

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE FAISAL ARAB
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE MUNIB AKHTAR

CONST. PETITIONS NO.50/2018, 51/2018 & 63/2011, CIVIL MISC. APPLICATIONS NO.4922, 5382/2011, 695/2012 & 724/2017 IN CONST. PETITION NO.63/2011, CONST. PETITIONS NO.6/2012, 16/2015 & 20/2015, CIVIL MISC. APPLICATION NO.6966/2017 IN CONST. PETITION NO. 20/2015, CONST. PETITION NO.3/2016, CIVIL MISC. APPLICATION NO.6800/2017 IN CONST. PETITION NO.3/2016, CONST. PETITION NO.13/2016, 32/2016, 34/2016, CIVIL MISC. APPEAL NO.184/2016 IN CONST. PETITION NO.NIL/2016, CIVIL MISC. APPLICATION 7367/2016 IN CONST. PETITION NO.2/2017, 30/2017, 41/2018, CIVIL MISC. APPEAL NO.202/2016 IN CONST. PETITION NO.NIL/2016, CONST. PETITION NO.49/2018, 55/2018, 30/2015, 31/2015 32/2015, 36/2015, 64/2015, 6/2017 IN CIVIL MISC. APPEAL NO.31/2017, CONST. PETITION NO.61/2017 IN CIVIL MISC. APPEAL NO.243/2017, CONST. PETITION NO.18/2018 AND CIVIL MISC. APPLICATION NO.10872/2018 IN CONST. PETITION NO.16/2015

Const.P.50/2018:	Civil Aviation Authority Vs. Supreme Appellate Court Gilgit Baltistan etc.
Const.P.51/2018:	Prince Saleem Khan Vs. Registrar Supreme Appellate Court Gilgit Baltistan etc.
Const.P.63/2011:	Dr. Ghulam Abbas Vs. Federation of Pakistan etc.
C.M.A.4922/2011: in Const.P.63/2011	Application for impleadment by Supreme Appellate Court Bar Association Gilgit-Baltistan
C.M.A.5382/2011: in Const.P.63/2011	Application for Impleadment Dolat Jan
C.M.A.695/2012: in Const.P.63/2011	Application for Impleadment by Wazir Farman Ali
C.M.A.724/2017: in Const.P.63/2011	Application for Impleadment by Taqdir Ali Khan v. Federation of Pakistan and others
Const.P.6/2012:	Gilgit Baltistan Chief Court Bar Association through its Vice President Vs. Federation of Pakistan etc.
Const.P.16/2015:	Gilgit Baltistan, Bar Council through its Vice Chairman Vs. Federation of Pakistan etc.
Const.P.20/2015:	Gilgit Baltistan, Supreme Appellate Court Bar Association Vs. Federation of Pakistan etc.
C.M.A.6966/2017:	Gilgit Baltistan, Supreme Appellate Court Bar

in Const.P.20/2015	Association v. Federation of Pakistan & others
Const.P.3/2016:	Shaheen Air International Ltd., Karachi Vs. The Registrar, Supreme Appellate Court, Gilgit-Baltistan etc.
C.M.A.6800/2017: in Const.P.3/2016	Shaheen Air International Ltd. Karachi v. The Registrar, Supreme Appellate Court, Gilgit-Baltistan & others
Const.P.13/2016:	Zafar Ali Khan Maqpoon Vs. Government of Pakistan etc.
Const.P.32/2016:	Muhammad Ibrahim Vs. Fed. of Pakistan etc.
Const.P.34/2016:	Pak Agricultural Research Council Vs. Govt. of GB through Chief Secretary, Gilgit Baltistan etc.
C.M.Appeal.184/2016: in Const.P.Nil/2016	Pak Agricultural Research Council v. Govt. of GB through Chief Secretary, Gilgit Baltistan & others
C.M.A.7367/2016: in Const.P.34/2016	Pak Agricultural Research Council v. Govt. of GB through Chief Secretary, Gilgit Baltistan & others
Const.P.2/2017:	Federal Board of Intermediate & Secondary Educations through its Chairman & another Vs. Federations of Pakistan through M/o Kashmir Affair & Northern Areas etc.
Const.P.30/2017:	Chairman F.B.R., Islamabad Vs. Registrar Supreme Appellate Court, Gilgit Baltistan
Const.P.41/2018:	Federation of Pakistan through Secretary Ministry of Kashmir Affairs and Gilgit Baltistan, Islamabad Vs. Registrar Supreme Appellate Court, Gilgit-Baltistan & another
C.M.Appeal.202/2016: in Const.P.Nil/2016	Air Blue Company Ltd. v. The Registrar S.C. Appellate Court Gilgit-Baltistan
Const.P.49/2018:	Federation of Pakistan through Secretary Ministry of Kashmir Affairs and Gilgit Baltistan, Islamabad & another Vs. The Registrar Supreme Appellate Court, Gilgit-Baltistan etc.
Const.P.55/2018:	Gilgit Baltistan Bar Council & another Vs. Federation of Pakistan etc.
Const.P.30/2015:	Amna Ansari & another Vs. Chairman Gilgit-Baltistan Council etc.
Const.P.31/2015:	Amna Ansari & another Vs. Chairman Gilgit-Baltistan Council etc.
Const.P.32/2015:	Amna Ansari & another Vs. Chairman Gilgit-Baltistan Council etc.
Const.P.36/2015:	Ameer Khan Vs. Federation of Pakistan etc.

- Const.P.64/2015: Prof. Abdul Rasheed Mian etc. Vs. Federation of Pakistan through Secretary M/o Health Services Regulations and Coordination, Islamabad etc.
- Const.P.6/2017: Pakistan Tourism Development Corporation Vs. Registrar Supreme Appellate Court & another
- Const.P.61/2017: Hotels and Restaurants Association of Gilgit-Baltistan & another Vs. Federation of Pakistan through Secy. Cabinet Division, Islamabad etc.
- Const.P.18/2018: Abdul Qayyum Khan Vs. Ministry of Kashmir Affairs & Gilgit-Baltistan through its Secretary, Islamabad etc.
- C.M.Appeal.10872/2018 in Const.P.16/2015: Impleadment application by Lt. Co. (R) Syed Iqbal Hashmi
- For the petitioner(s):
- Mr. Salam Akram Raja, ASC
Syed Rifaqat Hussain Shah, AOR
(In Const.P.6/2012, 20/2015 & 55 of 2018 & 64/2015)
- Mian Shafaqat Jan, ASC
Syed Rifaqat Hussain Shah, AOR
(In Const.P.50/2016 & Const.P.18 of 2018)
- Barrister Masroor Shah, ASC
(In Const.P.51/2011)
- Mr. Ikram Chaudhry, ASC
(In Const.P.63/2011)
- Rai M. Nawaz Kharal, ASC
Syed Rifaqat Hussain Shah, AOR
(In Const.Ps.16/2015 & 61/2017 & C.M.A.6966/2017)
- Mr. Bhajandas Tejwani, ASC
Ch. Akhtar Ali, AOR
(In Const.P.3/2016)
- Syed Qalb-i-Hassan, ASC
(In Const.P.13/2016)
- Mian Shafaqat Jan, ASC
(In Const.P.32/2016)
- Nemo
(In Const.P.34/2016)
- Mr. Mir Afzal Malik, ASC
Mr. Tariq Aziz, AOR
(In Const.P.2/2017)
- Mr. Ghulam Shoaib Jally, ASC
(In Const.P.30/2017)
- Mr. Sajid Ilyas Bhatti, Addl. A.G.P.
(In Const.Ps.41 & 49/2018)
- Mr. Asif Fasih ud Din Vardag, ASC
Ch. Akhtar Ali, AOR
(In Const.Ps.30 & 32/2015)

Mr. M. Munir Peracha, ASC
Mr. Mehmood A. Sheikh, AOR
(In Const.P.6/2017)

Nemo
(In Const.P.36/2015)

Mr. M. Ikhlaque Awan, ASC
(In C.M.A.5382/2011 & C.M.Appeal 202/2018)

On Court's notice: Mr. Anwar Mansoor Khan, A.G.P.

Amicus Curiae: Ch. Aitzaz Ahsan, Sr. ASC

For the respondent(s): Mr. Saeed Iqbal, Dy. A.G. Gilgit-Baltistan
Mr. Aurangzeb Khan, Minister of Law &
Parliamentary Affairs, Gilgit Baltistan

Mr. Dil Muhammad Khan Alizai, ASC
Ch. Afrasiab Khan, ASC
(For respondent No.2 in Const.P.49/2018)

Mr. M. Iqbal Hashmi, Advocate in person
(in C.M.A.10872/2018)

Mr. Waseem Sajjad, Sr. ASC
(For respondent in Const.P.63/11)

Raja Abdul Ghafoor, AOR
(For the Federation)

Mr. Abdullah Baig
(Respondent in person)

Date of hearing: 7.01.2019

ORDER

MIAN SAQIB NISAR, CJ.- Succinctly, the instant matters pertain to a very important historical and constitutional issue involving the status, authority and powers of Gilgit-Baltistan (*GB*) including the judiciary and the rights available to its people. Although similar issues emanate from the various constitution petitions filed before this Court, it would be pertinent to briefly discuss the factual background of each case before proceeding further:-

- i. In Constitution Petition No.63/2011, the petitioner who is a political and social activist, seeks the enforcement of the independence of the judiciary in GB and thus challenges the *vires* of the Gilgit-Baltistan Empowerment and Self-Governance Order 2009 (*2009 Order*) (*and the Gilgit Baltistan Order, 2018 (2018 Order)* by amendment of the petition through a C.M.A.) in light of Article 175 and

203 of the Constitution of the Islamic Republic of Pakistan, 1973 (*Constitution*);

- ii. In Constitution Petition No.6/2012, the GB Chief Court Bar Association claims that the 2009 Order did not make sufficient provisions for the appointment of judges to the GB Supreme Appellate Court and this oversight threatens the establishment of an independent judiciary in GB and thus the *vires* of the relevant provisions [*Articles 60(5), (6) and (8) of the 2009 Order*] have been challenged.
- iii. In Constitution Petition No.16 and 20/2015, the petitioner, GB Bar Council (*in both the petitions*) seeks appropriate directions to the respondents to arrange for issuance of an order contemplated by Article 258 of the Constitution read with Article 1(2)(d) thereof, to provide for good governance for GB in compliance with the direction already issued by this Court in paragraph No.28 of the judgment reported as **Al-Jehad Trust through Habibul Wahab Al-Khairi, Advocate and 9 others Vs. Federation of Pakistan through Secretary, Ministry of Kashmir Affairs, Islamabad and 3 others (1999 SCMR 1379)** to enforce fundamental rights;
- iv. In Constitution Petitions No.30, 31, 32 and 36/2015 the petitioner challenged the appointments of the Chief Election Commissioner GB, Governor of GB and the Chief Minister of GB made under the 2009 Order and sought a declaration to the effect that the said Order was *ultra vires* and the fundamental rights extended to the people of GB be enforced;
- v. Petitioners No.1 and 2 in Constitutional Petition No.64/2015 are faculty members of various medical colleges and petitioners No.1, 3 and 4 are also members of the Pakistan Medical and Dental Council (*PMDC*). Through the instant petition they claim that Section 2 of the PMDC (Amendment) Ordinance, 2015 on account of being discriminatory to the people of Azad Jammu and Kashmir and GB be declared *ultra vires* of Article 25 of the Constitution, fresh elections be announced for members of council of PMDC and Regulation No.9(2) of the PMDC Regulations 2015 be declared unreasonable, arbitrary and of no legal effect;

- vi. In Constitutional Petition No.2/2016 the judgments against the Federal Board of Intermediate & Secondary Education by the lower fora were upheld by the GB Supreme Appellate Court. Through the instant petition, the impugned judgment was sought to be declared as beyond the jurisdiction of the said Court and the declaration that no civil proceedings may be initiated against it in the territory of GB and any such proceedings should have no legal effect;
- vii. In Constitutional Petition No.3/2016, the petitioner Shaheen Airline Limited was issued directions in Suo Moto Case No.2/2009 by the Supreme Appellate Court to operate flights to Gilgit Baltistan despite it not being commercially feasible for the petitioner. Through this petition, the petitioner seeks that the said *suo moto* proceedings and all the orders issued therein be declared unconstitutional, *ultra vires* of the Constitution and void ab initio;
- viii. In Constitutional Petition No.13/2016, the petitioner, *inter alia*, seeks the implementation of the judgment passed in **Al-Jehad Trust**'s case (*supra*) as well as the declaration that the 2009 Order is *ultra vires* of the Constitution and has no legal value unless the Constitution is amended;
- ix. In Constitutional Petition No.34/2016, the Pakistan Agriculture Research Council seeks reversal of the transfer of 24 *kanals* and 3 *marlas* to Pakistan State Oil under the mistaken belief that the said land was owned by the Government of GB whereas according to the petitioner the said land was owned by the Government of Pakistan and could not be unilaterally so transferred. The said matter was *sub judice* when it was taken up in suo moto proceedings by the GB Supreme Appellate Court in S.M.C. No.8 of 2016 and directions have been issued to facilitate said transfer. The petitioner seeks, *inter alia*, that the jurisdiction of the said Court be outlined in light of the Constitution of Pakistan and the said transfer of land be declared void and without lawful authority.
- x. In Constitutional Petition No.3/2016, the petitioner, *inter alia*, seeks implementation of the **Al-Jehad Trust**'s case (*supra*) as

well as the declaration that Order 2009 is ultra vires of the Constitution and has no legal value unless the Constitution is amended and therefore should be declared ultra vires;

- xi. In Constitutional Petition No.6/2017, there was a dispute regarding *shamlat* land measuring 30 *kanals* in Satpara Lake which the Pakistan Tourism and Development Corporation (*PTDC*) wanted to acquire. *Vide* impugned order dated 19.11.2015 in S.M.C. No.3/2009, this Court issued directions to *PTDC* to bring its work at the Satpara Lake in conformity with the environmental standards it laid out which directions the *PTDC* states that it has complied with. Subsequently, through suo moto case No. 2/2016, the GB Supreme Appellate Court passed a series of adverse orders against *PTDC*. The petitioner seeks, *inter alia*, that the proceedings be declared illegal, unconstitutional and coram non iudice and be quashed.
- xii. In Constitutional Petition No.30/2017, the Federal Board of Revenue, Islamabad, Pakistan (*petitioner*) seeks a declaration by this Court that the GB Supreme Appellate Court exceeded its jurisdiction when in suo moto case No.11/2010 it passed orders issuing notices and orders to and against the petitioner, declaring the same to be unconstitutional, coram non iudice and consequently quash the same;
- xiii. In Constitutional Petition No.61/2017, the petitioner is a representative body of Hotels and Restaurants in GB which seeks the implementation of the **Al-Jehad Trust** case (*supra*) which, *inter alia*, provides for the right of access to justice and independence of judiciary to the people of GB. Thus directions are sought from this Court to implement the same in letter and spirit;
- xiv. In Constitutional Petition No.49/2018, the Supreme Appellate Court of GB after taking cognizance of the matter *vide* judgment dated 13.7.2018 set aside the 2018 Order. The Federation of Pakistan through the instant petition seeks that the said judgment be set aside and such action of the said Court be declared unconstitutional and beyond its jurisdiction;

- xv. In Constitutional Petition No.51/2018, the petitioner seeks the quashment of the impugned judgment wherein the GB Supreme Appellate Court declared the by-election held in petitioner's constituency to be void, illegal and without any legal authority, thus it was set aside seeking *inter alia* that: (1) the GB Supreme Appellate Court exceeded its jurisdiction by taking *suo motu* notice under Article 61 read with Article 95 of the 2009 Order; (2) *suo motu* notice was taken of a fact not pleaded in the *lis*; (3) the impugned judgement is per incuriam for having been rendered in derogation of the express words used in Article 61 of the 2009 Order;
- xvi. In Constitutional Petition No.55/2018, the petitioner, GB Bar Council, *inter alia*, seek that the 2018 Order be declared illegal, void ab initio and without legal authority;
- xvii. In Constitutional Petition No.50/2018, the Petitioners, Civil Aviation Authority seek that the declaration that the jurisdiction of the Chief Court in terms of article 71 of the 2009 Order is only to the extent of the Government of GB therefore the latter does not have the jurisdiction to issue writs/directions to the former;
- xviii. In Constitutional Petition No.18/2018 the petitioner is a citizen of Pakistan after remaining in the permanent and pensionable service of the Armed Forces Medical College Rawalpindi. This is mainly a service dispute and the petitioner seeks implementation of the judgment of the Federal Service Tribunal against the Principal Public School & College, Jutial, Gilgit. The petitioner seeks quashment of the judgment passed in Writ Petition No.108/2017 filed by the respondents to be declared without lawful authority, coram non jure and not maintainable; and
- xix. In Constitutional Petition No.41/2018, the Federation of Pakistan through Secretary Ministry of Kashmir Affairs and Gilgit Baltistan Islamabad seeks quashment of the impugned judgment wherein the GB Supreme Appellate Court *vide* order dated 20.06.2018 stayed the operation of the 2018 Order and its implementation process was suspended till the decision of the *suo moto* taken by the said Court.

2. The following common but key questions stem from the foregoing factual background:-

- i. Would granting fundamental rights and a status, role and recognition to the people of GB within the constitutional scheme of Pakistan prejudice Pakistan's cause for the resolution of the Kashmir dispute by such appropriate means as may be acceptable to Pakistan (which could, for example, be a United Nations sanctioned and supervised plebiscite)?
- ii. What rights can be granted to the people of GB?
- iii. Is the GB Supreme Appellate Court a constitutional court?

To answer the foregoing questions, it is pertinent to examine some of the commitments made to the people of Jammu and Kashmir. Their importance is enhanced by some special provisions in the constitutions of both Pakistan and India. These constitutional provisions are not only a continuing reminder of those commitments but especially from Pakistan's side most definitely and certainly reiterate its commitment to a peaceful resolution of the Kashmir dispute in accordance with International Law and the aspirations of the people of Kashmir.

3. The Kashmir issue, starting as it did in the dying days of the British Raj and erupting and escalating into a dispute (*and indeed armed conflict*) shortly thereafter, became one of Partition's defining moments. A process that could have produced two empowered, independent countries—countries with a shared history and hopes of a productive and cooperative future—instead embroiled Pakistan in strife that it did not want and was not of its making. The origins of the dispute lay in the contrived (*some might even say coerced*) accession of Kashmir to India by the Hindu ruler of a Muslim majority state, which was contrary to the expectations of the population and to the basis professed to be preferred by the British for accession by Princely States. The resultant heroic uprising and resistance by the majority was but inevitable. Subsequent United Nations (*UN*) intervention

recommended, and Pakistan and India accepted, a de-escalatory approach leading up to calls for a plebiscite to determine the wishes of the people of the region. Successive Security Council Resolutions asked the UN to facilitate a *“free and impartial plebiscite to decide whether the State of Jammu and Kashmir is to accede to India or Pakistan.”*

4. What does require clarification is that the commitment to a plebiscite was, at least ostensibly, echoed also from Indian side, perhaps in an attempt to calm the uproar around the obvious injustice of Maharaja Hari Singh's alleged declaration of accession to India. Thus, the then Prime Minister of India, Pandit Jawaharlal Nehru unambiguously committed himself to the plebiscite arrangement. His telegrams to the Prime Ministers of Pakistan and the United Kingdom (UK) sought to create the impression that any Indian recognition of the Maharaja's accession to India was only provisional and that the question of the future of Jammu and Kashmir (*i.e., whether as part of Pakistan or India*) would be determined by its own people after the restoration of law and order. What, after all, could (*at least facially*) be more unambiguous than Mr. Nehru's telegram to the British Prime Minister, Clement Attlee where, in paragraph No.3, he committed that *“I would like to make it clear that the question of aiding Kashmir in this emergency is not designed in any way to influence the State to accede to India. Our view which we have repeatedly made public is that **the question of accession in any disputed territory or State must be decided in accordance with the wishes of people and we adhere to this view.**”*¹

[*Emphasis supplied*] This commitment of the Prime Minister of India was repeated and forwarded by the Prime Minister of Britain to the Prime Minister of Pakistan on 27th October, 1947 by stating that *“He adds that he would like to make it clear that the question of aiding Kashmir in this emergency is not designed in any way to influence the State to accede to India.”*²

¹ Reproduced in Modern History of Jammu and Kashmir: Ancient times to Shimla Agreement by J. C. Aggarwal, S. P. Agrawal (originally published in 1995, page 35, paragraph 3).

² Kashmir: The Case for Freedom By Tariq Ali, Arundhati Roy, Pankaj Mishra, Hilal Bhatt, Angana P. Chatterji (originally published in 2011, page 125).

5. Mr. Nehru continued his protestations of supporting the right of the Kashmiri people to so decide their future in direct communications with Pakistan's leaders. Thus in his telegram of 28th October, 1947 to Mr. Liaquat Ali Khan, Mr. Nehru reiterated that:-

*“In regard to accession also it has been made clear that this is subject to reference to people of State and their decision. The Government of India have no desire to impose any decision and will abide by people's wishes.”*³

Similarly, in his telegram of 31st October, 1947 to the Prime Minister of Pakistan, the Prime Minister of India reasserted as follows:-

*“Our assurance that we shall withdraw our troops from Kashmir as soon as peace and order are restored and leave the decision regarding the future of this State to people of the State is not merely a pledge to your Government but also to the people of Kashmir and to the world.”*⁴

Mr. Nehru's claims of sincerity in empowering the people of Kashmir to so decide their future continued unabated. In his telegram of 4th November, 1947 to the Prime Minister of Pakistan, Mr. Nehru declared, yet again that:-

*“I wish to draw your attention to broadcast on Kashmir which I made last evening. I have stated our Government's policy and made it clear that we have no desire to impose our will on Kashmir but to leave final decision to people of Kashmir. I further stated that we have agreed on impartial international agency like United Nations supervising any referendum. This principle we are prepared to apply to any state where there is a dispute about accession.”*⁵

³ Modern History of Jammu and Kashmir: Ancient times to Shimla Agreement By J. C. Aggarwal, S. P. Agrawal (originally published in 1995, page 41).

⁴ Regional and Ethnic Conflicts: Perspectives from the Front Lines By Judy Carter, George Irani, Vamik D Volkan (originally published in 2009, page 44).

⁵ Quoted in “Unravelling the Kashmir Knot” by Aman M. Hingorani (originally published in May 2016).

Mr. Nehru's claims of fealty to the rights to the Kashmiris were echoed by his government's representatives. The Indian representative to the UN, Mr. Gopaldaswami Ayyangar, made a policy statement in the UN Security Council on 15th January, 1948 where he claimed that India desired *“only to see peace restored in Kashmir and to ensure that the people of Kashmir are left free to decide in an orderly and peaceful manner the future of their State. We have no further interest, and we have agreed that a plebiscite in Kashmir might take place under international auspices after peace and order have been established.”*

6. It was on the basis of such assurances that the UN Security Council passed resolutions on 17th and 20th January, 1948 establishing the UN Commission for India and Pakistan (*UNCIP*). The UNCIP was directed to investigate the facts and to report its advice. On 6th February, 1948, the Security Council made an appeal to both parties to agree on a just settlement of the Kashmir problem, to put an end to violence and hostilities and to withdraw all regular and irregular forces who had entered the State from outside. These resolutions were supplemented by a comprehensive resolution passed on 21st April, 1948 and the UNCIP's resolutions of 13th August, 1948 and 5th January, 1949. Truce was declared on 1st January, 1949. However, rather than adopting the process of demilitarization as envisaged in the aforesaid resolutions India has made the area that it holds in Kashmir as one of the most militarized areas in the world.

7. We have taken the liberty of citing at length from the statements of the Indian leadership because it is important to understand that the concept of the international nature of the Kashmir dispute was not a demand put forth merely by Pakistan. To the contrary, the repeated statements of Mr. Nehru make clear that the right of self-determination of the Kashmiri people was a right acknowledged, promoted and committed to by the Government of India as well as the Government of Pakistan and embraced and sanctified by the international community through the UN.

8. Commitments of this nature ought to be inviolable. Pakistan has certainly not resiled from its commitments—whether to the people of Kashmir or the international community. However, and this is a sad but hard reality, despite the passage of seven decades the promised plebiscite has yet to be held and the territory of Kashmir continues to remain divided—Jammu and Kashmir under the Indian Constitution, increasingly subsumed into India (*hereinafter referred to as “Indian Occupied Kashmir” or “IOK”*) on the one hand, and the State of Azad Jammu and Kashmir (*hereinafter referred to as “AJK”*) and the territory of GB on the other.

9. Over the decades the trajectories of the divided region have diverged. The part under Pakistan’s administrative control (*i.e., GB*)—subject to the writ of the Constitution of the Islamic Republic of Pakistan, 1973 (*the Constitution*)—and that aligned with Pakistan (*i.e., AJK*) have progressed (*though perhaps not as swiftly or as much as Pakistanis would have desired*) and remained largely at peace, while the portion of Kashmir under Indian control has been convulsed with resistance and rebellion—expressions of popular sentiment that have been met with ever worsening repression and suppression.

10. The situation at present in IOK is dire. To reach such conclusion we need not turn to any official document or statement from Pakistan. Reliance can be placed upon the most recent report of the Office of the UN High Commissioner for Human Rights (*OHCHR*) issued in the summer of 2018 which pulls no punches and is damning. It notes widespread allegations of *“human rights violations [that] include torture and custodial deaths, rape, enforced disappearances and extrajudicial killings.”* With some 500,000 to 700,000 troops in the territory, the OHCHR report noted that *“Indian Kashmir”* is *“one of the most militarized zones in the world.”* *“Impunity for human rights violations and a lack of access to justice”* are just a few of the human rights challenges in IOK. This impunity is sanctioned and promoted by such draconian laws as the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 (*AFSPA*) that grants broad powers to the security forces and

effectively bestows immunity from prosecution in civilian courts for their conduct by requiring the central government to sanction all prospective prosecutions prior to being launched. As per the OHCHR, the law “*gives virtual immunity against prosecution for any human rights violation. In the nearly 28 years that the law has been in force in Jammu and Kashmir, there has not been a single prosecution of armed forces personnel granted by the central government.*” The provisions of AFSPA fly in the face of the most basic international norms and conventions. For example, section 4 thereof allows any personnel operating under the law to use lethal force not only in cases of self-defence but also against any person contravening laws or orders “*prohibiting the assembly of five or more persons.*” The use of pellet guns is regarded as directly responsible for the blinding, and thus incapacitation, of hundreds of Kashmiri youth. Others have been bound, in some of the most bizarre sights of the modern era, in front of military vehicles, self-evidently as so-called “human shields” against stones lobbed by unarmed youth facing the terrible might of one of the world’s largest and most well-equipped armies.

11. In contrast, circumstances on the Pakistan side of the Line of Control (*LOC*) are markedly better. Tellingly, the OHCHR Report devotes most of itself to the situation in Indian-held Kashmir. There is of course an obvious and understandable reason for this. In all of the seven decades since Independence even when Pakistan itself was caught in, and convulsed by, turmoil of the most tragic nature, there was always an obvious and popular acceptance of, and for, Pakistan by the people, both in AJK and GB. On the Indian side however state sanctioned violence seems to go on and on.

12. As acknowledged by the OHCHR Report, AJK is neither a police state, nor are military laws or rules in place. Basic rights are available to the population and most elements of due process exist. Relative to IOK, the region is empowered, peaceful and prosperous. But a relative improvement as compared with the dire situation across the border is

not the standard that Pakistan should ever be satisfied with. Nor is this Court prepared to tolerate or condone any violation of human rights on this side of the prevailing divide even though those breaches involve no violence as reported from the other side. We should seek to hold ourselves to the highest standards of conduct in relation to the territories for which Pakistan bears responsibility. In this context, there is always more work to be done.

13. As noted, Pakistan has responsibilities in relation to two regions: AJK and GB. In 1948, UNCIP recognized the existence of local authorities (*as distinct from the Government of Pakistan*) for the territories. We are of course here concerned with GB alone. The region has not been incorporated into Pakistan as it is considered to be a part of the disputed State of Jammu and Kashmir. However, it has always remained completely under Pakistan's administrative control.

14. For the governance of the region, a series of administrative structures and laws have been applied to GB since 1947. These have included the following (*up to 1999*):-

Year	Legal instrument	Description
1947	Frontier Crimes Regulations (<i>FCR</i>) implemented	First law to be enforced was a continuation of the colonial law of FCR. Under this British law for the tribal areas and GB, a civil bureaucracy exercised all judicial and administrative power.
1949	Karachi Agreement	On 28 th April, 1949, officials of the Pakistan Government met with those of the AJK Government to ink the Karachi Agreement. Under this accord, it was agreed that the affairs of Gilgit would be run by the Pakistan Government. It appears that no leader from Gilgit was included in this agreement. ⁶
1950	Ministry of Kashmir Affairs and Northern Areas created	Affairs of Northern Areas handed over to the Ministry of Kashmir Affairs and Northern Areas (<i>KANA</i>). Joint Secretary of the Ministry of Kashmir Affairs has been performing duties of Resident in the Northern Areas with all administrative and judicial authority since 1952. ⁷
1952	Political Resident Appointed	Joint Secretary of the Ministry of Kashmir Affairs who headed the local administration and judiciary; was responsible for enforcement of the FCR and was also the

⁶ Information retrieved from <http://gbla.gov.pk/page/history#advocuncil>.

⁷ AJK and Gilgit-Baltistan, *Journal of Contemporary Studies*, Vol. V, No. 1, Summer 2016, at page 80, paragraph 2, available at: https://ndu.edu.pk/fcs/Publications/fcsjournal/JCS_2016_summer/5.AJK-and-Gilgit-Baltistan.pdf.

		financial and revenue commissioner. The Resident also exercised legislative powers in the Northern Areas in consultation with the Federal Government. ⁸
1967	Political Agents appointed	KANA transferred powers of the High Court and Revenue Commissioner to the Resident and appointed two Political Agents, one each for Gilgit and Baltistan. ⁹
1970	Advisory Council for Northern Areas Council Constitutional Order	Between Pakistan and the Azad Kashmir Government. 21 elected and non-elected members headed by the then Resident for GB as Chairman under KANA Division O.M. No.NA-1(6)/70 dated 18th November, 1970. 16 members of Northern Areas Advisory Council (NAAC) were elected in 1970. ¹⁰
1975	Northern Areas Council Legal Framework Order 1975 FCR Abolished	Major administrative, judicial and political reforms were introduced. The <i>jagirdari nizam</i> was abolished. GB was transformed into districts like those in Pakistan. The FCR was abolished, and the civil and criminal law was extended to the Northern Areas. The Advisory Council for Northern Areas was replaced by Northern Areas Council (NAC). ¹¹
1994	Northern Areas Council Legal Framework Order (LFO) of 1994	Administrative instrument devised by KANA, supplemented by the Northern Areas Rules of Business (NARoB) (also of 1994) serving as a sort of basic law but with only limited advisory functions devolved on the council. ¹²
1999	Al Jihad Trust judgment (1999 SCMR 1379)	This Court declared it could not prescribe a form of government for the region, nor could it direct that the region be represented in the Parliament since that could undermine Pakistan's stand on Kashmir. It left such issues to the Federal Government and the Parliament. However, it directed the Government to take "proper administrative and legislative steps" to ensure that the people of the Northern Areas enjoyed their rights under Pakistan's Constitution. ¹³
1999	Northern Areas Council Legal Framework (Amendment) Order, 1999	The Northern Areas Council was renamed as the Northern Areas Legislative Council (NALC) which was given the powers to legislate on 49 subjects. The post of Speaker and three women seats were also created. ¹⁴

15. As of today, the situation ultimately to emerge both for AJK and GB, as also of course for the rest of the erstwhile State, is enshrined in the aspiration expressed in Article 257 of the Constitution, which provides that "When the people of the State of Jammu and Kashmir decide to accede to Pakistan,

⁸ Ibid at paragraph 2.

⁹ *Supra*.

¹⁰ Information retrieved from <http://gbla.gov.pk/page/history#advCouncil>.

¹¹ Information retrieved from <http://gbla.gov.pk/page/history#advCouncil>.

¹² Volume 7, page 108, paragraph 35.

¹³ Volume 7, Pg 108, Paragraph 36.

¹⁴ Information retrieved from <http://gbla.gov.pk/page/history>.

the relationship between Pakistan and that State shall be determined in accordance with the wishes of the people of that State.”

16. Be that as it may, in 1999, this Court in the seminal judgment reported as **Al-Jehad Trust through Habibul Wahab Al-Khairi, Advocate and 9 others Vs. Federation of Pakistan through Secretary, Ministry of Kashmir Affairs, Islamabad and 3 others** 1999 SCMR 1379 directed the Pakistan Government to extend fundamental freedoms to the Northern Areas (*now of course referred to as GB*) within six months. The judgment declared that Pakistan exercised both *de facto* and *de jure* administrative control over the Northern Areas. This Court ruled that the people of the region were “*citizens of Pakistan for all intents and purposes...and could invoke constitutionally guaranteed fundamental rights.*” (at page 1393) The ruling emphasized that the people of the Northern Areas were “*entitled to participate in the governance of their area and to have an independent judiciary to enforce...Fundamental Rights.*” (at page 1396).

17. This Court has thus been sensitive for a long time to the fundamental rights of the people of GB. At the same time it was recognized that in the prevailing circumstances the Northern Areas’ Legislative Council could not simply be equated with a Provincial Government. The problem clearly required a resolution. However, there was no immediate follow-up to the judgment passed in the **Al-Jehad Trust** case (*supra*) as the Executive procrastinated. But after the lapse of a decade, the Federal Government promulgated the 2009 Order which, it argued, would establish a system of full internal governance in GB. The 2009 Order was a step towards the empowerment of the people of GB, but was not a complete solution. Thus, the Human Rights Commission of Pakistan (*HRCP*) emphasized, in a 2016 report based on a fact-finding mission, that the 2009 Order “*falls short of providing a democratic system in which the people of Gilgit-Baltistan could enjoy the rights available to other Pakistan citizens.*” Other deficiencies noted in the report included, in part, that it (*the 2009 Order*) did not guarantee the right to protection against double punishment nor a right to information and the

right to education. According to the report, discrimination on the basis of sex was not prohibited nor was the State obliged to take affirmative action in favour of women and children. This situation appears to be most unsatisfactory to this Court. Even though some rights are indeed available in GB, albeit under laws such as the Pakistan Penal Code and the Code of Criminal Procedure, 1898 (*CrPC*), and are given effect by the respective courts, these are not protected under any overarching framework of a constitutional nature. This therefore remains unsatisfactory. Perhaps unsurprisingly, the 2009 Order failed to fully address the aspirations of the people of GB for full empowerment and representation. Reflecting this discontent, the GB Legislative Assembly passed a unanimous resolution in August 2015 demanding that the region be included in Pakistan as a constitutional Province with representation in Parliament. The desire of the people of GB to participate fully in the national life of Pakistan is palpable. The HRCP mission had noted that “*a large number of people living in Gilgit-Baltistan aspire to have **full rights** as citizens of Pakistan. They argue that whenever it suits the federal government they are viewed as Pakistanis but **when they ask for equal rights they are reminded of their controversial constitutional status.***” [Emphasis supplied]

18. The division of Kashmir has dragged on for more than seven decades. Given continued Indian policy to deny a plebiscite, it is possible that it may persist for a considerable further period. Under these circumstances, it is surely a denial of fundamental rights to have the people of GB linger on in legal limbo—deprived of rights simply because they await a future event that may not practically occur within their individual lifetimes. Quite obviously, the question of fundamental rights cannot be addressed in isolation. Such rights do not hang in the air. In order to have meaningful life and force, they must be embedded in (*thereby drawing support and sustenance from, and in turn, fertilizing and enhancing*) a properly articulated system of governance of a constitutional nature. These two—fundamental rights and a system of governance—of necessity go hand in hand. The former without

the latter is not possible and only desirable, and the latter without the former, though possible, is not desirable. To attempt to put in place one but not the other would be a lopsided exercise, lacking the proper balance that must exist. Fortunately, a path forward is already available in the recommendations of the Committee on Constitutional and Administrative Reforms in GB (*Committee*) constituted by the Prime Minister in 2015. The Committee, which submitted its report in March 2017, was tasked with reviewing the constitutional and administrative arrangements in GB and recommending reforms, as well as reviewing the existing internal arrangements of the region. The Committee was led by the veteran civil servant and former Foreign Minister Mr. Sartaj Aziz. The report of the Committee concluded that further reforms were required to enhance the sense of participation of the people of GB and to upgrade the standard of governance and public service delivery. At the same time, the Committee noted that **the reforms proposed should not prejudice Pakistan's principled position in the context of UN resolutions on Kashmir.**

19. We are in agreement with the conclusions of the Committee on both the above noted counts: (i) that there is a need for further substantive reforms to enhance the participation of GB's citizenry in governance; and (ii) that in no way and at no point should the proposed reforms prejudice Pakistan's principled position regarding the status of Kashmir. Indeed, the latter point is of crucial importance and must guide and inform any and all recommendations regarding reforms in GB. It is within the context of the above framework that we must examine the recommendations of the Committee. The Committee recommended, in part, that:-

- i. GB be accorded a "provisional" and special status of a Province pending final settlement of the Jammu and Kashmir dispute;
- ii. The region be given representation in the National Assembly and the Senate of Pakistan through amendments to Articles 51

and 57 of the Constitution, rather than an amendment to Article 1 thereof;

- iii. All legislative subjects other than those enumerated in Article 142 of the Constitution and its Fourth Schedule be assigned to the GB Assembly;
- iv. GB be given representation in all constitutional bodies; and
- v. A robust local bodies system be introduced.

The Committee also suggested broad reforms in other key areas including infrastructure development, socio-economic uplift and the civil service.

20. We are cognizant of the fact that nothing this Court recommends or orders should affect the nature and status of the Kashmir issue. It is within this light that we have reflected upon the recommendations of the Committee with great care. We also recognize that some of the recommendations may require Acts of Parliament and even amendments to the Constitution. At the same time, we have also been comforted by the fact that the Committee itself was acutely aware of the sensitivities of the issue before it, and provided its recommendations only after considering their implications, if any, on the status of the Kashmir dispute. It must be emphasized that **all** the above measures must be predicated by the caveat that these are subject to the result of the plebiscite, which is duly recognized in Article 257 already alluded to above. The Committee's recommendations have been considered in the backdrop of Pakistan's international commitments and their constitutional endorsement. As a responsible member of the comity of nations Pakistan remains aware of its obligations in such terms. As and when the promised plebiscite is organized by the parties to the dispute, it will be up to the people of all of Jammu and Kashmir, and of GB, to make their choice. Till then, it is surely incumbent upon both India as well as Pakistan to ensure that the people of this region enjoy maximum rights for

areas within each country's control. Therefore, till such time that the plebiscite is held, a proper arrangement must be provided for by Pakistan for the people of GB for purposes of governance within a framework of a constitutional nature, including most importantly the enjoyment of fundamental rights.

21. This Court has already held in the case of **Al-Jehad Trust** (*supra*) that the people of GB are “*citizens of Pakistan for all intents and purposes...and could invoke constitutionally guaranteed fundamental rights*” and emphasized that they were “*entitled to participate in the governance of their area and to have an independent judiciary to enforce...Fundamental Rights.*” (at page 1393) This Court's observations in the noted case find expression in the Committee's report which distinguishes between the (*yet to be finally resolved*) status of GB, and the legitimate aspirations of the people of the region to participate in national life. It is clear that granting full rights to them does not in any way prejudice the eventual determination of the status of Jammu and Kashmir. A state of vacuum cannot be created for the people of GB. They, after all, are as entitled to all the fundamental rights as are enjoyed by others. Therefore there can be no prejudice to Pakistan's position on the plebiscite issue if the men, women and children living in GB are guaranteed basic human rights and a role in their own governance within a framework of a constitutional nature. Indeed, full rights for the people of GB can only bolster Pakistan's case for the right of self-determination for all the people of Kashmir. Pakistan has the principled position that the people of Kashmir deserve to exercise all fundamental rights **including the right of self-determination in terms of the plebiscite, the promise of which remains yet to be actuated.**

22. Regrettably, this latter right is not solely within Pakistan's own prerogative to proffer. It is a right that can only be exercised with the participation of India and the international community through the UN. However, Pakistan does have the ability to itself empower the people of

GB with all those fundamental rights that Pakistanis enjoy, without the involvement of India or the international community, and without prejudice to the right of self-determination through a plebiscite of **all** the people of Jammu and Kashmir. **These rights for GB residents would include the right to representation as well as all other rights enjoyed by the citizens of Pakistan.** In conferring these rights Pakistan is not only discharging its obligations to the people in the territory that it controls and administers, it is also making a loud and clear statement in favour of providing all rights to all the people of Kashmir. As such, its actions can only strengthen the case for self-determination of Kashmir in accordance with the commitment to ensure exercise of all fundamental rights. It may be mentioned clearly, and without any ambiguity, that the most fundamental and basic right, the right of self-determination is for all the people of Jammu and Kashmir, and it remains a matter of satisfaction that their right to choose through a plebiscite remains a solemn commitment. That is why we hold that the Committee's recommendations relating to the provision and enforcement of fundamental rights provided by the Constitution must be implemented immediately and with full force and effect. As a matter of law as well as morality, there should be no discrepancy in the fundamental rights available to those in GB relative to Pakistani citizens anywhere in the country. As for a framework for governance, of a constitutional and political nature, for GB we are of the view that the right to self-government through an empowered GB Assembly as well as a robust system of local bodies is entirely uncontroversial and must be enforced as early as possible.

23. We hold the above while yet again emphasizing our considered view that these changes do not in any way prejudice or affect Pakistan's principled stance on Kashmir. As such, these reforms are by definition provisional until the time when the people of Kashmir exercise their right of self-determination under the plebiscite. They have been deprived of this

choice for far too long and at far too great a cost. Our judgment today merely states and upholds the obvious—that the parties to the Kashmir issue have an obligation to hasten the final resolution of this dispute and until that takes place, we must do everything in our power to minimize the suffering that this region has had to bear on account of its prolonged division.

24. Another question before this Court is whether the GB Supreme Appellate Court lacks the judicial power and jurisdiction to suspend, set aside or vary an Order promulgated by the President of Pakistan for the governance of GB, i.e., the 2018 Order or any Order amending, substituting or replacing the same. Now, given the present status of GB, i.e., as a region that is fully within the administrative control of Pakistan, and where Pakistan functionally exercises all aspects of sovereignty, it is clear that the Federation (*i.e., Parliament and the Federal Government*) is fully empowered to make arrangements for the governance of the region. This power extends to enacting and putting into place, whether on the executive side by means of an Order promulgated by the President or on the legislative side by an Act of Parliament, a framework and system of governance that is of a constitutional nature. The 2018 Order was issued in exercise of these powers, and the courts in GB were created under the same. The question now being considered can be put in more general terms: what would be the position (*i.e., status, powers and jurisdiction*) of the judicial, legislative and executive organs established by an instrument of the nature of the 2018 Order? In accordance with well-established principles of law, the GB legislature would only have such powers as are conferred upon it by the Federation through the Proposed Order. The courts created by such Order shall have the power to judicially review the laws enacted by such legislature. Of course, the organs created by the 2018 Order, and especially any legislative body, would be bound not merely by the Order, but also by the Constitution (*under which the Order itself*

came into existence). For the present purposes, the more immediate point is that a court created by the 2018 Order, such as the GB Supreme Appellate Court or the Chief Court, can examine whether the GB Assembly has exceeded the remit of its competence as conferred by the Order (*when, e.g., enacting a law*), and can declare it to be *ultra vires* the same. However, this jurisdiction is of necessity territorially bound. It can only apply and operate in relation to GB, and to things done or purported to be done under the 2018 Order. It cannot extend to any matter beyond or outside GB, or the *vires* or validity of the 2018 Order itself. The jurisdiction of a GB court of the sort being considered in the present context is confined to the territory of GB. Therefore, it may be concluded that the intention was to give the GB Supreme Appellate Court and the Chief Court the status of a “constitutional” court within the ambit of GB and the 2018 Order, but confining the scope to interpreting and implementing the said Order and conducting judicial review within the territory of GB in this regard. It is thus a “constitutional” court inasmuch as it has the jurisdiction to strike down any law made by a GB legislature on the recognized concept of *ultra vires*. But it would not be in a position to question, in any manner and on any ground whatsoever, the very law that created it. This view is bolstered by the fact that an ouster clause has been inserted as Article 118 of the 2018 Order, whereby the GB courts have been restrained from calling into question the validity of the 2018 Order. The said Article reads as under:-

“118. 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 law framed under this Order, the laws of Pakistan shall prevail.

(2) No Court, including the Gilgit-Baltistan Supreme Appellate Court and the Gilgit-Baltistan High Court, shall call into question or permit to be called into question, the validity of this Order.”

25. Therefore it may be concluded that the GB Court does not sit as a court having the power of judicial review in respect of the territory of Pakistan, nor can it declare Orders made or legislation passed by the President or the Parliament as *ultra vires*, nor can it initiate judicial review of departments working outside of GB. Instead, the 2018 Order can be challenged by, inter alia, the people of GB, but only before this Court, either under Article 184 of the Constitution or in the manner herein after provided.

26. We now turn to a question of importance, which is crucial for the success of the project of creating a framework of governance for GB of a constitutional nature. Any framework of such a nature necessarily implies, and indeed it could be said demands, a degree of continuity in the manner provided in the Proposed Order (*hereinafter referred to*). Otherwise, what good is it? Of what value are the fundamental rights enshrined in such a framework, and how independent can a judiciary created thereby be, if the structure is impermanent, and even ephemeral? This is all the more so where the framework is put in place in exercise of executive authority, by means of an Order promulgated by the President. Such an Order can be put in place, as it were, with a stroke of the pen, but likewise instantly cast into oblivion. Indeed, the manner in which the 2009 Order was replaced by the 2018 Order is a telling illustration of the point now under consideration. During the course of the hearing of these petitions, and in light of the submissions by various learned counsel and the observations of the Court, the Federal Government constituted a committee shepherded by the learned Attorney General, to review the entire matter, and place before the Court a draft of a fresh Order for the governance of GB. This was duly

done, and the draft so placed was examined by the Court in light of the submissions made before it. In our view, that draft, as modified in the manner hereinafter stated, does provide a suitable framework in the hue of constitutional nature for the governance of GB. The Federal Government stands committed to promulgating the same (*hereinafter referred to as the “Proposed Order”*), in substitution of the 2018 Order. However, the question of permanence remains. It is this point that must now be considered.

27. As noted above, the matters before us have been instituted under Article 184(3) of the Constitution. The jurisdiction thereby conferred upon this Court has been considered in a number of decisions, which have settled a well-known jurisprudence that requires no elaborate rehearsal. There is also Article 187 of the Constitution, which confers a special jurisdiction on this Court. As the text of Article 184(3) *supra* indicates, this Court can give “*such directions to any person or authority including any Government... as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II*” of the Constitution. It is now well settled that this constitutional power, within the scope of the grant, is not just plenary; it is also dynamic and flexible. Indeed, if we may adapt (*in a somewhat modified manner*) for present purposes a famous metaphor used by the Privy Council in relation to the Canadian constitution, in granting fundamental rights the Constitution has planted a “*living tree capable of growth and expansion*”. Understandings of both the nature of fundamental rights, and what must be done to ensure their meaningful enjoyment in full, have developed and evolved over the decades and will undoubtedly continue to do so in times to come. Thus, to take but one example, the meaning of the right to life conferred by Article 9 of the Constitution has developed in a manner that would, perhaps, be breathtaking for previous generations. The categories and varieties of cases involving or raising issues of fundamental rights of public importance can never be closed. They are shaped by the human condition and the vagaries of the human experience, which by its very

nature is limitless. This is not to say that the scope of the constitutional power is, as a matter of law, boundless, but only to stress that any artificial straitjacketing, based on preconceived notions or whatever passes for orthodoxy or received wisdom in a particular age, is to be avoided. Now, precedent is too often perceived as a limitation. Certainly, at least in the common law tradition, it is a defining characteristic of judicial power. It should however, perhaps also be given greater recognition as a useful tool in the judicial arsenal. It must never be forgotten that while we are certainly tied to the past we are not shackled by it. And this is perhaps all the more so when the jurisdiction is of the nature as conferred by Article 184(3) *supra*. To this must be added the power conferred on this Court under Article 187 *supra*, to “*issue such directions, orders or decrees as may be necessary to do complete justice*” in any pending case or matter. Keeping these provisions in mind, and the special nature of the issue before us—the settling of a framework, of a constitutional nature, for the governance of GB—we are of the view that our jurisdiction extends to the giving of suitable directions to the Federation, both to promulgate the Proposed Order and also for ensuring its continuity. It is only in this way that fundamental rights can be granted to the people of GB in the meaningful and realistic manner envisaged by this Court in the case of **Al-Jehad Trust** (*supra*). At the same time, as indeed was accepted on behalf of the Federation, the directions that we can give extend to making certain modifications in the Proposed Order, again in order to properly effectuate the objective sought to be achieved. It is in the foregoing terms that we have, indeed, made certain modifications to the Proposed Order, which have been incorporated therein, and have also for convenience been gathered in the appendix to this judgment.

28. Before concluding, we would like to make one last point. It is a matter of some concern that although this Court had articulated the basic position as regards the status and rights of the people of GB in the case of

Al-Jehad Trust (*supra*) two decades ago, the actual realization by the Executive of that expression has remained fitful at best. This is not acceptable. This Court has not hesitated in the past to give legal recognition to the aspirations of people who have unhesitatingly, enthusiastically (*and, if we may put it like that, joyously*) cast their lot with Pakistan right from the beginning. We do not hesitate now to take the matter further. Therefore, we do not just provide judicial imprimatur to the proposed framework: we also give it permanence, so that the people of GB have unassailable confidence that their rights, and the enjoyment thereof, is not subject to the whims and caprice of every passing majority, but are firmly grounded in the Constitution itself. And let it be clearly understood: we will not hesitate in future, should the need and occasion arise, to take, within our constitutional mandate, all such steps as may be required. The human rights jurisprudence of this Court has served, and will continue to serve, as the sheet-anchor of the liberties and rights of all the people. Those of Gilgit-Baltistan are no exception.

29. Accordingly, we hereby direct and order as follows:-

- i. The Proposed Order, which (*modified as noted above*) is annexed to this judgment, shall be forthwith promulgated by the President on the advice of the Federal Government, and in any case within a fortnight hereof;
- ii. No amendment shall be made to the Order as so promulgated except in terms of the procedure provided in Article 124 of the same, nor shall it be repealed or substituted, without the instrument amending, repealing or substituting (*as the case may be*) the same being placed before this Court by the Federation through an application that will be treated as a petition under Article 184(3) of the Constitution. Nothing in this judgment shall be construed to limit the jurisdiction conferred on this Court by the Proposed Order itself; and

- iii. If the Order so promulgated is repealed or substituted by an Act of Parliament the validity thereof, if challenged, shall be examined on the touchstone of the Constitution.

30. In light of the foregoing, the instant matters are disposed of accordingly, save those petitions in which a specific order or judgment, of either the GB Supreme Appellate Court or the Chief Court, has been challenged. Such petitions (*being only Constitution Petitions No.2/2016, 3/2016, 34/2016, 6/2017, 30/2017, 18/2018, 50/2018 and 51/2018*) shall be deemed pending and be treated and disposed of as the leave petitions envisaged under Article 103 of the Proposed Order, when promulgated. Such petitions shall be listed in the normal course before an appropriate Bench.

CHIEF JUSTICE

JUDGE

JUDGE

JUDGE

JUDGE

JUDGE

Announced in open Court
on **17.01.2019** at **Islamabad**
Approved for Reporting
M. Azhar Malik

JUDGE

No.F.13 (2)/2018-Admn(GBC)
GOVERNMENT OF PAKISTAN
MINISTRY OF KASHMIR AFFAIRS AND
GILGIT-BALTISTAN

Islamabad, the January, 2019

AN
ORDER

to provide for further political empowerment and good governance in Gilgit-Baltistan

WHEREAS the Federal Government intends to give Gilgit-Baltistan the status of a provisional Province, subject to the decision of the Plebiscite to be conducted under the UN Resolutions, with all privileges provided by the Constitution, however, a proper Constitutional Amendment needs to be made in the Constitution of the Islamic Republic of Pakistan. This needs two thirds majority in the Parliament and would take time. However, as an interim measure the Federal Government intends to give such Fundamental Right as given to the other Province.

WHEREAS it is expedient to provide for greater empowerment so as to bring Gilgit-Baltistan at par with other provinces and to initiate necessary legislative, executive and judicial reforms for the aforesaid purposes;

NOW, THEREFORE, the President of Islamic Republic of Pakistan is pleased to make the following Order:-

1. Short title, extent and commencement.- (1) This Order may be called the Gilgit-Baltistan Governance Reforms, 2019.

(2) It extends to whole of the 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;
- (b) **"Citizen"** means a person who has a domicile or resident 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) **"Federation"** means the Federal Government of Islamic Republic of Pakistan;
- (f) **"Financial year"** means the year commencing on the first day of July and ending on the thirtieth day of June;
- (g) **"Gilgit-Baltistan"** means the areas comprising districts of Astore, Diamer, Ghanche, Ghizer, Gilgit, Hunza, Nagar, Skardu, Shigar, Kharmang and such other districts as may be created from time to time;
- (h) **"Governor"** means the Governor of Gilgit-Baltistan and includes a person for the time being acting as Governor;
- (i) **"Government"** means the Government of Gilgit-Baltistan
- (j) **"Joint Sitting"** means a joint sitting of the Assembly, the Federal Minister in-charge of the Council Secretariat and the members of the Council;
- (k) **"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;
- (l) **"person"** includes any body politic or corporate;
- (m) **"prescribed"** means prescribed by law or rules made there under;
- (n) **"President"** means the President of Islamic Republic of Pakistan;
- (o) **"Property"** includes any right, title or interest in property, movable or immovable, and any means and instruments of production;
- (p) **"remuneration"** includes salary and pension;

- (q) **“Service”** means the Service of Pakistan, Service of Gilgit-Baltistan and Service of Azad Jammu and Kashmir;
- (r) **“Service of Gilgit-Baltistan”** means any service, post or office in connection with the affairs of Gilgit-Baltistan, but does not include service of Council, service as Governor, Speaker, Deputy Speaker, Chief Minister, Minister or Advisor, Parliamentary Secretary, Advisor to the Minister or a member of the Assembly;
- (s) **“Service of Council”** means any service, post or office in connection with the affairs of Gilgit-Baltistan Council which shall be the service of Pakistan, but does not include service as the Chairman of the Council, Advisor to Chairman, Member of the Council, Chairman of the Council's Committees;
- (t) **“Speaker”** means Speaker of the Assembly and includes any person acting as the Speaker of the Assembly; and
- (u) **“Supreme Court of Pakistan”** means the Supreme Court as defined by the Constitution of the Islamic Republic of Pakistan, 1973;
- (v) **“Vice Chairman of the Council”** means the Governor of Gilgit-Baltistan.

3. Elimination of exploitation.- The Government shall ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from each according to his ability to each according to his work.

4. Right of individuals to be dealt with in accordance with law, etc.- (1) To enjoy equal protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being in Gilgit-Baltistan

(2) In particular—

- (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
- (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

(c) no person shall be compelled to do that which the law does not require him to do.

5. Obedience to this Order.- Obedience to this Order and law is the inviolable obligation of every citizen, wherever he may be, and of every other person for the time being within Gilgit-Baltistan.

PART - II

FUNDAMENTAL RIGHTS

6. Laws inconsistent with or in derogation of Fundamental Rights to be void.- (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 part, shall, to the extent of such inconsistency, be void.

(2) The Government shall not make any law which takes away or abridges the rights so conferred by this Order and any law made in contravention of this clause shall, to the extent of such contravention, be void.

(3) The Provisions of this Article shall not apply to any law relating to members of the Armed Forces, or of the Police or of such other forces as are charged with the maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them and no such law nor any provision thereof shall be void on the ground that such law or provision is inconsistent with, or repugnant to, any provision of this Part.

(4) The rights conferred by this Part shall not be suspended except as expressly provided by this Order.

7. Security of person.- No person shall be deprived of life or liberty save in accordance with law.

8. 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 clause (1) and (2) shall apply to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall be made except to deal with persons acting in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof, or external affairs of Pakistan, or public order, or the maintenance of supplies or services, and no such law shall authorize the detention of a person for a period exceeding three months unless the Review Board has, after affording him an opportunity of being heard in person, reviewed his case and reported, before the expiration of the said period, that there is, in its opinion, sufficient cause for such detention, and, if the detention is continued after the said period of three months, unless the Review Board has reviewed his case and reported, before the expiration of each period of three months, that there is, in its opinion, sufficient cause for such detention.

Explanation I.— In this article, "the Review Board" means, a Board appointed by the Chief Judge of the Supreme Appellate Court of Gilgit-Baltistan consisting of a Chairman, the Secretary of the Department concerned with Home Affairs and a person, who is or has been a Judge of the Supreme Appellate Court or the Chief Court.

Explanation II.—The opinion of the Review Board shall be expressed in terms of the views of the majority of its members.

(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, within fifteen days from such detention, 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.

(6) The authority making the order shall furnish to the Review Board all documents relevant to the case unless a certificate, signed by a Secretary to the Government, to the effect that it is not in the public interest to furnish any documents, is produced.

(7) Within a period of twenty-four months commencing on the day of his first detention in pursuance of an order made under a law providing for preventive detention, no person shall be detained in pursuance of any such order for more than a total period of eight months in the case of a person detained for acting in a manner prejudicial to public order and twelve months in any other case:

Provided that this clause shall not apply to any person who is employed by, or works for, or acts on instructions received from, the enemy, or who is acting or attempting to act in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof or who commits or attempts to commit any act which amounts to an anti-national activity as defined in any law or is a member of any association which has for its objects, or which indulges in, any such anti-national activity.

(8) The Review Board shall determine the place of detention of the person detained and fix a reasonable subsistence allowance for his family.

(9) Nothing in this article shall apply to any person who for the time being is an enemy alien.

9. 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 a fair trial and due process.

10. 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 and traffic in human beings is prohibited.

(3) No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.

(4) 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.

11. 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 from, the penalty prescribed by law for that offence at the time the offence was committed.

12. 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.

13. Inviolability of dignity of man, etc. (1) The dignity of man and, subject to law, the privacy of home, shall be inviolable.

(2) No person shall be subjected to torture for the purpose of extracting evidence.

14. Freedom of movement.- Every citizen shall have the right to remain

in, and, subject to any reasonable restrictions imposed by law in the public interest, enter and move freely throughout Gilgit-Baltistan and to reside and settle in any part thereof.

15. 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.

16. 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.

(3) Every citizen, not being in the Service, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan or any part thereof and such law shall provide that where the Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan or any part thereof, the Government of Gilgit-Baltistan shall, within fifteen days of such declaration, refer the matter to the Supreme Appellate Court whose decision on such reference shall be final.

(4) Every political party shall account for the source of its funds in accordance with law.

17. 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 by a corporation controlled by Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons.

18. 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, public order, decency or morality, or in relation to contempt of Court, commission of, or incitement to an offence.

19. 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.

20. Freedom to profess religion and manage religious institutions.- 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.

21. 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.

22. 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.

23. 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.

24. 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 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 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 clause (2) and (3), the expression 'property' means immovable property, or any commercial or industrial undertaking, or any interest in any undertaking.

(4) The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court.

25. Equality of citizens.- (1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of gender.

(3) Nothing in this Article shall prevent the Government from making any special provision for the protection of women and children.

26. Right to education.- The Government 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.

27. 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, gender or place of birth, but nothing herein shall be deemed to prevent the making of any special provision for women.

28. Safeguard against discrimination in services.- No citizen otherwise qualified for appointment in the service of Gilgit-Baltistan, shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste or gender:

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

29. Preservation of language, script and culture.- Subject to Article 117 any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same and subject to law, establish institutions for that purpose.

PART - III

PRINCIPLES OF POLICY

30. Principles of Policy.- (1) The Principles set out in this Part shall be known as the Principles of Policy, and it is the responsibility of each organ and authority of the Government, and of each person performing functions on behalf of an organ or authority of the Government, to act in accordance with those Principles in so far as they relate to the functions of the organ or authority.

(2) In so far as the observance of any particular Principle of Policy may be dependent upon resources being available for the purpose, the Principle shall be regarded as being subject to the availability of resources.

(3) In respect of each year, the Governor shall cause to be prepared and laid before the Assembly, a report on the observance and implementation of the Principles of Policy, and provision shall be made in the rules of procedure of the Assembly, for discussion on such report.

31. Responsibility with respect to Principles of Policy. (1) The responsibility of deciding whether any action of an organ or authority of the Government, or of a person performing functions on behalf of an organ or authority of the Government, is in accordance with the Principles of Policy is that of the organ or authority of the Government, or of the person, concerned.

(2) The validity of an action or of a law shall not be called in question on the ground that it is not in accordance with the Principles of Policy, and no action shall lie against the Government or any organ or authority of the Government or any person on such ground.

32. Islamic way of life. (1) Steps shall be taken to enable the Muslims of Gilgit-Baltistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah.

(2) The Government shall endeavor:-

- (a) to make the teaching of the Holy Quran and Islamiat compulsory, to encourage and facilitate the learning of Arabic language and to secure correct and exact printing and publishing of the Holy Quran;
- (b) to promote unity and the observance of the Islamic moral standards; and
- (c) to secure the proper organization of zakat, ushr, auqaf and mosques.

33. Promotion of local Government institutions.- The Government shall encourage local Government institutions composed of elected representatives of the areas concerned and in such institutions special

representation will be given to peasants, workers and women.

34. Parochial and other similar prejudices to be discouraged.- The Government shall discourage parochial, racial, tribal and sectarian prejudices among the citizens.

35. Full participation of women in national life.- Steps shall be taken to ensure full participation of women in all spheres of national life.

36. Protection of family, etc.- The Government shall protect the marriage, the family, the mother and the child.

37. Protection of minorities.-The Government shall safeguard the legitimate rights and interests of minorities, including their due representation in the service of Gilgit-Baltistan.

38. Promotion of social justice and eradication of social evils.- The Government shall:

- (a) promote, with special care, the educational and economic interests of backward classes or areas;
- (b) remove illiteracy and provide free and compulsory secondary education within minimum possible period;
- (c) make technical and professional education generally available and higher education equally accessible to all on the basis of merit;
- (d) ensure inexpensive and expeditious justice;
- (e) make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment;
- (f) enable the people of different areas, through education, training, agricultural and industrial development and other methods, to participate fully in all forms of national activities, including employment in the service of Gilgit-Baltistan;
- (g) prevent prostitution, gambling and taking of injurious drugs,

printing, publication, circulation and display of obscene literature and advertisements;

- (h) prevent the consumption of alcoholic liquor otherwise than for medicinal and, in the case of non-Muslims, religious purposes; and
- (i) decentralize the Government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public.

39. Promotion of social and economic well-being of the people.- The Government shall:

- (a) secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants;
- (b) provide for all citizens, within the available resources of the Gilgit-Baltistan, facilities for work and adequate livelihood with reasonable rest and leisure;
- (c) provide for all persons employed in the service of Gilgit-Baltistan or otherwise, social security by compulsory social insurance or other means;
- (d) provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment;
- (e) reduce disparity in the income and earnings of individuals, including persons in the various classes of the service of Gilgit-Baltistan; and
- (f) eliminate riba as early as possible.

40. Participation of people in Armed Forces.- The Government shall enable people from all parts of Gilgit-Baltistan to participate in the Armed

PART - IV

GOVERNOR

41. The Governor.- (1) There shall be a Governor of the Gilgit-Baltistan who shall be appointed by the President on the advice of the Prime Minister.

(2) When the Governor, by reason of absence from Gilgit-Baltistan or for any other cause, is unable to perform his functions, the Speaker of the Assembly and in his absence any other person as the President may nominate shall perform the functions of Governor until the Governor returns to Gilgit-Baltistan or, as the case may be, resumes his functions.

(3) A person shall not be appointed a Governor unless he is qualified to be elected as a member of the Assembly and is not less than thirty-five years of age and is a registered voter and resident of Gilgit-Baltistan.

(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 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.

42. 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 or by, any court, tribunal or other authority.

PART - V

THE GOVERNMENT

43. 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, consisting of the Chief Minister and the relevant Minister(s), 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, through the Ministers or through their subordinate Officers.

44. The Cabinet.- (1) There shall be a Cabinet of Ministers, with the Chief Minister at its head, to aid and advise the Governor in the exercise of his functions.

(2) The Assembly shall meet on the twenty-first day following the day on which a general election to the Assembly is held, unless sooner summoned by the Governor.

(3) 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.

(4) 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 secures 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 or more members securing the highest number of votes is equal, further polls shall be held between them until one of them secures a majority of votes of the members present and voting.

(5) The member elected under clause (4) shall be called upon 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:

(6) The Cabinet shall be collectively responsible to the Assembly and the total strength of the Cabinet shall not exceed twelve members or eleven percent of the total membership of the Assembly, whichever is higher:

Provided that the aforesaid limit shall be effective after the next general elections.

(7) The Chief Minister shall hold office during the pleasure of the Governor, but the Governor shall not exercise his powers under this clause unless he is satisfied that the Chief Minister does not command the confidence of the majority of the members of the Assembly, in which case he shall summon the Assembly and require the Chief Minister to obtain a vote of confidence from the Assembly.

(8) The Chief Minister may, by writing under his hand addressed to the Governor, resign his office.

(9) A Minister who for any period of six consecutive months is not a member of the Assembly shall, at the expiration of that period, cease to be a Minister and shall not before the dissolution of that Assembly be again appointed a Minister unless he is elected a member of that Assembly.

(10) Nothing contained in this Article shall be construed as disqualifying the Chief Minister or any other Minister for continuing in office during any period during which the Assembly stands dissolved, or as preventing the appointment of any person as Chief Minister or other Minister during any such period.

(11) The Chief Minister shall not appoint more than two Advisers.

45. Governor to be kept informed. The Chief Minister shall keep the Governor informed on matters relating to administration and on all legislative proposals the Government intends to bring before the Assembly.

46. Ministers.-(1) Subject to clause (9) and (10) of Article 44, the Governor shall appoint Ministers from amongst members of the Assembly on the advice of the 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 Governor, resign his office or may be removed from office by the Governor on the advice of the Chief Minister.

47. Vote of no-confidence against Chief Minister.-(1) A resolution for a vote of no-confidence moved by not less than twenty per centum of the total membership of the Assembly may be passed against the Chief Minister by the Assembly.

(2) A resolution referred to in clause (1) shall not be voted upon before the expiration of three days, or later than seven days, from the day on which such resolution is moved in the Assembly.

(3) If the resolution referred to in clause (1) is passed by a majority of the total membership of the Assembly, the Chief Minister shall cease to hold office.

48. 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 Chief Minister, in case of a vote of no confidence.

49. Extent of executive authority of Government. 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:

Provided that, in any matter with respect to which both Council and the Assembly has power to make laws, the executive authority of the Government shall be subject to, and limited by law made by the Council

50. Conferring of functions on subordinate authorities. On the recommendation of the Government, the Assembly may by law confer functions upon officers or authorities subordinate to the Government.

51. Conduct of business of Government. (1) All executive actions of the Government shall be expressed to be taken in the name of the Governor.

(2) The Government shall by rules specify the manner in which orders and other instruments made and executed in the name of Governor shall be authenticated, and the validity of any order or instrument so authenticated shall not be questioned in any court on the ground that it was not made or executed by the Governor.

(3) The Government shall also make rules for regulation, allocation and transaction of its business and may for the convenient transaction of that

business delegate any of its functions to the officers or authority subordinate to it.

52. 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.

53. 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 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 Governor and shall not engage in private practice so long as he holds the office of the Advocate General.

(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 - VI

GILGIT-BALTISTAN COUNCIL

54. 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-in-Charge of the Council:

- (d) the Chief Minister of Gilgit-Baltistan;
- (e) six members to be elected by the Assembly in accordance with single non-transferable majority 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 for a term of five years from the day he enters upon his office.

(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.

55. 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.

PART - VII

THE LEGISLATURE

56. 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 preceding 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.

(5) On dissolution of Assembly on completion of its term, or in case it is dissolved under Article 62, the Chairman of the Council shall appoint a care-taker Cabinet:

Provided that the care-taker Chief Minister shall be selected by the Chairman of the Council in consultation with the Chief Minister, the leader of the Opposition in the outgoing Assembly and the Minister for Kashmir Affairs and Gilgit-Baltistan:

Provided further that the members of the care-taker Cabinet shall be appointed on the advice of the care-taker Chief Minister:

Provided also that if the Chief Minister, the Leader of the Opposition in the outgoing Assembly and the Minister for Kashmir Affairs and Gilgit-Baltistan do not agree on any person to be appointed as care-taker Chief Minister, the Chairman of the Council may appoint, in his discretion, a care-taker Chief Minister.

57. 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.

58. 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;
- (c) his name appears on the electoral roll of any constituency in Gilgit-Baltistan; and
- (d) he is not a dual national.

(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 un-discharged 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 Azad Jammu and Kashmir or 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 in the Service or of any statutory body or anybody which is owned or controlled by the Government of Pakistan or

- Gilgit-Baltistan or Azad Jammu and Kashmir or in which such 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 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.

59. Seat in Assembly becomes vacant under certain circumstances.- (1) The seat of a member of the Assembly shall become vacant if-

- (a) he/she 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/she is absent from the Assembly without the leave of the Assembly for thirty consecutive sitting days of the Assembly; or
- (c) he/she fails to make the oath referred to in Article 57 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/she is elected as member of the Council; or
- (e) he/she 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.

60. 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.

61. 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.

62. 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, stand 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.

(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.

(3) Notwithstanding anything in the Order, if at any time it is not possible for any reason to hold general election to the Assembly, the Chairman of the Council may postpone the election for a period not exceeding ninety days at a time.

63. 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 procedure 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.

64. 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.

65. 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.

66. 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.

67. 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 - VIII

DISTRIBUTION OF LEGISLATIVE POWERS

68. 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 Legislative List set out in the Third Schedule, hereinafter referred to as the Legislative List; and
- (b) subject to clause 2 (a), the assembly shall and the Council shall not, have power to make laws with respect to any matter not enumerated in the 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) Notwithstanding anything contained in this Order, the Government of Pakistan shall have exclusive powers and the Council and the Assembly shall not have powers to make any law in respect of the following matters.-

- (a) the defence and external security of Gilgit-Baltistan;
- (b) the current coin of the issue of any bills, notes or other paper currency; or
- (c) the external affairs of Gilgit-Baltistan including foreign trade and foreign aid; or
- (d) such other matters as the President may specify by Order.

69. 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.

PART - IX

ISLAMIC PROVISIONS

70. 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.

71. 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 be, 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.

72. 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.

73. 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.

74. 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 than a Money Bill, return the Bill to the Assembly with a message 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 - X

FINANCIAL PROCEDURE

75. 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.

Provided that the Government of Pakistan shall provide grant in aid to the Council to meet its revenue deficit.

(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 these 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).

76. 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.

77. 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 spent 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 Article, 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.

78. 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 Order, be deemed to have been passed by the Assembly.

79. 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 - XI

ORDINANCE

80. 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.

PART - XII

THE JUDICATURE

81. Appointment of Judges to the Supreme Appellate Court and Chief Court, Gilgit-Baltistan.- (1) There shall be a Judicial Commission of Gilgit-Baltistan, hereinafter in this Article referred to as the Commission, for

appointment of Judges of the Supreme Appellate Court and Chief Court as hereinafter provided.

(2) For appointment of Judges of the Supreme Appellate Court, the Commission shall consist of-

- | | | |
|-------|---|-----------|
| i. | Chief Judge, Supreme Appellate Court; | Chairman |
| ii. | Secretary Kashmir Affairs & Gilgit-Baltistan | Member |
| iii. | One most senior Judge of the Supreme Appellate Court; | Member |
| iv. | One former Judge of the Supreme Court of Pakistan to be nominated by the Chief Justice of Pakistan for a terms of two years | Member |
| v. | Minister for Law, Govt. of Gilgit-Baltistan; | Member |
| vi. | Chief Secretary, Gilgit-Baltistan; and | Member |
| vii. | A Senior Advocate of the Supreme Appellate Court of Gilgit-Baltistan nominated by the Bar Council for a term of two years. | Member |
| viii. | Joint Secretary, Gilgit-Baltistan Council | Secretary |

(3) On recommendation of the Commission, the Gilgit-Baltistan Council shall move a summary to the Chairman Gilgit-Baltistan Council for approval of the appointment of Judge, Supreme Appellate Court;

(4) Notwithstanding anything contained in clause (1), clause (2) or clause (3), the Chief Judge of the Supreme Appellate Court shall be appointed by the above Commission. However, the Secretary, Kashmir Affairs and Gilgit-Baltistan shall replace the Chairmanship of Commission.

(5) The Commission may make rules regulating its procedure.

(6) For appointment of Judges of the Chief Court, Gilgit-Baltistan the Commission shall in clause (2) shall also include the following, namely:-

- | | | |
|------|---|--------|
| i. | Chief Judge, Chief Court; | Member |
| ii. | One most senior Judge of the Chief Court; | Member |
| iii. | A Senior Advocate of the Chief Court of Gilgit-Baltistan nominated by the concerned Bar Council | Member |

for a term of two years.

Provided that for appointment of the Chief Judge of the Chief Court, the most Senior Judge mentioned in paragraph (ii) shall not be member of the commission.

82. Gilgit-Baltistan Supreme Appellate Court.- (1) There shall be 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) 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, 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 this order; and

(b) a High Court in Pakistan including a High Court that existed in Pakistan at any time before this order.

(6) 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 of Supreme Appellate Court, oath in the form set out in the First Schedule.

(7) The Chief Judge and judges of the Supreme Appellate Court of Gilgit-Baltistan shall be appointed by the Chairman on recommendation of the Commission and shall hold office until he/she attains the age of 65 years, or unless he/she sooner resigns or is removed from office in accordance with law:

Provided that if the Chief Judge or a Judge is a person who has been a Judge of the Supreme Court of Pakistan, he/she shall hold office until he/she attains the age of 70 years, or unless he/she sooner resigns or is removed from office in accordance with law.

(8) 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 Chairman shall appoint the senior most Judge of the Supreme Appellate Court to act as Chief Judge of Gilgit-Baltistan.

(9) 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.

Provided that Council will provide funds to Supreme Appellate Court Gilgit-Baltistan.

83. Original Jurisdiction. (1) Without prejudice to the provisions of Article-94, 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

If 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.

84. Appellate Jurisdiction.- (1) Subject to the succeeding provision of this Article, the Supreme Appellate 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.

(2) 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.

(3) 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 grants leave to appeal.

- (4) (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.

(5) 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.

(6) 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.

85. 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.

86. 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.

87. 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.

88. 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.

89. 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.

90. 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 81, 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.

91. Bar of Jurisdiction.- The proceedings before the Supreme Judicial Council, and the removal of a Judge under Article 87, shall not be called in question in any Court.

92. 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 six 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) A person shall not be appointed as a Judge of the Chief Court unless he is 45 years of age and;

- (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; 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.

(7) 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.

(8) 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:

(9) 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.

(10) 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.

(11) 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.

(12) 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.

93. 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 Chairman shall appoint the most senior Judge of the Chief Court to act as Chief Judge.

94. 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.

95. 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.

96. Decision of Chief Court binding on subordinate Courts.- Subject to Article 86, 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.

97. 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.

98. 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.

99. 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.

100. 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.

101. Administrative Courts and Tribunals.— (1) Notwithstanding anything 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 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 or 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.

Provided that Council will provide funds to Administrative Courts and Tribunals of Gilgit-Baltistan fall under Council legislative list.

102. Employees of Court.- The Gilgit-Baltistan Supreme Appellate Court and the Gilgit-Baltistan Chief Court, with the approval of the Chairman and Governor respectively, may make rules providing for the appointment of employees of the Court and for their terms and conditions of employment.

103. Supreme Court of Pakistan.- (1) The Supreme Court shall, to the exclusion of every other court including the Supreme Appellate Court and the Chief Court, have original jurisdiction in respect of:

- (i) any dispute between the Government, the Federation or the Government of a Province of Pakistan;
- (ii) any challenge to, or dispute raising any issue regarding, the *vires* or validity of this Order or any amendment hereto or modification herein, including an Order repealing, replacing or substituting this Order, and clause (2) of Article 126 hereof shall apply accordingly.

(2) Any aggrieved person may, subject to clause (3), appeal to the Supreme Court against any judgment, order or decree of the Supreme Appellate Court or the Chief Court made in any proceedings where the subject matter of

the dispute or the matter in issue is not exclusively in relation to or under this Order or any law made hereunder or Gilgit-Baltistan.

(3) An appeal under clause (2) shall lie only if the Supreme Court grants leave to appeal.

(4) A decision of the Supreme Court, whether made under any of the foregoing clauses or otherwise, shall be as binding on all courts established by or under this Order as it is in terms of Article 189 of the Constitution on all courts in Pakistan, and Article 86 and Article 96 hereof shall apply accordingly.

PART - XIII

SERVICES

104. 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.

Provided that till the establishment of the Gilgit-Baltistan Public Service Commission, the Federal Public Service Commission shall continue recruitment functions on behalf of Gilgit-Baltistan Government.

105. 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 and Council shall be regulated by law.

(2) Until an Act of the Council in respect of persons 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 Pakistan Administrative Service (PAS), Police Service of Pakistan (PSP), or all Pakistan Service (APS) shall be as specified in the Fourth Schedule.

(4) Gilgit-Baltistan shall be given representation in Federal Services in accordance with provisions made for the purpose thereof for the provinces. Necessary, civil service reforms, including up gradation of posts, commensurate with the increased delegation of powers and in line with other provinces shall be carried out in Gilgit-Baltistan.

PART - XIV

ELECTIONS

106. Chief Election Commissioner.- (1) 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.

(2) Before entering upon office, the Chief Election Commissioner shall make before the Chief Judge of Gilgit-Baltistan oath in the form set out in the First Schedule.

PART - XV

AUDITOR GENERAL

107. 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.

Provided that till the appointment of Auditor-General of Gilgit-Baltistan, the Chairman of the Gilgit-Baltistan Council may ask Auditor- General of Pakistan to work as Auditor-General of Gilgit-Baltistan also.

(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 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 Governor who shall cause them to be laid before the Assembly.

PART - XVI

GENERAL

108. 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.

109. 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.

110. 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 may 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.

PART - XVII

EMERGENCY PROVISIONS

111. 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, anybody 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.

112. 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 Part 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.

113. Power to vary or rescind proclamation.- (1) A Proclamation issued under Article 108 may be varied or revoked by a subsequent Proclamation.

(2) The validity of any Proclamation issued or order made under Article 108 or Article 109 shall not be questioned in any Court.

114. 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 - XVIII

MISCELLANEOUS

115. 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.

116. Chairman may make laws of indemnity, etc. Nothing in the Order shall prevent the Chairman from making any law indemnifying any person in the service of Gilgit-Baltistan, or any other person, in respect of any act done in connection with the maintenance or restoration of order in any area in Gilgit-Baltistan.

117. Protection to Chairman, Governor, Minister, etc.—(1) The Chairman, the Governor, the Chief Minister, and Ministers shall not be answerable to any court for the exercise of powers and performance of functions of their respective offices or for any act done or purported to be done in the exercise of those powers and performance of those functions:

Provided that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President, Chairman or Governor in any court during his term of office.

(3) No process for the arrest or imprisonment of the President, Chairman or a Governor shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the Chairman or Governor shall be instituted during his term of office in respect of anything 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 in the manner prescribed by law, stating the nature of the proceedings, the cause of action, the name, description and place of residence of the party by whom the proceedings are to be instituted and the relief which the party claims.

118. Legal proceedings.— Any legal proceedings which, but for this Order, could have been brought by or against the Government in respect of a matter which, immediately before the commencing day, was the responsibility of the Council and has, under the Order, become the responsibility of the Assembly,

shall be brought by or against the Government; and if any such legal proceedings were pending in any court immediately before the commencing day then, in those proceedings, for the aforesaid Council the Government shall, as from that day, be deemed to have been substituted.

119. 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.

120. Official language. (1) The official language of Gilgit-Baltistan is Urdu.

(2) Subject to clause (1), the English language may be used for official purposes until arrangements are made for its replacement by Urdu.

(3) Without prejudice to the status of the National language, the Assembly may by law prescribe measures for the teaching, promotion and use of any other language in addition to the National language.

121. Private armies forbidden. (1) No private organization capable of functioning as a military organization shall be formed, and any such organization shall be illegal.

(2) The Chairman shall, by law, provide for the punishment of persons found guilty of the offence under this Article and such law may also provide for establishment of special courts for trial of such offence.

122. Local Government. (1) The Government shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments.

(2) Elections to the local governments shall be held by the Election Commission.

123. Order not to prejudice stance.- The provision of this Order shall not derogate from, 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.

124. Power to amend.- (1) The President on advice of the Federal Government may, by notified Order, amend the provisions of this Order:

Provided that no amendment shall be made or take effect unless it has been placed before the Supreme Court under application moved by the Federal Government, which shall be treated as a petition under clause (3) of Article 184 of the Constitution, and the Supreme Court has not disapproved of the amendment.

(2) For the purposes of this Article, any Order proposing or seeking to repeal or replace this Order shall be deemed to be a measure to amend it.

125. 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.

126. 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.

127. Repeal and saving.- (1) The Government of Gilgit-Baltistan Order, 2018, hereinafter in this Article referred to as "the Repealed Order" together with the Orders amending it, is hereby repealed.

(2) Any rules made under the Repealed Order is so far as they are not inconsistent with the provisions of this Order shall continue to be in force unless altered amended or repealed by the competent authority.

128. 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 41(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 44(5)]

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 46(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 63(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 57(1)]

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 54(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 82(6)]**

I, having been appointed Chief Judge/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 92(7)]**

I, having been appointed Chief Judge/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 54(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 107(2)]

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 106(2)]

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 Chief Election Commissioner

Place

Date

Signature of Chief Judge of Supreme Appellate Court
Gilgit-Baltistan

SECOND SCHEDULE

[See Article 58(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 68 (2) (a)]

1. Nationality, citizenship and naturalization.
2. Migration from or into, or settlement in Gilgit-Baltistan.
3. Admission into, and emigration and expulsion from Gilgit-Baltistan, including in relation thereto the regulation of the movements in Gilgit-Baltistan of persons not domiciled in Gilgit-Baltistan; pilgrimages to places beyond Pakistan.
4. Post and telegraphs, including telephones, wireless, broadcasting and other like forms of communications; Post Office Saving Bank.
5. Foreign Exchange; cheques, bills of exchange, promissory notes and foreign aid.
6. Public debt, including the borrowing of money on the security of the Gilgit-Baltistan Council Consolidated Fund.
7. Public debt of the Federation, including the borrowings of money on the security of the Federal Consolidated Fund; foreign loan and foreign aid.
8. Council public services.
9. Pensions, that is to say, pensions payable by the Council out of the Council Consolidated Fund.
10. Ombudsman.
11. Administrative courts for the subjects in legislative list.
12. Libraries, museums, and similar institutions controlled by the Council.
13. Federal 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.
14. Education as respects students of Gilgit-Baltistan in foreign countries and foreign students in Gilgit-Baltistan.
15. 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.
 - (d) boilers

16. Ports quarantine, seamen's and marine hospitals and hospitals concerned with port quarantine.
17. Maritime shipping and navigation, including shipping and navigation on tidal waters, Admiralty jurisdiction.
18. Aircraft and air navigation; the provision of aerodromes; regulations and organization of air traffic and of aerodrome.
19. Light Houses, including lightships, beacons and other provisions for safety of aircraft.
20. Carriage of passengers and goods by sea or by air.
21. Copyright, inventions, designs, trademarks and merchandise marks.
22. Opium so far as regards sale for export.
23. Import and exports across customs frontiers as defined by the Federal Government, inter-provincial trade and commerce with foreign countries; standards of goods to be exported out of Pakistan.
24. State Bank of Pakistan; banking, that is to say, the co-ordination with the Government of Pakistan of the conduct of banking business by corporations other than corporations owned or controlled by Gilgit-Baltistan and carrying out business only within Gilgit-Baltistan.
25. The law for insurance, except as respects insurance undertaken by Government of Gilgit-Baltistan, and the regulation of the conduct of insurance business, except as respect to business under taken by Government of Gilgit-Baltistan, Government insurance, except so far as undertaken by the Government of Gilgit-Baltistan by virtue of any matter within the legislative competence of the Assembly.
26. Stock-exchange and future markets with object and business not confined to the areas comprising Gilgit-Baltistan.
27. 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, cooperative societies, and of corporations, whether trading or not, with object not confined to the Gilgit-Baltistan, but not including universities.
28. International treaties conventions and agreements and international arbitration
29. National Highways, strategic roads, and highways continuing beyond the territory of the Gilgit-Baltistan.

30. Federal surveys including geological surveys and Federal meteorological organizations.
31. Fishing and fisheries beyond territorial waters
32. Works, lands and buildings vested in, or in the possession of the Government or Federal Government, for the purpose of the Federation (not being Military, Naval or Air Force works), but as regards property situate in the Gilgit-Baltistan, subject always to law made by the Assembly, save in so far as Federal law otherwise provides.
33. Census.
34. Establishment of standards of weights and measures.
35. 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.
36. Duties of Customs, including export duties.
37. Duties of excise, including duties on salt but not including duties on alcoholic liquors, opium and other narcotics.
38. Railways.
39. Mineral oil natural gas; liquids substances declared by Federal law to be dangerously inflammable.
40. 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 of this Order
41. Electricity and bulk water storage.
42. Major ports, that is to say the declaration and delimitation of such ports, and the constitution and powers of port authorities therein
43. All regulatory authorities established under Federal laws.
44. Supervision and management of public debt.
45. Legal, medical and other professions.
46. Standards in institutions for higher education and research, scientific and technical institutions.

47. Terminal taxes on goods or passengers carried by railway or air, taxes on their fares and freights.
48. Fees in respect of any of the matter enumerated in this list.
49. Fees in respect of any of the matters enumerated in this list, but not including fees taken in any court.
50. National Planning and national economic coordination including planning and coordination of scientific and technological research.
51. Inter-provincial matters and co-ordination
52. Jurisdiction and powers of all courts with respect to any of the matters enumerated in this list.
53. Offences against laws with respect to any of the matters enumerated in this list.
54. Inquiries and statistics for the purpose of any of the matters enumerated in this list.
55. Matters which under the law are within the legislative competence of the Council or relates to the Chairman of the Council.
56. Taxes on income other than agricultural income.
57. Taxes on corporations.
58. Taxes on the sale and purchases of goods and services imported, exported, produced, manufactured or consumed.
59. Taxes on the capital value of the assets, not including taxes on capital gains on immovable property.
60. 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 56 and 57 or in lieu of either or both of them.
61. Election to the Council
62. The salaries, allowances and privileges of the Members of the Council and Advisors.
63. Matter incidental or ancillary to any of the matters enumerated in this list.

FOURTH SCHEDULE

SERVICES

[See Article 93(3)]

**POSITION OR VACANCY SHARING FORMULA BETWEEN THE
GOVERNMENT OF PAKISTAN AND THE GOVERNMENT OF GILGIT-
BALTISTAN.**

Government of Gilgit-Baltistan	PAS /PSP/APS	BS-17	BS-18	BS-19	BS-20	BS-21
		25%	40%	50%	60%	65%

N.B-Percentage showing the share earmarked for PAS/PSP/APS, out of total number of vacancies in Gilgit-Baltistan (on the pattern of Federal Government and Provinces of Pakistan).

F.No. 13 (2)/2018-Admn (GBC)

**(Hamid Mahmood Rana)
Deputy Secretary**

APPENDIX

A. In the proposed Article 82:

(i) In clause (5), for sub-clause (a), substitute the following:

(a) has been, or is qualified to be, a judge of the Supreme Court of Pakistan; or

(ii) In clause (7), replace the full stop with a colon, and add the following proviso at the end:

Provided that if the Chief Judge or a Judge is a person who has been a Judge of the Supreme Court of Pakistan, he/she shall hold office until he/she attains the age of 70 years, or unless he/she sooner resigns or is removed from office in accordance with law.

B. For the proposed Article 103, substitute the following:

103. Supreme Court of Pakistan.-

(1) The Supreme Court of Pakistan shall, to the exclusion of every other court including the Supreme Appellate Court and the Chief Court, have original jurisdiction in respect of:

(i) any dispute between the Government, the Federation or the Government of a Province of Pakistan;

(ii) any challenge to, or dispute raising any issue regarding, the *vires* or validity of this Order or any amendment hereto or modification herein, including an Order repealing, replacing or substituting this Order, and clause (2) of Article 126 hereof shall apply accordingly.

(2) Any aggrieved person may, subject to clause (3), appeal to the Supreme Court of Pakistan against any judgment, order or decree of the Supreme Appellate Court or the Chief Court made in any proceedings where the subject matter of the dispute or the matter in issue is not exclusively in relation to or under this Order or any law made hereunder or Gilgit-Baltistan.

(3) An appeal under clause (2) shall lie only if the Supreme Court of Pakistan grants leave to appeal.

(4) A decision of the Supreme Court of Pakistan, whether made under any of the foregoing clauses or otherwise, shall be as binding on all courts established by or under

this Order as it is in terms of Article 189 of the Constitution on all courts in Pakistan, and Article 86 and Article 96 hereof shall apply accordingly.

C. For the proposed Article 124, substitute the following:

124. Power to amend.- (1) The President on advice of the Federal Government may, by notified Order, amend the provisions of this Order:

Provided that no amendment shall be made or take effect unless it has been placed before the Supreme Court of Pakistan under application moved by the Federal Government, which shall be treated as a petition under clause (3) of Article 184 of the Constitution, and the Supreme Court has not disapproved of the amendment.

(2) For purposes of this Article, any Order proposing or seeking to repeal or replace this Order shall be deemed to be a measure to amend it.



17th January 2019

PRESS SUMMARY

CIVIL AVIATION AUTHORITY VS. SUPREME APPELLATE COURT GILGIT BALTISTAN, ETC. (CONSTITUTION PETITION NO.50/2018, ETC.)

JUSTICES

Chief Justice Mian Saqib Nisar, Justice Sh. Azmat Saeed, Justice Umar Ata Bandial, Justice Faisal Arab, Justice Ijaz Ul Ahsan, Justice Sajjad Ali Shah and Justice Munib Akhtar

BACKGROUND

The instant matters pertain to an important historical and constitutional issue involving the status, authority and powers for Gilgit-Baltistan, including the judiciary and the rights available to its people. The following issues were presented in the various petitions and considered by the Court:-

- i. Would granting fundamental rights and a status, role and recognition of Gilgit-Baltistan in the constitutional scheme of Pakistan prejudice Pakistan's cause for the resolution of the Kashmir dispute by such appropriate means as may be acceptable to Pakistan (which could, for example, be a United Nations sanctioned and supervised plebiscite)?
- ii. What rights can be granted to the people of Gilgit-Baltistan?
- iii. Is the Gilgit-Baltistan Supreme Appellate Court a constitutional court?

JUDGMENT

The Supreme Court disposes of the matters according to the details contained in the judgment, save those petitions in which a specific order or judgment, of either the Gilgit-Baltistan Supreme Appellate Court or the Chief Court, has been challenged. Such petitions shall be deemed pending and be treated and disposed of as the leave petitions envisaged under Article 103 of the Proposed Order (as described in the judgment), when promulgated.

REASONS FOR JUDGMENT

Nothing this Court recommends or orders should affect the nature and status of the Kashmir issue. It must be emphasized that all the measures and directions taken and given must be predicated by the caveat that these are subject to the result of the plebiscite, which is duly recognized in Article 257 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"). As a responsible member of the comity of nations Pakistan remains aware of its obligations in such terms. As and when the promised plebiscite is organized by the parties to the dispute, it will be up to the people of all of Jammu and Kashmir, and of Gilgit-Baltistan, to make their choice. Till then, it is surely incumbent upon both India as well as Pakistan to ensure that the people of this region enjoy maximum rights for areas within each country's control. Therefore, till such time that the plebiscite is held, a proper arrangement must be provided for by Pakistan for the people of Gilgit-Baltistan for purposes of governance within a framework of a

constitutional nature, including most importantly the enjoyment of fundamental rights. (See paragraph 20 of the judgment)

In 1999, this Court in the case of *Al-Jehad Trust* (1999 SCMR 1379) directed the Pakistan Government to extend fundamental freedoms to the Northern Areas (now referred to as Gilgit-Baltistan) within six months. The judgment declared that Pakistan exercised both de facto and de jure administrative control over the Northern Areas. This Court ruled in the *Al-Jehad Trust* case that the people of the region were “*citizens of Pakistan for all intents and purposes...and could invoke constitutionally guaranteed fundamental rights.*” It also emphasized that the people of the Northern Areas were “*entitled to participate in the governance of their area and to have an independent judiciary to enforce...Fundamental Rights.*” (See paragraph 16 of the judgment)

In the judgment, the Court has considered what would be the position (i.e., status, powers and jurisdiction) of the judicial, legislative and executive organs established by an instrument of the nature of the Gilgit Baltistan Order, 2018. In accordance with well-established principles of law, the Gilgit-Baltistan legislature would only have such powers as are conferred upon it by the Federation through the Proposed Order. The courts created by such Order shall have the power to judicially review the laws enacted by such legislature. Of course, the organs created by the Proposed Order (or any previous or subsequent such Order), and especially any legislative body, would be bound not merely by the Order, but also by the Constitution. The jurisdiction of a Gilgit-Baltistan court established by or under the Proposed Order is confined to the territory of Gilgit-Baltistan. Therefore, it is concluded that the intention was, and is, to give the Gilgit-Baltistan Supreme Appellate Court and the Chief Court the status of a “constitutional” court within the ambit of Gilgit-Baltistan and the Proposed Order. The Gilgit-Baltistan Courts do not, and will not, sit as courts having the power of judicial review in respect of the territory of Pakistan, nor can they declare Orders made or legislation passed by the President or the Parliament as ultra vires, nor can they initiate judicial review of departments working outside of Gilgit-Baltistan. Instead, the Proposed Order (or any previous or subsequent such Order) can be challenged by, inter alia, the people of Gilgit-Baltistan, but only before this Court, either under Article 184 of the Constitution or in the manner herein after provided. (See paragraphs 24 and 25 of the judgment)

DIRECTIONS

Accordingly, by the judgment, this Court directs and orders as follows:-

- i. The Proposed Order (modified in the manner as noted in the judgment), and annexed to the judgment, shall be forthwith promulgated by the President on the advice of the Federal Government, and in any case within a fortnight hereof;
- ii. No amendment shall be made to the Order as so promulgated except in terms of the procedure provided in Article 124 of the same, nor shall it be repealed or substituted, without the instrument amending, repealing or substituting (as the case may be) the same being placed before this Court by the Federation through an application that will be treated as a petition under Article 184(3) of the Constitution. Nothing in the judgment shall be construed to limit the jurisdiction conferred on this Court by the Proposed Order itself; and
- iii. If the Order so promulgated is repealed or substituted by an Act of Parliament the validity thereof, if challenged, shall be examined on the touchstone of the Constitution.

(See paragraph 29 of the judgment)

NOTE:

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. The judgment is a public document and available at <http://www.supremecourt.gov.pk>.