

The Kazis Act 1880

Report No. 86

REPEAL OF THE KAZIS ACT, 1880

The statement of objects and reasons to the Kazis Act 1880, reveals that a Kazi, in the sub-continent, not only exercised the power of a court but also manage public religious or charitable trusts, attestation and registration of documents. During the British rule, Kazis were replaced by the Judges and Magistrates and the judicial office of Kazi and Kazi-ul-Kazaat were abolished by Act No XI of 1864. Latter on by the present Act the British Government no longer recognizing the judicial function of the Kazi revived the appointment of Kazi for performing religious rituals marriage etc amongst the Muslim community in the British India.

The Kazi's Act 1880 provides that the Provincial Government shall appoint a Kazi after consulting the principal Muslim residents of a local area for performance of Muslim marriages and certain other rites and ceremonies.

The pre-emble to the Act as amended reads as follows:

“Whereas by the preamble to Act No. XI of 1864 (an Act to repeal the law relating to the offices of Hindu and Muhammadan Law Officers and the the offices of Kazi-ul-Kuzaat and of Kazi, and to abolish the former offices) it was (among other things) declared that it was inexpedient that the appointment of the Kazi-ul-Kuzaat, or of City, Town or Pargana Kazis, should be made by the Government, and by the same Act the enactments relating to the appointment by the Government of the said officers were repealed, and whereas by the usage of the Mohammadan community in some parts of Pakistan the presence of Kazis appointment by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of Kazi;

After independence in 1947 various existing laws including the Kazis Act 1880, was adopted, through Adoption of Central Acts and Ordinance, Order 1949. In the year 1981, the Act was repealed to the extent of Islamabad Capital territory by Ordinance No 27 of 1981 and now it is applicable to the Provinces only.

As the religious rites and ceremonies relating the marriage or divorce are regulated under the Muslim Family Law Ordinance 1961 i.e., performance of nikkah, registration of marriage, maintenance of marriage record and providing its copies the functions and duties contemplated for a Kazi in the Act No XII of 1880 are being performed by the nikkah registrar appointed by the Government. The Section 5 of the Ordinance reads as under;

Section 5:- Registration of Marriages. (1) Every marriage solemnized under Muslim Law shall be registered in accordance with the provisions of this Ordinance.

(2) For the purpose of registration of marriage under this Ordinance, the Union Council shall grant license to one or more persons, to be called Nikah Registrars, but in no case shall more than one Nikah Registrar be licensed for any one Ward.

(3) Every marriage not solemnized by the Nikah Registrar shall, for the purpose of registration under this Ordinance, be reported to him by the person who has solemnized such marriage.

(4) Whoever contravenes the provisions of sub-section (3) shall be punishable with simple imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees, or with both.

(5) The form of Nikahnama, the registers to be maintained by Nikah Registrars, the records to be preserved by Union Councils, the manner in which marriage shall be registered and copies of Nikahnama shall be supplied to the parties, and the fees to be charged therefore, shall be such as may be prescribed.

(6) Any person may, on payment of the prescribed fee, if any, inspect at the office of the Union Council the record preserved under sub-section (5), or obtain a copy of any entry therein.”

It appears that after the enforcement of Muslim Family Laws Ordinance, 1961 no Kazi under the Act has ever been appointed by the Provincial Government but there are appointed registrars of Nikah etc under the said Ordinance therefore, the provisions relating to the appointment of Kazis under the Kazis Act has become dormant and suppressed by overriding provisions of sections 5 read with section 3 of the Muslim Family Laws Ordinance, 1961.

It is therefore, suggested that the Kazis Act 1880 may be repealed by the Provincial Government as has done by the Federal Government.

A
Bill

To repeal the Kazis Act 1880.

Whereas it is expedient to repeal the Kazis Act 1880 (XII of 1880).

It is hereby enacted as follows:-

1. Short title and Commencement:- (1). This Act may be called the Kazis (Repeal) Act, 2005.

(2). It shall come into force at once.

2. Repeal of Kazis Act, 1880 (XII of 1880):- The Kazis Act, 1880 (XII of 1880) is hereby repealed.

Commission's deliberation on 10.06.2006

The working paper was considered by the Commission in its meeting held on 10.6.2006 and the following are the deliberations:-

The Commission also considered Kazis Act 1880 which was earlier deferred in the last meeting for want of report of Mr. Justice (Ret) Amirul Mulk Mengal that in certain areas of Balochistan, Kazis are still appointed and functioning under the Act. The learned Member informed the Commission that the appointment of Kazis under the Kazis Act 1880 is different than the appointment of Kazis under the Dastoorul Amal Diwani Qalat and Shariat Regulations enforced in parts of Balochistan. He added that there are no Kazis appointed under the Kazis Act in the Province of Balochistan. The Secretary Law and Justice Division informed that the Act has already been repealed in its application to the Federal territory. The Commission therefore, approved repeal of the Qazi's Act 1880 in its application to be Provinces.