a) that the amount authorized to 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 for that year; the Government shall have power to authorize expenditure from the Azad Jammu and Kashmir consolidated Fund and shall cause to be laid before the Assembly a supplementary Budget or, as the case may be, an Excess Budget, setting the amount of that expenditure, and the provisions 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.]

39. [Special provisions regarding Budget, etc.]- (1) Where the Annual budget for any financial year cannot be passed by the Assembly by reason of its having been earlier dissolved, the [Prime Minister] shall cause to be prepared an Annual Budget for that year and, by his signature, authenticate the Budget.

(2) The Annual Budget for any financial year authenticated by the [Prime Minister] under sub-section (1) shall, for the purpose of this Act, be deemed to have been passed by the Assembly.

40. Restriction on expenditure.- No expenditure shall be incurred by the Government except as authorized by the Annual or supplementary Budget as passed or deemed to have been passed by the Assembly.

41. Power to make Ordinance.-(1) The President may, except when the Assembly is in session, if satisfied that circumstances exist which render it necessary to take immediate action, make and promulgate an ordinance as the circumstances may require.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Assembly and shall be subject to like restrictions as the power of the Assembly to make law, but every such Ordinance.

(a) shall be laid before the Assembly and shall stand repealed at the expiration of four months from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by the Assembly, upon the passing of that resolution; and

(b) may be withdrawn at any time by the President.

(3) Without prejudice to the provisions of sub-section (2) an Ordinance laid before the Assembly shall be deemed to be a Bill introduced in the Assembly

(4) The President [1][shall] likewise, except when the council is

in session, if so advised by the Chairman of the council make, [promulgate and withdraw] an Ordinance as the circumstances may require; and the provisions of sub-section (2) and sub-section (3) shall apply to an Ordinance so made as if reference therein to 'Act of the Assembly and Assembly were references respectively to 'Act of the council and council'.

27. Proposed amendment to section 41 (Power to make Ordinance)

Sub-section (4) of section 41 shall be deleted.

28. *Proposed Insertion of new Section 41-A*.

The following new section 41-A shall be added after section 40:
"41-A. Judicial Commission for the appointment of Judges of the Supreme Court, High Court, Shariat Court, etc. *(1) There shall be a Judicial Commission of Azad Jammu and Kashmir, hereinafter referred to as the Commission, to make nominations to the President for the appointment of Judges of the Supreme Court, the High Court and the Shariat Court, the Chief Election Commissioner, the Chairman of the Ehtesab Bureau, the Mohtasib-e-Ala (Ombudsman), the Chairman of the Public Service Commission and such other offices as may be prescribed by law.*

(2) The Commission shall consist of:

(i) Chief Justice of Azad Jammu and Kashmir. (Chairman)
(ii) The most senior Judge of the Supreme Court. (Judicial Member)
(iii) Chief Justice of the High Court. (Judicial Member)

(iv) The most senior Judge of the High Court
(Judicial Member)

(v) Two former Chief Justices or Judges of the Supreme Court or the High Court to be nominated by the Chief Justice of Azad Jammu and Kashmir in consultation with other Judicial Members of the Commission for a term of four years
(Member)

(vi) Federal Minister for Kashmir and Gilgit-Baltistan Affairs or another Federal Minister nominated by the President of Pakistan
(Member)

(vii) The Leader of the Opposition in the Assembly (Member)

(viii) The Law Minister of the Government of Azad Jammu and Kashmir
(Member)

(ix) Vice Chairman of the Bar Council of Azad Jammu and Kashmir or his nominee; and
(Member)

(x) President of the Bar Association of the Supreme Court of Azad Jammu and Kashmir
(Member)

(3) The Judicial Commission shall, by a majority of two-thirds of its total membership, nominate to the President one person for every vacancy referred to in sub-section (1) of this section and the President shall make the appointment within seven days.

Provided that the Judicial Commission shall nominate the most senior Judge of the Supreme Court or High Court, as the case may be, for appointment as Chief Justice of that Court..

4. The Commission may make rules for regulating its procedure.

5. No action or decision of the Commission taken in

accordance with this section and the rules shall be called in question before any Court or authority."

[42. Supreme Court of Azad Jammu and Kashmir.- (1) 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 shall consist of a Chief Justice to be known as Chief Justice of Azad Jammu and Kashmir and two other Judges.]

(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 High court; or

(b) for a period of, or for periods aggregating, not less than fifteen years, been an advocate or pleader of 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 day 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 of the 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 Judges 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 a person who has held the office of a Judge of that Court, the Supreme Court of Pakistan or the Judicial Board or has held the office of Judge of the High Court

for a minimum period of three years and since whose ceasing to hold that office three years have not elapsed; or

(b) With the approval of the President and except in the case of Chief Justice, with the consent of the Chief Justice of High Court, require a Judge of that Court who has held office as such Judge for a minimum period of three years; or

(c) With the approval of the president, request any person qualified for appointment as Judge of the Supreme Court, to attend sittings of the Supreme Court as an 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 the Supreme Court.

(9) The remuneration and other terms and conditions of service of a Judge of the Supreme Court of Azad Jammu and Kashmir shall be as provided in the Fourth schedule.

(10) Subject to the succeeding provision of this section, the Supreme Court of Azad Jammu and Kashmir shall have jurisdiction to hear and determine appeals from judgements, decrees, final orders or sentences of the High Court of Azad Jammu and Kashmir.

(11) An appeal shall lie to the Supreme Court of Azad Jammu and Kashmir from any judgment, decree, final order or sentence of the High Court of Azad Jammu and Kashmir.-

(a) if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced to

death 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 trail before itself any case from any court subordinate to it and has in such trial convicted the accused person and sentenced 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 appeal 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 of 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 judgement, decree or final order appealed from has varied or set aside the judgement, decree or final order of the court immediately below;

(f) if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act.

(12) An appeal to the Supreme Court of Azad Jammu and Kashmir from a judgement, decree, order or sentence of the High Court in a case to which sub section(11) dose not apply

shall lie only if the supreme Court of Azad Jammu and Kashmir grants leave to appeal.]

[(13) (a) An appeal to the Supreme Court shall be heard by a Bench consisting of not less than two judges to be constituted or reconstituted by the Chief Justice;

(b) If the Judges hearing a petition or an appeal are divided in opinion of majority shall prevail;

(c) If there is no such majority as aforesaid, the petition or appeal, as the case may be, shall be placed for hearing and disposal before another Judge to be nominated by the Chief Justice;

Provided that if there is no other Judge, or if no other Judge is able to hear the case, the judgment, decree, order or sentence appealed from shall be deemed to be the judgment, decree, order or sentence, as the case may be, of the Supreme Court;

Provided further that in case of difference of opinion as aforesaid, if the difference is only in respect of the nature, quantum or extent of the relief, liability, penalty or punishment to be granted or imposed, the decision of the Supreme Court shall be expressed in term of opinion of the senior of the two Judges.]

[(14) The person holding office as Chief Justice of the State of Azad Jammu and Kashmir immediately before the commencement of the Azad Jammu and Kashmir interim constitution (first Amendment) Act,1975, shall as from such commencement hold office as Chief Justice of Supreme Court under this Act on the same terms and conditions of

service as were applicable to him immediately before such commencement.

(15) All legal proceeding pending in the Judicial Board, immediately before the commencement of the Azad Jammu and Kashmir interim constitution (first Amendment) Act, 1975, shall on such commencement, stand transferred to, and be deemed to be pending before the Supreme Court for determination and any judgment or order of the Judicial Board delivered or made before such commencement shall have the same force and effect as if it had been delivered or made by the Supreme Court.]

29. <u>Proposed amendment to Section 42 (Supreme Court of Azad Jammu and Kashmir)</u>

(1) Sub-section (4) of section 42 shall be substituted by the following:

> *"(4) The Chief Justice of the Supreme Court and the other Judges of the Court shall be appointed by the President on the nomination of the Judicial Commission in accordance with sub-section (3) of section 41-A."*

(2) In sub-section (8) of section 42, the words "the President shall appoint the most senior of the other Judges of the Supreme Court" shall be substituted by the words "the most senior of the other Judges of the Supreme Court, as notified by the President, shall act as".

(3) Sub-section 8-A of section 42, shall be substituted by the following:

> *"(8-A) (a) If at any time it is not possible for want of a quorum of the 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 Court, the President may, upon a request by the Chief Justice of the Court, appoint one or more ad hoc Judges of the Supreme Court for a period of not more than two years.

(b) A person shall not be appointed as an ad hoc Judge of the Supreme Court unless he is serving as a Judge of the High Court and has held that office for at least three years, or has served as a Judge of the High Court and is qualified to be appointed as a Judge of the Supreme Court.

(c) An ad hoc Judge of the Supreme Court shall be appointed on the nomination of the Judicial Commission in accordance with sub-section (3) of this section and for such period as the Commission may determine.

(d) An ad hoc Judge of the Supreme Court shall have the same powers, jurisdiction, pay and privileges as a Judge of the Supreme Court."

(4) The following new sub-section shall be added after sub-section (9):

"(9-A) A Judge of the Supreme Court shall not:

(a) hold any other office of profit in the service of Azad Jammu and Kashmir, if it increases his remuneration; or

(b) occupy any other position carrying the right to remuneration for rendering of services but shall not be prevented by this provision from holding or managing private property."

(5) In clause (d) in sub-section (11) of section 42, the word "Act of the Council" shall be substituted by the word "law".

(6) The following new sub-section shall be added after sub-section (12):

"(12-A) Without prejudice to the provisions of section 44, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the fundamental rights is involved, have the powers to make an order of the nature mentioned in the said section."

[42-A. Issue and execution of processes of Supreme Court.- (1) The Supreme Court shall have powers to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it including an order for the purpose of securing the attendance of any person or the discovery or production of any document.

(2) any such direction order or decree shall be enforceable throughout Azad Jammu and Kashmir as if it has been issued by the High Court.

(3) All executive and judicial authorities throughout Azad Jammu and Kashmir shall act in aid of the Supreme Court.

(4) Subject to this Act and Law, the Supreme Court may, in consultation with the Council, make rules regulating the practice and procedure of the Court;

Provided that till the new rules are framed, the rules framed by the Judicial Board shall, so far as they are not inconsistent with this Act and any other law, be deemed to have been made by the Supreme Court until altered or amended and reference to the Judicial Board in there rules shall be construed to be referred to the Supreme Court.

30. <u>Proposed amendment to section 42-A (Issue and execution of processes of the Supreme Court)</u>

In sub-section (4) of section 42-A, the word "Council" shall be substituted by the word "Government".

42-B **Decisions of Supreme Court binding on other Courts.-** Any decision of the Supreme Court shall, to the extent that it

decides a question of law or is based upon or enunciates a principal of law, be binding on all other Courts in Azad Jammu and Kashmir.]

[42-C **Seat of the Supreme Court.-** (1) The seat of the Supreme Court shall be at Muzaffarabad.

(2) The Supreme Court may sit at such other place or places as the Chief Justice of Azad Jammu and Kashmir, with the approval of the President, may appoint.

[42-D **Review of judgment of Order by the Supreme Court.**- The Supreme Court shall have powers, subject to the provisions of an Act of the Assembly or the Council and of any rules made by the Supreme Court , to review any judgement pronounced or any order made by it.

31. <u>Proposed amendment to Section 42-D (Review of Judgment or order by the Supreme Court)</u>

In section 42-D, the words "An Act of the Assembly or the Council" shall be deleted and substituted by the word "law".

42-E. **Supreme Judicial Council.-** (1) There shall be a Supreme Judicial Council of Azad Jammu and Kashmir.

(2) The Supreme Judicial Council shall consists of;-

(a) the Chief Justice of Azad Jammu and Kashmir who shall be its Chairman.

(b) The Senior Judge of the Supreme Court; and

(c) The Chief Justice of the High Court.

(3) A Judge of the Supreme Court or of the High Court shall not be removed from office except as provided by this section.

(4) If, on information received from the Supreme Judicial Council or from any other source, the Chairman of the Azad Jammu and Kashmir Council or the President is of the opinion that a Judge of the supreme Court or of the High Court.-

(a) may be incapable of properly performing the duties of his office by reason of physical or mental incapacity; or

(b) may have been guilty of misconduct, the Chairman or the President, as the case may be, shall direct the Supreme Judicial Council to inquire into the matter.

(5) If, upon any matter inquired into by the Supreme Judicial Council, there is a difference of opinion amongst its members, the opinion of the majority shall prevail , and the report of the Supreme Judicial Council shall be expressed in terms of the view of the majority.

(6) If, after inquiring into the matter, the Supreme Judicial Council reports to the Chairman of the Azad Jammu and Kashmir Council that it is of the opinion.-

(a) that the judge is incapable of performing the duties of his office or has been guilty of misconduct, and

(b) that he should be removed from office, the

Chairman shall advice the President to remove the Judge from his office and the President shall pass orders accordingly.

(7) The Supreme Judicial Council shall issue a Code of conduct to be observed by Judges of the Supreme Court, and of the High Court.

(8) If at any time the Supreme Judicial Council is inquiring into the conduct of a Judge who is a member of the Supreme Judicial Council , or a member of the Supreme Judicial Council is absent or is unable to act due to illness or any other cause, then;

(a) If such member is the Chief Justice or Judge of the Supreme Court, the judge of the Supreme Court who is next in seniority;
(b) If such member is the Chief Justice of High Court the senior most of the other Judges of the High Court, shall, act as a member of the Supreme Judicial Council in his place.

(9) If, upon any matter inquired into by the Supreme Judicial Council, there is a difference of opinion amongst its members , the opinion of the Supreme Judicial Council shall be expressed in terms of the view of the majority.

32. <u>Proposed amendment to section 42-E (Supreme Judicial Council)</u>

(1) In sub-section (4) of section 42-E, the words "the Chairman of the Azad Jammu and Kashmir Council or" shall be deleted and the words "the Chairman or the President, as the case may be," in clause (b) of the sub-section shall be substituted by the words "the President".

(2) In sub-section (6) of section 42-E, the words "the Chairman of the Azad Jammu and Kashmir Council" shall be deleted and clause (b) of the sub-section shall be substituted by the following:

> *"(b) that he shall be removed from office, the President shall remove the Judge from his office forthwith, failing which he shall be deemed to have been removed from office."*

[42-F. Power of Supreme Judicial Council to enforce Attendance of persons etc:- (1) For the purpose of inquiring into any matter, the supreme Judicial Council shall have the same powers as has the Supreme Court, to issue directions or orders for securing the attendance of any person or the discovery or production of any document and any such direction or order shall be enforceable as if it has been issued by the Supreme Court.

(2) The Provisions of section 45 shall apply to supreme Judicial Council as they apply to the Supreme Court and the High Court.

42-G. Bar of Jurisdiction:- The proceedings before the Supreme Judicial Council , and the removal of a Judge under section 42-E shall not be called in question in any Court.]

43. High Court.- (1) There shall be a High Court for Azad Jammu and Kashmir, hereinafter called the High Court, which shall consist of a Chief Justice and such number of other Judges as may be prescribed by an Act of the Assembly.

> [(1-A) (a) The functions of the High Court may be performed by a single Bench, a Division Bench or a Full Bench;
>
> Provided that the Chief Justice may recall a

case pending before Bench and make it over to another Bench or constitute a larger Bench for the purpose;

(b) in case of difference of opinion in a Full Bench, the opinion of the majority shall prevail;

(c) in case of difference of opinion in a Division Bench, the matter shall be referred to a third judge and the decision of the High Court shall be expressed in terms of Judgement of the majority.]

(2) The person holding office as Chief Justice or other Judge of the High Court immediately before the commencement of this Act shall be deemed to be the Chief Justice or other Judge, as the case may be, appointed under this Act.

[(2-A) 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.

(3) [A person shall not be appointed] as a Judge of the High Court or Advocate-General 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 of Azad Jammu and Kashmir or a High Court in Pakistan.

Provided that the term "High Court," herein

shall include a High Court or an equivalent Court that existed at any time before the 14th day of August, 1947; 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) Before he enters upon his office, the Chief Justice of the High Court shall make before the president, and an other judge of the High Court shall make before the Chief Justice, an oath in the form set out in the First Schedule.

(5) The Chief Justice or 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.

Provided that the President may appoint a Retired Judge of any High Court of Pakistan to be the Chief Justice or a Judge of the High Court for a period not exceeding three years and such person shall hold office till he attains the age of sixty-five years.

(6) If at any time any Judge of the High Court is absent or is unable to perform his functions due to illness or some other cause, the President may appoint a person qualified for appointment as a Judge of the High Court to be an Additional Judge of the High Court for the period for which the Judge is absent or unable to perform his functions.

(7) A Judge of the High Court shall not,

(a) hold any other office of profit in the service of

Azad Jammu and Kashmir if his remuneration is there by increased; or

(b) occupy any other position carrying the right to remuneration for the rendering of services, but this sub-section shall not be construed as preventing a Judge from holding or managing private property.

(8) A person who has held office as a Judge of the High Court shall not hold any office of profit in the service of Azad Jammu and Kashmir, not being a Judicial or quasi-Judicial office or the office of Chief Election Commissioner or of Chairman or member of the Public Service Commission, before the expiration of two years after he ceased to hold that office.

(9) The remuneration and other terms and conditions of Service of Judge of High Court shall be as provided in the [Fifth Schedule.]

33. <u>Proposed amendment to Section 43 (High Court)</u>

(1) Sub-section 2-A of section 43 shall be substituted by the following:

"(2-A) The Chief Justice of the High Court and the other Judges of the Court shall be appointed by the President on the nomination of the Judicial Commission in accordance with sub-section (3) of section 41-A."

(2) Sub-section (6) of section 43 shall be substituted by the following:-

"(6) (a) *If at any time a Judge of the High Court is absent or is unable to perform his functions due to illness or some other cause, or for any other reason it is necessary to increase the number of Judges of the Court, the President may, upon a*

request by the Chief Justice of the High Court, appoint a person qualified for appointment as a Judge of the Court to be an Additional Judge of the Court for a period of not more than two years.

(b) An Additional Judge of the High Court shall be appointed on the nomination of the Judicial Commission in accordance with sub-section (3) of this section and for such period as the Commission may determine.

(c) An Additional Judge of the High Court shall have the same powers, jurisdiction, pay and privileges as a Judge of the High Court."

[43-A. Acting Chief Justice:- At any time when:-

(a) the office of Chief Justice of High Court is vacant ; or

(b) the Chief Justice of High Court is absent or is unable to perform the functions of his office due to any other cause, the President shall appoint the senior most of the other Judges of the High Court to act as Chief Justice.]

34. <u>Proposed Amendment to section 43-A (Acting Chief Justice)</u>

In clause (b) of section 43-A, the words "the President shall appoint the most senior of the other Judges of the High Court to" shall be substituted by the words "the most senior of the other Judges of the High Court, as notified by the President, shall".

35. <u>Proposed addition of Section 43-B (Shariat Court)</u>

"(1) There shall be constituted in the High Court a Shariat Bench to be called the Shariat Court for Azad Jammu and Kashmir to advise the Government on 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.

(2) The Chief Justice of the High Court shall be the Chief Justice of the Shariat Court and he shall nominate not less than three Judges of the High Court and a District Qazi, with at least ten years' service as such, to act as Judges of the Shariat Court.

Provided that the District Qazi shall be appointed in the same manner as a Judge of the High Court and shall have the same pay, privileges and tenure as a Judge of the High Court.

(3) The Judges performing the functions of the Shariat Court at the time of commencement of this Act shall be deemed to have been appointed under this Act.

(4) The Shariat Court shall have such other jurisdiction and powers as may be conferred upon it by or under any law and shall exercise its powers in such manner as may be prescribed by law."

44. Jurisdiction of High Court:- (1) The High Court shall have such jurisdiction as is conferred on it by this Act or by any other law.

(2) Subject to this Act, the High Court [may] if it is satisfied that no other adequate remedy is provided by law.-

(a) on the application of any aggrieved party, make an order.-

i) directing a person performing function in connection with the affairs of Azad Jammu and Kashmir or local authority to refrain from doing that which he is not permitted by law to do, or to do that which he is required by law to do; or

ii) declaring that any act done or proceedings taken [--------] by a person performing functions in connection with the affairs of the state or a local authority has been done or taken without law full authority , and is of no legal effect; or

(b) on the application of any person , make an order.-

i) directing that a person in custody in Azad Jammu and Kashmir be brought before the High Court so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

ii) requiring a person [------] holding or purporting to hold a public office [in connection with the affairs of Azad Jammu and Kashmir] to show under what authority of law he claims to hold that office; or

(c) on the application of any aggrieved person , make an order giving such directions to the person or authority, including the council and the Government, exercising any, power or performing any function in, or in relation to, Azad Jammu and Kashmir as may be appropriate for the enforcement of any of the fundamental rights conferred by this Act.

(3) An order shall not be made under sub-section (2) of this section on application made by or in relation to a person in the Defence Service in respect of his terms and conditions of service, in respect of any matter arising out of his service or in respect of any action in relation to him as a member of the Defence Services.

(4). Where.-

(a) application is made to the High Court for an order under clause (a) or clause(c) of sub section (2); and

(b) The court has reason to believe that the making of an interim order would have the effect of prejudicing or interfering with the carrying out of a public work or otherwise being harmful to the public interest, the court shall not make an interim order unless the advocate General has been given notice of the application and the Court, after the Advocate-General or any officer authorized by him in this behalf has been given an opportunity of being heard, is satisfied that the making of the interim order would not have the effect referred to in clause (b) of this sub-section.

(5) In this section, unless the context otherwise requires, person includes any body politic or corporate, any authority of or under control of the council or the Government and any court or tribunal other than the Supreme Court of Azad Jammu and Kashmir, the High Court or a Court or Tribunal established under a law relating to the Defence Services.

[44-A. **Rules of procedure.-** Subject to this Act and law, the High Court may in consultation with the Government , make rules regulating the practice and procedure of the court or of any Court subordinate to it.

44-B. **Decision of High Court binding on subordinate Court.-** subject to section 42-B, any decision of the High Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all

courts subordinate to it.]

[44-C. Seat of the High Court.- (1) The permanent seat of the High Court shall be at Muzaffarabad.

(2) The High Court may, from time to time , sit at such other places as the Chief Justice of the High Court, with the approval of the President, may appoint.]

45. Contempt of Court.- (1) In this section "Court" means the Supreme Court of Azad Jammu and Kashmir or the High Court.

(2) A court shall have power to punish any person who-

(a) Abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court;

(b) Scandalizes the Court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule or contempt;

(c) Does anything which tends to prejudice the determination of a matter pending before the Court; or does any other thing which, by law, constitutes contempt of the Court.

(3) The exercise of the power conferred on a court by this section may be regulated by law and, subject to law, by rules made by the Court.

46. High Court to superintend and control all courts subordinate to it, etc.- (1) The High Court shall superintend and control all other courts that are subordinate to it.

(2) There shall, in addition to the Supreme Court of Azad Jammu and Kashmir and the High Court, be such other Courts as are established by law.

(3) A Court so established shall have such jurisdiction as conferred on it by law.

(4) No Court shall have any jurisdiction which is not conferred on it by this Act or by or under any other law.

[46-A. Advisory jurisdiction.- (1) 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.

(2) 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 the case may be, the President.]

36. <u>Proposed amendment to section 46-A (Advisory Jurisdiction)</u>

"(1) In sub-section (1) of section 46-A, the words "the Chairman of the Council or" shall be deleted.

(2) In sub-section (2) of section 46-A, the words "the Chairman of the Council or as the case may be" shall be deleted."

47. Administrative Courts and Tribunals.- (1) Notwithstanding any thing herein before contained, the [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,] may by Act provide for the establishment of one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of.-

(a) matters relating to the terms and conditions of persons who are or have been in the service of [Azad Jammu and Kashmir] including disciplinary matters;

(b) matters relating to claims arising from tortuous acts of [the Council or the] Government or any person in the service of [Azad Jammu and Kashmir]or of any local or other authority empowered by law to levy any tax or cess and any servant or such authority acting in the discharge of his duties as such servant; or

(c) matters relating to acquisition, administration and disposal of any property which is deemed to be enemy property under any law.

(2) Notwithstanding anything herein before contained, where any Administrative Court or Tribunal is established under sub- section (1), no other Court shall grant an injunction, make any order or entertain any proceeding in respect of any matter to which the jurisdiction of such Administrative court or Tribunal extends and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal shall abate on such establishment.

(3) An appeal to the Supreme Court of Azad Jammu and Kashmir from a judgment, decree, order or sentence of an

Administrative Court or Tribunal 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.

37. <u>Proposed amendment to Section 47 (Administrative Courts and Tribunal)</u>

"(1) In sub-section (1) of section 47, the words "the Council in respect of matters to which its executive authority extends, and" shall be deleted.

(2) In clause (b) of sub-section (1) of section 47, the word "tortuous" shall be replaced by word "tortious" and the words "the Council or" shall be deleted.

[47-A. Employees of Court.- The Supreme Court and the High Court, with the approval of the President, may make rules providing for the appointment of employees of the Court and for their terms and conditions of employment.]

48. Public Service Commission.- (1) There shall be a public Service Commission for Azad Jammu and Kashmir which shall consist of such number of members, including a Chairman, and perform such function as may be prescribed.

(2) The public Service Commission existing immediately before the commencement of this Act and the persons holding office as Chairman and other members of that Commission immediately before such commencement shall be deemed to have been constituted and appointed under this Act.

49. The Services.- (1) Subject to this Act, the appointment of persons to and the terms and conditions of service of persons in, the service of Azad Jammu and Kashmir may be

regulated by law.

[(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 the affairs of the Government, makes provision for the matters 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 to time by the Council or, as the case may be, the Government.]

50. Chief Election Commissioner.- (1) There shall be a Chief Election Commissioner appointed by the President [on the advice of the Council] on such terms and conditions as may be prescribed.

(2) The person appointed as Chief Election Commissioner under the Azad Jammu and Kashmir Government Act, 1970 or deemed to have been so appointed and functioning as such immediately before the commencement of this Act shall be deemed to have been appointed as Chief Election Commissioner under sub-section (1) on the same terms and conditions of service as are applicable to him immediately before such commencement.

38. <u>Proposed amendment to section 50 (Chief Election Commissioner)</u>

Sub-section (1) of section 50 shall be substituted by the following;-

> *"There shall be a Chief Election Commissioner of Azad Jammu and Kashmir who shall be appointed by the President on the nomination of the Judicial Commission in accordance with the provisions of Section 41-A on such terms and conditions as may be prescribed by law."*

50-A. Auditor General.- (1) 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 terms of office, of the Auditor- General shall be determined by Act of the council and, until so determined, by rules made by the Council.

(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.]

39. <u>Proposed amendment to Section 50-A (Auditor General)</u>

Section 50-A shall be substituted by the following;-

"The Auditor General of Pakistan shall act as the Auditor General of Azad Jammu and Kashmir and shall perform such functions and duties as he performs in relation to the provinces of Pakistan under the Constitution of the Islamic Republic of Pakistan."

51. Continuance of existing laws.- subject to the provisions of this Act, all laws which, immediately before the commencement of this Act, were in force in Azad Jammu and Kashmir shall continue in force until altered , repealed or amended by an Act of the appropriate authority.

[Explanation.- In this section.-

(a) 'laws; includes Ordinance, Orders , rules, bye-laws, regulations and any notification and other legal instruments having the force of law; and

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

52. General Provision regarding President and Ministers.- (1) [The President, the Prime Minister, a Minister or an Advisor shall not.-]

(a) hold any other office of profit in the service of

Azad Jammu and Kashmir or any other country; or

(b) occupy any other position carrying the right to remuneration for the rendering of service, but this action shall not be construed as preventing the President, the [Prime Minister, a Minister or an Advisor]from holding or managing his private property.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President [or the Chairman of the Council] while he is in office.

(3) No civil proceedings in which relief is claimed against the President [or the Chairman of the Council] shall be instituted while he is in office in respect of anything done or not done, or purporting to have been done or not done, by him in his personal capacity, whether before the or after he enters upon his office unless at least sixty days before the proceedings are instituted, notice in writing has been delivered to him, or sent to him, stating the nature of the proceedings, the cause of the action, the name, description and place of residence of the party by whom the proceedings are to be instituted and the relief which he claims.

(4) Except in relation to proceedings referred to in sub-section (3) no process whatsoever shall be issued from any court, or Tribunal against the President [or the Chairman of the Council,] whether in a personal capacity or otherwise, while he is in office.

(5) Subject to this Act, [the President, the Prime Minister, the Chairman of the Council, the Federal Minister who is a member of the Council, a Minister or an Advisor shall not]

except in respect of anything done or not done by him in contravention of law, be answerable to any Court or Tribunal for the exercise of the powers, or the performance of the duties, of his office or for any act done or purporting to be done by him in the exercise of those powers or in the performance of those duties;

Provided that nothing in this sub-section shall be construed as restricting the right of any person to bring appropriate proceedings against the [Council]or as the case may be, the Government.

40. <u>Proposed amendment to Section 52 (General provisions regarding President and Ministers)</u>

In sub-sections (2), (3), (4) and (5) of section 52, the words "or the Chairman of the Council", "the Federal Minister who is a member of the Council" and "Council or as the case may be" shall be deleted.

[52-A. 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 or as the case may be, the Council, and to the making of contracts.

(2) All property acquired for the purpose 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 that 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.

(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.]

41. <u>Proposed amendment to Section 52-A (Power to acquire property and to make contracts etc.)</u>

(1) In sub-section (1) of section 52-A, the words "and of the Council" and "or as the case may be, the Council" shall be deleted.

(2) Sub-section (2) of section 52-A shall be substituted by the following:-

"(2) Till the determination of the final status of the State of Jammu and Kashmir, all property acquired for the Federal Government shall vest in the Federal Government and all property acquired for the Government of Azad Jammu and Kashmir shall vest in the President of Azad Jammu and Kashmir."

(3) Sub-section (3) of Section 52-A shall be substituted by the following:

"(3). All contracts made in the exercise of the executive authority of the Federal Government or the Government of Azad Jammu and Kashmir shall be expressed to be made in

the name of the Federal Government, or as the case may be, the President of Azad Jammu and Kashmir and all such contracts and all assurances of property made in exercise of that authority shall be executed on behalf of the Federal Government or the President of Azad Jammu and Kashmir by such persons and in such manner as the Federal Government or, as the case may be, the President of Azad Jammu and Kashmir may direct or authorise.

Provided that all property acquired or contracts made by the Federal Government in or in relation to Azad Jammu and Kashmir shall vest in the sovereign authority to which Azad Jammu and Kashmir accedes after plebiscite is held in Kashmir under the auspices of UNCIP."

(4) Sub-section (4) of section 52-A shall be substituted by the following:

"(4) Neither the Prime Minister of Pakistan, nor the President of Azad Jammu and Kashmir shall be personally liable for any contract or assurance made or executed in the exercise of the executive authority of the Federal Government or, as the case may be, the Government of Azad Jammu and Kashmir, 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) Sub-section (5) of section 51-A shall be substituted by the following:

"(5) Transfer of land by the Federal Government or the Government of Azad Jammu and Kashmir shall be regulated by law."

53. Power to issue proclamation.- (1) [The President, if so advised by the Chairman of the Council] a grave emergency exists in which the security of Azad Jammu and Kashmir is

threatened by war or external aggression or by internal disturbances, the President [shall]issue Proclamation of emergency, hereinafter referred to as the proclamation.

[(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

(b) 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.

(2-A). 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.]

(3) A proclamation may be made before the actual occurrence of war or external aggression if the President is satisfied that there is imminent danger thereof.

42. <u>Proposed amendment to section 53 (Power to issue Proclamation)</u>

(1) Sub-section (1) of section 53 shall be substituted by the following:

"(1). The President shall, if advised by the Prime Minister that a grave emergency exists in which the security of Azad Jammu and Kashmir is threatened by war or external aggression or by internal disturbances, issue a Proclamation of Emergency, hereinafter referred to as the Proclamation."

(2) In sub-section (2) of section 53, the words "a Joint Sitting", wherever occurring, shall be substituted by the words "the Assembly".

54. Power to suspend fundamental rights.- (1) while a proclamation is in operation , the President may, by order, declare that rights to move any Court for the enforcement of such of the rights conferred by section 4 as may be specified in the order, and all proceedings pending in any court for the enforcement of the rights so specified, shall remain suspended for the period during which the proclamation is in force.

(2) Every order made under sub-section (1), shall, as soon as may be, laid before the Assembly.

55. Power to vary or rescind proclamation.- (1) A proclamation issued under section 53 may be varied or revoked by a subsequent proclamation.

(2) The validity of any proclamation issued or order made under section 53 or section 54 shall not be questioned in any Court.

56. Act not to derogate from responsibilities of Pakistan.- Nothing in this Act shall derogate from the responsibilities of the Government of Pakistan in relation to the [matters specified in sub-section (3) of section 31] or prevent the Government in Pakistan from taking such action as it may

consider necessary or expedient for the effective discharge of those responsibilities.

43. <u>Proposed Amendment to Section 56 (Act not to derogate from responsibilities of Pakistan)</u>
In section 56:

(1) the words "Government of Pakistan" occurring twice shall be substituted by the words "Federal Government";

(2) the words "sub-section (3)"shall be substituted by the words "sub-section (4)"; and

(3) the words "or issuing such order" shall be added after the words "such action".

[56-A. 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 within 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.

56-B. Oath of office.- (1) An oath required to be made by 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.

56-C 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 anything not in force or existing at the time at which the repeal taken effect;

(b) affect the previous operation of the law or any thing 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

(e) affect any investigation , legal proceeding or remedy in respect of 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.]

57. Act to over-ride other laws, etc.- (1) The provisions of this Act shall over-ride and have effect notwithstanding the provisions of any law for the time being in force.

(2) No Court, including the [supreme court of Azad Jammu and Kashmir]and the High Court, shall call into question or permit to be called into question, the validity of this Act [or an Act to amend it.]

58. Power to make rules.- The President may make rules for carrying out the purpose of this Act.

59. Repeal and saving.- (1) The Azad Jammu and Kashmir Government Act, 1970, hereinafter referred to as the said Act, together with the Acts amending it, and the rules made thereunder are hereby repealed.

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The First Schedule
Oath of Office
President
[see section 5 (6)]

I,----------do solemnly swear that I am a Muslim and believe in the Unity and oneness of Almighty Allah, His angels, the Books of Allah, the Holy Quran being the last of them, his prophets, the absolute finality of the prophethood of Muhammad (Peace be upon him), the day of Judgment , and all the requirements and teachings of the Holy Quran and Sunnah;

That, as President of Azad Jammu and Kashmir, 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 President 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 President;

So Help me Allah.

Prime Minister
(see section 13(4)

I,----------do solemnly swear that I am a Muslim and believe in the Unity and oneness of Almighty Allah, His angels, the Books of Allah, the Holy Quran being the last of them, his prophets, the absolute finality of the prophethood of Muhammad (Peace be upon him), the day of Judgment , and all the requirements and teachings of the Holy Quran and Sunnah;

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 Prime Minister 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 Prime Minister of Azad Jammu and Kashmir;

So Help me Allah.

Minister
[See Section 14 (2)]

I,----------do hereby solemnly swear in the name of Allah;

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 Minister 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 Minister;

So Help me Allah.

Speaker [1][Or Deputy Speaker] of Legislative Assembly
[see section 29 (2)]

I,---------- having been elected as Speaker [2][or Deputy Speaker] of Azad Jammu and Kashmir Legislative Assembly do hereby solemnly swear in the name of Allah;

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 Speaker [3][or Deputy Speaker] of Legislative Assembly 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 Speaker [4][or Deputy Speaker] of Legislative Assembly;

So Help me Allah.

Member of Legislative Assembly or Council
[see section 21 (6) and 23 (1)]

I,---------- having been elected as Member of Azad Jammu and Kashmir Legislative Assembly(or Council) do hereby solemnly swear in the name of Allah;

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 Member of Legislative Assembly(or Council) honestly and faithfully; and

[1] Inserted by (1st Amendment) Act, 1975
[2] Ibid
[3] Ibid
[4] Ibid

That I will not directly or indirectly communicate or reveal to any person any official secret which may come to my knowledge as Member of Legislative Assembly(or Council) ;

So Help me Allah.

[5][Chief Justice of Azad Jammu and Kashmir, Judge of Supreme Court of Azad Jammu and Kashmir
[see section 42 (6)]

I,----------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.]

Oath of Chief Justice
Judge High Court
[See section 43(4)]

I,----------having been appointed Chief Justice (or Judge) of the High Court of Judicature, Azad Jammu and Kashmir State 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.

[5] Inserted by (1st Amendment) Act, 1975 42

[1][Oath of Advisor
[see section 21(9)]

I,----------do hereby solemnly swear in the name of Allah;

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.

[2][Auditor-General
[see section 50-A(2)]

I,----------do hereby solemnly swear in the name of Allah;

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.]

Second Schedule
[see section 24 (2) (d)]

1. An office, which is not a whole time office remunerated either by salary or by fee.
2. The office of Lamberdar, inamdar, Sufedposh and Zaildar, whether called by this or any other title.

[1] Added by (1st Amendment) Act, 1975
[2] Ibid 43

3. The offices of the Chairman of the Union Council, Union Committee and Town Committee and of the Vice Chairman of the Municipal Committee and District Council.
4. Reserve of the Armed Forces.
5. Any other office which is declared by an Act of the Assembly not to disqualify its holder from being elected as, or from being a member of the Assembly.

Third Schedule
[see section 31 (2)]
Council Legislatie list

1. Subject to the responsibilities of the Government of Pakistan under the UNCIP Resolutions, nationality, citizenship and [1][Nationalization;]migration from or into Azad Jammu and Kashmir, and admission into, and emigration and expulsion from, Azad Jammu and Kashmir, including in relation thereto the regulation of the movements in Azad Jammu and Kashmir of persons not domiciled in Azad Jammu and Kashmir.
2. Post and Telegraphs, including Telephones, Wireless, Broad- Casting and other like forms of communications; post office saving Bank.
3. Public debt of the Council, including the borrowing of money on the security of the Council consolidated Fund.
4. Council public services and Council Public Service commission.

[1]Substituted for 'Nationalisation, and shall be deemed always to have been so substituted by(14th Amendment Act 1977 44

5. Council pensions, that is to say, pensions payable by the Council or out of the Council consolidated Fund.
6. Administrative courts for Council subjects.
7. Council agencies and institutions for the following purpose, that is to say, for research , for professional or technical training, or for the promotion of special studies.
8. Nuclear energy, including.-
   (a) mineral resources necessary for the generation of nuclear energy;
   (b) the production of nuclear fuels and the generation and use of nuclear energy; and
   (c) ionising radiation.
9. Aircraft and air navigation; the provision of aerodromes; regulation and organization of air traffic and of aerodrome.
10. Beacons and other provisions for safety of aircraft.
11. Carriage of passengers and goods by air.
12. Copyright, inventions, designs, trade marks and merchandise marks.
13. Opium so far as regards sale for export.
14. Banking, that is to say, the co-ordination with the Government of Pakistan of the conduct of banking business.
15. The law of insurance and the regulation of the conduct of insurance business.
16. Stock-exchange and future markets with object and business not confined to Azad Jammu and Kashmir.
17. Corporations, that is to say, the incorporation regulation and winding up of trading corporations including banking, insurance and financial corporations, but not including corporations owned or controlled by Azad Jammu and Kashmir and carrying on business only within Azad Jammu and

Kashmir or, co-operative societies, and of corporations, whether trading or not, with object not confined to Azad Jammu and Kashmir, but not including universities,

18. Planning for economic coordination including planning and coordination of scientific and technological research.
19. Highways, continuing beyond the territory of Azad Jammu and Kashmir excluding roads declared by the Government of Pakistan to be strategic importance.
20. Council surveys including geological surveys and council meteorological organizations.
21. Works, lands and buildings vested in, or in the possession of, the council for the purpose of the council (not being Military, Navel or air force works), but as regards property situate in Azad Jammu and Kashmir, subject always to law made by the Legislative Assembly, save in so far as law made by the council otherwise provides.
22. Census.
23. Establishment of standards of weights and measures.
24. Extension of the powers and jurisdiction of members of a police force belonging to Azad Jammu and Kashmir or any province of Pakistan to any area in such province of Azad Jammu and Kashmir, but not so as to enable the police of Azad Jammu and Kashmir or such province to exercise powers and jurisdiction in such province or Azad Jammu and Kashmir without the consent of the Government of that province or Azad Jammu and Kashmir; extension of the powers jurisdiction of members of a police force belonging the Azad Jammu and Kashmir or a province of Pakistan to railway areas outside Azad Jammu and Kashmir or that province.

25. Election to the council.
26. The salaries, allowance and privileges of the members of the council and[1][Advisors.]
27. Railways.
28. Mineral oil natural gas; liquids substances declared by law made by the Council to be dangerously inflammable.
29. Development of industries, where development under council control is declared by law made by council to be expedient in the public interest.
30. Removal of prisoners and accused persons from Azad Jammu and Kashmir to Pakistan or from Pakistan to Azad Jammu and Kashmir.
31. Measures to combat certain offences committed in connection with matters concerning the council and the Government and the establishment of police force for that purpose[2][or the extension to Azad Jammu and Kashmir of the jurisdiction of a police force establish in Pakistan for the investigation of offences committed in connection , with matters concerning the Government of Pakistan]
32. Prevention of the extension from Azad Jammu and Kashmir to Pakistan or from Pakistan to Azad Jammu and Kashmir of infections of contagious diseases or pests affecting men; animals or plants.
33. Population planning and social welfare.
34. Boilers.
35. Electricity.
36. Newspapers, books and printing presses.
37. State property.

[1]Substituted by (1st Amendment) Act, 1975
[2] Added by ibid 45

38. Curriculum , syllabus, planning, policy, centers of excellence and standards of education.
39. Sanctioning of cinematograph films for exhibition.
40. Tourism.
41. Duties of customs, including export duties.
42. Taxes on income other than agricultural income.
43. Taxes on corporations.
44. Taxes on the capital value of the assets, not including taxes on capital gains on immovable property.
45. Taxes and duties on the production capacity of any plant, machinery, under taking, establishment or installation in lieu of the taxes and duties specified in entries 42 and 43 or in lieu of either or both of them.
46. Terminal taxes on goods or passengers carried by railway or air, taxes on their fares and freights.
47. Fees in respect of any of the matters enumerated in this list, but not including fees taken in any court.
48. Jurisdiction and powers of all courts with respect to any of the matters enumerated in this list.
49. Offences against laws with respect to any of the matters enumerated in the list.
50. Inquiries and statistics for the purpose of any of the matters enumerated in this list.
51. Matters which under the Act are within the Legislative competence of the Council or relates to the Council.
52. Matters incidental or ancillary to any of the matters enumerated in this list.

[1][Fourth Schedule
[see section 42(9)]

The Chief Justice and Judges of the Supreme Court of Azad Jammu and Kashmir shall be entitled to the same salary,

Allowances, Privileges and pension as are admissible to the Chief Justice and the Judges of the Supreme Court of Pakistan.

[2][Fifth Schedule
[see section 43(9)]

The Chief Justice and the Judges of the High Court of Azad Jammu and Kashmir shall be entitled to the same salary, Allowances, Privileges and pension as are admissible to the Chief Justice and Judges of the High Court in Pakistan.]

[1]Substituted by (10th Amendment) Act XX of 1993 and shall be deemed to have taken effect from the 1st day of July, 1990.

[2]Ibid 47

Attachment - C
PROPOSED AMENDMENTS TO GILGIT-BALTISTAN (EMPOWERMENT AND SELF-GOVERNANCE) ORDER, 2009

AN ORDER
to provide greater political empowerment and better governance to the people of Gilgit-Baltistan;

WHEREAS it is expedient to undertake necessary legislative, executive and judicial reforms for granting self-governance to the people of Gilgit-Baltistan and for matters connected therewith or incidental thereto;

NOW, THEREFORE, the Government of Pakistan is pleased to make the following Order:-

1. Short title, extent and commencement.- (1) This Order may be called the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009.

(2) It extends to the whole of areas Gilgit-Baltistan.

(3) It shall come into force on at once.

PART. I-PRELIMINARY

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

(a) "Assembly" means the Gilgit-Baltistan Legislative Assembly;

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* This Attachment reproduces the full text of the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009. The proposed amendments are shown in italics.

(b) **"Citizen"** unless otherwise expressed in this Order "citizen" means a person who has a domicile of Gilgit-Baltistan;

(c) **"Council"** means the Gilgit-Baltistan Council constituted under this Order;

(d) **"Chairman"** means the Chairman of the Council who shall be the Prime Minister of Pakistan;

(e) **"Financial year"** means the year commencing on the first day of July and ending on the thirtieth day of June;

(f) **"Gilgit-Baltistan"** means the areas comprising districts of Astore, Diamer, Ghanche, Ghizer, Gilgit, Hunza-Nagar, Skardu and such other districts as may be created from time to time;

(g) **"Governor"** means the Governor of Gilgit-Baltistan and includes a person for the time being acting as, or performing the functions of the Governor;

(h) **"Government"** means the Government of Gilgit-Baltistan

(i) **"Joint Sitting"** means a joint sitting of the Assembly, the Federal Minister in-charge of the Council Secretariat and the members of the Council;

(j) **"Judge"** in relation to the Gilgit-Baltistan Supreme Appellate Court or the Gilgit-Baltistan Chief Court, includes the Chief Judge of the Gilgit-Baltistan Supreme Appellate Court and the Chief Court;

(k) **"person"** includes any body politic or corporate;

(l) **"prescribed"** means prescribed by law or rules made thereunder;

(m) **"Property"** includes any right, title or interest in property, movable or immovable, and any means and instruments of production;

(n) **"remuneration"** includes salary and pension;

(o) **"Service of Gilgit-Baltistan"** means any service, post or office in connection with the affairs of Gilgit-Baltistan including the Council, but does not include service as Chairman of the Council, Governor, Speaker, Deputy Speaker, Chief Minister, Minister, Federal Minister in-charge of the Council Secretariat or Advisor, Parliamentary Secretary, Advisor to the Minister or a member of the Assembly or member of the Council; and

(p) **"Speaker"** means Speaker of the Assembly and includes any person acting as the Speaker of the Assembly.

(q) **"Vice Chairman of the Council"** means the Governor of Gilgit-Baltistan.

1. Proposed Amendment to Section 2 (Definitions)

(1) In sub-section (1) of section 2, the definitions of "Chairman", "Council", "Joint Sitting" and "Vice Chairman of the Council" shall be deleted and the definition of "Service of Gilgit-Baltistan" shall be substituted by the following:-

"Service of Gilgit-Baltistan" means any service, post or office in connection with the affairs of Gilgit-Baltistan but does not include service as Governor, Speaker, Deputy Speaker, Chief Minister, Minister, Parliamentary Secretary, Advisor to the Chief minister

or a Member of the Assembly."

(2) The following sub-section (2A) shall be inserted after sub-section (2) of section 2:

"(2A) The following words shall have the same meanings as under the Constitution of the Islamic Republic of Pakistan: "Act of Majlis-e-Shoora (Parliament)", "Federal Consolidated Fund", "Federal Government", "Federal law", "Federal Legislative List", "Federal Minister", "Federation", "Majlis-e-Shoora (Parliament)" and "President of Pakistan".

PART. II-FUNDAMENTAL RIGHTS

3. Security of person.- No person shall be deprived of liberty save in accordance with law.

4. Safeguard as to arrest and detention.- (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate, and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

(3) Nothing in Clauses (1) and (2) shall apply to any person-

(a) who for the time being is an enemy alien, or

(b) who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorize the detention of a person for a period exceeding three months unless the review board set up by the Government has reported before the expiration of the said period of three months that there is, in its opinion, sufficient cause for such detention.

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall as soon as may be, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order:

Provided that the authority making any such order may refuse to disclose facts which such authority considers it to be against the public interest to disclose.

2. Proposed addition of section 4 (A)

The following new section shall be added after Section 4:

*"**4-A. Right to fair trial**: For the determination of his civil rights and obligations or in any criminal charge against him, a person shall be entitled to fair trial and due process."*

5. Slavery and forced labour prohibited.- (1) No person shall be held in slavery, and no law shall permit or in any way facilitate the introduction into Gilgit-Baltistan of slavery in any form.

(2) All forms of forced labour are prohibited.

(3) Nothing in this clause shall be deemed to affect compulsory service-

(a) by persons undergoing punishment for offences under any law; or

(b) required by any law for a public purpose.

6. Protection against retrospective punishment.- No law shall authorize the punishment of a person-

(a) for an act or omission that was not punishable by law at the time of the act or omission; or

(b) for an offence by a penalty greater than, or of a kind different form, the penalty prescribed by law for that offence at the time the offence was committed.

3. Proposed addition of section 6 (A)

The following new section shall be added after Section 6:

*"**6-A. Protection against double punishment and self-incrimination**:*

No person

(a) shall be prosecuted or punished for the same offence more than once; or

(b) shall, when accused of an offence, be compelled to be a witness against himself."

7. Freedom of movement.- Subject to any reasonable restrictions imposed by law in the public interest, every

citizen shall have the right to move freely throughout the Gilgit-Baltistan and to reside and settle in any part thereof.

8. Freedom of assembly.- Every citizen shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of morality or public order.

9. Freedom of association.- (1) Subject to this Order, every citizen shall have the right to form association or unions, subject to any reasonable restrictions imposed by law in the interest of morality or public order.

(2) No person or political party in the area comprising **Gilgit-Baltistan** shall propagate against, or take part in activities prejudicial or detrimental to the ideology of Pakistan.

10. Freedom of trade, business or profession.- Every citizen possessing such qualifications, if any, as may be prescribed by law in relation to his profession or occupation shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Provided that nothing in this Article shall prevent-

(a) the regulation of any trade or profession by a licensing system; or

(b) the regulation of trade, commerce or industry in the interest of free competition therein; or

(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 the exclusion,

complete or partial, or other persons.

11. Freedom of speech.- Every citizen shall have the right to freedom of speech and expression, subject to any reasonable restrictions imposed by law in the interest of the security of area **Gilgit-Baltistan**, public order, decency or morality, or in relation to contempt of Court, commission of, or incitement to an offence.

4. Proposed addition of section 11 (A)

The following new section shall be added after Section 11:

*"**11-A. Right to information**: Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law."*

12. Freedom of religion.- Subject to law, public order and morality-

(a) every citizen has the right to profess and practice his religion; and

(b) every religious denomination and every sect thereof has the right to establish, maintain and manage its places of worship.

13. Safeguard against taxation for purposes of any particular religion.- No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own.

14. Safeguard as to educational institutions in respect of religion etc.- (1) No person attending any educational

institution shall be required to receive religious instructions or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own.

(2) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination.

(3) No citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth.

(4) In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation.

(5) Nothing in this paragraph shall prevent any public authority from making provision for the advancement of any society or educationally backward class.

15. Provisions as to property.- Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to acquire, hold and dispose of property.

16. Protection of property.- (1) No person shall be deprived of his property save in accordance with law.

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefor and either fixes the amount of compensation or specifies the

principles on which and the manner in which compensation is to be determined and given.

(3) Nothing in this clause shall, affect the validity of-

(a) any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health; or

(b) any law relating to the acquisition, administration or disposal of any property which is or is deemed to be evacuee property under any law; or

(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 purpose of-

(i) providing education and medical aid to all or any specified class of citizen; or

(ii) providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizen; or

(iii) providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves; or

(f) any law in force immediately before the coming into force of this Order.

Explanation.- In clauses (2) and (3), the expression 'property' means immovable property, or any commercial or industrial undertaking, or any interest in any undertaking.

17. Equality of citizens.- All citizens are equal before law and are entitled to equal protection of law.

5. Proposed addition of section 17 (A)

The following new section shall be added after Section 17:

*"**15-A. Right to education**: The state shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law."*

18. **Non-discrimination in respect of access to public places**.- In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex or place of birth, but nothing herein shall be deemed to prevent the making of any special provision for women.

19. Safeguard against discrimination in services.- No citizen otherwise qualified for appointment in the services of areas comprising **Gilgit-Baltistan** shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste or sex:

Provided that, in the interest of the said service, specified posts or services may be reserved for members of either sex.

PART. III-GOVERNOR

20. The Governor.- (1) There shall be a Governor of the Gilgit-Baltistan who shall be appointed by the President of Pakistan on the advice of the Prime Minister of Pakistan:

(a) Notwithstanding any thing contained in this Order, the Federal Minister for Kashmir Affairs and Gilgit-Baltistan shall act as the Governor of Gilgit-Baltistan till the appointment of the first Governor.

(b) provided that after the first election under this Order, in the absence of Governor, the Speaker of Legislative Assembly shall act as acting Governor.

(3) A person shall not be appointed as Governor unless he is qualified to be elected as a member of the Assembly or the National Assembly of Pakistan and is not less than thirty five years of age.

(4) The Governor shall hold office during the pleasure of the President and shall be entitled to such salary, allowances and privileges as the President may determine.

(5) The Governor may, by writing under his hand addressed to the President, resign his office.

(6) The President may make such provision as he thinks fit for the discharge of the functions of the Governor in any contingency not provided for in this Order.

(7) Before entering upon office, the Governor shall make before the Chief Judge of the Gilgit-Baltistan Supreme Appellate Court an oath in the form set out in the First Schedule.

(8) The Governor shall not hold any office of profit in the service of Gilgit-Baltistan or of Pakistan nor occupy any other position carrying the right to remuneration for the rendering of services.

(9) The Governor shall not be a candidate for election as a member of the Assembly, and, if a member of the Assembly is appointed as Governor, his seat in the Assembly shall become vacant on the day he enters upon his office.

21. Governor to act on advice, etc.- (1) Subject to this Order in the performance of his functions, the Governor shall act in accordance with the advice of the Cabinet or the Chief Minister:

Provided that the Governor may require the Cabinet or, as the case may be, the Chief Minister to reconsider such advice, whether generally or otherwise, and the Governor shall act in accordance with the advice tendered after such reconsideration.

(2) The question whether any, and if so what, advice was tendered to the Governor by the Chief Minister or the Cabinet shall not be inquired into in, or by, any court, tribunal or other authority.

PART. IV-THE GOVERNMENT

22. The Government.- (1) Subject to this Order, the executive authority of Gilgit-Baltistan shall be exercised in

the name of the Governor by the Government through Cabinet consisting of the Chief Minister and the Ministers, which shall act through the Chief Minister who shall be the Chief Executive.

(2) In the performance of his functions under this Order, the Chief Minister may act either directly or through the Ministers.

(3) The Chief Minister and the Ministers shall be collectively responsible to the Assembly.

(4) Orders and other instructions made and executed in the name of the Governor 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 instruction which is so authenticated shall not be questioned in any court on the ground that it is not an order or instruction made or executed by the Governor.

(5) The Governor, in consultation with Chairman of the Council, 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.

6. Proposed amendment to Section 22 (The Government)

In sub-section (5) of section 22, the words "in consultation with Chairman of the Council" shall be deleted.

23. The Chief Minister.- (1) The Assembly shall meet on the thirtieth day following the day on which a general election to the Assembly is held, unless sooner summoned

by the Governor.

(2) After the election of the Speaker, and the Deputy Speaker, the Assembly shall, to the exclusion of any other business, proceed to elect, without debate, one of its members to be the Chief Minister.

(3) The Chief Minister shall be elected by the votes of the majority of the total membership of the Assembly;

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

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

(4) The member elected under clause (3) shall be invited by the Governor to assume the office of Chief Minister and he shall, before entering upon the office make before the Governor oath in the form set out in the First Schedule.

24. Ministers.- (1) The Governor shall appoint Ministers from amongst the members of the Assembly on the advice of Chief Minister

(2) Before entering upon office, a Minister shall make before the Governor oath in the form set out in the First Schedule.

(3) A Minister may, by writing under his hand addressed to the Chief Minister, resign his office or may be removed from office by the Chief Minister.

7. Proposed amendment in Section 24 (Ministers)

The following proviso shall be added to sub-section (1) of section 24:

"Provided that the total number of Ministers shall not exceed eleven percent of the total membership of the Assembly."

25. Advisors to Chief Minister.- The Governor may, on the advice of Chief Minister, appoint not more then two Advisors on such term and conditions, as he may determine.

8. Proposed addition of new sub-section in section 25 (Advisors to Chief Minister)

Section 25 may be re-numbered as sub-section (1) and the following new sub-section may be added to section 25:-

"(2) The Advisor shall have the right to speak and otherwise take part in the proceedings of the Assembly or any Committee thereof of which he may be named a member but shall not by virtue of this section be entitled to vote."

26. Parliamentary Secretaries.- (1) The Chief Minister may appoint Parliamentary Secretaries from amongst the members of the Assembly to perform such functions as may be prescribed.

(2) A Parliamentary Secretary may, by writing under his hand addressed to the Chief Minister, resign his office or may be removed from office by the Chief Minister.

27. Resignation of Chief Minister.- (1) Subject to clause (2) the Chief Minister may, by writing under his hand addressed to the Governor, resign his office and, when the Chief Minister resigns, the Ministers shall cease to hold office.

(2) If the Assembly is in session at the time when the Chief Minister resigns his office, the Assembly shall forthwith proceed to elect a Chief Minister, and if the Assembly is not in session the Governor shall for that purpose summon it to meet within fourteen days of the resignation.

28. Vote of no-Confidence against Chief Minister.- (1) A resolution for a vote of no-confidence moved by not less than twenty percent of the total membership of the Assembly may be passed against the Chief Minister by the Assembly.

(2) A resolution shall not be moved in the Assembly unless by the same resolution the name of another member of the Assembly is put forward as the successor.

(3) A resolution shall not be moved in the Assembly while the Assembly is considering demands for grants submitted to it in the Annual Budget.

(4) A resolution shall not be voted upon before the expiration of three days, or later than seven days, form the date on which it is moved in the Assembly.

(5) If the resolution is passed by majority of the total membership of the Assembly, the Chief Minister and the Ministers appointed by him shall cease to hold office.

(6) If a resolution is not passed another such resolution shall not be moved until a period of six months has elapsed.

9. Proposed addition of sub-section (7) in section 28 (Vote of no-confidence against Chief Minister)

The following sub-section (7) shall be added to section 28:

"(7) The Governor shall, if he is satisfied that the Chief Minister has lost the confidence of the majority of the members of the Assembly, summon the Assembly and require the Chief Minister to obtain a vote of confidence from the Assembly."

29. Chief Minister Continuing in Office.- The Governor may ask the Chief Minister to continue to hold office until his successor enters upon the office of the Chief Minister.

30. Minister performing functions of Chief Minister.- (1) In the event of the death of the Chief Minister or the office of the Chief Minister becoming vacant by reason of his ceasing to be member of the Assembly or he resigns his office, the most senior Minister for the time being shall be called upon by the Governor to perform the functions of that office and the Minister shall continue in office until a new Chief Minister has been elected and has entered upon his office.

(2) If the Assembly is in session at the time when the Chief Minister dies or the office of the Chief Minster becomes vacant, the Assembly shall forthwith proceed to elect a Chief Minister, and if the Assembly is not in session the Governor shall for that purpose summon it to meet within fourteen days of the death of the Chief Minister or, as the case may be, of the office becoming vacant.

(3) When, for any reason, the Chief Minister is unable to perform his functions, the most senior Minister for the time being shall perform functions of Chief Minister until the Chief Minister resumes his functions.

(4) In this Article 'most senior Minister' means the Minister for the time being designated as such by the Chief Minister by notification in the official Gazette.

10. Proposed addition of new section 30A (Caretaker cabinet)

The following new section shall be added after section 30:

"(1) On dissolution of the Assembly on completion of its term, or in case it is dissolved under section 41, the Governor shall appoint a care-taker cabinet in accordance with the provisions of this section.

(2) The care-taker Chief Minister shall be appointed by the Governor in consultation with the outgoing Chief Minister and the Leader of the Opposition in the outgoing Assembly;

Provided that if the outgoing Chief Minister and the Leader of the Opposition in the outgoing Assembly do not agree on any person to be appointed care-taker Chief Minister within three days of the dissolution of the Assembly, the most senior retired judge of the Supreme Appellate Court or the Chief Court shall be appointed by the Governor as the care-taker Chief Minister.

(3) The members of the care-taker cabinet other than the care-taker Chief Minister shall be appointed by the Governor on the advice of the care-taker Chief Minister.

(4) Members of the care-taker Cabinet including the care-taker Chief Minister and their spouses and children shall not be eligible

to contest the immediately following election to the Assembly."

31. Extent of Executive Authority of Government.- (1) Subject to this Order, the executive authority of the Government shall extend to the matters with respect to which the Assembly has power to make laws.

(2) The executive authority of the Government shall be so exercised as to secure compliance with the laws made by the Council and Pakistan laws.

(3) Notwithstanding anything contained in this Order, the Government may with the consent of the Council, entrust, either conditionally or unconditionally, to the Council, or to its officers functions in relation to any matter which the executive authority of the Government extends.

11. Proposed amendment to section 31 (Executive authority of the Government)

(1) In sub-section (2) of section 31, the words "laws made by the Council and Pakistan laws" shall be substituted by the words "Federal Laws".

(2) In sub-section (3) of section 31, the word "Council" occurring twice shall be substituted by the words "Federal Government."

(3) The full stop at the end of sub-section (3) shall be deleted and the following words shall be added: "and the Federal Government may, with the consent of the Government, entrust, either conditionally or unconditionally, to the Government, or to its officers functions in relation to which the executive authority of the Federal Government extends".

32. Advocate General.- (1) The Governor shall appoint a citizen, being a person qualified to be appointed as Judge of the Gilgit-Baltistan Chief Court, to be the Advocate General for Gilgit-Baltistan.

(2) It shall be the duty of the Advocate General to give advice to Government upon such legal matter, and to perform such other duties of a legal character, as may be referred or assigned to him by the Government.

(3) The Advocate General shall hold office during the pleasure of the Governor.

(4) The Advocate General may, by writing under his hand addressed to the Governor resign his office.

(5) The person holding the office as Advocate General immediately before the commencement of this Order shall be deemed to be the Advocate General, appointed under this Order.

PART. V-GILGIT-BALTISTAN COUNCIL

33. Gilgit-Baltistan Council.- (1) There shall be a Gilgit-Baltistan Council consisting of.-

(a) the Prime Minister of Pakistan;
(b) the Governor;
(c) six members nominated by the Prime Minister of Pakistan from time to time from amongst Federal Ministers and members of Parliament: Provided that the Federal Minister for Kashmir Affairs and Gilgit-Baltistan shall be an ex officio member and Minister Incharge of the Council:

(d) the Chief Minister of Gilgit-Baltistan;
(e) six members to be elected by the Assembly in accordance with the system of proportional representation by means of a single transferable vote.

(2) The Prime Minister of Pakistan shall be the Chairman of the Council.

(3) The Governor shall be the Vice-Chairman of the Council.

(4) The Minister of State for Kashmir Affairs and **Gilgit-Baltistan** shall be an *ex officio* non voting member of the Council.

(5) The qualifications and disqualifications for being elected, as, and for being, a member of the Council shall, in the case of a member referred to in sub-clause (e) of clause (1), be the same as those for being elected as, and for being a member of the Assembly.

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

(a) if 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 ten consecutive sittings of the Council;

(c) if he fails to make the oath referred to in clause (11)

within a period of ninety days after the date of his election, unless the Chairman, for good cause shown, extends the period; or

(d) if he ceases to be qualified for being a member under any provision of this Order or any other law for the time being in force.

(7) 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 member and his seat shall become vacant.

(8) An election to fill a vacancy in the office of an 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.

(9) The manner of election of elected members and filling of a casual vacancy in the office of an elected member shall be such as may be prescribed.

(10) An elected member shall hold office during term of the Council.

(11) An elected member shall, before entering upon office, make before the Chairman or the Vice Chairman oath in the form set out in the First Schedule.

(12) The executive authority of the Council shall extend 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 Federal Minister for Kashmir Affairs and Gilgit-Baltistan shall be incharge.

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

(13) The Chairman may from among the elected members of the Council appoint not more than three Advisors on such terms and conditions as he may determine.

(14) An advisor shall, before entering upon office, make before the Chairman oath in form set out in the First Schedule.

(15) 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 clause be entitled to vote.

(16) The Council may make rules for regulating its 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.

(17) 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 or executed by the Council.

(18) 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.

Explanation: In this Article the expression 'Chairman' means Chairman of the Council.

12. Proposed deletion of section 33 (Gilgit-Baltistan Council)

Section 33 shall be deleted.

34. Chairman of Council power to pardon and reprieve.- The Chairman shall have power to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.

13. Proposed amendment to Section 34 (Chairman of Council power to pardon and reprieve)

In section 34, including its title, the word "Chairman" shall be substituted by the word "Governor".

PART. VI-THE LEGISLATURE

35. Legislative Assembly.- *(1)* The Legislative Assembly shall consist of **thirty three** members of whom-

(a) **twenty four** members shall be elected directly on the basis of adult franchise;

(b) **six** women members shall be elected on the pattern as in case of reserved seat in Pakistan.

(c) **three** technocrats and other professional members shall be elected on the pattern as in case of reserved seat in Pakistan.

Explanation.- In sub-clause (c), the expression "technocrat or other professional" includes a person who is in possession of such qualification or experience as may be prescribed.

(2) The manner of election of the members of the Assembly and the manner of filling casual vacancies shall be such as may be prescribed.

(3) The Assembly, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting.

(4) A general election to the Assembly shall be held within a period of sixty days immediately proceeding the day on which the term of the Assembly is due to expire, unless the Assembly has been sooner dissolved, and result of the election shall be declared not later than fourteen days before that day.

36. Oath of members of the Assembly.- (1) A person elected as a member of the Assembly shall not take his seat in the Assembly until he makes before such person as is prescribed by rules of the Assembly an oath in the form set out in the First Schedule.

(2) The oath may be made when the Assembly is in session.

(3) If any person sits or votes in the Assembly knowing that he is not qualified to be, or is disqualified from being a member of the Assembly he shall be liable in respect of every day on which he so sits or votes; shall be guilty of an offence punishable for a term which shall not be less than seven years and a fine which shall not be less than two hundred thousand rupees.

37. Qualifications of members of the Assembly.- (1) A person shall be qualified to be elected as, and to be, a member of the Assembly if-

(a) he is a citizen;

(b) he is not less than twenty-five years of age; and

(c) his name appears on the electoral roll of any constituency in Gilgit-Baltistan..

(2) A person shall be disqualified from being so elected if-

(a) he is of unsound mind and stands so declared by a competent court; or

(b) he is an undischarged insolvent unless a period of ten years has elapsed since his being adjudged as insolvent; or

(c) he has been on conviction for any offence sentenced to transportation for any term or imprisonment for a term of not less than two years unless a period of five years has

elapsed since his release; or

(d) he holds any office of profit in the service of Gilgit-Baltistan or in the service of Pakistan other than a office which is not a whole time office remunerated either by salary or by fee other than an office specified in the Second Schedule; or

(e) he has been in the service of Gilgit-Baltistan, Pakistan and AJ&K or of any statutory body or any body which is owned or controlled by the Government of Pakistan, AJ&K and Gilgit-Baltistan or in which the Government has a controlling share or interest, unless a period of two years has elapsed since he ceased to be in such service; or

(f) he has been dismissed for misconduct from the service of Gilgit-Baltistan or the service of Pakistan unless a period of five years has elapsed since his dismissal; or

(g) he is otherwise disqualified from being a member of the Assembly by this Order or by any other law.

38. Seat in Assembly becomes vacant under certain circumstances.- (1) The seat of a member of the Assembly shall become vacant if-

(a) he resigns his seat by notice in writing under his hand addressed to the Speaker, in his absence, to the Secretary of the Assembly; or

(b) he is absent from the Assembly without the leave of the Assembly for thirty consecutive sitting days of the Assembly; or

(c) he fails to make the oath referred to in Article 36 within a period of ninety days after the date of his election unless the Speaker for good cause shown extends the period; or

(d) he is elected as member of the Council; or

(e) he ceases to be qualified for being a member under any provision of this Order or any other law.

(2) If the member of the Assembly is elected to more than one seat, he shall within a period of thirty days after the declaration of result for the last such seat, resign all but one of his seats, and if he does not so resign, all the seats 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 filed last.

(3) If any question arises whether a member of the Assembly has, after his election become disqualified from being a member of the Assembly, the Speaker 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.

(4) When except by dissolution of the Assembly, a seat in the Assembly has become vacant not later than one hundred and twenty days before the term of the Assembly is due to expire, an election to fill the seat shall be held within sixty days from the occurrence of the vacancy.

14. Proposed amendment in Section 38 (Seat in Assembly becomes vacant under certain circumstances)

Clause (d), sub-section (1) of this section shall be deleted.

39. Right of Governor to address the Assembly. - (1) The Governor may address the Assembly and may for that purpose require the attendance of the members.

(2) The Advocate General shall have the right to speak and otherwise take part in the proceedings of the Assembly or any Committee thereof of which he may be named a member, but shall not by virtue of this Article be entitled to vote.

40. Meetings of the Assembly.- (1) The Assembly shall assemble at such times and at such places as the Governor may appoint, and the Governor may prorogue a session of the Assembly except when the Assembly has been summoned by the Speaker.

(2) Any meeting of the Assembly may be adjourned by the Speaker or other person presiding thereat.

(3) There shall be at least three sessions of the Assembly every year, and not more than one hundred and twenty days shall intervene between the last sitting of the Assembly in one session and the date appointed for its first sitting in the next session.

Provided that the Assembly shall meet for not less than one hundred and thirty working days in each parliamentary year.

(4) On a requisition signed by not less than one-third 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.

41. Dissolution of the Assembly.- (1) The Governor shall dissolve the Assembly if so advised by the Chief Minister, and the Assembly shall, unless sooner dissolved, stands dissolved at the expiration of the forty-eight hours after the Chief Minister has so advised.

Explanation.- Reference in this Article to Chief Minister shall not be construed to include reference to a Chief Minister against whom a resolution for a vote of no-confidence has been moved in the Assembly but has not been voted upon or against whom such a resolution has been passed or who is continuing in office after his resignation or after the dissolution of the Assembly or a Minister performing the functions of Chief Minister under clause (I) or clause (3) of Article 30.

(2) When the Assembly is dissolved a general election to the Assembly shall be held within a period of ninety days after the dissolution, and the result of the election shall be declared not later than fourteen days after the conclusion of the polls.

42. Speaker of the Assembly.- (1) After a general election, the Assembly shall, at its first meeting and to the exclusion of any other business, elect from amongst its members a Speaker and a Deputy Speaker of the Assembly.

Provided that the period intervening between the

declaration of the official result of the election to the Assembly and the date for assumption of office of members shall not exceed thirty days.

(2) Before entering upon office, a member of the Assembly elected as Speaker or Deputy Speaker shall make before the Assembly an oath in the form set out in the First Schedule.

(3) All the proceedings of the Assembly shall be conducted in accordance with rules of procedures made by the Assembly and approved by the Governor.

(4) The Speaker shall preside the meetings of the Assembly except when a resolution for his removal from the office is being considered 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) Soon after as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall elect one of its members to fill the office.

(6) The Speaker may resign from his office by writing under his hand addressed to the Governor.

(7) The Deputy Speaker may resign his office by writing under his hand addressed to the Speaker.

(8) The office of the Speaker or Deputy Speaker shall become vacant if-

(a) except as provided in clause (9) he ceases to be a member of the Assembly; or

(b) he is removed from office by a resolution of the Assembly, of which not less than seven days' notice by not less than one-fourth of the total membership of the Assembly has been given and which is passed by a majority of total membership of the Assembly.

(9) When the Assembly is dissolved, the Speaker shall continue in his office till the person elected to fill the office by the next Assembly enters upon his office.

43. Voting in Assembly and quorum.- (1) Subject to this Order,-

(a) a decision in the Assembly shall be taken by a majority of the votes of the members present and voting but the Speaker or the person presiding in his absence shall not vote except when there is an equality of votes in which case he shall exercise his casting vote;

(b) the Assembly may act notwithstanding any vacancy in its membership; and

(c) any proceedings in the Assembly shall not be invalid on the ground that some person who was not entitled to do so sit, voted or otherwise took part in the proceedings.

(2) If at any time during the meeting of the Assembly the attention of the person presiding at the meeting is drawn to

the fact that number of the members is less than one-third of the total membership of the Assembly, it shall be the duty of the person presiding either to adjourn the meeting or to suspend the meeting till such number of members are present.

44. Restriction on discussion in Assembly, etc.- No discussion shall take place in the Assembly or the Council or the joint sitting with respect to matters relating to Foreign Affairs, Defence, Internal Security and Fiscal Plans of Government of Pakistan and the conduct of the any Judge of the Gilgit-Baltistan Supreme Appellate Court or the Gilgit-Baltistan Chief Court in the discharge of his duties.

15. Proposed amendment in Section 44 (Restriction on discussion in Assembly, etc.)

In section 44, the words "or the Council or the Joint Sitting" shall be deleted.

45. Finance Committee.- (1) The expenditure of the Assembly within authorized appropriation shall be controlled by the Assembly acting on the advice of the Finance 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.

46. Secretariat of the Assembly.- (1) The Assembly shall have a separate Secretariat.

(2) The Assembly may by law regulate the recruitment and conditions of service of persons appointed to the Secretariat Staff of the Assembly.

(3) Until provision is made by the Assembly under clause (2) the persons appointed to the Secretariat Staff of the Assembly shall continue to be governed by conditions of service for the time being applicable to them.

PART. VII-
DISTRIBUTION OF LEGISLATIVE POWERS

47. Legislative Powers.- (1) Subject to the succeeding provisions of this Article, both the Council and the Assembly shall have the power to make laws,-

(a) for the territories of Gilgit-Baltistan;

(b) for all citizens of Gilgit-Baltistan; and

(c) for the officers of the Council or as the case may be, the Government, wherever they may be.

(2) Subject to clause (3)-

(a) the Council shall have exclusive power to make laws with respect to any matter in the Council Legislative List set out in the Third Schedule, hereinafter referred to as the Council Legislative List; and

(b) the Assembly shall, and the Council shall not, have power to make laws with respect to any matter enumerated in the Fourth Schedule referred to as the Assembly Legislative List.

(c) The Council shall have the powers to adopt any amendment in the existing Laws or any new Law in force in Pakistan.

(3) The Government of Pakistan shall have exclusive power to make laws in respect of any matter not enumerated in the Council Legislative List or the Assembly Legislative List by Order notified in the official Gazette.

16. Proposed substitution of section 47 (Legislative Powers)

Section 47 shall be substituted by the following:

"31. (1) Subject to the succeeding provisions of this section, the Assembly shall have the power to make laws-

(a) for the territories of Gilgit-Baltistan;

(b) for all citizens of Gilgit-Baltistan, wherever they may be; and

(c) for all persons in the service of Gilgit-Baltistan, wherever they may be.

(2) The Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to any matter in the Federal Legislative List.

(3) Both the Majlis-e-Shoora (Parliament) and the Assembly shall have power to make laws with respect to criminal law, criminal procedure and evidence.

(4) The Assembly shall have power to make laws with respect to any matter not included in the Federal Legislative List.

48. Tax to be levied by laws only.- No tax shall be levied for the purposes of the territories of Gilgit-Baltistan except by or under the authority of an Act of the Council or the

Assembly and all taxes and levies competently imposed under an Act of the Assembly or the Council or under any law made by the Government of Pakistan shall remain in force.

17. Proposed substitution of Section 48 (Tax to be levied by laws only)

Section 48 shall be substituted by the following:

"No tax shall be levied for the purposes of the territories of Gilgit-Baltistan except by or under the authority of a Federal law or an Act of the Assembly and all existing taxes and levies imposed by a competent authority shall remain in force."

PART. VIII
ISLAMIC PROVISIONS

49. No laws against Islamic Injunctions, etc.- No law shall be repugnant to the teachings and requirements of Islam as set out in the Holy Quran and Sunnah and all existing laws shall be brought in conformity with the Holy Quran and Sunnah.

50. Reference to Council of Islamic Ideology.- (1) If one-third of the total number of the members of the Assembly or, as the case may, the Council so requires, the Assembly or the Council shall refer to the Council of Islamic Ideology constituted under the Constitution of Islamic Republic of Pakistan (hereinafter referred to as the Islamic Council) for advice on any question as to whether a proposed law is or is not repugnant to the injunctions of Islam.

(2) When a question is referred by the Assembly or the Council, as the case may be, the Council of Islamic Ideology

shall, within fifteen days thereof, inform the Assembly or the Council, as the case may be, of the period within which the Council of Islamic Ideology expects to be able to furnish that advice.

(3) Where the Assembly or, as the case may be, the Council considers that in the public interest, the making of the proposed law in relation to which the question arose should not be postponed until the advice of the Council of Islamic Ideology is furnished, the law may be made before the advice is furnished.

Provided that, where a law is referred for advice to the Council of Islamic Ideology and the Council advises that the law is repugnant to the injunctions of Islam, the Assembly or, as the case may be, the Council shall reconsider the law so made.

18. Proposed amendment to Section 50 (Reference to Council of Islamic Ideology)

In section 50, the word "Council" wherever used shall be substituted by the word "Parliament (Majlis-e-Shoora)."

51. General provisions regarding Council, etc.- (1) The validity of any proceedings in the Council or the Assembly shall not be questioned in any Court.

(2) An officer or member or an authority in whom powers are vested for regulation of proceedings, conduct of business, maintain order in the Council or the Assembly shall not, in relation to exercise by him of any of those powers, be subject to the jurisdiction of any Court.

(3) A member of, or a person entitled to speak in, the

Council or the Assembly, shall not be liable to any proceedings in any Court in respect of anything said by him or any vote given by him in the Council or the Assembly or in any Committee thereof.

(4) A person shall not be liable to any proceedings in any Court in respect of publication by or under the authority of the Council or the Assembly, of any report, paper, vote or proceedings.

(5) No process issued by a Court or other authority shall except with the leave of the Chairman of the Council or the Speaker be served or executed within the precincts of the place where a meeting of the Council or, as the case may be, the Assembly is being held.

(6) Subject to this Article, the privileges of the Council, the Assembly, the Committees and members of the Council, or the Assembly and of the persons entitled to speak in the Council, or the Assembly, may be determined by law.

19. Proposed amendment of Section 51 (General provisions regarding Council etc.)

"(1) The words "Council etc." in the title of section 51 shall be substituted by the word "Assembly".

(2) The words "the Council or the Assembly", occurring in sub-sections (1), (2), (3) and (4) of section 34 shall be substituted by the words "the Assembly."

(3) In sub-section (5) of section 34, the words "Chairman of the Council or" and the words "the Council or, as the case may be" shall be deleted.

(4) Sub-section (6) of section 34 shall be substituted by the following:

"(6) Subject to this section, the privileges of the Assembly and its Committees and members and of persons entitled to speak in the Assembly may be determined by law."

52. Authentication of Bills Passed by the Council.- A Bill passed by the Council shall not require the assent of the Governor and shall, upon its authentication by the Chairman of the Council, become law and be called an Act of the Council.

20. Proposed deletion of section 52 (Authentication of Bills passed by the Council)

Section 52 shall be deleted.

53. Governor's assent to Bills.- (1) Subject to this Order, when a Bill has been passed by the Assembly it shall be presented to the Governor for assent.

(2) When a Bill is presented to the Governor for assent, the Governor shall, within thirty days,-

(a) assent to the Bill; or

(b) in the case of a Bill other then a Money Bill, return the Bill to the Assembly with a massage requesting that the Bill, or any specified provision thereof, be reconsidered and that any amendment specified in the message be considered.

(3) When the Governor has returned a Bill to the Assembly, it shall be reconsidered by the Assembly and, if it is again passed, with or without amendment, by the

Assembly, by the votes of the majority of the members of the Assembly present and voting, and in accordance with the provision of this Order and in not in any manner prejudicial to the security, integrity, solidarity and strategic interest of Pakistan, it shall be again presented to the Governor and Governor shall not withhold assent therefrom.

(4) When the Governor has assented to a Bill, it shall become law and be called an Act of Assembly.

PART. IX-FINANCIAL PROCEDURE

54. Council Consolidated Fund.- (1) All revenues received by the Council, all loans raised by the Council and all moneys received by it in payment of any loan shall form a part of Consolidated Fund, to be known as the Council Consolidated Fund.

(2) All other moneys-

(a) received by or on behalf of the Council; or

(b) received by or deposited with the Gilgit-Baltistan Supreme Appellate Court or any other Court established under the authority of this Order shall be credited to the Public Account of the Council.

(3) The Custody of the Council Consolidated Fund, the payment of money into that Fund, the withdrawal of money there from, the custody of other moneys received by or on behalf of the Council, their payment into, and withdrawal from the Public Account of the Council, and all matters connected with or ancillary to the matters aforesaid, shall be regulated by the Act of the Council or, until provision in that behalf is so made, by rules made by the Chairman of the

Council.

(4) The Council shall, in respect of every financial year, cause to be prepared, and approve, a statement of estimated receipts and expenditure of the Council for that year.

(5) The Chairman of the Council shall authenticate by his signature the statement approved by the Council under clause (4), and no expenditure from the Council Consolidated Fund shall be deemed to be duly authorized unless it is specified in the statement so authenticated.

(6) 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 a need has arisen for expenditure upon some new service not included in the statement referred to in clause (4) for that year; or

(b) that any money has been spend on any service during a financial year in excess of the amount granted for that year, the Chairman of the Council shall have the power to authorize 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 provision of clause (3) and (4) shall apply to theses statements as they apply to the statement referred to in clause (3).

(7) Notwithstanding anything contained in the foregoing provisions of this Article, 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 clause (3) and (4).

21. Proposed deletion of section 54 (Council Consolidated Fund)

Section 54 shall be deleted.

55. Gilgit-Baltistan Consolidated Fund.- (1) All revenues received by the Government, all loans raised by the Government with the approval of Government of Pakistan and all moneys received by it in payment of any loan shall form a part of Consolidated Fund, to be known as the Gilgit-Baltistan Consolidated Fund.

(2) All other moneys-

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

(b) received by or deposited with any other Court established under the authority of the Government, shall be credited to the Public Account of the Government.

(3) The custody of the Gilgit-Baltistan Consolidated Fund, the payment of money into that Fund, the withdrawal of money therefrom, the custody of other moneys received by or on behalf of the Government, their payment into, and withdrawal from the Public Account of the Government, and all matters connected with or ancillary to the matters aforesaid, shall be regulated by the Act of the Assembly or, until provision in that behalf is so made, by rules made by the Governor.

56. Budget.- (1) The Government shall, in respect of every financial year, cause to be laid before the Assembly a

statement of estimated receipts and expenditure for that year, to be called the Annual Budget.

(2) The Annual Budget shall be submitted to the Assembly in the form of demands for grant and the Assembly shall have power to assent to, or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Government.

(4) The Annual Budget as passed by the Assembly shall be placed
before the Governor who shall authenticate it by his signature.

(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 a 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 spend on any service during a financial year in excess of the amount granted for that year, the Government shall have the power to authorize expenditure from the Gilgit-Baltistan Consolidated Fund and shall cause to be laid before the Assembly a Budget or, as the case may be, an excess Budget, setting out the amount of that expenditure, and the provisions of this Article 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 clause (2) for the voting of such grant and the authentication of the Budget as passed by the Assembly in accordance with the provisions of clause (4) in relation to the expenditure.

57. Special provisions regarding Budget, etc.- (1) Where the Annual Budget for any financial year cannot be passed by the Assembly by reason of its having been dissolved, the Chief Minister shall cause to be prepared an Annual Budget for that year and, by his signature, authenticate the Budget.

(2) The Annual Budget for any financial year authenticated by the Chief Minister under clause (1) shall, for the purpose of this Act, be deemed to have been passed by the Assembly.

58. Restriction on expenditure.- No expenditure shall be incurred by the Government except authorized by the Annual or Supplementary Budget as passed or deemed to have been passed by the Assembly.

PART. X-ORDINANCE

59. Power to make Ordinance.- (1) The Governor may, except when the Assembly is in session, if satisfied that circumstances exist which render it necessary to take immediate action, make and promulgate an Ordinance as the circumstances may require.

(2) An Ordinance promulgated under this Article shall

have the same force and effect as an Act of the Assembly and shall be subject to like restrictions as the power of the Assembly to make law, but every such Ordinance:

(a) shall be laid before the Assembly and shall stand repealed at the expiration of four months from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by the Assembly, upon the passing of that resolution; and

(b) may be withdrawn at any time by the Governor.

(3) Without prejudice to the provisions of clause (2) an Ordinance laid before the Assembly or the Council shall be deemed to be a Bill introduced in the Assembly or the Council, as the case may be.

(4) The Governor shall likewise, except when the Council is in session, if so advised by the Chairman of the Council, make, promulgate and withdraw an Ordinance as the circumstances may require, and the provisions of clause (2) and clause (3) shall apply to an Ordinance so made as if references therein to 'Act of the Assembly and, Assembly were references respectively to' Act of the Council and Council.

22. Proposed amendment to Section 59 (Power to make Ordinance)

Sub-section (4) of section 59 shall be deleted.

PART. XI-THE JUDICATURE

60. Gilgit-Baltistan Supreme Appellate Court.- (1) There shall be constituted a Gilgit-Baltistan Supreme

Appellate Court, referred to as the Supreme Appellate Court to be the highest Court of Appeal.

(2) Subject to the provisions of this Order, the Supreme Appellate Court shall have such jurisdiction as is or may be conferred on it by this Order or by under any law.

(3) The Supreme Appellate Court shall consist of a Chief Judge to be known as Chief Judge of Gilgit-Baltistan and **two other Judges**:

Provided that the Government of Pakistan may from time to time increase the number of judges.

(4) The person holding office as Chief Judge or other Judge of the Supreme Appellate Court immediately before the commencement of this Order shall be deemed to be the Chief Judge or other Judge as the case may be appointed under this Order.

(5) The Chief Judge of Supreme Appellate Court shall be appointed by the Chairman of the Council on the advice of the Governor and other Judges shall be appointed by the Chairman on the advice of Governor after seeking views of the Chief Judge.

(6) A person shall not be appointed as the Chief Judge or Judge of the Supreme Appellate Court of Gilgit-Baltistan unless he_

(a) has been a judge of Supreme Court of Pakistan or is qualified to be a judge of the Supreme Court of Pakistan; or

(b) has for a period of, or for periods aggregating, not less

than five years been a Judge of a Chief Court; or

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

Explanation.- In this sub-clause, the expression 'High Court' includes,-

(a) the Chief Court of Gilgit-Baltistan, or an equivalent Court that existed in Gilgit-Baltistan before the 1st day of August, 2009; and

(b) a High Court in Pakistan including a High Court that existed in Pakistan at any time before the 1st day of July, 2009.

(7) Before entering upon office, the Chief Judge of Gilgit-Baltistan shall make before the Governor and any other Judge of the Supreme Appellate Court of Gilgit-Baltistan shall make before the Chief Judge, oath in the form set out in the First Schedule.

(8) The Chief Judge and judges of the Supreme Appellate Court of Gilgit-Baltistan shall be appointed for a term not exceeding three years and may be appointed for such further term as the Government of Pakistan may determine, unless they sooner resign or are removed from office in accordance with law.

(9) At any time when the office of Chief Judge of Gilgit-Baltistan is vacant, or the Chief Judge, is absent or unable to perform the functions of his office due to any other cause, the next senior Judge of the Supreme Appellate Court to act as Chief Judge of Gilgit-Baltistan.

(10) The remuneration and other terms and conditions of service of the Chief Judge and of a Judge of the Gilgit-Baltistan Supreme Appellate Court shall be such as are admissible to the Chief Justice of Pakistan and Judges of the Supreme Court of Pakistan.

(11) Subject to the succeeding provision of this Article, the Supreme Court of Gilgit-Baltistan shall have jurisdiction to hear and determine appeals from judgments, decrees, final orders or sentences of the Chief Court of Gilgit-Baltistan.

(12) An appeal shall lie to the Supreme Appellate Court of the Gilgit-Baltistan from any judgment, decree, final order or sentence of the Chief Court of Gilgit-Baltistan,-

(a) if the Chief Court has on appeal reversed an order of acquittal of an accused person and sentenced to death or to imprisonment for life; or, on revision, has enhanced a sentence to a sentence as aforesaid; or.

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

(c) if the Chief Court has imposed any punishment on any person for contempt of the Chief 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 appeal is, not less than fifty thousand rupees or such other sum as may be specified in that behalf by Act of the Council and judgment, decree or final order appealed from has varied or set aside the judgment, decree or final order of the court

immediately below; or

(e) if the judgment, decree or final order involved directly or indirectly some claim or question respecting property or 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 Chief Court certifies that the case involves a substantial question of law as to the interpretation of this Order.

(13) An appeal to the Gilgit-Baltistan Supreme Appellate Court of from a judgment, decree, order or sentence of the Chief Court in a case to which clause (11) does not apply shall lie only if the Supreme Appellate Court of grants leave to appeal.

(14) (a) an appeal to Gilgit-Baltistan the Supreme Appellate Court shall be heard by a Bench consisting of not less than two judges to be constituted or reconstituted by the Chief Judge;

(b) if the Judges hearing a petition or an appeal are divided in opinion, the opinion of majority shall prevail;

(c) if there is no such majority as aforesaid the petition or appeal, as the case may be, shall be placed for hearing and disposal before another Judge to be nominated by the Chief Judge:

Provided that in case of difference of opinion as aforesaid, the decision of the Supreme Appellate Court shall be expressed in term of opinion of the senior of the two Judges.

(15) The person holding office as Chief Judge of the Gilgit-Baltistan Supreme Appellate Court of Gilgit-Baltistan immediately before the commencement of this Order shall as from such commencement hold office as Chief Judge of Supreme Appellate Court under this Order on terms and conditions prescribed in this Order provided these are not inferior to the terms and conditions applicable to him immediately before such commencement.

(16) All legal proceedings pending in the Gilgit-Baltistan Supreme Appellate Court, immediately before the commencement of this Order, shall on such commencement, stand transferred to, and be deemed to be pending before the Supreme Appellate Court for determination and any judgment or order of the Supreme Appellate Court delivered or made before such commencement shall have the same force and effect as if it had been delivered or made by the Supreme Appellate Court.

23. Proposed amendment to Section 60 (Gilgit-Baltistan Supreme Appellate Court)

(1) In sub-section (5) of section 60, the words "Chairman of the Council" and the word "Chairman" between the words "the" and "on" shall be substituted by the words "Federal Government."

(2) Sub-section (8) shall be substituted by the following:-

"A judge of the Supreme Appellate Court of Gilgit-Baltistan, including the Chief Judge, 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."

61. Original Jurisdiction. (1) Without prejudice to the provisions of Article-71, the Supreme Appellate Court, on an

application of any aggrieved party, shall if it considers that a question of general public importance with reference to the enforcement of any of the fundamental right conferred by Part II of this Order is involved, have the power to make declaratory order of the nature mentioned in the said Article.

(2) An application made under clause (1) shall be heard by a Bench comprising not less than two Judges to be constituted by the Chief Judge.

62. Issue and execution of processes of Supreme Appellate Court.- (1) The Supreme Appellate Court shall have powers to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it including an order for the purpose of securing the attendance of any person or the discovery or production of any document.

(2) Any such direction, order or decree shall be enforceable throughout Gilgit-Baltistan as if it has been issued by the Gilgit-Baltistan Chief Court.

(3) All executive and judicial authorities throughout Gilgit-Baltistan shall act in aid of the Supreme Appellate Court.

(4) Subject to this Order and Law, the Supreme Appellate Court may, in consultation with the Council, make rules regulating the practice and procedure of the Court:

Provided that till the new rules are framed, the rules framed by the Supreme Appellate Court shall, so far as they are not inconsistent with this Order and any other law, deemed to have been made by the Supreme Appellate Court until altered or amended and references to the Supreme Appellate

Court in these rules shall be construed to be referred to the Supreme Appellate Court.

63. Decisions of Supreme Appellate Court binding on other Courts.- Any decision of the Supreme Appellate Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other Courts in the Gilgit-Baltistan.

64. Seat of the Supreme Appellate Court.- (1) The Seat of the Supreme Appellate Court shall be at Gilgit.

(2) The Supreme **Appellate** Court may sit at such other place or places as the Chief Judge of Gilgit-Baltistan, with the approval of the Governor, may appoint.

65. Review of judgment or order by the Supreme Appellate Court.- The Supreme Appellate Court shall have powers, subject to the provisions of an Act of the Assembly or the Council and of any rules made by the Supreme Appellate Court, to review any judgment pronounced or any order made by it.

66. Supreme Judicial Council.- (1) There shall be a Supreme Judicial Council of Gilgit-Baltistan.

(2) The Supreme Judicial Council shall consist of,_

(a) the Chief Judge of Gilgit-Baltistan who shall be its Chairman.

(b) the Senior Judge of the Supreme Appellate Court; and

(c) the Chief Judge of the Chief Court .

(3) A Judge of the Supreme Appellate Court or of the Chief Court shall not be removed from office except as provided by this Article.

Explanation: The expression "Judge" includes the Chief Judge of Gilgit-Baltistan and the Chief Judge of Chief Court of Gilgit-Baltistan.

(4) If on information received from the Supreme Judicial Council or from any other source, the Chairman of the Gilgit-Baltistan Council or the Governor is of the opinion that a Judge of the Supreme Appellate Court or of the Chief Court,_

(a) may be incapable of properly performing the duties of his office by reason of physical or mental incapacity; or

(b) may have been guilty of misconduct, the Chairman or the Governor, as the case may be, shall direct the Supreme Judicial Council to inquire into the matter.

(5) If, upon any matter inquired into by the Supreme Judicial Council, there is a difference of opinion amongst its members, the opinion of the majority shall prevail, and the report of the Supreme Judicial Council shall be expressed in terms of the view of the majority.

(6) If, after inquiring into the matter, the Supreme Judicial Council reports to the Chairman of the Gilgit-Baltistan Council that it is of the opinion.

(a) that the Judge is incapable of performing the duties of his office or has been guilty of misconduct; and

(b) that he should be removed from office, the Chairman

shall advise the Governor to remove the Judge from his office and the Governor shall pass orders accordingly.

(7) The Supreme Judicial Council shall issue a Code of conduct to be observed by Judges of the Gilgit-Baltistan Supreme Appellate Court, and of the Gilgit-Baltistan Chief Court.

(8) If at any time the Supreme Judicial Council is inquiring the conduct of a Judge who is a member of the Supreme Judicial Council, or a member of the Supreme Judicial Council is absent or is unable to act due to illness or any other cause, than;

(a) If such member is the Chief Judge or the Judge of the Supreme Appellate Court the Judge of the Supreme Appellate Court who is next in seniority;

(b) If such member is the Chief Judge of Gilgit-Baltistan Court, the most senior most of the other Judges of the Chief Court, shall, act as a member of the Supreme Judicial Council in his place.

(9) If, upon any matter inquired into by the Supreme Judicial Council, there is a difference of opinion amongst its member, the opinion of the Supreme Judicial Council shall be expressed in terms of the view of the majority.

24. Proposed amendment to section 66 (Supreme Judicial Council)

(1) In sub-section (4) of section 66, the words "Chairman of the Gilgit-Baltistan Council" shall be substituted by the words "Federal Government."

(2) In clause (b) sub-section (4) of section 66, the word "Chairman" shall be substituted by the words "Federal Government."

(3) In sub-section (6) of section 66, the words "Chairman of the Gilgit-Baltistan Council" shall be substituted by the words "Federal Government".

(4) In clause (b), sub-section (6) of section 66, the word "Chairman" shall be substituted by the words "Federal Government."

67. Power of Supreme Judicial Council to enforce attendance of persons, etc.- (1) for the purpose of inquiring into any matter, the Supreme Judicial Council shall have the same powers as has the Supreme Appellate Court, to issue directions or order for securing the attendance of any person or the discovery or the production of any document and any such direction or order shall be enforceable as if it has been issued by the Supreme Appellate Court.

(2) The provisions of Article 60, shall, mutatis mutandis apply to the Supreme Judicial Council as they apply to the Gilgit-Baltistan Supreme Appellate Court and the Gilgit-Baltistan Chief Court.

68. Bar of Jurisdiction.- The proceedings before the Supreme Judicial Council, and the removal of a Judge under Article 66, shall not be called in question in any Court.

69. Gilgit-Baltistan Chief Court. - (1) There shall be a Gilgit-Baltistan Chief Court, hereinafter called the Chief Court, which shall consist of a Chief Judge and four other judges of whom 60% will be appointed from lawyers community and 40% from subordinate judiciary:

Provided that the Government of Pakistan may from time to time increase the number of judges.

(2) The function of the Chief Court may be performed by a Single Bench, a Division Bench or a Full Bench:, but the Chief Judge may recall a case pending before a Bench and make it over to another Bench or constitute a larger Bench for the purpose.

(3) In case of difference of opinion in a Full Bench, the opinion of the majority shall prevail;

(4) In case of difference of opinion in a Division Bench, the matter shall be referred to a third judge and the decision of the Chief Court shall be expressed in terms of judgment of the majority.

(5) The person holding office as Chief Judge or other Judge of the Chief Court Immediately before the commencement of this Order shall be deemed to be the Chief Judge or other Judge as the case may be appointed under this Order.

(6) The Chief Judge and Judges of the Chief Court shall be appointed by the Chairman of the Council on the advice of the Governor.

(7) A person shall not be appointed as a Judge of the Chief Court unless-

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

Provided that the expression "High Court" herein shall include a High Court or an equivalent Court that existed at any time before the 1st day of August, 2009; 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.

(8) Before he enters upon his office, the Chief Judge of the Chief Court shall make before the Governor, and judge of the Chief Court shall make before the Chief Judge, an oath in the form set out in the First Schedule.

(9) The Chief Judge or a Judge of the Chief 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:

Provided that the Chairman of the Gilgit- Baltistan Council may appoint a retired Judge of any High Court of Pakistan to be the Chief Judge or a Judge of the Chief Court for a period not exceeding three years and such person shall hold office till he attains the age of sixty-five years.

(10) If at any time any Judge of the Chief Court is absent or is unable to perform his functions due to illness or some other cause, the Chairman of the Gilgit- Baltistan Council may appoint a person qualified for appointment as a Judge of the Chief Court to be an Additional Judge for the period for which the Judge is absent or unable to perform his functions.

(11) A Judge of the Chief Court shall not,-

(a) hold any other office of profit in the service of the Gilgit-Baltistan if his remuneration is thereby increased; or

(b) occupy any other position carrying the right to remuneration for the rendering of services, but this clause shall not be construed as preventing a Judge from holding or managing private property.

(12) A person who has held office as Judge of the Chief Court shall not hold any office of profit in the service of Gilgit-Baltistan not being a Judicial or quasi-Judicial office or the office of Chief Election Commissioner or of Chairman or member of the Public Service Commission, before the expiration of two years after he ceased to hold that office.

(13) The remuneration and other terms and conditions of service of the Chief Judge and Judges of Chief Court shall be such as admissible the Chief Justice and the Judges of the High Courts of Pakistan.

25. Proposed amendment to section 69 (Gilgit-Baltistan Chief Court)

(1) In sub-section (6) of section 69, the words "Chairman of the Council" shall be substituted by the words "Federal Government."

(2) In the proviso to sub-section (9) and in sub-section (10) of section 69, the words "Chairman of the Gilgit-Baltistan Council" shall be substituted by the words "Federal Government."

70. Acting Chief Judge.- At any time when-

(a) the Office of Chief Judge of Chief Court is vacant;

(b) the Chief Judge of Chief Court is absent or is unable to

perform the functions of his office due to any other cause, the Governor shall appoint the most senior Judge of the Chief Court to act as Chief Judge.

71. Jurisdiction of Chief Court.- (1) The Chief Court shall have such jurisdiction as is conferred on it by this Order or by any other law.

(2) Subject to this Order, the Chief Court may if it is satisfied that no other adequate remedy is provided by law,-
(a) the Government, exercising any power or performing any function in, or in relation to, Gilgit-Baltistan as may be appropriate for the enforcement of any of the fundamental rights conferred by this Order. on the application of any aggrieved party, make an order,--

(i) directing a person performing functions in connection with the affairs of Gilgit-Baltistan or local authority to refrain from doing that which he is not permitted by law to do, or to do that which he is required by law to do; or

(ii) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Gilgit-Baltistan or a local authority has been done or taken without lawful authority, and is of no legal effect; or

(b) on the application of any person, make an order.-

(i) directing that a person in custody in Gilgit-Baltistan be brought before the Chief Court so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

(ii) requiring a person holding or purporting to hold a public office in connection with the affairs of Gilgit-Baltistan to show under what authority of law he claims to hold that office; or

(c) on the application of any aggrieved person, make an order giving such directions to the person or authority, including the Council.

(3) An order shall not be made under clause (2) on application made by or in relation to a person in the Armed Forces of Pakistan in respect of his terms and conditions of service, in respect of any matter arising out of his service or in respect of any action in relation to him as a member of the Armed Forces of Pakistan.

(4) Where,--

(a) an application is made to the Chief Court for an order under sub-clause (a) or sub-clause (c) of clause (2); and

(b) the Court has reason to believe that the making of an interim order would have the effect of prejudicing or interfering with the carrying out of a public work or otherwise being harmful to the public interest, the Court shall not make an interim order unless the Advocate-General has been given notice of the application and the Court, after the Advocate-General or any officer authorized by him in this behalf has been given an opportunity of being heard, is satisfied that the making of the interim order would not have the effect referred to in sub-clause (b) of this clause.

(5) In this Article unless the context otherwise requires, the expression "person" includes any body politic or

corporate, any authority of or under control of the Council or the Government and any court or tribunal other than the Gilgit-Baltistan Supreme Appellate Court, the Chief court or a Court or tribunal establish under a law relating to the Armed Forces of Pakistan.

72. Rules of procedure.- Subject to this Order and law the Chief Court may in consultation with the Government, make rules regulating practice and procedure of the Court or of any Court subordinate to it.

73. Decision of Chief Court binding on subordinate Courts.- Subject to Article 47, any decision of Chief Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all Courts subordinate to it.

74. Seat of the Chief Court.- (1) The permanent seat of the Chief Court shall be at Gilgit.

(2) The Chief Court may, from time to time, sit at such other place as the Chief Judge of the Chief Court, with the approval of the Governor, may appoint.

75. Contempt of Court. - (1) In this Article the expression "Court" means the Gilgit-Baltistan Supreme Appellate Court or the Chief Court.

(2) A Court shall have power to punish any person who-

(a) abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court;

(b) scandalizes the Court or otherwise does anything which tends to bring the Court or a judge of the Court into hatred,

ridicule or contempt;

(c) does anything which tends to prejudice the determination of a matter pending before the Court; or

(d) does any other thing which, by law, constitutes contempt of the Court.

(3) The exercise of the power conferred on a Court by this Article may be regulated by law and, subject to law, by rules made by the Court.

76. The Chief Court to superintend and control all courts subordinate to it, etc.- (1) The Chief Court shall superintend and control all other courts that are subordinate to it.

(2) A Court so established shall have such jurisdiction as conferred on it by law.

(3) No Court shall have any jurisdiction which is not conferred on it by this Order or by or under any other law.

77. Advisory jurisdiction. (1) If, at any time, the Chairman of the Council or the Governor desires to obtain the opinion of the Gilgit-Baltistan Supreme Appellate Court on any question of law which he considers of public importance, he may refer the question to the Supreme Appellate Court of Gilgit-Baltistan for consideration.

(2) The Gilgit-Baltistan Supreme Appellate Court shall consider a question so referred and report its opinion on the question to the Chairman of the Council or as the case may be, the Governor.

26. Proposed amendment to Section 77 (Advisory jurisdiction)

In section 77, the words "Chairman of the Council", occurring twice, shall be substituted by the words "Federal Government".

78. Administrative Courts and Tribunals. (1) Notwithstanding anything hereinbefore contained, the 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 may by Act provide for the establishment of one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of, -

(a) matters relating to the terms and conditions of persons who are or have been in the service of Gilgit-Baltistan including disciplinary matters;

(b) matters relating to claims arising from tortuous acts of the Council or the Government or any person in the service of Gilgit-Baltistan or of any local or other authority empowered by law to levy any tax or cess and any servant or such authority acting in the discharge of his duties as such servant; or

(c) matters relating to acquisition, administration and disposal of any property which is deemed to be enemy property under any law.

(2) Notwithstanding anything herein before contained, where any Administrative Court of Tribunal is established under clause (1), no other Court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative

Court or Tribunal extends and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal shall abate on such establishment.

(3) An appeal to the Gilgit-Baltistan Supreme Appellate Court from a judgment, decree, order or sentence of an Administrative Court or Tribunal shall lie only if the Supreme Appellate Court of Gilgit-Baltistan being satisfied, that the case involves a substantial question of law of public importance, grants leave to appeal.

27. Proposed amendment to Section 78 (Administrative Courts and Tribunals)

In sub-section (1) of section 78, the word "Council" occurring twice shall be substituted by the words "Federal Government."

79. Employees of Court.- The Gilgit-Baltistan Supreme Appellate Court and the Gilgit-Baltistan Chief Court, with the approval of the Governor, may make rules providing for the appointment of employees of the Court and for their terms and conditions of employment.

PART. XII-SERVICES

80. Public Service Commission. There shall be a Public Service Commission for Gilgit-Baltistan which shall consist of such number of members, including a Chairman to be appointed by the Chairman of the Council on the advice of Governor, and perform such functions as may be prescribed on such terms and conditions as may be determined by the Governor.

28. Proposed amendment to Section 80 (Public Service Commission)

In section 80, the words "Chairman of the Council" shall be substituted by the words "Federal Government."

81. Services. (1) Subject to this Order, the appointment of persons to, and the terms and conditions of service of persons in the service of Gilgit-Baltistan may be regulated by law.

(2) Until an Act of the Council in respect of persons in the service of Gilgit-Baltistan employed in connection with the affairs of the Council, or an Act of the Assembly in respect of such persons employed in connection with the affairs of the Government, makes provision for the matters referred to in clause (1), all rules and orders in force immediately before the commencement of this Order, shall continue to be in force and may be amended from time to time by the Council or, as the case may be, the Government.

(3) Notwithstanding anything contained in clause (1) or (2) the position or vacancy sharing formula between the Government of Gilgit-Baltistan and the Government of Pakistan, i.e. Gilgit-Baltistan Civil Service and All Pakistan Unified Grades or District Management Group, shall be as specified in the Fifth Schedule.

29. Proposed amendment to Section 81 (Services)

In sub-section (2) of section 81, the word "Council", wherever occurring, shall be substituted by the words "Federal Government."

82. Chief Election Commissioner.- There shall be a

Chief Election Commissioner to be appointed by the Chairman of the Council on the advice of Governor on such terms and conditions as may be prescribed.

30. Proposed amendment to Section 82 (Chief Election Commissioner)

In section 82, the words "Chairman of the Council" shall be substituted by the words "Federal Government."

83. Auditor-General.- (1) There shall be an Auditor General of Gilgit- Baltistan who shall be appointed by the Governor on the advice of the Council.

(2) Before entering upon office, the Auditor General shall make before the Chief Judge of Gilgit-Baltistan oath in the form set out in the Schedule

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

(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 Governor who shall cause them to be laid before the Assembly.

31. Proposed amendment to Section 83 (Auditor General)

Section 83 shall be substituted by the following;-

"The Auditor General of Pakistan shall act as Auditor General of Gilgit-Baltistan and shall perform such functions and duties as he performs in relation to the provinces of Pakistan under the Constitution of Pakistan and law."

PART. XIII-GENERAL

84. Continuance of existing laws.- Subject to the provisions of this Order, all laws which immediately before the commencement of this Order, were in force in Gilgit-Baltistan shall continue to be in force until altered, repealed or amended by an Act, of the appropriate authority.

Explanation.- In this Article.-

(a) The expression 'laws includes Ordinance, Orders, rules, bye-laws, regulations and any notification and other legal instruments having the force of law, and

(b) The expression 'in force' in relation to any law, means having effect as law whether or not the law has been brought into operation.

85. General provision regarding Governor and Ministers.- (1) The Governor, the Chief Minister, a Minister or an Advisor shall not.-

(a) hold any other office of profit in the service of Gilgit-Baltistan or any other country; or

(b) occupy any other position carrying the right to remuneration for the rendering of services; but this action shall not be construed as preventing the Governor, the Chief Minister, a Minister or an Advisor from holding or managing his private property.

(2) No criminal proceedings whatsoever shall be instituted or continued against the Governor or the Chairman of the Council while he is in office.

(3) No civil proceedings in which relief is claimed against the Governor or the Chairman of the Council shall be instituted while he is in office in respect of anything done or not done, or purporting to have been done or not done, by him in his personal capacity, whether before or after he enters upon his office unless at least sixty days before the proceedings are instituted, notice in writing has been delivered to him, or sent to him, stating the nature of the proceedings, the cause of the action, the name, description and place of residence of the party by whom the proceedings are to be instituted and the relief which he claims.

(4) Except in relation to proceedings referred to in clause (3) no process whatsoever shall be issued from any court or

tribunal against the Governor or the Chairman of the Council, whether in a personal capacity or otherwise, while he is in office.

(5) Subject to this Order, the Governor, the Chief Minister, the Chairman of the Council, the Federal Minister who is a member of the Council, a Minister or an Advisor shall not except in respect of anything done or not done by him in contravention of law , be answerable to any court or Tribunal in the exercise of the powers, or the performance of the duties, of his office or for any act done or purporting to be done by him in the exercise of those powers or in the performance of those duties:

Provided that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Council or as the case may be, the Government.

32. Proposed amendment to Section 85 (General provision regarding Governor and Ministers)

(1) In sub-sections (2), (3) and (4) of section 85, the words "or the Chairman of the Council" shall be deleted.

(2) In sub-section (5) of section 85, the words "Chairman of the Council, the Federal Minister who is a member of the Council" shall be deleted.

(3) In the proviso to sub-section (5) of section 85, the words "Council or as the case may be," shall be deleted.

86. 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 or as the case may be, the Council, and to the making of contracts.

(2) All property acquired for the purpose of the Government or of the Council shall vest in the Government 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 Governor, or as the case may be, the Council and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the Governor or the Council by such persons and in such manner as the Governor, or as the case m ay be, the Council may direct or authorize.

(4) Neither the Governor, 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.

33. Proposed amendment to Section 86 (Power to acquire property and to make contracts, etc.)

(1) In sub-sections (1), (2) and (3) of section 86, the word "Council" wherever occurring shall be substituted by the words "Federal Government"

(2) Sub-section (4) of section 86 shall be substituted by the following:

"The Governor shall not be personally liable in respect of any contract or assurance made or executed in the exercise of the executive authority of the Government, nor shall any person making or executing any such contract or assurance on his behalf be personally liable in respect thereof."

PART. XIV-EMERGENCY PROVISIONS

87. Power to issue proclamation.- (1) If the Chairman of the Gilgit-Baltistan Council ,on receipt of a report from Governor of Gilgit- Baltistan or otherwise, is satisfied that a grave emergency exists in which the security of Gilgit-Baltistan is threatened by war or external aggression or by internal disturbances, in which the Government of the Gilgit-Baltistan cannot be carried on in accordance with the provisions of this Order, Chairman of the Council shall issue Proclamation of Emergency, hereinafter referred to as the Proclamation.

(2) Assume to himself, or direct the Governor of the Gilgit-Baltistan to assume on behalf of the Chairman of the Council , all or any of the functions of the Government of the Gilgit-Baltistan, and all or any of the powers vested in, or exercisable by, any body or authority in the Gilgit-Baltistan, other than the Assembly;

(3) A Proclamation shall be laid before a Joint Sitting of the Council and the Assembly which shall be summoned by the Chairman of the Council on the advice of Governor 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

(b) shall, subject to the provisions of sub-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.

(4) Notwithstanding anything contained in clause (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.

(5) A Proclamation may be made before the actual occurrence of war or external aggression if the Governor is satisfied that there is imminent danger thereof.

34. Proposed amendment to Section 87 (Power to issue proclamation)

(1) In sub-section (1) of section 87, the words "Chairman of the Gilgit-Baltistan Council" and "Chairman of the Council" shall be substituted by the words "Federal Government".

(2) In sub-section (2) of section 87, the words "Assume to himself" shall be substituted by the words "When a Proclamation is in force, the Federal Government may assume to itself," and the words "Chairman of the Council" shall be substituted by the words "Federal Government".

(3) In sub-section (3) of section 87, the words "a Joint Sitting of the Council and the Assembly" shall be substituted by the words "the Assembly", the words "Chairman of the Council on the advice of the Governor" shall be substituted by the word "Governor" and the words "the Joint Sitting" shall be substituted by the word "the Assembly."

(5) In sub-section (4) of this section, the word "but" shall be substituted by the word "and" and the words "unless it has earlier been approved by a resolution of the Council" shall be substituted by the words "unless it is earlier extended by the Federal Government".

88. Power to suspend fundamental rights.- (1) While a Proclamation is in operation, the Governor may, by order, declare that right to move any Court for the enforcement of such of the rights conferred by Chapter as may be specified in the order, and all proceedings pending in any Court for the enforcement of the rights so specified, shall remain suspended for the period during which the Proclamation is in force.

(2) Every order made under clause (1), shall, as soon as may be, laid before the Assembly.

89. Power to vary or rescind proclamation.- (1) A Proclamation issued under Article 87 may be varied or revoked by a subsequent Proclamation.

(2) The validity of any Proclamation issued or order made under Article 87 or Article 88 shall not be questioned in any Court.

90. Failure to comply with requirement as to time does not render an act invalid.- When any act or thing is required

by this Order to be done within 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.

PART. XV-MISCELLANEOUS

91. Oath of office.- (1) An oath required to be made by person under this Order shall be made in a language that is understood by that person.

(2) Where, under this Order, 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 Order, 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.

92. Order not to prejudice stance.- The provision of this Order shall not derogate form, or in any manner prejudice, the declared stand of the Government of Pakistan regarding the right of self-determination for the people of Jammu and Kashmir in accordance with the United Nations Resolutions.

93. **Power to amend.-** The Government of Pakistan may, by notified Order, amend the provisions of this Order.

35. Proposed amendment to Section 93 (Power to amend)

Section 93 shall be substituted by the following:-

"(1) Subject to this section, this Order may be amended by an Act of the Assembly.

(2) A Bill to amend this Order shall not be presented to the Governor for assent unless it has been passed by the votes of not less than two-thirds of the total membership of the Assembly.

(3) No amendment shall be made in this section, or in any provision of this Order which relates to the Federation, the Federal Government or the Majlis-e-Shoora, except with the prior approval of the Federal Government."

94. Power to make rules.- The Governor or as the case may be, the Chairman of the Council, may make rules for carrying out the purposes of this Order.

95. Order to override other laws, etc.- (1) The provision of this Order shall have effect notwithstanding anything contained in the provisions of any law for the time being in force except that in case of conflict between the laws of Pakistan and the laws framed under this Order, the laws of Pakistan shall prevail.

(2) No Court, including the Gilgit-Baltistan Supreme Appellate Court and the Gilgit-Baltistan Chief Court, shall call into question or permit to be called into question, the validity of this Order or an Act to amend it.

96. Repeal and saving.- (1) The Northern Areas Governance Order, 1994 hereinafter referred to as the said Order, together with the Orders amending it, and the rules made there-under are hereby repealed.

(2) On the commencement of this Order-
(a) the Legislative Assembly in existence shall stand

dissolved and General Election shall be held within one hundred and twenty days of such commencement; and

(b) in all documents, proceedings and references, a reference to the expression "Northern Areas" shall mean and be construed as reference to "Gilgit-Baltistan."

97. Effect of repeal.- Where a law is repealed, or is deemed to have been repealed, by, under, or by virtue of this Order, the repeal shall not, except as otherwise provided in this Order;-

(a) revive anything 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

(e) affect any investigation, legal proceeding or remedy in respect of 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.

****

FIRST SCHEDULE
OATH OF OFFICE OF GOVERNOR
[*See* Article 20(7)]

I,…….do hereby solemnly swear in the name of Allah;

That, as Governor of Gilgit-Baltistan, I will remain loyal to Pakistan;

That I will perform my functions as Governor 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 Governor.

So help me Allah.

Signature of Governor

Place
Date

Signature of Chief Judge
Supreme Appellate Court, Gilgit-Baltistan

CHIEF MINISTER
[*See* Article 23(4)]

I,…….do hereby solemnly swear in the name of Allah;

That, as Chief Minister of Gilgit-Baltistan, I will remain loyal to Pakistan;

That I will perform my functions as Chief Minister 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 Chief Minister;

So help me Allah.

Signature of Chief Minister

Place
Date

Signature of Governor
Gilgit-Baltistan

MINISTER
[*See* Article 24(2)]

I,…….do hereby solemnly swear in the name of Allah;

That, as Minister of Gilgit-Baltistan, I will remain loyal to Pakistan;

That I will perform my functions as Minister 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 Minister;

So help me Allah.

Signature of Minister

Place
Date

Signature of Governor
Gilgit-Baltistan

SPEAKER OR DEPUTY SPEAKER OF LEGISLATIVE ASSEMBLY
[*See* Article 42(2)]

I,…….having been elected as Speaker or Deputy Speaker of Gilgit-Baltistan Legislative Assembly do hereby solemnly swear in the name of Allah;

That I will remain loyal to Pakistan;

That I will perform my functions as Speaker or Deputy Speaker of the Legislative Assembly 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 Speaker or Deputy Speaker of the Assembly;

So help me Allah.

Signature of Speaker/Deputy Speaker

Place
Date

Signature of Outgoing Squeaker /Sitting Speaker
Gilgit-Baltistan Legislative Assembly

MEMBER OF LEGISLATIVE ASSEMBLY
[*See* Article 36]

I,…….having been elected as Member of Gilgit- Baltistan Legislative Assembly do hereby solemnly swear in the name of Allah;

That I will remain loyal to Pakistan;

That I will perform my functions as Member of the Legislative Assembly 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 Member of the Legislative Assembly;

So help me Allah.

Signature of Member

Place
Date

Signature of Speaker
Gilgit-Baltistan Legislative Assembly

MEMBER OF GILGIT-BALTISTAN COUNCIL
[*See* Article 33 (11)]

I,…….having been elected as Member of Gilgit- Baltistan Council do hereby solemnly swear in the name of Allah;

That I will remain loyal to Pakistan;

That I will perform my functions as Member of the Gilgit-Baltistan Council 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 Member of the Council;

So help me Allah.

Signature of Member

Place
Date

Signature of Chairman/Vice Chairman
Gilgit-Baltistan Council

CHIEF JUDGE/JUDGE OF GILGIT-BALTISTAN SUPREME APPELLATE COURT
[*See* Article 60(6)]

I,…… .having been appointed Chief Judge of Gilgit -Baltistan Supreme Appellate Court do solemnly swear and I will bear true faith and allegiance to Pakistan 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 Gilgit-Baltistan, without fear or favour, affection or ill-will.

Signature of Chief Judge/Judge

Place
Date

Signature of Governor/Chief Judge
Gilgit-Baltistan

OATH OF CHIEF JUDGE/JUDGE OF GILGIT-BALTISTAN CHIEF COURT
[*See* Article 69(8)]

I,…… .having been appointed Chief Judge of Gilgit-Baltistan Chief Court 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 the Areas comprising Gilgit-Baltistan, without fear or favour, affection or ill-will.

Signature of Chief Judge/Judge

Place
Date

Signature of Governor/Chief Judge
Gilgit-Baltistan

OATH OF ADVISOR
[*See* Article 33 (14)]

I,……. do hereby solemnly swear in the name of Allah;

That I will remain loyal 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.

Signature of Advisor

Place
Date

Signature of Chairman of Council
Gilgit-Baltistan

AUDITOR-GENERAL
[*See* Article 83]

I,…….do hereby solemnly swear and bear true faith and allegiance to Pakistan.

That, as Auditor-General of the Areas comprising Gilgit- Baltistan, I will perform my functions honestly, faithfully, in accordance with the Gilgit - Baltistan (Empowerment and Self-Government) Order, 2009, and the law and to the best of my knowledge, ability and judgment, without fear or favour, affection or ill-will.

Signature of Auditor General

Place
Date

Signature of Chief Judge of Supreme Appellate Court
Gilgit-Baltistan

CHIEF ELECTION COMMISSIONER
[*See* Article 82]

I,…….do hereby solemnly swear and bear true faith and allegiance to Pakistan.

That, as Chief Election Commissioner of the Areas comprising Gilgit- Baltistan, I will perform my functions honestly, faithfully, in accordance with the Gilgit-Baltistan (Empowerment and Self-Government) Order, 2009, and the law and to the best of my knowledge, ability and judgment, without fear or favour, affection or ill-will.

Signature of Auditor General

Place
Date

Signature of Chief Judge of Supreme Appellate Court
Gilgit-Baltistan

SECOND SCHEDULE
[*See* Article 37(2)(d)]

1. An office, which is not a whole time office remunerated either by salary or by fee.
2. The office of Lamberdar, Inamdar, Sufedposh and Zaildar, whether called by this or any other title.
3. The office of the Chairman of any elective body constituted under any law relating to the Local Government.
4. Reserve of the Armed Forces.
5. Any other office which is declared by an Act of the Assembly not to disqualify its holder from being elected as, or from being a member of the Assembly.

THIRD SCHEDULE
COUNCIL LEGISLATIVE LIST
[See Article 47(2) (a)]

1. Post and telegraphs, including telephones, wireless, broad-casting and other like forms of communications; Post Office Saving Bank.
3. Public debt of the Council, including the borrowing of money on the security of the Council Consolidated Fund.
4. Council public services and Council Public Service Commission.
5. Council pensions, that is to say, pensions payable by the Council or out of the Council Consolidated Fund.
6. Administrative courts for Council subjects.
7. Council agencies and institutions for the following purpose, that is to say, for research, for professional or technical training, or for the promotion of special studies.
8. Nuclear energy, including.-
   (a) mineral resources necessary for the generation of nuclear energy;
   (b) the production of nuclear fuels and the generation and use of nuclear energy; and
   (c) ionizing radiations.
9. Aircraft and air navigation; the provision of aerodromes; regulations and organization of air traffic and of aerodrome.
10. Beacons and other provisions for safety of aircraft.
11. Carriage of passengers and goods by air.
12. Copyright, inventions, designs, trade marks and merchandise marks.
13. Opium so far as regards sale for export.
14. Banking, that is to say, the co-ordination with the Government of Pakistan of the conduct of banking

business.

15. The law for insurance and the regulation of the conduct of insurance business.
16. Stock-exchange and future markets with object and business not confined to the areas comprising Gilgit-Baltistan. .
17. Corporations, that is to say, the incorporation regulation and winding up of trading corporations including banking, insurance and financial corporations, but not including corporations owned or controlled by the Provincial Government of Gilgit-Baltistan and carrying on business, co-operative societies, and of corporations, whether trading or not, with object not confined to the Gilgit-Baltistan, but not including universities.
18. Planning for economic coordination, including planning and coordination of scientific and technological research.
19. Highways, continuing beyond the territory of the Gilgit-Baltistan excluding roads declared by the Government of Pakistan to be strategic importance.
20. Council surveys including geological surveys and Council meteorological organizations.
21. Works, lands and buildings vested in, or in the possession of the Council, for the purpose of the Council (not being Military, Naval or Air Force works), but as regards property situated in the Gilgit-Baltistan, subject always to law made by the Legislative Assembly, save in so far as law made by the Council otherwise provides.
22. Census.
23. Establishment of standards of weights and measures.
24. Extension of the powers and jurisdiction of members of a police force belonging to the Gilgit-Baltistan or

any Province of Pakistan to any area in such Province or the Gilgit-Baltistan, but not so as to enable the police of the Gilgit-Baltistan or such province to exercise powers and jurisdiction in such Province or the Gilgit-Baltistan without the consent of the Government of that Province or the Gilgit-Baltistan; extension of the powers and jurisdiction of members of a police force belonging the Gilgit-Baltistan or a Province of Pakistan to railway areas outside the Gilgit-Baltistan or that Province.

25. Election to the Council.
26. The salaries, allowances and privileges of the members of the Council and Advisors.
27. Railways.
28. Mineral oil natural gas; liquids substances declared by law made by the Council to be dangerously inflammable.
29. Development of industries, where development under Council control is declared by law made by Council to be expedient in the public interest.
30. Removal of prisoners and accused persons from the Gilgit-Baltistan to Pakistan or from Pakistan to the Gilgit-Baltistan.
31. Measures to combat certain offences committed in connection with matters concerning the Council and the Government and the establishment of police force for that purpose or the extension to the Gilgit-Baltistan of the jurisdiction of police force established in Pakistan for the investigation of offences committed in connection, with matters concerning the Government of Pakistan.
32. Prevention of the extension from the Gilgit-Baltistan to Pakistan or from Pakistan to the Gilgit-Baltistan of infections or contagious diseases or pests affecting

men, animals or plants.

33. Boilers.
34. Electricity and bulk water storage.
35. Newspapers, books and printing presses.
36. Works, lands and buildings vested, or in the possession of Government for the purpose of Gilgit-Baltistan Council (not being air force, military or navel works) save in so far as the Council Act otherwise provides.
37. Curriculum, syllabus, planning, policy, centers of excellence and standards of education.
38. Sanctioning of cinematography films for exhibition.
39. Tourism.
40. Forest.
41. Minerals and Mineral Wealth.
42. Duties of customs, including export duties.
43. Duties of excise, including duties on salt but not including duties on alcoholic liquors, opium and other narcotics.
44. Taxes on income other than agricultural income.
45. Taxes on corporations.
46. Taxes on the sale and purchases of goods and services imported, exported, produced, manufactured or consumed.
47. Taxes on the capital value of the assets, not including taxes on capital gains on immovable property.
48. Taxes and duties on the production capacity of any plant, machinery, under taking, establishment or installation in lieu of the taxes and duties specified in entries 42 and 43 or in lieu of either or both of them.
49. Terminal taxes on goods or passengers carried by railway or air, taxes on their fares and freights.
50. Fees in respect of any of the matters enumerated in this list, but not including fees taken in any court.

51. Jurisdiction and powers of all courts with respect to any of the matters enumerated in this list.
52. Offences against laws with respect to any of the matters enumerated in this list.
53. Inquires and statistics for the purpose of any of the matters enumerated in this list.
54. Matters which under the Act are within the legislative competence of the Council or relates to the Council.
55. Matter incidental or ancillary to any of the matters enumerated in this list.

FOURTH SCHEDULE
ASSEMBLY LEGISLATIVE LIST
[See Article 47 (2) (b)]

1. Public order (but not including the use of Naval, Military, Air Force, or any other armed forces of the Federation in aid of the civil power).
2. Preventive detention for reasons in connection with the maintenance of public order; persons subjected to such detention.
3. Prisons, reformatories, borstal institution and other institutions of a like nature and persons detained therein, arrangements with other provinces for the use of prisons and other institutions.
4. Land, that is to say, rights in or over land; land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization.
5. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purpose and records of rights and alienation of revenues.

6. Works, lands and buildings vested in or in the possession of the Gilgit-Baltistan Administration.
7. Compulsory acquisition or requisitioning of property.
8. Agriculture, including agricultural education and research protection against pests and prevention of plant diseases.
9. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district councils settlement authorities and other local authorities for the purpose of local self-government or village administration.
10. Preservation, protection and improvement of stock, and prevention of animal diseases; veterinary training and practice.
11. Pounds and the prevention of cattle trespass.
12. Drinking water supplies, irrigation and canals, drainage and embankments; flood control.
13. Libraries, museums and ancient and historical monuments.
14. Botanical, zoological and anthropological surveys.
15. Theaters; cinemas; sports; entertainments and amusements.
16. Public health and sanitation; hospitals and dispensaries.
17. Registration of births and deaths.
18. Burials and burial grounds; cremations and cremation grounds.
19. Relief of the disabled and un-employed.
20. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors and other narcotic drugs.
21. Markets and fairs.
22. Money lending and moneylenders; relief of

indebtedness.

23. Protection of wild animals and birds.
24. Prevention of cruelty to animals.
25. Adulteration of food-stuff and other goods.
26. Betting and gambling.
27. Fisheries.
28. Professions.
29. Inns and in-keepers.
30. Orphanages and poor houses.
31. Taxes on agricultural income and on the value of agricultural land.
32. Lunacy and mental deficiency including places for reception of treatment of lunatics and mental deficient.
33. Duties in respect of succession to agricultural land.
34. Estate Duty in respect of agricultural land.
35. Taxes on lands and buildings.
36. Taxes on advertisement.
37. Taxes on goods and passengers carried by road or on inland waterways.
38. Taxes on vehicles, whether mechanically propelled or not, suitable for use on a road; on boats, launches and steamers on inland water; on tram cars.
39. Taxes on animals and boats.
40. Tolls.
41. Capitation taxes.
42. Taxes on luxuries, including entertainments and amusements. Taxes.
43. Taxes on profession, trades, callings and employment.
44. Relief of poor; un-employment.
45. Offences against laws with respect of any of the matters in this list.
46. Inquiries and statistics for the purpose of any of the

matters in this list.

47. Cesses on the entry of goods into a local area for consumption, use or sale therein.
48. The salaries, allowances and privileges of the Speaker, Deputy Speaker, Chief Minister, Ministers and Members of the Assembly.
49. Dues on passengers and goods carried on roads or inland water-ways.
50. Management of Gilgit-Baltistan Consolidated Fund.
51. Environmental pollution and ecology.
52. Population planning and social welfare.
53. The setting up and carrying on of labour exchanges, employment information bureaus and training establishments.
54. Regulation of labour and safety in mines and factories.
55. Trade unions; industrial and labour disputes.
56. Gilgit-Baltistan public services and Public Service Commission.
57. Gilgit-Baltistan pensions, that is to say, pension payable out of Gilgit-Baltistan Consolidated Fund.
58. Administrative Courts for subjects within purview of Gilgit-Baltistan Legislative Assembly.
59. Gilgit-Baltistan agencies and institutions for the following purpose, that is to say, for research, for professional or technical training, or for the promotion of special studies.
60. Fees in respect of any of the matters enumerated in this list, but not including fees taken in any court.
61. Jurisdiction and powers of all Courts with respect to any of the matters enumerated in this list.

Appendix

CONSTITUTION OF PAKISTAN

FOURTH SCHEDULE
[Article 70(4)]
Legislative Lists
Federal Legislative List

PART I

1. The defence of the Federation or any part thereof in peace or war; the military, naval and air forces of the Federation and any other armed forces raised or maintained by the Federation; any armed forces which are not forces of the Federation but are attached to or operating with any of the Armed Forces of the Federation including civil armed forces; Federal Intelligence Bureau; preventive detention for reasons of State connected with defence, external affairs, or the security of Pakistan or any part thereof; person subjected to such detention; industries declared by Federal law to be necessary for the purpose of defence or for the prosecution of war.

2. Military, naval and air force works; local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas, and the delimitation of such areas.

3. External affairs; the implementing of treaties and agreements, including educational and cultural pacts and agreements, with other countries; extradition, including the surrender of criminals and accused persons to Governments outside Pakistan.

4. Nationality, citizenship and naturalization.

5. Migration from or into, or settlement in, a Province or the Federal Capital.

6. Admission into, and emigration and expulsion from, Pakistan including in relation thereto the regulation of the movements in Pakistan of persons not domiciled in Pakistan; pilgrimages to places beyond Pakistan.

7. Posts and telegraphs, including telephones, wireless, broadcasting and other like forms of communications; Post Office Saving Bank.

8. Currency, coinage and legal tender.

9. Foreign exchange; cheques, bills of exchange, promissory notes and other like instruments.

10. Public debt of the Federation, including the borrowing of money on the security of the Federal Consolidated Fund; foreign loans and foreign aid.

11. Federal Public Services and Federal Public Service Commission

12. Federal Pensions, that is to say, pensions payable by the Federation or out of the Federal Consolidated Fund.

13. Federal Ombudsmen.

14. Administrative Courts and Tribunals for Federal subjects.

15. Libraries, museums, and similar institutions controlled or financed by the Federation.

16. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

17. Education as respects Pakistani students in foreign countries and foreign students in Pakistan.

18. Nuclear energy, including:-

(a) mineral resources necessary for the generation of nuclear energy;

(b) the production of nuclear fuels and the generation and use of nuclear energy, and

(c) ionizing radiations ; and

(d) boilers.

19. Port quarantine, seamen's and marine hospitals and hospitals connected with port quarantine.

20. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

* * * * *

22. Aircraft and air navigation; the provision of aerodromes; regulation and organization of air traffic and of aerodromes.

23. Lighthouses, including lightships, beacons and other provisions for the safety of shipping and aircraft.

24. Carriage of passengers and goods by sea or by air.

25. Copyright, inventions, designs, trademarks and merchandise marks.

26. Opium so far as regards sale for export.

27. Import and export across customs frontiers as deemed by the Federal Government, inter-provincial trade and commerce, trade and commerce with foreign countries; standard of quality of goods to be exported out of Pakistan.

28. State Bank of Pakistan; banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Province and carrying on business only within that Province.

29. The law of insurance, except as respects insurance undertaken by a Province, and the regulation of the conduct of insurance business, except as respects business undertaken by a Province, Government insurance, except so far as undertaken by a Province by virtue of any matter within the legislative competence of the Provincial Assembly.

30. Stock exchanges and future markets with objects and business not confined to one Province.

31. Corporations, that is to say, the incorporation, regulation and winding- up of trading corporations, including banking, insurance and financial corporations, but

not including corporations owned or controlled by a Province and carrying on business only within that Province, or cooperative societies, and of corporations, whether trading or not, with objects not confined to a Province, but not including universities.

32. International treaties, conventions and agreements and International arbitration.

* * * * *

34. National highways and strategic roads.

35. Federal surveys including geological surveys and Federal meteorological organizations.

36. Fishing and fisheries beyond territorial waters.

37. Works, lands and buildings vested in, or in the possession of Government for the purposes of the Federation (not being military, naval or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides.

* * * * *

39. Establishment of standards of weights and measures.

* * * * *

41. Elections to the office of President, to the National Assembly, the Senate and the Provincial Assemblies; Chief Election Commissioner and Election Commissions.

42. The salaries, allowances and privileges of the President, Speaker and Deputy Speaker of the National Assembly, Chairman and Deputy Chairman of the Senate, Prime Minister, Federal Minister, Ministers of State, the salaries, allowances and privileges of the members of the Senate and the National Assembly, and the punishment of persons who refuse to give evidence or produce documents before committees thereof.

43. Duties of customs, including export duties.

44. Duties of exercise, including duties on salt, but not including duties on alcoholic liquors, opium and other narcotics.

* * * * *

47. Taxes on income other than agricultural income;

48. Taxes on corporations.

49. Taxes on the sales and purchases of goods imported, exported, produced, manufactured or consumed, except sales tax on services.

50. Taxes on the capital value of the assets, not including taxes** on immovable property.

51. Taxes on mineral oil, natural gas and minerals for use in generation of nuclear energy.

52. Taxes and duties on the production capacity of any plant, machinery, undertaking, establishment or installation in lieu of any one or more of them.

53. Terminal taxes on goods or passengers carried by railway, sea or air; taxes on their fares and freights.

54. Fees in respect of any of the matters in this Part, but not including fees taken in any court.

55. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this list and, to such extent as is expressly authorized by or under the Constitution, the enlargement of the jurisdiction of the Supreme Court, and the conferring thereon of supplemental powers.

56. Offences against laws with respect to any of the matters in this Part.

57. Inquiries and statistics for the purposes of any of the matters in this Part.

58. Matters which under the Constitution are within the legislative competence of Majlis- e-Shoora (Parliament) or relate to the Federation.

59. Matters incidental or ancillary to any matter enumerated in this Part.

PART II

1. Railways.

2. Mineral oil and natural gas; liquids and substances declared by Federal law to be dangerously inflammable.

3. Development of industries, where development

under Federal control is declared by Federal law to be expedient in the public interest; institutions, establishments, bodies and corporations administered or managed by the Federal Government immediately before the commencing day, including the Pakistan Water and Power Development Authority and the Pakistan Industrial Development Corporation; all undertakings, projects and schemes of such institutions, establishments, bodies and corporations, industries, projects and undertakings owned wholly or partially by the Federation or by a corporation set up by the Federation.

4. Electricity.

5. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of port authorities therein.

6. All regulatory authorities established under a Federal law.

7. National planning and national economic coordination including planning and coordination of scientific and technological research.

8. Supervision and management of public debt.

9. Census.

10. Extension of the powers and jurisdiction of members of a police force belonging to any Province to any area in another Province, but not so as to enable the police of one Province to exercise powers and jurisdiction in another Province without the consent of the Government of that

Province; extension of the powers and jurisdiction of a police force belonging to any Province to railway areas outside that Province.

11. Legal, medical and other professions.

12. Standards in institutions for higher education and research, scientific and technical institutions.

13. Inter-provincial matters and co-ordination.

14. Council of Common Interests.

15. Fees in respect of any of the matters in this Part but not including fees taken in any court.

16. Offences against laws with respect to any of the matters in this Part.

17. Inquiries and statistics for the purposes of any of the matters in this Part.

18. Matters incidental or ancillary to any matter enumerated in this Part.

