

GOVERNMENT OF THE <sup>1</sup>[Khyber Pakhtunkhwa],  
HOME & TRIBAL AFFAIRS DEPARTMENT.

NOTIFICATION

Dated 15th of March, 1999.

No. 1/60-SOS-II/Laws/HD/99Vol-IV. In exercise of the powers conferred by paragraph 11 of the Shar'i Nizam-e-Adl Regulation, 1999 (<sup>2</sup>[Khyber Pakhtunkhwa] Reg. I of 1999), the Government of the <sup>3</sup>[Khyber Pakhtunkhwa] is pleased to make the following rules, namely:-

THE SHARI NIZAM-E-ADL RULES, 1999.

Chapter I

1. Short title and commencement.----(1) These rules may be called the Shar'i Nizam-e-Adl Rules, 1999.

(2) They shall come into force at once.

2. Definitions.--- (1) In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say:-

- (a) "Chairman" means the Chairman of the Committee;
- (b) "Committee" means the Committee constituted under paragraph 6 of the Regulation;
- (c) "member" means a member of the Committee;
- (d) "panel" means the current panel of Muavineen-e-Qazi;
- (e) "parties" means the parties to a dispute pending disposal, in a court established under the Regulation;
- (f) "Qazi" means a presiding officer of court and includes a judicial officer;
- (g) "recognized institution" means a religious educational institution of Muslims, recognised as such by Government; and
- (h) "Regulation" means the Shar'i Nizam-e-Adl Regulation, 1999 (<sup>4</sup>[Khyber Pakhtunkhwa] Reg I of 1999).

<sup>1</sup> Sub. by the Khyber Pakhtunkhwa Act No. IV of 2011.

<sup>2</sup> Sub. by the Khyber Pakhtunkhwa Act No. IV of 2011.

<sup>3</sup> Sub. by the Khyber Pakhtunkhwa Act No. IV of 2011.

<sup>4</sup> Sub. by the Khyber Pakhtunkhwa Act No. IV of 2011.

(2) All other expressions, not defined expressly in these rules, shall have the same meanings as assigned to them in the Regulation or any other law for the time being in force in the said area.

## Chapter II

### Qazi

3. Appointment of Qazi:-—(1) Any person to be appointed as Illaqa Qazi shall be a person whose conduct and character is in accordance with the injunctions of Islam and who is a duly appointed judicial officer in the <sup>5</sup>[Khyber Pakhtunkhwa].

(2) The Judicial Officers mentioned in column 3 of Schedule II to the Regulation shall be appointed by transfer from among Judicial Officers mentioned against each in column 1 thereof;

Provided that such officer has completed shariat course of at least three months duration from a recognised institution.

(3) Subject to sub-rule (1), for the purpose of appointment under sub-rule (2), preference will be given to those who possess LL.M Sharia'h Degree or an equivalent qualification in Islamic laws.

4. Conduct and character.---- Qazi shall order his official and personal conduct and character in accordance with Islamic injunctions, and shall follow the Eijabi and Salbi conditions for a Qazi. and A'adil Shahid prescribed by recognised Fuqaha'a.

5. Guidance from Quran Majeed and Sunah-e-Nabyi (Sallalloho alaihe wasallam)-----A Qazi shall seek guidance from Quran Majeed and Sunnah-e-Nabavi (Sallalloho alaihe wasallam) for the purposes of procedure and proceedings of conduct of, and resolution and decision of, cases pending disposal in his court, and, while expounding and Interpreting Quran Majeed and Sunnah-e-Nabavi (Sallalloho alaihe wasallam); shall follow the established principles of expounding and interpreting Quran Majeed and Sunnah-e-Nabavi (Sallalloho alaihe wasallam); and, for this purpose, shall consider the expositions and opinions of recognised Fuqaha'a of Islam.

6. Effects of non-observance of codified procedural law, ----No proceedings, decision or order in a case shall be irregular, illegal or void on the ground alone that any provision of any codified; procedural law for the time being in force, therefor, has not been followed, unless it is against the established principles of Shariah.

7. Obedience to instructions of Government.— A Qazi shall, subject To established principles of Sharia'h and the provisions of the laws for the time being in force in the area of his jurisdiction, follow the measures taken by Government, in conformity with the provisions of the Regulation, and shall abice by the instructions and directions issued by it ii this regard.

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<sup>5</sup> Sub. by the Khyber Pakhtunkhwa Act No. IV of 2011.

### Chapter III

8. Powers relating to muavin-e-Qazi- or aalim wakeel.--- (1) The concerned District Magistrate, in consultation with the concerned Zilla Qazi, shall, subject to rule 11, recommend to the committee the name of a person who, in the opinion of both the District Magistrate and the Zilla Qazi is eligible for inclusion of his name in the panel or, as the case may be, for registration as a,alim wakeel.

(2) The concerned Zilla Qazi shall send his comments about punctuality, regularity, efficiency, honesty and other aspects of character of each of the muavineen-e- Qazi and A,alim wakeel, to the committee.in the middle of November in each year.

3. A Qazi shall not allow a person to act as Muavin-e-Qazi or A'alim wakeel, whose name is either not included in the panel or has been deleted from it, or as the case may be, has either not been registered as A,alim wakeel or has been deregistered.

9. Facility of muavin-e-Qazi.--- A Qazi shall provide facility to a muavin-e-Qazi called for assistance of the court to hear evidence and arguments, and to peruse the record of the case, and the Qazi shall, before decision of the case or proceeding, hear him on the legal points involved in the case or proceeding in the light of Sharia'h.

10. Observance of time Schedule.--- A Qazi shall try his best to finalise a case within the time schedule. If any, prescribed by Government. In case of delay in disposal of a case beyond the prescribed time schedule, he shall report the cause and reasons of delay to the next higher court, and act on the instructions issued by such court in this respect:

Provided the unless otherwise prescribed, a period of not more than six months for disposal of a civil case and a period of not more than three months for disposal of a criminal case shall be standard time.

11. Muavineen-e-Qazi.--- (1) The name of a person may be included in the panel, if he-

- (a) is eligible to become a Qazi, except for the condition of age; or
- (b) Has learning and experience in Ilm-fiqh and Shariah and teaching of Laws related to Islamic principles/Jurisprudence, from a recogsnized University/Islamic Institute of learning, having international or national reputation or having recognition by the University Grants Commission, such institution having been notified by the Government.

(2) The names of A,alim wakeel, like Muavineen-e-Qazi, shall be notified in the official Gazette.

(3) The Committee, on the recommendation of the concerned District Magistrate under rule S(1), or on the information of any other person of suomoto, shall ball such person for interview and shall approve the names of suitable persons for inclusion in the panel or, as the case may be, for registration as a,alim wakeel to act as such.

(4) The Committee before the end of the current calendar year, in the light of the comments of the concerned Zilla,a Qazi any other information or the needs of the courts of the concerned area, may revise the panel and may include therein or delete therefrom the name of any person for reasons to be recorded.

(5) A muavin-e-Qazi shall be entitled to such honoraria and be entitled nor demand or receive, directly or indirectly, any pecuniary gain from the parties to a dispute pending disposal in a court in which he may act as muavin-e-Qazi.

6. Government shall provide funds to the concerned Zilla Qazi for payment to muavin-e-Qazi who appear, in accordance with the instructions of the concerned Zillah a Qazi, in the courts in the area of his jurisdiction.

(7) A muavin-e-Qazi, when called by court, shall assist the court in arriving at correct conclusion regarding the proper application of Islamic laws in the circumstances of a case and shall quote references from Quran Majeed, ahadith-e-Nabavi (Sallallaho alaihe wasallam) and Fatawa and books of Fiqh of the recognized Fuqaha,a of Islam.

#### Chapter IV

##### Musleheen

12. Offer for sulh.---A Qazi shall, at the initial stage of the proceedings, ask the parties whether they want to get their dispute resolved through musleheen, and, if they so agree, shall refer their dispute to one or more musleheen for its resolution in accordance with sharia'h.

13. Appointments musleh. --- (1) Any person may be appointed as musleh by the court for the purposes of resolution of a dispute if the parties mutually so agree.

(2) One or more musleheen, consultation with Muavin-e-Qazi after hearing the parties and their witness, if any perusing shall form opinion about resolution of the dispute with reasons therefor, and shall submit the same to the concerned court without delay.

(3) The Court shall examine the report submitted to it under sub-rule (2) and shall proceed further in term of paragraph 7(5) of the Regulation:

Provided that before proceeding further the Court shall provide any oppportunity to the parties to make objections, if any, to the report of the musleh or musleheen, the case may be.

(4) The Court shall, in the circumstances of each case, keeping in the view the actual expenses incurred by the musleh or musleheen, on traveling to, and stay at, the place other than the place of his/their residence and the time spent in dealing with the case, fix the remuneration to be paid by each party to the musleh or musleheen in such proportion as determined by it.

## Chapter V

### Committee

14. Committee ---(1) The committee shall meet once in every three months, and may also meet as and when necessary, for;

- (a) preparation of panel of muavineen-e-Qazi;
- (b) registration or deregistration of an a,alim wakeel;
- (c) inclusion or deletion of names of persons in the current panel;
- (d) revision of the panel for coming year before the end of the current year;
- (e) interview of persons for appointment as muavineen-e-Qazi or registration as a' alim wakeel; and
- (f) any other matter ancillary or incidental thereto.

(2) The Chairman and three members shall form quorum for a meeting. A meeting may be convened at the request of two members the Chairman is of the view that there is enough work to be disposed of in such meeting. All the decisions in a meeting shall be taken by two-thirds majority of votes of the members attending the meeting and the Chairman.

(3) Government shall provide funds for the expenses of the Committee which shall include travelling charges, entertainment charges, expenses on stationery and other administrative expenses.

(4) The office of the Committee shall be located in Peshawar High Court building or at any other place provided by Government.

(5) The Committee shall decide that an officer of Peshawar High Court or Provincial Government shall be the Secretary of the Committee who shall maintain record and shall administratively deal with the business of the committee.

15. Duties and responsibilities of an a,alim wakeel.---(1) An a,alim wakeel shall, for the purposes of conducting cases in courts established under the Regulation, have the same status, rights, duties and liabilities as an Advocate or pleader appointed under any law for the time being in force may have.

16. Instructions. --- Government shall, in consultation with the Chief justice, Peshawar High Court, from time to time, issue instructions and directions about conduct and disposal of cases and time schedule.

17. Action against investigating officer.--- The Administrative authority of an investigating officer or officer in charge of a police station, either suomoto or on the complaint or decision of the concerned Qazi or District Magistrate, shall conduct disciplinary proceedings against such officer if he either.

- (i) conducts a criminal case against the established principles of Sharia'h; or
- (ii) delays the submission of a copy of the first information report to the concerned Qazior District Magistrate, sub-Divisional Magistrate or an Executive Magistrate; or
- (iii) does not properly inform the concerned Qazi or Executive Magistrate about the position and progress of a criminal case with his jurisdiction; or
- (iv) fails to comply with the directions of the concerned Qazi, Executive Magistrate, sub-divisional Magistrate or District Magistrate concerning investigation; or
- (v) fails to complete investigation without sufficient cause within the specified period; or
- (iv) does not submit complete challan within the prescribed period in the light of paragraph 5(4) of the Regulation,

and shall inform the concerned Qazior Executive Magistrate about the position and further progress and result of such proceedings.

Provided that no disciplinary action shall be taken against him, if he deviates from the provisions of any other procedural law while following established principles of Shariah.

18. Repeal. --- The Provincially Administered Tribal Areas (Nifaz-e-Nizam-e-Sharia,h) Rules, 1994, are hereby repealed.

Secretary to Government,  
<sup>6</sup>[Khyber Pakhtunkhwa]  
 Home and Tribal Affairs Department.

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<sup>6</sup> Sub. by the Khyber Pakhtunkhwa Act No. IV of 2011.