IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Advisory Jurisdiction)

PRESIDENTIAL REFERENCE NO. 01 OF 2026
(Filed on 4th of June 2026)

PRESENT:
Raja Saeed Akram Khan, C.J.
Khalid Yousaf Chaudhary, J.

IN THE MATTER OF: A Reference made by the President of Azad Jammu and Kashmir, under Article 46-A of the Azad Jammu and Kashmir Interim Constitution, 1974, seeking the Advisory Opinion of this Court on five questions of law of grave public importance concerning the constitutional status of the twelve refugee seats in the AJ&K Legislative Assembly, the competence of the outgoing Legislature to effect a fundamental constitutional amendment, the constitutional limits of the right of assembly, and the obligation of the State to protect the electoral process.

APPEARANCES

Advocate General:	Mr. Muhammad Nadeem Khan assisted by Raja Ejaz Ahmed, Ch. Muhammad Kaleem Afsar and Mr. Muzaffar Hussain Mughal, Additional Advocate General.
Amicus Curiae:	Raja Sajjad Ahmed Khan, Barrister Humayun Nawaz Khan, Advocates.
Members of Bar:	Mr. Sadaqat Hussain Raja, Advocate, (former Chief Justice of High Court), Mr. Haroon Riaz Mughal, Vice Chairman AJ&K Bar Council, Raja Aftab Khan, President Supreme Court Bar Association, Raja Jahangir Akram, President High Court Bar Association, Raja Zaigham Iftikhar, President Central Bar Association, Muzaffarabad, Sardar Abdul Raziq Khan, Raja Gul Majeed Khan, Mir Abdul Latif, Kh. Ansar Ahmed, Mr. Saghir Javed and Kh. Manzoor Qadir, Advocates.
Public at large:	Mr. Muhammad Tanveer Chaudhary, Advocate Supreme Court of Pakistan, Syed Imtiaz Ahmed Shah, refugee of 1989.

Date of Hearing: 06.06.2026

ADVISORY OPINION

Raja Saeed Akram Khan, C.J. This Reference has been made under Article 46-A of the Azad Jammu and Kashmir Interim Constitution ***(hereinafter 'the Constitution')*** by the President of Azad Jammu and Kashmir.

2. The Reference was received on the 4th of June 2026. Upon receipt, in terms of Rule 1, Order XXXVI of the Azad Jammu and Kashmir Supreme Court Rules, 1978, notice was issued to the Advocate General to appear and take the directions of the Court as to the parties upon whom notice of the Reference shall be served. On 05.06.2026, the learned Advocate General, Mr. Muhammad Nadeem Khan, appeared. After hearing him, we directed that notices be issued to the Leader of the House, the Leader of the Opposition, all members of the Legislative Assembly through the Secretary of the Assembly, the heads of all political parties represented in the Assembly, the Vice Chairman of the Azad Jammu and Kashmir Bar Council, the President of the Supreme Court Bar Association AJ&K, the President of the High Court Bar Association AJ&K, and the public at large. We also invited Raja Sajjad Ahmed Khan and Barrister Humayun Nawaz Khan, Advocates, to assist as amicus curiae. In response to the notice, the statements of facts have been filed by the following:

1. Raja Muhammad Farooq Haider Khan, former Prime Minister / Member Legislative Assembly of AJ&K.
2. Sardar Abdul Sammie Khan, Raja Gul Majeed Khan, Mr. Najm us Saqib and Sardar Abdul Raziq Khan, Advocates on behalf of Sardar Attique Ahmed Khan, President, all Jammu and Kashmir Muslim Conference.
3. Muhammad Ahmed Raza Qadri, Ch. Muhammad Akbar, Muhammad Akmal Sargala, Javed Butt, Abdul Majid Khan, Members AJ&K Legislative Assembly.
4. Mir Rizwan-ur-Rehman, Advocate/Member High Court Bar Association/Secretary General Muslim Conference Lawyers Wing.
5. Kh. Ansar Ahmed and Sagheer Javed, Advocates Supreme Court of AJ&K.
6. Sardar Aftab Khan, on behalf of Jammu & Kashmir Council Foreign Affairs through Faisal Jamil Kashmiri.
7. Asif Gillani, son of Mehboob Hussain Shah, Syed Imtiaz Ahmed son of Syed Ghulam Haider, Muhammad Iqbal son of Khalil ur

Rehman and Muhammad Mushtaq son of Saraj Din, (Public at large).

8. Mr. Haroon Riaz Mughal, Vice Chairman AJ&K Bar Council.

9. Farhat Ali Mir, Retired Additional Chief Secretary AJ&K.

10. Sajjad Haider Jarral, former President Press Club, Mirpur.

PART-I
SUBMISSIONS

3. **Advocate General:** The learned Advocate General, appeared and at the outset read the provisions of Article 46-A of the Constitution pertaining to the advisory jurisdiction of this Court. He submitted that this reference invokes the advisory jurisdiction of the Court regarding the questions of constitutional interpretation. While referring to said questions, he argued that this Reference seeks advice of the Court as to whether the refugee seats can be abolished otherwise than provided in the Constitution itself.; as to whether the assembly which has almost outlived its tenure is competent to enact an amendment of a fundamental character; whether coerced extra-constitutional demand amounts to subversion of the Constitution; what are the limits of the constitutional right of assembly and association; and what are the constitutional obligations of the Government of AJ&K and Pakistan and the scope of lawful measures. According to him, these questions are of vital public importance and required to be answered having regard to the imminence of General Elections and the gravity of the threat to the constitutional order, so as to uphold the supremacy of the Constitution and the inviolability of constitutional process.

4. Before writing the submissions of learned amicus curaie and others, it may be stated that all the parties are in agreement that an amendment can only be made in the Constitution by virtue of Article 33; the Legislative Assembly remains competent to legislate from its first day to the last day; the fundamental rights provided in the Constitution are not unbridled or unlimited rather the same are subject to reasonable restrictions imposed by law; and the Election Commission is under the constitutional duty to hold the fair and transparent elections within time stipulated by law without any delay.

5. **Raja Sajjad Ahmed Khan, Advocate**, while appearing as amicus curiae at the outset, stated that there exists a perception in the general public that the instant reference, being filed by Acting President, is not competent. However, he submitted that this perception is misconceived as in the light of principle of law laid down by this Court in the cases reported as 2017 SCR 759 and PLD 1991 SC(AJ&K) 63, the reference has been filed competently. The learned counsel further submitted that the constitutional provisions itself answer the questions raised in the reference in clear terms and there exists no ambiguity to be interpreted by this Court. However, he stated that Article 33 of the Constitution is very much clear which prescribes the mode of amendment in the Constitution. Furthermore, this question appears to be premature as in the light of recent resolution passed by all the political parties of Azad Jammu and Kashmir, having their representation in the Legislative Assembly, there exists no intention of any amendment. He further submitted that an amendment to the Constitution cannot be made on the basis of external threats. He further submitted that although there is no legal bar on the present Assembly to make an amendment at the eve of completion of its tenure, however, in the light of principle laid down in PLD 2009 SC 549 it is not appropriate for the present Assembly to legislate on this foundational issue. Furthermore, in Azad Jammu and Kashmir Penal laws are in force and the Government is at liberty to act in accordance with law, and in this regard no advice is warranted. The learned counsel lastly referred to Article 50 of the Constitution and submitted that it is the duty of the Election Commission to hold fair and transparent elections within the time stipulated in the Constitution and all the executive authorities are bound to act in aid of the Election Commission. Furthermore, under section 4 of the Elections Act, 2020 the Election Commission is empowered to issue such directions or orders as may be necessary for the performance of its functions and duties.

6. **Barrister Humayun Nawaz Khan,** Advocate, appearing as amicus curaie narrated the political history of Azad Jammu and Kashmir and stated that refugees' seats exist since the very first day of existence of this State. He stated that under law any sort of amendment changing or

disturbing the basic structure of the Constitution is not permissible. While referring to the Preamble of the Constitution, Articles 33, 31(3), Part-A of third Schedule read with Article 56, he submitted that the refugees seats as provided under Article 22(1)(a)(ii) and (iii) constitute the basic structure of the Constitution, hence, the same cannot be abolished by the Legislative Assembly. Regarding the point of competence of present Assembly to make amendment, he submitted that under law there is no legal bar on the Assembly to legislate even on the last day of its tenure, however, he maintained that the seats of the refugees cannot be abolished at all.

7. **Mr. Sadaqat Hussain Raja,** former Chief Justice of AJ&K High Court also addressed the Court. He owned the submissions made by Barrister Humayun Nawaz Khan and further added that normally the Legislative Assembly of AJ&K is fully competent to make an amendment in the Constitution under Article 33, however, in the light of political and historical background of refugees' seats, as provided under Article 22(1)(a)(ii) and (iii) of the Constitution, the amendment of this nature cannot be made by the Legislative Assembly in the normal course.

8. **Sardar Abdul Raziq Khan, Advocate**, appearing on behalf of All Jammu and Kashmir Muslim Conference submitted that the twelve seats reserved for refugees are not ordinary seats but form part of the constitutional framework established under Article 22(1)(ii) and (iii) of the Constitution and these seats reflect the historic practical and legal commitment of the State towards the people of Jammu and Kashmir who were displaced due to the unresolved Kashmir dispute. He further submitted that any demand seeking abolishing of such seats through coherent intimidation, brute force, threats of public disorder or extra constitutional pressure is wholly inconsistent with the rule of law. The twelve refugees' seats continue to enjoy constitutional validity and protection and any attempt to abolish these seats through coercive or unlawful means is constitutionally impermissible and legally unsustainable. He referred to the cases reported as PLD 2019 SC 318, 2013 SCMR 1205, PLD 2021 SC 313, 2024 CLC 101.

9. **Mr. Haroon Riaz Mughal,** Vice Chairman Azad Jammu and Kashmir Bar Council, argued that no substantial question of law of public importance is involved in the reference rather the same has been filed by the Government merely to shift the political burden upon the Court, instead of discharging its constitutional responsibilities under Article 22, 33 and 56. The issues raised are political in nature.

10. **Raja Aftab Ahmed,** President Supreme Court Bar Association owned the submissions made by Barrister Humayun Nawaz Khan, while adding that the refugees' seats as provided under Article 22(1)(a)(ii) and (iii) constitute the basic structure of the Constitution, hence, the same cannot be abolished.

11. **Raja Muhammad Jahangir,** President AJ&K High Court Bar Association appeared and submitted that under the Constitutional provisions, a complete mechanism has been provided for introducing an amendment in the Constitution.

12. **Raja Zaigham Iftikhar,** President Central Bar Association, Muzaffarabad submitted that reference was filed by an incompetent person. Furthermore, the questions raised in the reference are not questions of law of public importance.

13. **Mr. Muhammad Tanveer Chaudhary**, Advocate Supreme Court of Pakistan, being representative of the refugees settled in Pakistan also owned the submissions made by the learned counsel who appeared as amicus curiae and added that an amendment in the Constitution to the extent of 12 seats of refugees settled in Pakistan will not only adversely affect their fundamental right of vote but also affect the moral and political values of the citizens of AJ&K who are residing in Pakistan.

14. **Khawaja Ansar Ahmed,** the learned Advocate submitted that according to the spirit of Article 46-A of the Constitution, reference may be filed on behalf of the President AJ&K, for advisory opinion of this Court on the question of law of public importance. The questions raised in the reference do not fall within the ambit of the questions of law of public

importance. Furthermore, under the Constitutional provisions referred in the reference no ambiguity exists requiring advisory opinion of this Court, rather the said provisions itself answer the questions in clarity.

15. **Syed Imtiaz Shah**, being a refugee of 1989, appeared and submitted that the refugees' seats as provided under Article 22(1)(a)(ii) and (iii) constitute the basic structure of the Constitution, providing a right of vote to the said refugees being a fundamental right, which cannot be snatched by any amendment.

16. **Khawaja Manzoor Qadir**, the learned Advocate submitted that in view of the political and historical background as well as the Kashmir cause, the amendment in the Constitution to the effect of twelve seats of the refugees is unwarranted.

17. **Mr. Farhat Ali Mir**, also appeared and owned the submissions of Raja Sajjad Ahmed Khan, Advocate while adding that the present controversy relating to the abolition of twelve seats has to be dealt with politically.

18. Raja Muhammad Farooq Haider Khan, former Prime Minister of AJ&K, Mr. Ahmed Raza Qadri, Ch. Muhammad Akbar, Muhammad Akmal Sargala, Muhammad Javed Butt, Abdul Majid Khan, Members AJ&K Legislative Assembly and Mr. Sajjad Ahmed Jarral, former President Press Club, Mirpur also filed detailed statements of facts rendering their valuable assistance, however, for the sake of brevity the same are not reproduced here as the claim raised by them has already been narrated in the aforesaid paragraphs.

PART-II
SCOPE AND NATURE OF ADVISORY JURISDICTION

19. Article 46-A of the Constitution empowers the President of Azad Jammu and Kashmir to refer to this Court any question of law which he considers to be of public importance. The said Article reads as under:-

> ***"46-A. Advisory jurisdiction.- (1) If, at any time, the Chairman of the Council or the President desires to obtain the opinion of the Supreme***

Court of Azad Jammu and Kashmir on any question of law which he considers of public importance, he may refer the question to the Supreme Court of Azad Jammu and Kashmir for consideration.

(2) The Supreme Court of Azad Jammu and Kashmir shall consider a question so referred and report its opinion on the question to the Chairman of the Council or, as the case may be, the President."

This Article corresponds to Article 186 of the Constitution of Pakistan and Article 143 of the Constitution of India. It is imperative to begin with a frank and precise statement of what an advisory opinion is and, equally, what it is not. An Advisory opinion rendered under Article 46-A is neither a judgment nor a decree. It is not a decision that adjudicates the rights of parties[1]. It also does not attract the doctrine of res judicata. It creates no enforceable obligation through the coercive machinery of the Court. It is, as its name proclaims, an 'opinion' to assist the Government in discharge of its constitutional functions. In support of the foregoing, reliance is placed upon the judgment reported as **PLD 1991 SC (AJ&K) 63**[2], wherein this Court observed as under:

"I have given my anxious thought to the submissions of the learned counsel appearing in support of the President's reference and have reached the conclusion that there is no substance in the arguments that this Court has the power to issue an order in the shape of interim relief while hearing a reference. Section 46-A of the Constitution Act which provides for making a reference runs as follows:--

.....

A plain reading of the above section shows that this Court has only to give its opinion on the question referred to it and there is no judgment or order which can be passed by this Court while answering a Presidential reference. An opinion expressed in a reference is not a decision of the Court. Word "opinion" used in section 46-A reproduced above is in sharp contrast to the words "directions", "orders" or "decree" used in section 42-A of the Constitution Act which has been relied upon by Mr. Aitzaz Ahsan."

Advisory jurisdiction is non-adversarial in character. There are no parties in the conventional sense, no lis, no plaintiff and no defendant. The President refers a question; the Court considers and answers it. We have, however, invited the assistance of the Advocate General and of learned amicus curiae to ensure that all relevant considerations may be dealt with comprehensively. Their assistance, though valuable, does not convert this

[1] Al-Khair Trust of Pakistan vs. Professor G. J. Preshan Khattak & others [2002 SCR 476].
[2] Reference No.1 of 1991 made by the President of AJ&K under section 46-A of the Constitution.

proceeding into an adversarial contest. As a further consequence, the procedural formalities of adversarial proceedings i.e., rules of pleading and right of cross-examination do not govern this proceeding.

PART-III
HISTORICAL AND LEGISLATIVE BACKGROUND OF THE REFUGEE SEATS

20. The twelve seats reserved in the Legislative Assembly of Azad Jammu and Kashmir for refugees migrated from the Indian illegally occupied Jammu and Kashmir referred to in Article 22(1)(a)(ii) and (iii) of the Constitution as six for the Valley districts of Muzaffarabad, Anantnag (Islamabad) and Baramula, and six for the Jammu region together with the Mangla Dam affectees are not an incidental or adventitious feature of the Assembly. They are the constitutional expression of a profound historical and juridical truth. The partition of the Indian subcontinent in August, 1947 unleashed one of the most massive displacements of population in recorded history. Hundreds of thousands of Kashmiris fled or were driven from their ancestral homes as a direct consequence of the armed conflict and the Indian military occupation over a major part of the princely State of Jammu and Kashmir. These displaced persons settled primarily in what became the Azad Jammu and Kashmir and in the other regions of Pakistan. When the Government of Azad Jammu and Kashmir was established on the 24th of October 1947, it functioned in situation of a war. The constitutional journey from that foundational moment to the present day is the journey of the people in a unique political condition. This history must be understood and appreciated in its entirety before the constitutional significance of the refugee seats can be properly evaluated.

21. After a degree of administrative organisation had been achieved, the Rules of Business were promulgated on the 28th of December 1950. These Rules were revised in 1952, and a further revision was carried out in 1958. However, the idea of giving representation to the migrated people of Jammu and Kashmir did not wait for later constitutional developments. It found its first formal constitutional expression as early as

1960. In that year, the Azad Jammu and Kashmir Presidential Election Act, 1960[1] and the Refugees Registration and Representation Act, 1960[2] were promulgated. Under section 12 of the said Act, a Council of twelve members was constituted, of which six were elected by the Basic Democrats of Azad Jammu and Kashmir and the remaining six were drawn entirely from the displaced Kashmiri community. Section 12 of Presidential Election Act, 1960, which merits reproduction in full for the light it sheds upon this foundational arrangement, reads as follows:

> *"12. (i) As soon as may be after the first election of the President, there shall be constituted a Council which will consist of 12 members to be elected as follows:-*
>
> *(a) Six members to be elected out of the elected members of Basic Democracies;*
>
> *(b) Three members to be elected out of Representatives of refugees from the Province of Kashmir;*
>
> *(c) Three members to be elected out of the Representatives of refugees from Province of Jammu.*
>
> *Explanation:- .....*
>
> *(ii) .....*
>
> *(iii) ....."*

This provision is of the greatest constitutional significance. It constitutes the earliest formal legislative recognition of the principle that displaced Kashmiris settled in Pakistan were entitled to representation in the constitutional bodies of Azad Jammu and Kashmir. In 1964, the Azad Jammu and Kashmir Government Act, 1964[3] introduced further changes to the State Council. Section 3 of that Act constituted a State Council consisting of eight members. The provision reads as under:-

> *"3. There shall be constituted a State Council consisting of eight members who shall be elected in the prescribed manner by the elected members of the Union Councils, the Town Committee and Union Committees constituted under the Azad Jammu and Kashmir Basic Democracies Act, 1960 (Azad Jammu and Kashmir Act X of 1960)."*

This initial formulation lacked the representation of refugees, but it was promptly amended by the Azad Jammu and Kashmir Government

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[1] Act XIV of 1960 (Passed under Government order No. 699/60 dated 16-12-1960).
[2] ACT XIII OF 1960 (Passed under Government order No. 699/60 dated 16-12-1960).
[3] Act IV of 1964.

(Amendment) Act, 1964, which restored representation for the migrated Kashmiri community alongside the elected members. The amended section 3 reads as follows:

> *"3. State Council:- There shall be constituted a State Council which shall consist of:*
>
> *(a) eight members who shall be elected in the prescribed manner by the elected members of the Union Councils, Town Committees and Union Committees constituted under the Azad Jammu and Kashmir Basic Democracies Act, 1960 (Azad Jammu and Kashmir Act X of 1960); and*
>
> *(b) two members who shall be appointed by the President in consultation with the Chief Adviser from amongst the refugees of the State of Jammu and Kashmir residing in Pakistan."*

22. By the Azad Jammu and Kashmir Government Act, 1968[1], the Council was reconstituted with eight elected members and four members to be nominated by the Chief Advisor from amongst the refugees settled in Pakistan. For convenience, section 3 of Act, 1968 is reproduced as under:-

> *"3. Constitution of the State Council. There shall be constituted a State Council which shall consist of:-*
>
> *(a) eight members who shall be elected in the prescribed manner by the elected members of the Union Councils, Union Committees and Town Committees constituted under the Azad Jammu and Kashmir Basic Democracies Act, 1960 (Azad Jammu and Kashmir Act X of 1960);*
>
> *(b) four members who shall be nominated by the Chief Adviser from amongst the refugees of the State of Jammu and Kashmir residing in Pakistan."*

A further and critical constitutional development occurred in 1970. Through the Azad Jammu and Kashmir State Council Ordinance, 1970[2], a State Council was constituted consisting of sixteen members to be elected by the State Subjects residing in the territories under the administration of the Azad Government of the State of Jammu and Kashmir out of which four members to be elected from the refugees of Valley and four members to be elected from the refugees of Jammu settled in Pakistan together with co-opted members representing women, the Ulema-e-Deen or Mashaikh, State Subjects residing abroad, and technocrats and other professionals. The most

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[1] Passed under the Government Order No. Admin/3825-3864/SS/68, dated 17th September, 1968)
[2] Ordinance VI of 1970, promulgated on the 18th of July, 1970.

transformative constitutional development prior to the Interim Constitution arrived later in the same year, on introduction of the Azad Jammu and Kashmir Government Act, 1970[1]. This Act was a landmark constitutional reform that introduced the system of adult franchise and established a democratic political framework in Azad Jammu and Kashmir. The parliamentary system was thereafter introduced by the Azad Jammu and Kashmir Interim Constitution Act, 1974. It is to be noted that although the Interim Constitution Act, 1974 in its original form contained no express provision for the refugee seats, however, under section 22(2) of said Act the manner of election of the Assembly members and that of filling casual vacancies shall be such as may be prescribed, hence, the arrangement for refugees representation was preserved and continued through the legislative framework already in place. Subsequently, through the State Council (Amendment) Act, 1975 (Act I of 1975), the State Council Ordinance, 1970 was substantially amended and renamed as the Azad Jammu and Kashmir Legislative Assembly Ordinance, 1970, reflecting the transformation of the State Council into the Legislative Assembly. Through this amendment, the refugee seats were also enhanced from four to eight. This arrangement was not a temporary measure. Subsequent amendments[2] continued to operate upon the same framework, and the last such amendment was introduced in the year 2013, demonstrating that the legislative instrument i.e., State Council Ordinance, 1970 providing for refugees representation remained alive, operative, and continuously affirmed for a period of over four decades alongside the Constitution itself.

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[1] Act I of 1970 (passed under Government Order No. Admin\15132-78/SS/70, dated 5th of 1970)

[2] The AJ&K Legislative Assembly (Amendment) Ordinance, 1977 (Ordinance XI OF 1977); The AJ&K Legislative Assembly (Amendment) Ordinance, 1977 (Ordinance XXXII OF 1977); The AJ&K Legislative Assembly (Amendment) Ordinance, 1978 (Ordinance XCV of 1978); The AJ&K Legislative Assembly (Amendment) Ordinance, 1978 (Ordinance XXII Of 1978); The AJ&K Legislative Assembly (Amendment) Ordinance, 1979 (Ordinance CLXXIII of 1979); The AJ&K Legislative Assembly (Amendment) Ordinance, 1979 (Ordinance CVII of 1979); The AJ&K Legislative Assembly (Amendment) Ordinance, 1979 (Ordinance XLVIII of 1979); The AJ&K Legislative Assembly (Amendment) Ordinance, 1986 (Ordinance LVIII OF 1986); The AJ&K Legislative Assembly (Amendment) Ordinance, 1986 (Ordinance II OF 1986); The AJ&K Legislative Assembly (Amendment) Ordinance, 1986 (Ordinance LXI OF 1986); The AJ&K Legislative Assembly (Amendment) Ordinance, 1986 (Ordinance LXXXIII OF 1986); The AJ&K Legislative Assembly (Amendment) Ordinance, 1991 (Ordinance CVII Of 1991); The AJ&K Legislative Assembly (Amendment) Ordinance, 2012 (Ordinance XLIII OF 2012) and The AJ&K Legislative Assembly (Amendment) Ordinance, 2013 (Ordinance XXX OF 2013).

23. This unbroken legislative history establishes beyond any reasonable doubt that the representation of Kashmiris migrated from Indian occupied Kashmir in the legislative bodies of Azad Jammu and Kashmir is not an incidental feature of any single constitutional instrument rather it is a constitutional principle of the deepest roots, continuously affirmed and progressively strengthened across every phase of the constitutional evolution of this territory. This entire historical and legislative journey culminated in the 13th Amendment[1] to the Azad Jammu and Kashmir Interim Constitution Act, 1974 through which the twelve refugee seats were, for the first time, expressly inserted into the constitutional text itself, thereby receiving the highest possible form of legal protection that the constitutional order of Azad Jammu and Kashmir is capable of conferring. What had for decades been preserved through subordinate legislative instruments and executive orders was thus elevated, by formal constitutional amendment, to the supreme constitutional instrument of the territory, rendering the representation of migrated Kashmiris an entrenched feature of the Constitution.

PART IV
THE QUESTIONS

(i) WHETHER THE REFUGEE SEATS CAN BE ABOLISHED OTHERWISE THAN BY CONSTITUTIONAL AMENDMENT?

Whether, on an analysis of Articles 22, 33 and 57 of the Constitution, any provision of the Constitution, including the twelve seats reserved for refugees from the Indian Illegally Occupied Jammu and Kashmir under Article 22(1)(a)(ii) and (iii), is capable of being altered, abridged or abolished otherwise than by a constitutional amendment passed in accordance with Article 33; and whether a demand to abolish such seats through coercion, brute force and the threat of mass public obstruction is constitutionally competent or legally maintainable?

[1] The Azad Jammu and Kashmir Interim Constitution (Thirteenth amendment) Act, 2018 (Act III of 2018) dated 02.06.2018.

24. ***The Constitution - its Nature, Character and Supremacy:*** Before proceeding to examine the question referred, it is necessary to say something about the nature and character of the constitutional instrument within which those questions arise. The Azad Jammu and Kashmir Interim Constitution, 1974 is the supreme law of Azad Jammu and Kashmir. It is not an ordinary statute enacted by the Legislature in exercise of its ordinary legislative power. It is a document through which the people of Azad Jammu and Kashmir, acting through their chosen representatives, have organised the institutions of their governance, defined the powers and limits of each organ of the State, guaranteed the Fundamental Rights of every State subject, and embedded within the constitutional order the ideological and international commitments that give this territory its unique constitutional identity and purpose. A Constitution differs from ordinary legislation in its nature, in its legal force, and in the manner of its amendment. Ordinary legislation is the product of the Legislature acting within the powers conferred upon it by the Constitution; it derives its validity from the Constitution and must conform to it. The Constitution, by contrast, is not the product of ordinary legislative power; it is the source of that power; it stands above all other laws. Article 57 of the Constitution gives express and unambiguous meanings to this principle, declaring the Constitution to be the supreme law and providing that its validity cannot be called in question by any Court. Every organ of the State i.e., the Legislature, the Executive, and the Judiciary derives its existence, its authority, and its legitimacy from the Constitution and must act within the boundaries it prescribes. No organ of the State stands outside or above the Constitution. The Constitution of Azad Jammu and Kashmir is further distinguished by its unique ideological and international dimensions. Unlike the Constitutions of ordinary territorial units, it is explicitly premised upon the aspiration of the people of the whole State of Jammu and Kashmir to exercise their right of self-determination through a free and impartial plebiscite under the auspices of the Resolutions of United Nations Security Council. The Constitution of Azad Jammu and Kashmir is therefore to be read and interpreted not merely as a document of governance but as a document of trust a constitutional expression of the

commitment of the people of the liberated territory to hold themselves in readiness, and to preserve the political and constitutional identity of the whole Kashmiri people, pending the fulfilment of that solemn international promise.

25. ***Procedure of Amendment of Constitution:*** Article 33 of the Constitution governs the procedure for constitutional amendment. For convenience, Article 33 reads as follows:

> *"33. Amendment of the Constitution.- (1) The provisions of the Constitution may be amended in accordance with the following provisions.*
>
> *(2) No amendment shall be made in Articles 31, 33 and 56, without the prior approval of the Government of Pakistan.*
>
> *(3) A bill to amend the Constitution, shall be originated in the Assembly and when the bill has been passed with or without amendment by the votes of not less than two-third of total membership of the Assembly, the bill shall be presented to the President for assent."*

A plain reading of Article 33 leaves no room for ambiguity. The Constitution itself provides the manner through which its provisions may be altered. Clause (1) expressly declares that *"the provisions of the Constitution may be amended in accordance with the following provisions."* Clause (3) then prescribes the only constitutionally recognised procedure for such amendment, namely, the approval of a constitutional amendment bill by not less than two-thirds of the total membership of the Legislative Assembly. The significance of Article 33 lies not merely in the fact that it confers a power of amendment; it lies in the fact that it exhaustively regulates the manner in which that power may be exercised. Once the Constitution itself prescribes a particular mode for its amendment, every other mode stands constitutionally excluded. It is a settled principle of constitutional law that where the Constitution provides a specific procedure for its amendment, it can be altered only through that procedure and not otherwise.[1] This settled principle of constitutional law is based on the legal maxim *expressio unius est exclusio alterius* (the explicit mention of one thing excludes others). Because the Constitution is the supreme law, it can only be validly altered

[1] 2025 SCR 654; 2024 SCR 913; 2024 SCR 530; 2024 SCR 457. It is a settled principle of law that when a thing is required to be done in a particular manner, that must be done in that manner or not at all.

or amended through the exact mechanisms and procedures explicitly prescribed within the document itself. Thus, the power to amend the Constitution is a constituent power derived from the Constitution itself. It is distinct from ordinary legislative power and cannot be exercised through executive action, administrative order, ordinary legislation, public agitation, political agreement, or any form of extra-constitutional pressure. Any attempt to alter a constitutional provision without following the procedure prescribed by the Constitution is not an amendment in the eye of law but an unconstitutional usurpation of constituent authority.

26. The twelve seats reserved for refugees derive their existence directly from Article 22(1)(a)(ii) and (iii) of the Constitution. They are not created by an ordinary statute, a rule, a notification, or an executive arrangement. Their source is the Constitution itself. It necessarily follows that the abolition, reduction, suspension, or alteration of those seats would require a corresponding amendment of Article 22. Since Article 22 forms part of the constitutional text, no authority other than the constituent authority acting under Article 33 can lawfully modify it. Consequently, the refugee seats cannot be abolished, curtailed, or rendered ineffective through executive action, administrative measures, resolutions, political understandings, public demands, or subordinate legislation. Article 57 reinforces this conclusion. By declaring the Constitution to be the supreme law, Article 57 establishes the principle that all institutions, authorities, and citizens are subordinate to the Constitution and bound by its commands. Constitutional supremacy necessarily means that constitutional provisions remain operative and enforceable until they are altered through the mechanism prescribed by the Constitution itself. No individual, group, association, political movement, or public body possesses authority to suspend the operation of a constitutional provision merely because it disagrees with its contents or considers it undesirable.

27. It must also be observed here that the right to advocate constitutional change is distinct from the right to compel this constitutional change. Any citizen or political group is entitled, within the limits of law, to

express disagreement with existing constitutional arrangements and to persuade the Legislature to initiate a constitutional amendment. However, no person or organisation possesses a constitutional or legal right to secure such change through coercion, threats of violence, disruption of governmental functions, obstruction of public highways, interference with elections, or paralysis of the constitutional machinery of the State. Accordingly, we are of the considered opinion that the twelve refugee seats incorporated in Article 22(1)(a)(ii) and (iii) of the Constitution can be altered, reduced, or abolished only through a constitutional amendment enacted strictly in accordance with Article 33. No other method is constitutionally recognised. Any demand seeking abolition of any constitutional provision through coercion, brute force, threats of mass public obstruction, or other extra-constitutional means is devoid of constitutional sanction, legally unenforceable, and wholly incompatible with the principles of constitutional supremacy and the rule of law embodied in Articles 33 and 57 of the Constitution.

(ii) COMPETENCE OF THE OUTGOING ASSEMBLY TO ENACT A FUNDAMENTAL AMENDMENT

> *Whether the present Legislative Assembly, having effectively completed its constitutional tenure under Article 22(3) and being on the eve of the announcement of the election schedule under Article 22(4), is constitutionally competent or institutionally suited to entertain or to give effect to a fundamental amendment of the character now demanded; and whether, consistently with the well-settled principle that a legislature which has outlived its tenure carries no democratic mandate to bind its successor (Jamat-e-Islami v. Federation of Pakistan, PLD 2009 SC 549), so fundamental a constitutional change does not properly belong to the incoming Assembly, freshly mandated by and answerable to the electorate?*

28. Article 22(3) of the Constitution provides that the Assembly shall endure 'for five years from the date appointed for their first meeting and no longer', and that the expiration of that term shall operate as a dissolution. Article 22(4) mandates that a general election shall be held

within sixty days of dissolution. It is acknowledged in the Reference that the present Assembly stands upon the very eve of the expiry of its constitutional term, with general elections expected in or about the last week of July 2026. Before proceeding further, we consider it necessary to state clearly and unambiguously what this opinion does not say. It does not say, and it would not be constitutionally correct to say, that the present Assembly is legally incompetent to entertain or enact a constitutional amendment whether ordinary or fundamental in the closing days of its term. We reached that conclusion for the following reasons.

29. The power to amend the Constitution under Article 33 is vested in the Legislative Assembly without qualification or temporal restriction. Article 33 does not prescribe any period during the Assembly's term within which the amending power may or may not be exercised. It does not distinguish between the opening days and the closing days of the Assembly's mandate. It does not provide that the amending power is suspended or diminished as the Assembly approaches the end of its constitutional life. The constitutional text is clear, and where the constitutional text is clear this Court has neither the authority nor the inclination to read into it a restriction that its framers did not enact. It is a cardinal principle of constitutional interpretation, that the Courts must give effect to the plain meaning of constitutional provisions and cannot supply omissions or introduce restrictions that the Constitution does not itself prescribe. Nothing can be added, subtracted, or even substituted in the Constitution by the Courts.[1] The judiciary must interpret the law exactly as it exists on the statute book.

30. The aforesaid conclusion finds further and express constitutional support in Article 31 of the Constitution, which defines and governs the legislative powers of the Azad Jammu and Kashmir Legislative Assembly. Article 31 vests the legislative power of the State in the Assembly and prescribes the subjects upon which the Assembly is competent to legislate. Critically, Article 31 contains no provision qualifying, suspending, or diminishing the legislative authority of the Assembly by reference to the

[1] 2002 SCR 527, 2013 SCR 761, 2016 SCR 145 etc.

stage of its constitutional term. The legislative power conferred by Article 31 is conferred upon the Assembly as a constituted body for the duration of its existence, and it remains exercisable in full until the moment of dissolution by efflux of time under Article 22(3). It is equally significant that Article 33 of the Constitution, which governs constitutional amendments, itself requires the prior approval of the Government of Pakistan in respect of any amendment to Articles 31, 33, and 56. This express constitutional safeguard demonstrates that the framers were well aware of the need to impose specific restrictions upon the amending power where they considered such restrictions necessary. The framers imposed no temporal restriction upon the exercise of the amending power by reference to the stage of the Assembly's term. Had they intended such a restriction they would have said so expressly, as they did in respect of the subjects requiring Pakistan's prior approval. Their silence in this regard is not an omission to be supplied by this Court; it is a deliberate constitutional choice that we must respect and give effect to. There is therefore no embargo, no restriction, no legal incapacity, and no constitutional bar that prevents the present Assembly from entertaining or enacting a constitutional amendment.

31. The above conclusion finds further support from the jurisprudence of this Court itself. In **PLD 1996 (AJ&K) 12**[1], a writ petition was filed challenging the holding of a Presidential election by the outgoing Assembly on the ground that an Assembly whose term was on the point of expiry was not a constitutionally appropriate forum for the election of a President who would hold office for a full term of five years. The Court dismissed the petition and held that the Assembly remained a fully constituted and operative constitutional body until the moment of its dissolution by efflux of time under Article 22(3), and that its constitutional functions remained fully exercisable until that moment. In this regard, the case reported as **PLD 1991 HC (AJ&K) 89**[2] may also be referred. The reasons mentioned in the aforesaid judgments apply with equal force to the present case. The Assembly is either constituted, or it is not; it is either

[1] Sahibzada Muhammad Ishaque Zafar v. Speaker, Legislative Assembly AJ&K
[2] Ch. Sultan Mehmood vs. Chief Election Commissioner & others.

dissolved or it is not. Until dissolution occurs, it remains, in the fullest constitutional sense, the Legislative Assembly of Azad Jammu and Kashmir, possessed all the powers that the Constitution confers upon it including the power to amend the Constitution under Article 33.

32. **However,** in the light of recent development no further discussion is warranted in this regard. It has been brought to the notice of the Court during the course of hearing that all the political parties of Azad Jammu and Kashmir have passed a unanimous resolution showing their unwillingness to amend the Constitution and abolish the seats. In such scenario, there is no need to give our opinion on the question as to whether the present Assembly should legislate on this issue or not.

(iii) WHETHER COERCED EXTRA-CONSTITUTIONAL DEMAND AMOUNTS TO SUBVERSION OF THE CONSTITUTION

> *Whether a demand to abolish an entrenched constitutional provision by the threat or use of force, and to coerce the State into abandoning the amendment process prescribed by Article 33, amounts to subversion of the Constitution and is repugnant to the constitutional order, having regard to the ideology of the State's accession to Pakistan and the responsibilities of the Government of Pakistan under the UNCIP Resolutions (Articles 56 and 7, read with the Preamble and Part-A of the Third Schedule of the Constitution)?*

33. This question is inherently linked to question No.1 regarding which we have already held that under law the only mode for introducing an amendment in the Constitution is Article 33, however, as to the dimension of this question concerning the ideology of the State's accession to Pakistan and the responsibilities of the Government of Pakistan under the UNCIP Resolutions we observe that these provisions reflect the solemn ideological and international commitments that give Azad Jammu and Kashmir its unique constitutional identity. The twelve refugee seats are, as we have elaborated at length in this opinion, one of the constitutional expressions of those commitments. Any modification of these seats, if it is ever to be made, must be approached with full consciousness of this dimension not as a purely

domestic political matter but as a constitutional question touching upon the foundational ideology and international obligations of the State. We do not feel it appropriate to pronounce upon whether the demand for the abolition of these seats is consistent or inconsistent with those ideological and international commitments.

(iv) THE LIMITS OF THE CONSTITUTIONAL RIGHT OF ASSEMBLY AND ASSOCIATION

> *Whether the freedom of assembly and of association guaranteed by the Fundamental Rights (Article 4, Rights 6 and 7) extends to a movement whose declared object is to obstruct, by force or threat of force, constitutionally mandated elections or to compel an extra-constitutional amendment; or whether such activity falls outside that protection and within the reasonable restrictions permissible in the interest of public order and the sovereignty and integrity of the State?*

34. Having established the constitutional status of the twelve refugee seats and the exclusive mechanism through which they may lawfully be altered, we now turn to the constitutional dimensions of the means by which the demand for their abolition has been pressed. The Reference places before us the undisputed fact of the agitation involved, and threatens again to involve, the blockading of roads and communication routes, the closure of markets, the suspension of public life, and the obstruction of the routes linking Azad Jammu and Kashmir with Pakistan. These activities in previous rounds of the same agitation resulted in violence and loss of lives. We consider it necessary to examine these activities against the framework of the Fundamental Rights guaranteed by the Constitution, the reasonable restrictions permissible upon those rights, and the constitutional obligations of the State in response.

35. Article 4(4) of the Constitution enumerates twenty-four Fundamental Rights guaranteed to every State subject, including the right of freedom of movement, freedom of assembly, and freedom of association. However, the Fundamental Rights guaranteed by Article 4(4) are not

absolute. This Court has authoritatively held, in **2018 SCR 282**[1], that the rights of freedom of movement under Article 4(4)(5), freedom of assembly under Article 4(4)(6), freedom of association under Article 4(4)(7), and freedom of trade, business or profession under Article 4(4)(8) are all subject to reasonable restrictions imposed by law in the public interest or in the interest of morality or public order. The constitutional protection of these rights is therefore limited from the beginning: it applies only when they are exercised lawfully and peacefully, and not otherwise.

36. The right of peaceful assembly is undoubtedly a Fundamental Right guaranteed under Article 4(4)(6) of the Constitution. However, such right is neither absolute nor unrestricted and remains subject to reasonable restrictions imposed by law in the interest of public order. Such freedom has to be read in conjunction with the most crucial right to life[2]. While exercising the right of assembly, citizens are equally bound to respect the Fundamental Rights of other citizens guaranteed by the Constitution, including the right to security of person, freedom of movement, and freedom to carry on trade, business or profession. In this context, the blockading of roads and communication routes, the disruption of supply lines linking Azad Jammu and Kashmir with Pakistan, and the forcible closure of markets, businesses and public institutions cannot be regarded as legitimate manifestations of the right of peaceful assembly. Such acts directly interfere with the rights of other citizens to move freely, conduct lawful business, obtain essential goods and services, access medical facilities, and access to the ordinary necessities of daily life. The exercise of one Fundamental Right cannot be permitted in a manner that substantially impairs or destroys the Fundamental Rights guaranteed to others. In this regard, reference may usefully be made to the judgment reported as **2024 CLC 1012**[3], wherein it was held that the constitutional right of assembly must be balanced against the corresponding constitutional rights of other citizens and the requirements of public order.

> "18. Right to assemble peacefully is a fundamental right of every citizen guaranteed under Article 16 of the "Constitution" but such right is neither unbridled nor unlimited. Article 16 though guarantees such

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[1] Imran Khurshid & 10 others vs. Azad Government and 4 others.
[2] PLD 2022 SC 511.
[3] Sheikh Muhammad Hafeez vs. Federation of Pakistan & others.

right but it is always subject to reasonable restrictions imposed by law in respect of public order. A citizen who claims right of freedom of assembly for himself/herself has to keep in mind the fundamental rights of the other citizens, guaranteed under the "Constitution" e.g. security of person, freedom of movement, trade business and profession. Guidance in this respect can be sought from Watan Party and another v. Federation of Pakistan and others (2011 KLR Supreme Court 298). The relevant extract from the same is reproduced below: -

> "4. Article 14 of the Constitution of Pakistan ensures dignity of every individual. In the case of 'Commissioner of Income Tax v. Eli Lilly Pakistan' reported as 2009 SCMR 1279, this Court observed that:
>
> > "It is the duty and obligation of the State on account of the various provisions of the Constitution to provide the atmosphere based on honesty by providing equal protection of law. Every citizen must be treated equally, dignity of human being life should be maintained, and liberty of life and honour must be guaranteed as envisaged in the Articles 9, 14 and 25 of the Constitution."
>
> 5. Articles 15 and 18 of the Constitution, respectively relate to freedom of movement etc. and freedom of trade, business or profession and have been interpreted by this Court in the case titled "Government of Pakistan v. Zamir Ahmad" reported as PLD 1975 SC 667, in the following words: –
>
> > "Article 18 of the Constitution of Pakistan, which relates to the freedom of trade, business or profession, which corresponds to Article 15 of the interim Constitution, and which incidentally held the field at the relevant time, assures the citizens the right to enter upon any "lawful profession of occupation" and "to conduct any lawful trade or business". It is important to point out that the word "lawful" qualifies the right of the citizen in the relevant field. This clearly envisages that the State can by law ban a profession, occupation, trade or business by declaring it to be unlawful which in common parlance means anything forbidden by law. Prostitution, trafficking in women, gambling, trade in narcotics or dangerous drugs are common place instances of unlawful profession or trade. These are inherently dangerous to public health or welfare. Therefore, on the wording of Article 18 of the Constitution, the right to enter upon a profession or occupation or to conduct trade or business can hardly be described to be a Constitutional or Fundamental Right when such right may be denied by law. In this respect our Constitution stands in sharp contrast with the corresponding provision of the Indian Constitution which omits the use of word "lawful" in the relevant Provision."

The same principle was enunciated by this Court in the case of Arshad Mehmood (supra). This Court observed that the Government has the authority to regulate a lawful business or trade. Reasonable restriction, however, does not mean prohibition or prevention completely. Article 24(1) of the Constitution envisages that no person shall be deprived of his property save in accordance with law.

6. Any democratic set up consisting of citizens and functionaries in the country under the Constitution is bound to show its loyalty to the State, for to be loyal and faithful to the State is the basic duty of every citizen under Article 5 of the

Constitution. This Court in the case of Shahid Orakzai v. Pakistan through Secretary Law (PLD 2011 SC 365) held that Article 5(2) of the Constitution has mandated that obedience to the Constitution and law is the inviolable obligation of every citizen wherever he may be and for every other person for the time being within Pakistan. The chosen representatives, who have acquired authority on behalf of their electors as members of the National Assembly, Senate or Provincial Assemblies as per mandate of their oath, which they take before entering upon office, are bound to bear true faith and allegiance to Pakistan. The oath of the office of members of the National Assembly and Senate as set out in the Third Schedule provides that the members will perform their functions honestly, to the best of their ability, faithfully and in accordance with the Constitution and law; that they will act in the interest of the sovereignty, integrity, solidarity, wellbeing and prosperity of Pakistan and they will preserve, protect and defend the Constitution. Therefore, while holding a constitutional office, the chosen representatives of the people have to remain true to their oath and to observe constitutional limits in all circumstances."

19. Sit-in (دھرنا) has become a common phenomenon and fusty trend in Pakistan. It has now become a source/weapon not only with the political parties but every segment of society having followers/ members/ companions to stage a sit-in for their demands so as to exert pressure upon the executive/state to fulfill their demands, leaving aside all the legal course provided under the law. This trend has led the country to destabilization. In civilized countries, nobody can be allowed to take the law in his/her own hands irrespective of the fact how much the worst condition is. Pakistan is perhaps the only country in which the law enforcement agencies/executive, instead of defending the cause of the State and maintaining its writ, join hands with the persons/groups, who intend to erode the sovereignty of the State or to create lawlessness on extraneous reasons. It is not the first time in the history of country that such incident had taken place. In recent past, when the members of Tehrik-e-Labbaik Pakistan (TLP) and its supporters occupied a road junction (interchange) known as the 'Faizabad Interchange', the Hon'ble Supreme Court of Pakistan took suo motu notice as Suo Motu Case No.7 of 2017 reported as SUO MOTU CASE NO.7 OF 2017 (PLD 2019 Supreme Court 318). In the said judgment, the Hon'ble Apex Court after taking into consideration all the material facts passed the following declarations and directions: -

"53....

(1) ...

(2) Every citizen and political party has the right to assemble and protest provided such assembly and protest is peaceful and complies with the law imposing reasonable restrictions in the interest of public order. The right to assemble and protest is circumscribed only to the extent that it infringes on the fundamental rights of others, including their right to free movement and to hold and enjoy property.

(3) Protestors who obstruct people's right to use roads and damage or destroy property must be proceeded against in accordance with the law and held accountable.

(4) ....

(5) .....

(6) The State must always act impartially and fairly. The law is applicable to all, including those who are in government and institutions must act independently of those in government.

(7) to (12) ...

(13) Intelligence agencies should monitor activities of all those who threaten the territorial integrity of the country and all those who undermine the security of the people and the State by resorting to or inciting violence.

(14) ....

(15) .....

(16) The police and other law enforcement agencies are directed to develop standard plans and procedure with regard to how best to handle rallies, protests and dharnas, and ensure that such plans/ procedures are flexible enough to attend to different situations. It is clarified that though the making of such plans/ procedures is not within the jurisdiction of this Court however we expect that in the maintenance of law and order every effort will be taken to avoid causing injury and loss of life. Had the above directions been complied with by the relevant authorities, the present incident would have not happened."

37. Furthermore, the acts of blockading roads and communication routes, disrupting supply lines, forcibly closing markets and public institutions, damaging public or private property, inciting violence, and causing hardship to the general public are also contrary to the injunctions of Islam. As elaborated by the Supreme Court of Pakistan in **PLD 2018 SC 72**[1], Islam unequivocally condemns violence, disorder, destruction of property, hate speech, and every form of conduct that causes hardship to others. The Court observed that the teachings of the Holy Quran and Sunnah promote peace, unity, tolerance, and respect for the rights of fellow human beings, whereas creating public nuisance, obstructing the movement of people, disrupting daily life, and resorting to force are inconsistent with these fundamental Islamic values. It would be proper to reproduce here the relevant portion of said judgment as follows:-

"8. Those carrying out violent acts, or advocating or propagating violence, or destroying or damaging property, or abusing, or resorting to hate speech also violate the injunctions of Islam. Article 2 of the Constitution stipulates that, "Islam shall be the State religion of Pakistan". A believer cannot condone, let alone perpetuate violence. It is a matter of some concern that those parts of our earlier orders which referred to the verses from Holy Quran and the sayings of Prophet Muhammad (peace and blessings be upon him) apparently were not propagated as mentioned in our previous order. For ease of reference we reproduce the following:

From order dated November 21, 2017:

> *"sowing divisions ('tafarraqu') and difference ('ikhttalafu') [is] against the clear proscription by Almighty Allah in Surah Ash-Shura (42) ayat 13, Surah Al-Imran (3) ayat 103 and ayat 105.*

[1] Action regarding Islamabad, Rawalpindi Sit-in Dharna (Suo Motu Case No.7 of 2017, decided on 30th November, 2017)

Prophet Muhammad (peace and blessings be upon him) expanded on the Divine Message, warnings:

"Do not engage in disagreement thereby causing discord among your hearts".

When two Muslims were loudly arguing in disagreement about the meaning of a Quranic verse he said:

"People before you perished only because of their disagreement about the Scripture."

In his famous sermon delivered at mount Arafat he said that,

"Every Muslim is a Muslim's brother, and that Muslims are brethren".

He abhorred dissension (fitnah). Shortly before his death he said,

"O people the fire has been kindled, and dissension has set in like segments of a dark night."

From order dated November 23, 2017:

"Surah Al-Furqan (25) ayat 63 states that,

"And the servant of (Allah) Most Gracious are those who walk on the earth in humility, and when the ignorant address them, they say, 'Peace!'"

"And Allah loves not the proud and boastful" (surah An-Nisa, ayat 36)."

"Almighty Allah in surah Al-Ma'idah (5) ayat 32 equates the killing of a single person as equivalent to the killing of everyone and the saving of a single person as equivalent to saving everyone."

"No one can be allowed to use filthy-abusive language to advance a political agenda in the guise of an Islamic cause as it amounts to denigrating the glory of Islam."

"Force and violence (jabr) has no place in Islam. The word Islam itself means peace."

9. Those killing, maiming and injuring, and those destroying or damaging property and those advocating or justifying violence, purportedly in the name of Islam, attempt to denigrate Islam. They also provide fodder to the enemies of Islam and Muslims. And also help perpetuate the myth that Islam was spread by the sword. Peace is the religion of Islam, as can be gathered from the quoted verses of the Holy Quran. Islam's extraordinary message of peace and the beautiful sayings and the conduct of the Prophet Muhammad (peace and blessings be upon him) which good Muslims try their utmost to abide by persuaded hundreds of millions to turn to Islam. By adhering to Islam's message of peace, articulated in the "Unity, Faith and Discipline" motto, the All India Muslim League and its leader, Mohammad Ali Jinnah, attained Pakistan."

38. The cumulative effect of the foregoing constitutional and Islamic principles admits of no ambiguity. While every citizen is entitled to peacefully express grievances and advocate for lawful constitutional change, such objectives cannot be pursued through methods that undermine public order, impair the Fundamental Rights of others, or resort to coercion, violence, or disruption of public life. The Constitution protects peaceful

dissent; it does not protect conduct that infringes the rights of fellow citizens or challenges the lawful authority of the State. The Constitution does not leave the State without remedy or authority in the face of such obstruction. However, this Court does not, in this advisory opinion, purport to legislate or to prescribe the precise measures that the executive must adopt in response to the threatened agitation. That is a matter of executive judgment and legislative competence.

(v) CONSTITUTIONAL OBLIGATIONS OF THE GOVERNMENT AND THE SCOPE OF LAWFUL MEASURES

> *Whether the Azad Government of the State of Jammu and Kashmir is under a constitutional obligation to decline such extra-constitutional demands, to announce and hold the General Elections within the time prescribed by the Constitution, and to take all lawful measures available to it to preserve public order and protect the electoral process; and what is the constitutional scope of such lawful measures?*

39. The last question before us is whether the Azad Government of the State of Jammu and Kashmir is under a constitutional obligation to decline extra-constitutional demands, to announce and hold the General Elections within the time prescribed by the Constitution, and to take all lawful measures available to it to preserve public order and protect the electoral process. This question, in the peculiar facts and circumstances of this Reference, is perhaps the most practically urgent of the five questions referred. The answer to this question, in our opinion, does not admit of any doubt or complexity. The Constitution speaks to it directly, clearly, and without qualification, and this Court's advisory opinion on this question is no more than a faithful exposition of what the Constitution itself commands.

40. The constitutional obligation to hold elections within the prescribed time is not a matter left to the discretion of any constitutional functionary. It is a mandatory command of the Constitution, reinforced by the statutory framework governing the electoral process, and its faithful discharge is the most elementary duty of the State and its constitutional

institutions at this juncture. Article 22(3) of the Constitution provides in unambiguous terms that the Assembly shall endure for five years from the date appointed for its first meeting "and no longer", and that the expiration of that term shall operate as an automatic dissolution. Article 22(4) provides that a general election shall be held within sixty days of such dissolution. The referred Article reads as under:-

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

The word "shall" appearing in the aforesaid provision is not permissive; it is mandatory. It admits of no qualification, no condition, and no exception. It does not say that elections shall be held within sixty days unless there is political unrest. It does not say that elections may be postponed if a demand is pending. It says, plainly and categorically, that elections shall be held, therefore, the constitutional authorities of the State have no choice in the matter.

41. Under Article 50 of the Constitution there shall be an Election Commission for Azad Jammu and Kashmir and under sub-Article (7) of the said Article it shall be the duty of the Commission to organize and conduct the election for the office of the President, the Assembly, the Council and local government bodies and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with the law. Furthermore, under sub-Article (18) it shall be the duty of all executive authorities in the State to assist the Commission in the discharge of its functions. Section 4 of the Elections Act, 2020 gives the Election Commission power to issue such directions or orders as may be necessary for the performance of its functions and duties, including an order for doing complete justice. The combined reading of Article 22(4) and 50 of the Constitution read with section 4 of the Elections Act, 2020 makes the mandate of Constitution clear and unambiguous that it is the duty of not only the Election Commission but all the executive authorities of the State to ensure holding of free, fair and transparent elections within the period

specified in the Constitution and there is no option to deviate from this constitutional duty.

42. The superior Courts have affirmed in numerous judgments that the holding of elections within the constitutionally prescribed period is a non-derogable constitutional obligation and that no political, security, or administrative consideration can justify its postponement beyond the constitutional timeframe. In **PLD 2023 SC 406**[1] the Election Commission passed an order delaying elections to the Provincial Assemblies of Punjab and KPK. It was held that ***"neither the Constitution nor the law empowers the Election Commission to extend the date of elections beyond the 90 days period as provided in Article 224(2) of the Constitution"*** Accordingly, the order passed by the Election Commission was declared to be unconstitutional, without lawful authority or jurisdiction, void ab-initio, of no legal effect and was resultantly quashed with a direction to the relevant functionaries to ensure timely elections. In the case reported as **PLD 2024 SC 1**[2] the general elections were not held within a period of ninety days after dissolution of Assemblies, as stipulated by the Constitution. The Supreme Court of Pakistan declared the said act to be violation of the Constitution by the President, the Governors and the Election Commission. Thus, in our opinion, the Election Commission is under a constitutional obligation to conduct elections within the prescribed period and this obligation is absolute and unqualified which cannot be watered down by executive inaction, legislative delay, or political controversy.

43. In the result, this Court advises that the announcement and holding of general elections within the period prescribed by Article 22(4) of the Constitution is an absolute and non-derogable constitutional obligation; that the Chief Election Commissioner and all the executive authorities acting in his aid are under an independent constitutional duty to conduct elections within the prescribed period regardless of any political controversy or agitation; and that any attempt by any person, organisation, or movement to

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[1] Muhammad Sibtain Khan vs. Election Commission of Pakistan & others.
[2] Supreme Court Bar Association of Pakistan vs. Federation of Pakistan & others.

obstruct, delay, or prevent the holding of free, fair and transparent elections within the constitutional timeframe is a breach of public order.

44. The final limb of Question 5 asks what lawful measures the Government may take to preserve public order and protect the electoral process in the face of the threatened agitation. We do not consider it proper, in the exercise of our advisory jurisdiction, to enumerate, prescribe, or recommend specific measures in that behalf. This matter falls squarely within the executive authority.

PART V
SUMMARY OF ADVISORY OPINION

45. The summary of aforesaid discussion is as follows:

(i) **Regarding Question (i):** The twelve refugee seats enshrined in Article 22(1)(a)(ii) and (iii) of the Constitution are a creature of the Constitution and can be altered, abridged, or abolished exclusively through a constitutional amendment passed in strict conformity with Article 33. They cannot be altered by ordinary legislation, by executive action, or by any extra-constitutional means.

(ii) **Regarding Question (ii):** The Assembly is competent to perform functions till its last day. However, after passing of resolution by all the political parties, having representation in the sitting Legislative Assembly, this question needs no deliberation.

(iii) **Regarding Question (iii):** This question is linked to question No.1 and needs no independent opinion.

(iv) **Regarding Question (iv):** The constitutional right of peaceful assembly and association is fully protected and

extends to advocacy for any constitutional change. However, the blockading of roads, the forcible closure of markets, and the obstruction of public life fall entirely outside that protection. Such activities are always subject to reasonable restrictions imposed by law.

(v) **Regarding Question (v):** The Government is under an unqualified and mandatory constitutional obligation to announce and hold the General Elections within the period prescribed by Article 22(4) of the Constitution.

PART VI
CONCLUSION

This Court has tendered its Advisory Opinion on the five questions referred to by the President of Azad Jammu and Kashmir under Article 46-A of the Constitution, after full consideration of the constitutional provisions, the legislative and historical background of the refugee seats, the factual matrix placed before this Court, and the submissions of the Advocate General and the learned amicus curiae. The constitutional message of this opinion may be stated plainly: the Constitution of Azad Jammu and Kashmir is the supreme law of the State, and its provisions are the property of the people of Azad Jammu and Kashmir and of the whole Kashmiri people. The amendment of the Constitution is a solemn constitutional act, not a concession to be wrested from a government under duress. It can only be accomplished through the process the Constitution itself prescribes, by an Assembly possessed of the full democratic mandate of the people, after deliberation, consultation, and consensus-building. The Government of Azad Jammu and Kashmir is under legal obligation to hold elections within time stipulated by the Constitution. Lastly, the Constitution is not a document to be honoured when convenient and discarded when inconvenient. The Constitution endures because its guardians i.e., the Government, the Legislature, the Judiciary, and ultimately the people stand

firm in its defence. At the end, we would like to appreciate the Advocate General and amicus curiae (Raja Sajjad Ahmed Khan and Barrister Humayun Nawaz Khan, Advocates) for their valuable assistance in the matter.

CHIEF JUSTICE **JUDGE**

Muzaffarabad
Dated: 06.06.2026

The Reference has been answered. The Registrar is directed to communicate it to the Worthy President of Azad Jammu and Kashmir through Secretary Presidential Affairs, forthwith.

CHIEF JUSTICE