

ESTABLISHMENT OF COURTS OF QAZIS IN THE COUNTRY

The President of Pakistan was, vide his letter No.57/2/CMLA, dated the 17th September, 1981, pleased to desire the Pakistan Law Commission to examine the draft of "The Establishment of Courts of Qazis Ordinance, 1981", as prepared by the Federal Government for remodelling it on the right lines or to propose alternatives in accordance with the Sharia. It was also desired that recommendations of the Commission should be submitted to the President as early as possible but preferably by the 20th of October, 1981.

2. The Commission held its special session for this purpose in Rawalpindi on the 4th, 5th, 6th and the 7th October, 1981, and then on the 17th and 18th October, 1981, during which period the entire matter was considered in detail and the draft Ordinance examined section by section and clause by clause. The Commission's report in this respect is as follows:-

I- INTRODUCTION

Since the creation of Pakistan in 1947 successive Governments have been facing the problem of long delays in the disposal of judicial cases and mounting arrears in the Courts of the Country at all levels. The two Law Reform Commissions and a number of ad hoc Law Reform Committees, appointed in the past, suggested reforms in our laws from time to time, but their recommendations have not been implemented for one reason or the other. The present Government, in the circumstances, considered it necessary to devise a system of administration of justice "which should carry justice to the door steps of the people and was not only more suited to the genius of our Society but was also quicker, more effective and less expensive". Keeping this object in view, the Government drafted the Ordinance under consideration to be

known as "Establishment of Courts of Qazis Ordinance, 1981". It contains provisions both with regard to civil as well as the criminal sides of the Court's proceedings. It also includes rules of administrative nature relating to qualifications, appointments, promotions, etc., of the Ilaqa and the Zila Qazis.

While going through the draft Ordinance under consideration it is not difficult to find that the powers and functions made available to the Ilaqa Qazis and the Zila Qazis are, more or less, the same as at present exercised by the civil and criminal Courts in the Districts under the two Codes, viz the Code of the Civil Procedure and the Criminal Procedure Code.

The Commission while examining the draft Ordinance and formulating its recommendations has kept in view the object of this Ordinance, i.e., its provisions should lead to quicker, more effective and inexpensive administration of justice. The Commission has, therefore, curtailed, wherever possible and without affecting adversely the interests of the parties, the statutory period of limitation allowed in respect of various steps to be taken in connection with the proceedings in the Courts of Qazis. As for instance:-

- (1) It has been recommended that the suits should be disposed of by the Ilaqa Qazis within a period of three months and similarly the appellate Courts of Zila Qazi should dispose of the appeal within the same period whose order shall be final. Again the period for filing applications for restoration of suits in case of an ex parte decree or dismissal in default, and their disposal by the Courts, each, has been cut down to 30 days.
- (2) In the matter of appeals against acquittal, the period of limitation for filing such appeals has been reduced from the statutory period of six months to two months.

- (3) All suits relating to family disputes and involving money claims upto Rs. 25,000/- or with regard to immovable property of a value not exceeding Rs. 25,000/-, disputes under Canal and Drainage Act etc., are recommended to be tried and disposed of in a summary manner in accordance with the self contained procedure laid down in Chapter VI, Part A, of this Ordinance and the provisions with regard to Revisions and Review applications have not been made applicable to those suits. Provisions with regard to second appeals have been eliminated altogether except in a criminal case in which a Zila Qazi, on appeal, sets aside an order of acquittal passed by an Ilaqa Qazi.
- (4) The various periods of limitation in respect of a number of steps laid down in the Code of Civil Procedure as well as in the proposed Ordinance have been reduced to a minimum.
- (5) The period of fifteen days proposed for reconciliation proceedings in the draft Ordinance has been reduced to seven days.
- (6) Provisions with regard to settlement of disputes on the basis of reconciliation, mediation and assertion or denial by the parties of their claims or defence on oath have also been included in order to expedite their disposal.
- (7) The Commission has recommended that the trial Court shall exercise the powers of an executing Court and shall take steps for execution of the decree even on an oral request of the decree holder or his successor-in-interest.

The Commission considers it necessary to state that long delays in the disposal of judicial cases and accumulation of arrears in the law Courts of the Country at all levels has been,

by and large, due to shortage of judicial manpower, having regard to manifold increase in litigation due to a number of factors. Since according to the provisions of this Ordinance, the present load of pending cases will be transferred to the new Courts of Qazis, the Commission recommends that for getting effective results it would be advisable to recruit sufficient number of Ilaqa Qazis and Zila Qazis in order to dispose of the back log of cases and to deal with those matters which may be filed on or after the promulgation of this Ordinance.

II. OBSERVATIONS OF THE COMMISSION IN RESPECT OF INDIVIDUAL PROVISIONS OF THE ORDINANCE

1. PREAMBLE

In the first paragraph of the preamble it has been stated that "it is expedient in the public interest, to provide for speedy and inexpensive dispensation of justice in accordance with the principles of Islam...." In the opinion of the Commission the words `principles of Islam' are not very clear in conveying the object of promulgation of the Ordinance under consideration. Moreover, the word `principles' does not, in its ordinary parlance, include any element of compulsory obedience thereto. The Commission is, therefore, of the view that the words, `principles of Islam' should be substituted by the words "injunctions of Islam, as laid down in the Holy Quran and Sunnah". It is also imperative that the relevant Constitutional provisions viz, Article 227 of the Constitution read with the Provisional Constitution Order, 1981, should also be referred to in this connection. The first paragraph of the preamble should, consequently, read as follows:-

"Whereas it is expedient in the public interest to provide for speedy and inexpensive dispensation of justice, in accordance with the Injunctions of Islam as laid down in the Holy Quran and Sunnah and in accordance with the provisions of Article 227 of the Constitution read with the Provisional Constitution Order, 1981, and for matters connected therewith or ancillary thereto;"

2. SECTION 2 - DEFINITION

According to Section 2(1)(b), the term "Ilaqa" means the area of a Police Station. The proposed meaning of this term may some times create complications as usually the areas of Police Stations are neither equal nor uniform. Some times a Police Station covers a very vast

area while, in a small but thickly populated area there may be more than one Police Stations. In certain areas of Baluchistan there are no Police Stations. In order to avoid any possible confusion and complication the Commission suggests that the following words, namely:-

"Or such other areas as may be prescribed by the Provincial Government"

may be added to clause (b) in the end. The said clause shall accordingly read as follows:-

"Ilaqa means the area of a Police Station or such other areas as may be prescribed by the Provincial Government;"

3. In view of the recommendations of the Commission regarding deletion of administrative rules as contained in sections 6 to 13 of this Ordinance, clauses (e) and (g) of Section 2(1) relating to recognised religious institutions and Selection Board, respectively, become superfluous and should be deleted. Plain definitions of terms Alim, Plaintiff and Defendant have also been added to this Section as clauses.

4. SECTION 3

Section 3, as at present worded, refers to the overriding nature of this Ordinance only and not to the rules made thereunder. Similarly the words "anything contained in any other law" do not very clearly convey the real intention behind this Section. The Commission, therefore, proposes to amend this Section accordingly which should read as follows:-

"(3) The provisions of this Ordinance, and any rules made thereunder, shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force".

5. SECTION 5

In Section 5(2) the word "Courts" occurring in the end seems to be a misprint. In its place we should use the word "Zilas" because the jurisdiction exercisable by Izafi Zila Qazis shall be in relation to the prescribed area or areas and not to the Courts.

6. SECTIONS 6 TO 13

These Sections contain detailed provisions with regard to qualifications, selection, appointments, promotions etc., of the Ilaqa and Zila Qazis. Since the Qazis would, like the existing District and Sessions Judges, Civil Judges and Magistrates, be Civil Servants, all the relevant service laws should be made applicable to them and it would neither be proper nor expedient to include a few provisions in this respect in the Ordinance itself which should, being judicial in nature, remain confined exclusively to the procedure of the Courts of Qazis both in respect of civil as well as criminal matters. Consequently, the Commission recommends that the existing Section 6 should be substituted by the following new Section 6, namely:-

"6. The Zila Qazis and Ilaqa Qazis shall, like the existing District and Sessions Judges, Civil Judges and Magistrates, be Civil Servants and each Provincial Government may, by notification in the Official Gazette, make rules with regard to qualifications, selection, appointment and other terms of service of the Zila and Ilaqa Qazis".

The Commission would like to suggest here that the appointment of Ilaqa Qazis and Zila Qazis should be made on the basis of recommendations of the Public Service Commission of each Province. The Provincial Governments may, however, make ad hoc appointments until the final selections are made by the Public Service Commissions concerned. However, while making ad hoc appointments the Provincial Governments should constitute Selection Committees in which a Member of the Council of Islamic Ideology or a Member of the Federal

Shariat Court and a Judge of the High Court concerned should be included. The Public Service Commission also while selecting Ilaqa and Zila Qazis should include a Member of the Council of Islamic Ideology or Federal Shariat Court and one Judge of the High Court of the Province as its members.

7. SECTION 7

In Section 7(2), the word `Courts' occurring in the end should be substituted by the word "Ilaqa", as Izafi Ilaqa Qazis will be required to exercise jurisdiction and hold their Courts in particular Ilaqas and not in particular Courts. This is further elucidated by the provisions of the succeeding sub-Section (3) of Section 7.

8. Sections 8 to 13

Sections 8 to 13 shall, consequently be deleted from the Ordinance.

9. SECTION 15

According to Section 15(2), an Ilaqa Qazi of the First Class may pass a sentence of imprisonment for a term not exceeding three years; a fine not exceeding Rs.25,000/- and whipping not exceeding 40 stripes; whereas the Second Class Ilaqa Qazi may impose a sentence of imprisonment for a term upto one year, fine upto Rs.5,000/- and whipping upto 30 stripes. The Commission is of the view that the powers of the two Qazis are not, inter se, uniformly proportionate, e.g., the power of awarding sentence of imprisonment exercisable by a Second Class Ilaqa Qazi is 1/3rd of that available to the Ilaqa Qazi of the First Class; in the matter of fine it is 1/5th but as regards whipping it is 3/4th. The Commission, therefore, recommends that an Ilaqa Qazi of the Second Class should be empowered to award a sentence of whipping not exceeding 15 stripes.

10. SECTION 16

Section 16 prescribes the Civil Jurisdiction exercisable by the Courts of Ilaqa Qazis according to which an Ilaqa Qazi of the First Class can try civil suits without any pecuniary limit, whereas Ilaqa Qazi of the Second Class can try suits upto the value of Rs.50,000/-. Since this Sub-Section is silent about the existing civil jurisdiction of the High Courts, in order to avoid any misunderstanding in the mind of litigant public as well as the lower Courts that the Original Civil Jurisdiction of the High Courts has, after the promulgation of this Ordinance, ceased to exist, it is proposed to add the following proviso to Sub-Section (1),namely:-

"Provided that the Original Civil Jurisdiction of the High Courts shall remain unaffected."

11. Sub-Section(3) of Section 16 states that Civil Powers, functions and duties of a Civil Judge or a Civil Court shall be exercised, performed and discharged by an Ilaqa Qazi and any reference to a Civil Judge or a Civil Court in law, rule, regulation, notification or order shall be deemed to be a reference to an Ilaqa Qazi. In this Sub-Section functions, powers and duties have not been properly explained with reference to the subject matter to which they relate. Again the words "or a Civil Court" have been used after the words "a Civil Judge" in this Sub-Section at two places. "Civil Court" is definitely a wider term and includes other courts also, not necessarily those of Civil Judges, e.g., Rent Controllers, Settlement Commissioners, Banking Tribunals, Labour Courts etc. etc., which are all of a civil nature. Since from Section 4 of the Ordinance, the intention appears to be to entrust the Qazis with the judicial work at present attended to by the Civil Judges as mentioned in Sub-Section (2) of this Section, the Commission suggests that the words, "or a Civil Court" occurring in this Sub-Section at two places should be deleted and the words "in relation to suits and proceedings mentioned in Sub-Section (2) above", may be inserted in the first line of this Sub-Section between the words "duties" and "conferred".

Sub-Section (3) shall, consequently, read as follows:-

"(3) The civil powers, functions and duties, in relation to suits and proceedings mentioned in Sub-Section (2) above, conferred or imposed on a Civil Judge under any law for the time being in force, shall be exercised, performed or discharged by an Ilaqa Qazi and any reference to a Civil Judge in any law, rule, regulation, notification or order, shall be deemed to be a reference to an Ilaqa Qazi".

12. SECTION 18

Sub-Section(1) of Section 18 contains powers to transfer and withdraw cases to and from the Courts of Izafi Zila Qazis and Ilaqa Qazis in a District by the Zila Qazi; but it is silent about the powers of the High Court in that regard. This Section might, therefore, give an impression that after the promulgation of this Ordinance the High Court shall cease exercising those powers in respect of the proceedings under this Ordinance. These powers have necessarily to be exercised by the High Court, particularly, when a case is to be transferred from one District to another or for some unexceptionable reasons from the Court of the Zila Qazi to the High Court. In order to clarify this position the Commission suggests that the word "Zila Qazi" occurring in the main part of this Sub-Section should be substituted by the words, "High Court or the Zila Qazi, as the case may be". The words "or of his own motion" may be substituted by the words "suo moto". The main part of this Sub-Section shall, therefore, read as follows:-

"18(1). On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or suo moto without such notice, the High Court or the Zila Qazi, as the case may be, may at any stage:-....."

**CHAPTER IV
SUPERINTENDENCE AND INSPECTION
OF COURTS OF QAZIS**

13. SECTION 21

According to this Section every Provincial Government shall, in consultation with the High Court, appoint one or more Inspecting Qazis, who shall inspect the Court of Qazis and submit their reports to the High Court and the Provincial Government for such action as may be deemed necessary. This position is not correct. The Inspection teams for lower Courts are appointed by the High Courts and the members of the teams submit their reports to the High Courts only. Again section 20 of this Ordinance relating to superintendence and control of Courts of Qazis provides that all Ilaqa Qazis and Zila Qazis in a Province shall be subordinate to the High Court of that Province which provision is very clear and unambiguous. The Commission, therefore, suggests that in order to keep the functions of the judiciary and the executive apart, in Sub-section(1) of Section 21, the words "Provincial Government shall in consultation with the High Court" be substituted with the words "High Court shall". Similarly in Sub-Section(2) the words "and the Provincial Government" may be deleted. Section 21, after this amendment, shall read as follows:-

"21(1). Every High Court shall appoint one or more Inspecting Qazis."

14. "(2). The Inspecting Qazis shall inspect the Courts of Zila Qazis and Ilaqa Qazis and submit their reports to the High Court for such action as may be deemed necessary".

CHAPTER V MOAVENEEN-I-QAZI

15. SECTIONS 22 AND 23

The provisions contained in these two sections are nothing but a revival of the institution of `Assessors' who, in the past, used to assist the Sessions Judges in the trial of murder cases. Since the presence of assessors was rightly considered to be responsible for delay in the disposal of murder cases, besides making their trial more cumbersome, this institution was abolished. Now if the same procedure is reintroduced naming the `assessors' as `Moaveneen' to be associated not only with the Zila Qazis but with the Ilaqa Qazis also in certain specified cases, the disposal of judicial work is bound to be delayed, besides the trial of cases becoming more involved and open to extra judicial considerations. The Commission, therefore, recommends that these two sections relating to Moaveneen-i-Qazi may be deleted altogether from the Ordinance.

CHAPTER VI PROCEDURE IN CRIMINAL CASES

16. SECTION 24

According to Section 24 an Ilaqa Qazi shall take cognizance of an offence on receipt of a report in writing from a Police Officer or a complaint in writing by a person. It does not contain any provision with regard to taking cognizance of an offence by the Qazi upon information received from any person other than a Police Officer or of his own knowledge. Again a Zila Qazi, not being the Court of the first instance, should not be burdened with cognizance of offences which are exclusively triable by the Ilaqa Qazis. A Zila Qazi should take cognizance of an offence only when a case has been referred to him by an Ilaqa Qazi. The Commission, therefore, suggests:-

- (a) that the existing Section 24 may be treated as Section 24(1);
- (b) the words, "A Zila Qazi or" in the first line of Section 24(1) be deleted, and
- (c) the following new sub-clause (c) may be added to this Sub-Section preceded by the word `or':-

"(c) an information from any person other than a police officer or of his own knowledge, that such an offence has been committed."

III. REVISED DRAFT ORDINANCE

AN ORDINANCE

to provide for speedy and inexpensive dispensation of justice

WHEREAS it is expedient, in the public interest, to provide for speedy and inexpensive dispensation of justice in conformity with the Injunctions of Islam, as laid down in the Holy Quran and Sunnah, and in accordance with the provisions of Article 227 of the Constitution read with the Provisional Constitution Order, 1981, (C.M.L.A. Order No.1 of 1981), and for matters connected therewith or ancillary thereto;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by Article 89 of the Constitution, read with Article 2 of the Provisional Constitution Order, 1981 (C.M.L.A. Order No.1 of 1981), the President is pleased to make and promulgate the following Ordinance:-

CHAPTER I. PRELIMINARY

1. Short title, extent and commencement.- (1) This Ordinance may be called the Establishment of Courts of Qazis Ordinance, 1981.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint in this behalf.

2. Definitions. (1) In this Ordinance, unless there is any thing repugnant in the subject or context,-

- (a) "Aalim" means a person registered as such by a Body set up by the Federal or a Provincial Government for this purpose;
- (b) "Courts of Qazis" means Courts of Zila Qazis and Ilaqa Qazis;
- (c) "Ilaqa" means the area of a police-station or such other areas as may be prescribed by the Provincial Government;
- (d) "Ilaqa Qazi" includes Izafi Ilaqa Qazi;
- (e) The terms "Plaintiff" and "Defendant" in Chapter VI, Part A, include a juristic person such as a firm, a body corporate and the Federal and Provincial Governments;
- (f) "prescribed" means prescribed by rules;
- (g) "rules" means rules made under this Ordinance;
- (h) "Zila" means a revenue district; and
- (i) "Zila Qazi" includes Izafi Zila Qazi.

(2) In the application of this Ordinance to the Islamabad Capital Territory--

- (a) any reference to Province or Zila shall be read as a reference to the said Territory; and
- (b) any reference to Governor shall be read as a reference to the President.

3. Ordinance and Rules override other Laws.-

The provisions of this Ordinance, and any rules made thereunder, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

CHAPTER II COURTS OF QAZIS

4. Classes of Courts. -- Besides the Courts and Tribunals constituted by or under any other law for the time being in force, there shall be the following classes of Courts of Qazis, namely:-

- (a) Zila Qazis; and
- (b) Ilaqa Qazis

5. Zila Qazis.-- (1) The Provincial Government shall establish a Court of Zila Qazi for each Zila and appoint as many Zila Qazis as it thinks fit:

Provided that the same person may be posted as Zila Qazi for more than one Zilas.

(2) The Provincial Government may also appoint Izafi Zila Qazis to exercise jurisdiction in one or more such Zilas.

6. The Zila Qazis and Ilaqa Qazis shall, like the existing District and Sessions Judges, Civil Judges and Magistrates, be civil servants and each Provincial Government may, by notification in the Official Gazette make rules with regard to Qualifications, selection, appointments and other terms of service of the Zila and Ilaqa Qazis.

7. Ilaqa Qazis.-- The Provincial Government shall establish a Court of Ilaqa Qazi for each Ilaqa.

(2) The Provincial Government may appoint Izafi Ilaqa Qazis to exercise jurisdiction in one or more such Ilaqas, and

(3) The Provincial Government may post one or more Ilaqa Qazis in an Ilaqa and where more than one Ilaqa Qazis are appointed in an Ilaqa, the Provincial Government shall determine the area within which, or the class of cases in which, each Ilaqa Qazi shall exercise jurisdiction.

CHAPTER III. JURISDICTION OF COURTS OF QAZIS

(14) 8. Classification of Ilaqa Qazis.-- There shall be the following classes of Ilaqa Qazis, namely:-

- (a) Ilaqa Qazis of the first class; and
- (b) Ilaqa qazis of the second class.

(15) 9. Sentence which the Courts of Qazis may pass.-- (1) A Zila Qazi may pass any sentence authorised by law; but any sentence of death passed by a Zila Qazi shall be subject to confirmation by the High Court.

(2) The Courts of Ilaqa Qazis may pass the following sentences, namely:-

- (a) Ilaqa Qazi of the first class. Imprisonment for a term not exceeding three years, including such solitary confinement as is authorised by

law:

Fine not exceeding twenty-five thousand rupees; and

Whipping not exceeding forty stripes.

(b) Ilaqa Qazi of the second class. Imprisonment for a term not exceeding one year, including such solitary confinement as is authorised by Law: Fine not exceeding five thousand rupees; and Whipping not exceeding fifteen stripes.

(3) The Provincial Government may invest any Ilaqa Qazi of the first class with powers to try all offences not punishable with death; and any Ilaqa Qazi so empowered may pass any sentence authorised by law, except a sentence of death or imprisonment for a term exceeding seven years.

(16) 10. Civil and criminal jurisdiction of Ilaqa Qazis.- (1) The Ilaqa Qazis shall, in the exercise of their civil jurisdiction, try suits of the following pecuniary value, namely:-

(a) Ilaqa Qazi of the first class...	Without limit
(b) Ilaqa Qazi of the Second class...	Up to the value of fifty thousand rupees.

Provided that the original civil jurisdiction of the High Court shall remain unaffected.

(2) Subject to the pecuniary limits laid down in sub-section (1), all suits and proceedings of a civil nature including succession, dissolution of marriage, dower, divorce, maintenance, restitution of conjugal rights, jactitation of marriage, minority, custody of children, guardianship, wills, gifts, waqf, possession of immovable property, mortgage, foreclosure, redemption, determination of any other right to, or interest in, immovable property, damages, compensation for wrong to immovable property, recovery of movable property actually under distraint or attachment or suits under the Canal and Drainage Act, 1873 (VIII of 1873), and any other class of cases which the Provincial Government may, by notification in the official Gazette, specify, shall be instituted in and tried by the Court of Ilaqa Qazi having territorial jurisdiction:

Provided that every suit shall be instituted in the Court of Ilaqa Qazi of the lowest class competent to try it.

(3) The civil powers, functions and duties, in relation to suits and proceedings mentioned in sub-section (2) above, conferred or imposed on a Civil Judge, under any law for the time being in force shall be exercised, performed or discharged by an Ilaqa Qazi; and any reference to a Civil Judge in any law, rule, regulation, notification or order shall be deemed to be a reference to an Ilaqa Qazi.

(4) The criminal powers, functions and duties conferred or imposed on a Magistrate under the Code of Criminal Procedure, 1898, (Act V of 1898), or any other law for the time being in force shall be exercised, performed or discharged by an Ilaqa Qazi; and any reference to a Magistrate in any law, rule, regulation, notification or order shall be deemed to be a reference to an Ilaqa Qazi.

(17) 11. Civil and criminal jurisdiction of Zila Qazis.--(1) The civil powers, functions and duties conferred or imposed on a District Judge or an Additional District Judge under any law for the time being in force shall be exercised, performed or discharged by a Zila Qazi or an Izafi Zila Qazi, respectively; and any reference to a District Judge or an Additional District Judge in any law, rule, regulation, notification or order shall be deemed to be a reference to a Zila Qazi or an Izafi Zila Qazi, respectively.

(2) A suit of a civil nature triable under any law for the time being in force by a District Court shall be tried by the Court of a Zila Qazi; and any reference to a District Court in any law, rule, regulation, notification or order shall be deemed to be a reference to the Court of Zila Qazi.

(3) The criminal powers, functions and duties conferred or imposed on a Sessions Judge or an Additional Sessions Judge under the Code of Criminal Procedure, 1898, (Act V of 1898), or any other law for the time being in force, shall be exercised, performed or discharged by a Zila Qazi or an Izafi Zila Qazi, respectively; and any reference to a Sessions Judge or an Additional Sessions Judge in any law, rule, regulation, notification or order shall be deemed to be a reference to a Zila Qazi or an Izafi Zila Qazi, respectively.

(4) An offence triable under any law for the time being in force by a Court of Sessions shall be tried by the Court of a Zila Qazi; and reference to a Court of Sessions in any law, rule, regulation, notification or order shall be deemed to be a reference to the Court of Zila Qazi.

(18) 12. Power to transfer and withdraw cases.-- (1) On the application of any of the parties and after notice to the parties, and after hearing such of them as desire to be heard, or suo

moto without such notice, the High Court or the Zila Qazi, as the case may be, may, at any stage,--

- (a) transfer any suit, case, appeal, or other proceeding pending before him for trial or disposal to any Izafi Zila Qazi or Ilaqa Qazi competent to try or dispose of the same; or
- (b) withdraw any suit, case, appeal, or other proceeding pending before any Izafi Zila Qazi or Ilaqa Qazi, and --
 - (i) try or dispose of the same; or
 - (ii) transfer the same for trial or disposal to any Court competent to try or dispose of the same; or
 - (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit, case, appeal or proceeding has been transferred or withdrawn under sub-section (1), the Court which thereafter tries such suit, case or proceeding or hears such appeal shall proceed from the stage at which it was transferred or withdrawn and shall deal with any evidence already recorded or proceeding already taken as if such evidence or proceeding had been recorded or taken by the said Court.

(19) 13. Places of sitting of Courts of Qazis.--The Provincial Government may fix the place or places at which a Zila Qazi and an Ilaqa Qazi shall sit and hold their Courts;

Provided that, unless otherwise directed by the Provincial Government, by general or special order, the place of sitting of a Zila Qazi and an Ilaqa Qazi shall be within the local limits of their jurisdiction.

**CHAPTER IV.
SUPERINTENDENCE AND INSPECTION
OF COURTS OF QAZIS**

(20) 14. Superintendence and control of Courts of Qazis.- All Zila Qazis and Ilaqa Qazis in a Province shall be subordinate to the High Court of that Province, and, subject to the general superintendence and control of the High Court, the Zila Qazi shall have control over, and the power to inspect the Courts of, all Ilaqa Qazis within the local limits of a Zila.

(21) 15. Inspection of Courts of Qazis.- (1) Every High Court shall appoint one or more Inspecting Qazis.

(2) The Inspecting Qazis shall inspect the Courts of Zila Qazis and Ilaqa Qazis and submit their reports to the High Court for such action as may be deemed necessary.

**CHAPTER V.
PROCEDURE IN CRIMINAL CASES**

(24) 16. Cognizance of offences.- (1) An Ilaqa Qazi shall take cognizance of an offence on receiving--

- (a) a report in writing made by the police officer, or
- (b) a complaint in writing by any person, of the facts which constitute such offence,
or
- (c) an information from any person other than a Police Officer, or on his own knowledge, that such an offence has been committed.

(2) A Zila Qazi shall not take cognizance of any offence, as a Court of original jurisdiction, unless a case has been referred to him by an Ilaqa Qazi after taking cognizance thereof under sub-section (1) above.

(25) 17. Investigation and report in cognizable cases.- (1) As soon as may be, after a police officer has recorded the information relating to the commission of cognizable offence under section 154 of the Code of Criminal procedure, 1898, (Act V of 1898), he shall transmit immediately a copy of such information to the Ilaqa Qazi within whose jurisdiction such offence has been committed.

(2) A police officer seized of the investigation shall complete it and submit his report to the Ilaqa Qazi within a period of fifteen days or within such time as the Ilaqa Qazi may, for reasons to be recorded in writing, allow; and

(3)(a) An officer incharge of a Police Station shall produce or cause to be produced before the Court all the witnesses mentioned in the report under Section 173 of the Code of Criminal Procedure on the first date of hearing, who shall then be bound down by the Court for appearance during the trial. It shall also be duty of the Officer Incharge of a Police Station to produce, during the trial, any further evidence required to be produced under Section 45 of the Evidence Act, 1872, and Section 510 of the Criminal Procedure Code, 1898.

(b) Any default on the part of the Station House Officer in this regard shall be treated as willful disobedience of the order of the Court and dealt with under the law accordingly.

(26) 18. Cognizance of complaint cases.- (1) An Ilaqa Qazi taking cognizance of an offence on a complaint shall immediately examine the complainant upon oath and record such other relevant evidence as is produced by the complainant:

Provided that if the complainant is a non-muslim he shall, at the time of examination by the Court, be administered oath according to his own religion or belief:

Provided further that, when a complaint is made in writing by a public servant in the discharge of his official duties, it shall not be necessary for the Zila Qazi or any Ilaqa Qazi to examine the complainant or record his statement.

(2) After considering the statement of the complainant and other relevant evidence as is produced by him, an Ilaqa Qazi, may, if in his opinion there is not sufficient ground for proceeding further, dismiss the complaint.

(3) Where an Ilaqa Qazi, after recording the statement and examining the other relevant evidence as is produced before him, is of the opinion that there is sufficient ground for proceeding further, he shall summon the opposite party for a date fixed for the trial of the case.

(27) 19. Investigation by police in non-cognizable cases.- In a non-cognizable case, the Ilaqa Qazi may proceed with the trial without referring the case to the police for investigation, if in his opinion a prima facie case has been made out.

(28) 20. Trial.- (1) On the date fixed for the trial of a case, the Ilaqa Qazi taking cognizance shall--

(a) direct the production of the accused, if he is in custody; or

(b) issue a process for the appearance of the accused, if he is on bail or has not been arrested, in the Court on the date fixed by the Zila Qazi or Ilaqa Qazi, as the case may be.

(2) When the accused appears or is brought before the Zila Qazi or the Ilaqa Qazi, as the case may be, the substance of the accusation relating to the offence with which he is charged, shall be read over to him and he shall be asked whether he admits having committed the offence with which he is charged.

(3) Where an accused pleads guilty, the Court shall pronounce the judgment forthwith.

(4) Where the accused does not plead guilty, the Zila Qazi or the Ilaqa Qazi, as the case may be, shall record, from day to day, the evidence as may be produced by the prosecution.

(5) After the conclusion of the evidence produced by the prosecution, the Court shall examine the accused for the purpose of enabling him to explain any circumstance appearing in the evidence against him and record evidence in defence, as he may desire to produce.

The accused shall also be required to deny the charges against him on oath, but will not be subjected to any cross examination. If, however, he refuses to take oath a presumption may be drawn against him:

Provided that a non muslim accused shall take oath according to his own religion.

(6) A trial shall commence within 15 days of the submission of the Challan, which shall continue from day to day unless the Court otherwise directs for reasons to be recorded, as provided by Section 344 of Criminal Procedure Code.

(7) After conclusion of the trial, the Court shall pronounce its judgment forthwith, or as soon as possible, in accordance with the provisions of Section 366 of the Code of Criminal Procedure, but in no case later than the expiry of three weeks from the conclusion of the trial.

APPEALS IN CRIMINAL MATTERS

(39) 21. (1) Appeals in criminal matters.- Any person aggrieved by the judgment passed by an Ilaqa Qazi in a criminal case may, within thirty days from the date of such order, prefer an appeal to the Zila Qazi; and the order of the Zila Qazi in appeal shall be final.

(2) A person aggrieved by a final order passed by a Zila Qazi in a criminal case tried by him may, within thirty days from the date of such order, prefer an appeal to the High Court; and the order of the High Court in appeal shall be final:

Provided that nothing in this section shall apply to a case decided by a Zila Qazi under –

- (a) the Offences Against Property (Enforcement of Hadood) Ordinance, 1979, (VI of 1979);
- (b) the Offence of Zina (Enforcement of Hadood) Ordinance, 1979, (VII of 1979);
- (c) the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979, (VIII of 1979);
and
- (d) the Prohibition (Enforcement of Hadd) Order, 1979, (P.O.No.4 of 1979).

(40) 22. Confirmation of death sentence.-- A sentence of death passed by a Zila Qazi shall be subject to confirmation by the High Court:

Provided that nothing in this section shall apply to a case decided by a Zila Qazi under -

- (a) the Offences Against Property (Enforcement of Hadood) Ordinance, 1979, (VI of 1979); and
- (b) the Offences of Zina (Enforcement of Hadood) Ordinance, 1979, (VII of 1979).

23. Appeals against acquittal.--(1) The Provincial Government may, in any case, direct the public prosecutor to file within a period of two months an appeal, in accordance with the provisions of Section 417 of the Code of Criminal Procedure to the Zila Qazi against an order of acquittal passed by an Ilaqa Qazi or to the High Court against a similar order passed by a Zila Qazi in exercise of his original jurisdiction;

(2) The Zila Qazi or the High Court, as the case may be, may grant special leave to a complainant, in a complaint case, to file an appeal against an order of acquittal:

Provided that where, on appeal, the Zila Qazi has reversed an order of acquittal passed by an Ilaqa Qazi, an appeal shall lie to the High Court against the order of the Zila Qazi.

CHAPTER VI PROCEDURE IN CIVIL MATTERS

A. THE PROCEDURE FOR TRIAL OF SMALL CAUSES INCLUDING FAMILY DISPUTES

24. The following matters, including all family disputes, shall be tried in a summary manner:-

- (i) Dissolution of Marriage;
- (ii) Dower be it of any value;
- (iii) Divorce;
- (iv) Maintenance; -do-
- (v) Restitution of Conjugal Rights;
- (vi) Custody of Children;

- (vii) Guardianship;
- (viii) Jactitation of Marriage and declaratory suits relating to matrimonial matters;
- (ix) Disputes involving any amount not exceeding Rs.25,000/-;
- (x) Disputes involving claims with regard to immovable property of a value not exceeding Rs.25,000/-;
- (xi) Disputes under Canal and Drainage Act, 1873.

25. (1) Suits for dissolution of marriage, maintenance, recovery of dower, restitution of conjugal rights, Jactitation of marriage, declaratory suits with regard to matrimonial matters and custody of children shall be filed in the Court of the Ilaqa Qazi within whose jurisdiction the wife resides.

(2) Other suits shall be instituted in a Court within the local limits of whose jurisdiction-

- (a) the defendant, or each of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given or the defendants, who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

26. The provision of Order I, Rule 8 and Order XXXII of the Code of Civil Procedure, 1898, shall apply mutatis mutandis to suits filed in a representative capacity by or on behalf of or against minors, persons of unsound mind and lunatics.

27. (1) In every suit under this Chapter, the plaint shall be in writing, precise, and brief and shall be accompanied by documents in possession of the plaintiff, or photo-stat copies thereof, and a list of documents not in his possession, but relied upon by him, along with a list of witnesses; and shall be presented to the Court either personally by the plaintiff or by his authorised agent.

(2) The Court shall, on receipt of plaint, fix a date for appearance within a period not exceeding 30 days and issue summons to the defendant, directing him to appear for settlement of the dispute, on the date so fixed. The summons shall be accompanied by the copies of the plaint and the documents filed by the plaintiff.

(3) The copies of the plaint and the accompanying documents shall, simultaneously, be sent to the defendant by Registered Post, acknowledgement due, for the aforesaid date and an intermediary date shall also be fixed within a period not exceeding two weeks, in order to ascertain whether or not service of process has been effected on the defendant.

(4) The plaintiff shall furnish twice as many copies of the plaint and the accompanying documents as the number of defendants.

(5) In the event of service not having been so effected, a copy of the summons shall be pasted on the place of residence of the defendant or where he last resided or at his place of business or where he last carried on business or served on any adult member of the family

residing with him, if he is not available or evades service of process, in the presence of two respectable persons of the Ilaqa. A proclamation by beat of drum shall simultaneously be made.

(6) (i) If the defendant is serving in the Armed Forces the summons shall be served on him through his Commanding Officer.

(ii) In case the defendant is out of the Country, the summons shall be served on any adult member of his family in the presence of two respectable persons of the Ilaqa, which service shall be deemed as sufficient.

(7) In the case the whereabouts of the defendant are not known and service, for one reason or the other, cannot be effected in the manner as aforesaid, a proclamation shall be published in an approved news paper of the locality calling upon the defendant to appear on the date fixed in accordance with the provisions contained in sub-section (2) above, and the service effected in the manner aforesaid shall be considered as sufficient and conclusive.

(8) In case the defendant, notwithstanding the service of process, does not appear, the plaintiff shall be asked to produce his evidence and the Court shall, after recording his evidence, pronounce its judgment. In case the plaintiff fails to appear on a date so fixed his suit shall be dismissed.

(9) A defendant, if he wishes to contest the suit, shall file his written statement within the time that may be prescribed by the Court for this purpose, which, however, shall not exceed 30 days.

(10) In case of an admission on the part of the defendant, the suit shall be decreed accordingly, and no appeal shall lie against that decree.

28. (1) Before proceeding with the trial of the suit the Court shall make an effort to effect reconciliation between the parties in the manner it deems fit.

(2) If the efforts for reconciliation do not succeed within a period of one week the Court shall strike issues on a fixed date in respect of the points on which the parties are at variance and proceed to hold a summary inquiry and pronounce the judgment after signing and dating it in open Court, with notice to the parties. Such judgment shall be deemed to be a decree.

29. It shall be the responsibility of the parties to produce their evidence oral or documentary on the date specified by the Ilaqa Qazi for this purpose:

Provided that where the Court is satisfied that it is beyond the power and control of a party to produce a particular witness or a document it may, on an application made to it within seven days of the striking of issues, summon any witness or order production of any document in the Court:

Provided further that if the parties, or any one of them, fail to appear or produce their evidence or fail to perform any other act necessary to the further progress of the suit, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

30. Notwithstanding any thing contained in this chapter, if at any stage of the proceedings, but before the pronouncement of the judgment, either the plaintiff or the defendant makes before the Court an offer that he will admit or accept the claim or defence of the other party if the said other party asserts its claim or defence on oath in the name of Allah Almighty or the Holy Quran and the said other party accepts the offer and asserts the claim or defence on such oath the suit shall be decided by the Court according to that assertion and a decree passed.

31. In cases where the plaintiff is unable to prove his claim by evidence, an oath shall, on his demand, be administered by the Court to the defendant to deny the plaintiff's claim, who shall be bound to take the oath and if the defendant refuses to take the oath either expressly, or impliedly by remaining silent without a proper cause, the Court shall deliver judgment on the basis of his refusal:

Provided that a non-muslim defendant shall be administered oath according to his own religion or belief.

32. (1) In suits for recovery of money on account of dower or maintenance, the Court shall require the defendant to furnish security to the satisfaction of the Court for the amount of dower and maintenance and to file a list of his movable and immovable property and order him not to alienate the whole or any part thereof till the final disposal of the proceedings.

(2)(a) In case a defendant happens to be a salaried person his salary shall be attached for the purposes of maintenance of the plaintiff and the children, if any, to the extent of its one half, with effect from the date of filing of the suit; which amount may be ordered to be paid to the plaintiff if the Court prima facie finds the plaintiff to be entitled thereto;

(b) In other cases the court shall direct payment of maintenance to the plaintiff and the children, if any, according to the status of the husband subject to prima facie determination as to his liability as aforesaid from the date of the filing of the suit:

Provided that if the claim of the plaintiff is, ultimately, not proved for any reason, the amount paid by the defendant during the pendency of the suit shall be recoverable from the plaintiff as if it was due under a money decree without any further proceedings in that regard.

33. The suits instituted under this Chapter shall be decided by the Court of the Ilaqa Qazi within a period of three months and, in the case of an appeal, by the Zila Qazi also within a period of three months, whose order shall be final.

34. In case of an ex parte decree or dismissal of the suit in default, an application for restoration of the suit shall be filed by the defendant or the plaintiff, as the case may be, within one month of the date of the order which shall be disposed of by the Court within a period not exceeding 30 days. The provisions of rules 9 and 13 of Order IX of the Civil Procedure Code shall apply mutatis mutandis to the aforesaid proceedings.

35. An Ilaqa Qazi or a Zila Qazi, while trying suits or applications under this part, shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of a person and examining him on oath;
- (b) requiring the discovery and production of a document;
- (c) requisitioning any public record from any Court or Office;
- (d) issuing commissions as provided in Order XXVI of the Code of Civil Procedure, 1898;
- (e) appointing guardians or next friends of persons who may be minors or of unsound mind;
- (f) substituting legal representatives of a deceased party;
- (g) substituting, adding or striking off the names of the parties, and
- (h) consolidation of cases.

36. (1) The provisions of Law relating to multiplicity of suits, res judicata, bar to further suit and omissions to sue for one or more of several reliefs, as contained in Section 10, 11 and 12 and Order II, Rule 2, respectively, of the Code of Civil Procedure, 1908, shall apply mutatis mutandis to the proceedings under this Chapter.

(2) The provisions of Order VII, rules 10 and 11, shall mutatis mutandis apply to return and rejection of a plaint by the Ilaqa Qazi for one or more reasons mentioned in those provisions.

37. The Zila Qazi or the Ilaqa Qazi, as the case may be, may, in any proceedings pending before him, make such interim orders as he may consider necessary in the interest of justice including an order for the preservation of the property in dispute.

DECREE AND ITS EXECUTION

38. (1) In the event of a suit being decreed in favour of the plaintiff, the trial Court shall have all the powers of an executing Court and shall take steps for execution of the decree, even on an oral request of the decree holder or his successor in interest.

(2) A decree shall be executed by the Court, after hearing the objections, if any, of the judgment debtor or intervener. Such execution shall conform to the relief granted by the decree, keeping in view, as far as possible, the relevant provisions of Section 47 and Order XXI of the Code of Civil Procedure, 1908.

(3) In matrimonial suits, the part of the decree relating to recovery of any amount of money on account of maintenance or dower shall be satisfied out of the security furnished by the defendant or by attachment and sale of his property.

39. The execution of a money decree shall not be stayed except on deposit of the decretal amount by the judgment-debtor or on his furnishing a security to the satisfaction of the Court.

40. In case of a decree for restitution of conjugal rights if the defendant refuses to comply with the terms thereof, and the defendant is a female, she shall be called upon by the Court to seek dissolution of marriage by way of Khula within a specified time and the Court, if it is satisfied, dissolve the marriage according to the terms of Khula; and in the case of a male defendant, he shall be ordered by the Court to pronounce Talak within the time specified by the Court and on his failure to do so the Court shall dissolve the marriage.

41. No appeal shall lie against an order for execution of a decree, except where the interest of a minor, a person of unsound mind, a lunatic or a third party is thereby adversely affected:

Provided that no separate suit shall lie to challenge the legality of the said order.

COSTS

42. The Qazis shall be empowered to award costs of the suits and applications filed under this Chapter and the provisions contained in Sections 35 and 35-A of the Code of Civil Procedure, 1908, shall apply, mutatis mutandis to such proceedings.

43. Except the provisions of the Code of Civil Procedure, 1908, expressly made applicable to the proceedings under this Chapter no other provisions of the said Code shall apply thereto.

INHERENT POWERS

44. Nothing in this Ordinance shall be deemed to limit or otherwise affect the inherent powers of the Ilaqa or the Zila Qazi to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court.

APPEALS

45. An appeal shall lie before the Zila Qazi against any decree passed by an Ilaqa Qazi, in a suit filed under this Chapter within 30 days of the date of the impugned order. The judgment or order of the Zila Qazi shall be final. The provision of Section 107 of Code of Civil Procedure 1908 shall apply mutatis mutandis to the appeal filed under this Section.

Provided that no appeal shall lie against an interim or interlocutory order passed by the Ilaqa Qazi.

46. No case shall, on appeal, be remanded to a lower Court unless it has committed an error, omission, irregularity or acted in a manner inconsistent with the provisions of this Ordinance by reasons of which there has not been a proper trial or complete adjudication of the dispute, causing grave miscarriage of justice.

47. No petition for revision of a final order or decree passed by a Zila Qazi or an Ilaqa Qazi shall lie to any Court.

48. Where a person challenges the validity of a judgment, decree or order on the plea of fraud or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order and not by a separate suit.

**B. PROCEDURE FOR TRIAL OF CIVIL
CASES OTHER THAN SMALL CAUSES**

49. All civil matters other than those specified in Section 24 of this Ordinance shall be tried in accordance with the provisions of the Code of Civil Procedure, in so far as they are not inconsistent with the powers herein contained and the injunctions of Islam, as laid down in the Holy Quran and Sunnah.

50. The suits under the provisions of this part of Chapter VI shall be instituted in the Court of the Ilaqa Qazi of the second class if the value of the subject matter of the suit is upto Rs.50,000/- and in the Court of the Ilaqa Qazi of the first class if the value of the subject matter of the suit exceeds the said amount i.e. Rs.50,000/-.

51. The provisions contained in Sections 25(2), 26, 27, 28(1), 30 and 31 shall apply mutatis mutandis to the trial of civil suits under this part.

APPEALS

(41) 52. (1) Appeals in civil suits.- A person aggrieved by a decree passed by an Ilaqa Qazi, may prefer an appeal to--

- (a) the Zila Qazi, when the amount or value of the subject matter of the suit does not exceed fifty thousand rupees; and
- (b) the High Court, when the amount or value of the subject matter of the suit exceeds fifty thousand rupees.

(2) Every appeal under this Section shall be preferred within thirty days from the date of the order or decree appealed against.

(3) An order passed by the Zila Qazi on an appeal preferred to him under clause (a) of sub-section (1) shall be final.

(4) Subject to sub-section (3), a person aggrieved by a decree passed by a Zila Qazi, may prefer an appeal to the High Court; and the order of the High Court in appeal shall be final.

53. Only one appeal shall lie against the appealable interim orders and in such cases no record shall be sent for and the proceedings in the trial Court shall continue during the pendency of the appeal. Copies of the impugned order and the relevant documents relied upon by the appellant shall be filed by him along with the appeal, which shall be disposed of by the appellate Court as expeditiously as possible. No revision shall lie in such cases.

CHAPTER VIII MISCELLANEOUS

(44) 54. Interpretation.- In interpreting the provisions of this Ordinance, the Courts of Qazis shall be guided by the Injunctions of Islam set out in the Holy Quran and Sunnah.

(45) 55. Mediation.- (1) Before the commencement of the trial of a suit or a case compoundable under any law for the time being in force, a Zila Qazi or an Ilaqa Qazi may, with the consent of the parties, appoint a person as mediator for bringing about a settlement of the dispute between the parties.

(2) A mediator appointed under sub-section (1) shall, within fifteen days of his appointment, submit his report to the Zila Qazi or the Ilaqa Qazi as the case may be.

(3) If the parties reach a settlement, the Zila Qazi or the Ilaqa Qazi, as the case may be, may pronounce his decision accordingly.

(4) If the mediator reports that the parties have not reached any settlement, the Zila Qazi or the Ilaqa Qazi, as the case may be, shall proceed with the trial of the case.

(48) 56. Pending cases.- (1) Upon the establishment of the Courts of Qazis, all cases to which the jurisdiction of the Courts of Qazis extends and which may be pending in or before any court, tribunal or authority immediately before the establishment of the Courts of Qazis shall stand transferred to the Courts of Zila Qazis and Ilaqa Qazis of competent jurisdiction.

(2) In respect of a case transferred to a Zila Qazi or an Ilaqa Qazi by virtue of sub-section(1), the Zila Qazi or the Ilaqa Qazi, as the case may be, shall proceed with the trial in accordance with the provisions of this Ordinance and shall deal with any evidence already recorded and proceeding already taken as if such evidence or proceeding has been recorded or taken under this Ordinance.

(49) 57. Suits for or against Government.- The High Court shall, from time to time, designate the Ilaqa Qazis of the first class and the Zila Qazis who shall try suits and hear appeals, as the case may be, for or against the Government or any public officer as defined in clause (17) of section 2 of the Code of Civil Procedure, 1908, (Act V of 1908), in his official capacity:

Provided that such Ilaqa Qazis and Zila Qazis shall try such suits and hear such appeals at the headquarters of the Zila.

(52) 58. Representation through authorised agents.- A party to any proceedings under this Ordinance may be represented by an authorised agent, including a legal practitioner or an Aalim. An Ilaqa or Zila Qazi may require any person possessing special knowledge of Law applicable to the case under trial in his Court, to appear in the Court as an amicus curiae to assist in the disposal of the case on some suitable remuneration.

(53) 59. Abolition of existing civil and criminal courts.- On the establishment of the Courts of Qazis under this Ordinance, the criminal courts established under the Code of Criminal Procedure, 1898, (Act V of 1898), and the civil courts established under the Civil Courts Ordinance, 1962, shall stand abolished and any court established under any other law shall cease to exercise jurisdiction in respect of any matter to which jurisdiction of the Courts of Qazis extends.

(54) 64. Power to make rules.- (1) The Provincial Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

(2) Subject to the provisions of this Ordinance and the rules, the High Court may lay down such guide-lines and issue such instructions as it considers necessary or expedient for carrying out the provisions of this Ordinance into effective operation.

(55) 65. Laws to apply to proceedings under the Ordinance.- The provisions contained in the Code of Criminal Procedure, 1898, and the Evidence Act, 1872, shall, in so far as they are not inconsistent with the provisions contained herein before and the injunctions of Islam, as laid down in the Holy Quran and Sunnah, apply to the proceedings under this Ordinance.

**DISSENTING NOTE OF MR BASHIR AHMED ANSARI,
MEMBER, PAKISTAN LAW COMMISSION**

I deeply regret, I am unable to subscribe to the ideal behind the promulgation of the Establishment of Courts of Qazis Ordinance, 1981, that procedural laws tend to hamper and delay speedy dispensation of justice. It cannot also be said that procedural laws are against the injunctions of Islam as defined in Article 227 of the 1973 Constitution. True, here and there some provisions exist which can be said to be against such injunctions and it can be remedied by amendment. There is no manner of doubt that the country is committed to be governed by Laws which shall be in conformity with the Injunctions of Islam as laid down in Holy Quran and Sunnah. But the proposed Ordinance, both in its original shape and as amended, I may be excused to say, goes beyond the constitutional provision, Article 227, which has also been saved by the P.C.O. 1981.

No religion or society lays so much stress on doing justice between man and man and between subject and State than polity of Islam. Dispensation of justice (Ad'l) is the corner stone of a Muslim State. The proposed Ordinance, if I may be permitted to say so, negatives the principles so well enshrined in body politic of Islam. Ordinance is tantamount to denial of opportunities to people of Pakistan to seek justice and redress of their grievances.

The criticism against procedural laws was noticed by the Law Commission headed by the late Mr. Justice S.A. Rehman who observed that procedural laws were frequently abused but it was more due to the human factor which is associated with its enforcement than with the inherent good sense of such laws. I, therefore, earnestly hope and pray that people are not deprived of their basic rights and that too in the name of Islam. Curtailing right of review by superior Courts is fraught with extreme danger to the whole legal system. In present times, we

are faced with such complex and complicated problems which need to be attended to with great care and caution.

I would also suggest that the Ordinance is circulated for public opinion.

My minute of dissent may be forwarded with the Commission's recommendations.