

No. LD/Legis-Act/275-86/2020. The following Act, passed by the Azad Jammu and Kashmir Legislative Assembly on 19<sup>th</sup> May, 2020 and received the assent of the President on the 13<sup>th</sup> day of June, 2020, is hereby published for general information.

**[Act XVIII of 2020]**

**An**

**Act**

to amend and consolidate laws relating to the conduct of elections

**WHEREAS** it is expedient to amend and consolidate laws relating to the conduct of elections and matters connected therewith or ancillary thereto;

It is hereby enacted as follows:—

**CHAPTER-I**

**PRELIMINARY**

**1. Short title, commencement and extent.**— (1) This Act may be called the Azad Jammu and Kashmir Elections Act, 2020.

(2) It shall come into force at once.

(3) It shall extend to the whole of Azad Jammu and Kashmir Territory and shall also apply to all State Subjects, wherever they may be.

**2. Definitions.**— In this Act, unless there is anything repugnant in the subject or context,—

(i) **'Article'** means Article of the Azad Jammu and Kashmir Interim Constitution, 1974;

(ii) **'Assembly'** means the Legislative Assembly of Azad Jammu and Kashmir;

(iii) **'Asset'** means any property owned or held by a candidate or a member;

(iv) **'Ballot Paper Account'** means a ballot paper account prepared under sub-section (10) of Section 65;

(v) **'Bye-election'** means an election to fill a casual vacancy referred to in this Act;

(vi) **'Candidate'** means a person, proposed and seconded as a candidate for, or seeking, election as a Member;

(vii) **'CNIC'** means the Computerized National Identity Card issued by the NADRA;

- (viii) **‘Delimitation Commission’** means the Delimitation Commission constituted under Section 16;
- (ix) **‘Commission’** means the Azad Jammu and Kashmir Election Commission constituted under Article 50 of Azad Jammu and Kashmir Interim Constitution, 1974;
- (x) **‘Commissioner’** means Chief Election Commissioner appointed under Article 50, and includes an Acting Chief Election Commissioner appointed under sub-Article (9) of Article 50;
- (xi) **‘Constituency’** means a constituency delimited under the Section 17, for the purpose of election of a member;
- (xii) **‘Constitution’** means the Azad Jammu and Kashmir Interim Constitution, 1974;
- (xiii) **‘Contesting Candidate’** means a candidate who has been validly nominated for elections as a member and has not withdrawn his candidature;
- (xiv) **‘Election Agent’** means an election agent appointed by a candidate under Section 49 and, where no such appointment is made, the candidate acting as his own election agent;
- (xv) **‘Election Petition’** means an election petition made under Section 81;
- (xvi) **‘Election’** means an election to the seat of a member, held under this Act;
- (xvii) **‘Electoral area’** means,-
- (a) in rural areas, a village: and
  - (b) in urban areas,-
    - (i) where there is a municipal ward, such ward,
    - (ii) where there is no municipal ward a well-defined mohallah or a street, or
  - (c) such other areas as may be determined by the Commission:
 

Provided that for the purposes of challenging voter list in constituencies reserved for refugees settled in Pakistan, the whole constituency shall be treated as one Electoral area.
- (xviii) **‘Elector’** in relation to a constituency’ means a person who is enrolled on the electoral roll for that constituency;
- (xix) **‘Electoral roll’** means an electoral roll prepared under Section 19;
- (xx) **‘Government’** means the Azad Government of the State of Jammu and Kashmir;
- (xxi) **‘High Court’** means the High Court of Azad Jammu and Kashmir constituted under Article 43;

- (xxii) **‘Member of the Commission’** means Member of the Commission appointed as such under sub-Article (6) of Article 50;
- (xxiii) **‘Member’** means a Member of Azad Jammu and Kashmir Legislative Assembly or Local Government Bodies;
- (xxiv) **‘NADRA’** means National Database and Registration Authority, established by Government of Pakistan;
- (xxv) **‘Nomination day’** means the day declared under Section 36 for the nomination of candidates;
- (xxvi) **‘Political party’** includes a group or combination of persons which are operating for the purpose of propagating any political opinion or participating in any other political activity;
- (xxvii) **‘polling agent’** means a polling agent appointed under Section 50;
- (xxviii) **‘Polling Assistant’** means a Polling Assistant appointed under Section 34 for a polling station;
- (xxix) **‘Polling day’** means a day on which poll is taken for an election;
- (xxx) **‘Polling officer’** means a polling officer appointed under Section 34;
- (xxxi) **‘Population’** means the population as given in the latest census report;
- (xxxii) **‘Prescribed’** means prescribed by rules made under this Act;
- (xxxiii) **‘President’** means the President of the Azad Jammu and Kashmir;
- (xxxiv) **‘Presiding Officer’** means a Presiding Officer appointed under Section 34 for a polling station and includes a Polling Officer exercising the powers and performing the functions of Presiding Officer;
- (xxxv) **‘Qualifying date’** means the date fixed by the Commission for preparation, revision or amendment of the electoral rolls under this Act.
- (xxxvi) **‘Refugees settled in Pakistan’** for the purposes of this Act means a person who migrated from Indian Occupied Jammu and Kashmir and has been settled in any area of Pakistan:
- Provided that a person who migrated from any part of Indian Occupied Jammu and Kashmir and settled in any area of Azad Jammu and Kashmir shall be treated as resident of Azad Jammu and Kashmir;
- (xxxvii) **‘Registered voters’** means voters registered under this Act;

- (xxxviii) **‘Registration Officer’** means a Registration Officer appointed under Section 20 and includes an Assistant Registration Officer performing the functions of the Registration Officer;
- (xxxix) **‘Returned candidate’** means a candidate who has been declared elected as a Member under this Act;
- (xl) **‘Rules’** mean the rules made under this Act;
- (xli) **‘Scrutiny day’** means the day declared under Section 36 for the scrutiny of nomination papers;
- (xlii) **‘spoilt ballot paper’** means a ballot paper which has been spoiled and is returned to the Presiding Officer under Section 63 of this Act;
- (xlili) **‘State subject’** means a ‘State subject’ as defined in the Constitution;
- (xliv) **‘Supreme Court’** means the Supreme Court of Azad Jammu and Kashmir;
- (xlv) **‘Tribunal’** means an Election Tribunal constituted under Section 85;
- (xlvi) **‘Validly nominated candidate’** means a candidate whose nomination has been accepted;
- (xlvii) **‘Voter’** means, in relation to Assembly or a local government, a person who is enrolled validly as a voter on the electoral roll of any electoral area in a constituency;
- (xlviii) **‘Withdrawal day’** means the day declared under Section 36 on or before which candidature may be withdrawn;

## **CHAPTER-II**

### **ELECTION COMMISSION**

- 3. Procedure of the Commission.**- (1) In the performance of its functions, duties and exercise of its powers, the Commission shall regulate its own procedure.
- (2) The Commission may exercise its powers and perform its functions even if the office of any member of the Commission is vacant or any of the members is, for any reason, unable to attend the proceedings of the Commission and the decision of the majority of the members shall have the effect of the decision of the Commission.
- (3) If, upon any matter requiring a decision of the Commission, there is difference of opinion amongst its members, the matter shall be placed before the full Commission for decision and the opinion of the majority shall prevail and the decision of the Commission shall be expressed in terms of the opinion of the majority.

- 4. Power to issue direction.**- (1) The Commission shall have the 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 in any matter pending before it and an order for the purpose of securing the attendance of any person or the discovery or production of any document.
- (2) Any such direction or order shall be enforceable throughout Azad Jammu and Kashmir and shall be executed as if it has been issued by the High Court.
- (3) Anything required to be done for carrying out the purposes of this Act, for which no provision or no sufficient provision exists, shall be done by such authority and in such manner as the Commission may direct.
- 5. Assistance to the Commission.**- (1) The Commissioner or the Commission may require any person or authority to perform such functions or render such assistance for the purposes of this Act as he or it may direct.
- (2) It shall be the duty of all executive authorities to render such assistance to the Commissioner and the Commission in the discharge of his or its functions as may be required by the Commissioner or the Commission.
- (3) The Government shall make available to the Commission such staff as it may require for the performance of its functions under this Act:
- Provided that where the Commission decides to utilize the services of serving judicial officers, it may do so in consultation with the Chief Justice of the High Court.
- (4) After the Election Programme has been issued and till the publication of the names of the returned candidates in the official Gazette, the Government or authority shall not post or transfer any official appointed or deputed in connection with an election without prior approval in writing of the Commission, including posting or transfer, the decision in respect whereof has not been implemented, and the Commission may itself issue necessary directions to the Government or authority for the posting or transfer of any official.
- 6. Delegation of powers.**- (1) The Commission may authorize the Commissioner or any of its members or any of the officers of the Commission to exercise and perform any of its powers and functions under this Act.
- (2) The Commissioner shall exercise powers relating to the appointment of officers and staff to be employed in connection with the functions of the Commission and determine their terms and conditions of employment in accordance with the Rules.
- (3) The Commissioner shall constitute a bench comprising members of the Commission to hear and decide complaints, applications, petitions or

appeals filed before him.

(4) The decision of a bench constituted under sub-section (3) shall be deemed to be a decision of the Commission except where due to difference of opinion among members of the bench, the matter is required to be placed before the full Commission for decision under Section 3.

- 7. Power to requisition property.**- (1) The Government, Deputy Commissioner or head of district administration, by whatever name called, shall, upon a request made in this behalf by the Commission, requisition a vehicle, vessel or other means of transportation as is needed or is likely to be needed for the purpose of transporting to and from any polling station ballot boxes or other election material or any officer or other person engaged for the performance of any duty in connection with an election:

Provided that the Government, Deputy Commissioner or head of district administration, by whatever name called, shall not requisition a vehicle, vessel or other means of transportation which is being used by a candidate or his election agent for any purpose connected with the election of such candidate:

Provided further that Government own vehicle of a department shall only be requisitioned/used with the prior written approval of the Administrative Secretary.

(2) Any person authorized in this behalf by the Government may take possession of a vehicle, vessel or other means of transportation requisitioned under sub-section (1) and may for that purpose use such force, including police force, as may be reasonably necessary.

(3) Where any vehicle, vessel or other means of transportation is requisitioned under sub-section (1), there shall be paid to the owner thereof compensation the amount of which shall be determined by the Government or the officer requisitioning the vehicle, vessel or other means of transportation on the basis of the fares and rates prevailing in the locality for its hire.

(4) Where the owner of the vehicle, vessel or other means of transportation, being aggrieved by the amount of compensation so determined makes an application to the Government within a period of thirty days from the date the amount has been determined, for the matter being referred to an arbitrator agreed upon by the parties, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Government may determine.

- 8. Power of Commission to ensure fair election.**- Save as otherwise provided, the Commission may,-

- (a) stop the polls at one or more polling stations at any stage of the election if it is convinced that it shall not be able to ensure the conduct of the election justly, fairly and in accordance with law due to large scale malpractices, including coercion, intimidation and pressures, prevailing at the election;
- (b) review an order passed by an officer under this Act or the Rules, including rejection of a ballot paper; and
- (c) issue such instructions, exercise such powers and make such consequential orders as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly, fairly and in accordance with the provisions of this Act and the Rules.

**9. Power of the Commission to declare a poll void.**- (1) Notwithstanding anything contained in this Act, if, from facts apparent on the face of the record and after such inquiry as it may deem necessary, the Commission is satisfied that by reason of grave illegalities or such violations of the provisions of this Act or the Rules as have materially affected the result of the poll at one or more polling stations or in the whole constituency including implementation of an agreement restraining women from casting their votes, it shall make a declaration accordingly and call upon the voters in the concerned polling station or stations or in the whole constituency as the case may be, to recast their votes in the manner provided for bye-elections.

**Explanation.**- If the turnout of women voters is less than ten percent of the total votes polled in a constituency, the Commission may presume that the women voters have been restrained through an agreement from casting their votes and may declare, polling at one or more polling stations or election in the whole constituency, void.

(2) Notwithstanding the powers conferred on it by sub-section (1), the Commission may order filing of complaint under this Act before a court of competent jurisdiction against persons who entered into the agreement referred to in sub-section (1).

(3) Notwithstanding the publication of the name of a Returned Candidate, the Commission may exercise the powers conferred on it by sub-section (1) before the expiration of sixty days after such publication; and, where the Commission does not finally dispose of a case within the said period, the election of the Returned Candidate shall be deemed to have become final, subject to the decision of an Election Tribunal on an election petition, if any.

(4) While exercising the powers conferred on it by sub-section (1), the Commission shall be deemed to be an Election Tribunal to which an election petition has been presented, and shall regulate its own procedure.

(5) Any person aggrieved by a declaration of the Commission under this Section may, within thirty days of the declaration, prefer an appeal to the Supreme Court.

**10. Power to punish for contempt.**- The Commission may exercise the same power as the High Court to punish any person for contempt of court and the Contempt of Court Act 1993, or any other law pertaining to contempt of court shall have effect accordingly as if reference therein to a “court” and to a “judge” were a reference, respectively, to the “Commission” and the “Commissioner” or, as the case may be, a member of the Commission.

**11. Measures for training and public awareness.**- The Commission shall, from time to time as it may deem fit,-

(a) conduct training programs for election officials including officials of the Commission, any Government or corporations, and autonomous or semi-autonomous bodies and officers from the judiciary, if any, deputed or selected in connection with an election in accordance with procedure laid down under this Act or the Rules;

(b) advise public authorities, educational and training institutions regarding programmes and measures for dissemination of knowledge regarding electoral laws and best practices;

(c) conduct public awareness programme and media campaigns, regarding the importance of maximum voter enrolment and participation in elections, especially by women, dissemination of information regarding procedure of casting vote, and the importance of maintaining the integrity of the electoral process; and

(d) examine laws, rules and regulations in force which are relevant to the conduct of elections and recommend to the Government amendments in such laws, rules or regulations, as the case may be, in order to increase transparency and fairness and eliminate corrupt practices.

**12. Action Plan.**- (1) The Commission shall, at least four months before the general election is due to be held on expiry of the term of an Assembly, prepare a comprehensive Action Plan specifying all legal and administrative measures that have been taken or required to be taken in respect of the election, including the following,-

(a) delimitation of constituencies;

(b) revision of electoral rolls;

(c) enlistment of political parties;

- (d) allocation of symbols;
- (e) appointment and training of District Returning Officers, Returning Officers, Assistant Returning Officers, Presiding Officers, Assistant Presiding Officers, Polling Officers and other election officials;
- (f) preparation of constituency-wise list of polling stations and list of polling personnel;
- (g) determination and printing of requisite number of ballot papers and designation of printing presses;
- (h) establishment of a transparent result management system for election results;
- (i) introduction of any new technology;
- (j) arrangements for election observers;
- (k) appointment of the Appellate and Election Tribunals;
- (l) security measures; and
- (m) monitoring mechanism to report progress regarding implementation of the Action Plan.

(2) The Commission shall carry out a post-election review of implementation of the Action Plan to ascertain shortcomings, if any, with suggestions to further improve the electoral system.

(3) The Commission shall include the post-election review in its next annual report and publish it on its website.

**13. Complaints.**- (1) Any person aggrieved by any decision or action taken or direction issued by an authority subordinate to the Commission or any action of a political party or a candidate in violation of the Code of Conduct may, within fifteen days of such decision or action, submit a complaint to the Commission pertaining to matters other than relating to election disputes.

(2) The Commission may refer the complaint received under sub-section (1) to such authority as it may deem appropriate for inquiry and report.

(3) The Commission may, on receipt of inquiry report or after hearing the complainant and any other person relevant to the proceedings itself and holding a summary inquiry, pass such orders as it may deem fit within thirty days from the date of receipt of the complaint.

(4) The Commission may also act under this Section on its own accord.

(5) The Commission may publish the order passed under sub-Section (3) on its website, wherever practicable.

- 14. Commission to submit Annual Report.**- (1) The Commission shall, within 90 days after the end of every calendar year, publish a report of its activities for the year and send the report to the Government.
- (2) The Government shall within 60 days from the receipt of the annual report from the Commission lay the annual report in the legislative Assembly.
- (3) Immediately after the annual report is laid in the Legislative Assembly, the Commission shall publish the annual report on its website.
- 15. Officers and servants.**- The Commissioner shall exercise powers relating to the appointment of officers and staff to be employed in connection with the functions of the Commission and determine their terms and conditions of employment in accordance with the Rules.

### **CHAPTER-III**

#### **DELIMITATION OF CONSTITUENCIES**

- 16. Delimitation Commission.**- The Commission constituted under Article 50 of the Azad Jammu and Kashmir Interim Constitution, 1974, shall be delimitation Commission for purposes of this Act.
- 17. Delimitation of Constituencies, etc.**- (1) The Commission shall,-
- (a) for the purpose of election to the seats in the Legislative Assembly, divide each district in the Azad Jammu and Kashmir territory into as many territorial constituencies as the number of such seats set out in column 2 of the entry in Schedule I for the district; and
- (b) for the purpose of election to the seats in the Legislative Assembly for the State Subjects who are now residing in any of the Provinces of the Punjab, Baluchistan, Sindh and Khyber Pakhtunkhwa and Islamabad Capital Territory divide each Province or Provinces or areas into as many territorial constituency or constituencies as the number of such seats set out in column 2 of the entry in Schedule II.
- (2) (a) for the areas mentioned in clause (a) of sub- section (1), the allocation of seats in each district shall be on the basis of population; and
- (b) for the areas mentioned in clause (b) of sub-section (1), the allocation of seats in the Province or Provinces or areas shall be on the basis of registered voters.
- (3) The Constituencies for the seats in the Legislative Assembly shall be so delimited, having regard to administrative convenience, that each Constituency is a compact area and in doing so due regard shall be had,

so far as practicable, to the distribution of the population or the number of registered voters, as the case may be.

(4) The Commission shall, after making such inquiries and examining such records as it may deem necessary and considering such representations as may be received by it, publish in the Official Gazette a preliminary list of territorial Constituencies specifying the areas proposed to be included in each such constituency together with a notice inviting objections and suggestions within a period specified in such notice.

(5) The Commission shall, after hearing and considering the objections and suggestions, if any, received by it, make such amendments, alterations or modifications in the preliminary list published under sub-section (4) as it thinks fit or necessary, and shall publish in the Official Gazette of the final list of territorial constituencies showing the areas included in each such constituency.

- 18. Validity of act of Commission not questionable.**- The validity of the delimitation or formation of any constituency, or of any proceeding taken or anything done by or under the authority of the Commission, under this Act shall not be called in question in any Court.

#### **CHAPTER-IV**

#### **ELECTORAL ROLLS**

- 19. Electoral Rolls for Election of Legislative Assembly.**- (1) The electoral rolls for election to the Legislative Assembly shall be prepared for each electoral area.

(2) Notwithstanding anything contained in sub-section (1) separate electoral lists shall be prepared for,—

- (a) State Subjects residing in Azad Jammu & Kashmir territory;
- (b) State Subjects of the Indian occupied areas of the districts of Anantnag (Islamabad), Baramula and Muzaffarabad and now residing in Pakistan as existed the 14<sup>th</sup> day of August, 1947; and
- (c) Seats for the State Subjects from occupied areas of districts of Jammu, Kathua, Reasi, Udhampur, Poonch State and Mirpur as existed on the 14<sup>th</sup> day of August, 1947 and Mangla Dam affectees who are now residing in any of the province of Pakistan.

(3) Each Electoral Roll shall bear the name, father name and permanent address of the voter alongwith number contained in his CNIC or Form-B, as the case may be.

- 20. Appointment of Registration Officers, etc.**- (1) The Commission shall appoint a Registration Officer for each electoral area for the purpose of the preparation, correction and amendment of an electoral roll for that electoral

area and may, for that purpose, appoint as many Assistant Registration Officers as may be necessary and the same person may be appointed as Registration Officer or Assistant Registration Officer for two or more electoral areas.

(2) Subject to such instructions as may be given in this behalf by the Commission,-

(a) an Assistant Registration Officer may, under the control of the Registration Officer, perform the functions of a Registration Officer; and

(b) a Registration Officer may require any person to assist him in the performance of his functions.

**21. Preparation of electoral rolls, etc.**- (1) The Registration Officer for an electoral area shall, under the superintendence, direction and control of the Commission, prepare for that area in the prescribed manner a draft electoral roll containing the name of every State subject who, on the Qualifying date,-

(a) is not less than eighteen years of age and possesses CNIC or original "Form-B" issued by the NADRA if he is likely to attain eighteenth year of age on qualifying date or photo bearing identity card for refugees of Jammu and Kashmir 1989 and afterward, issued by the Government:

Provided that expired CNIC shall be valid for enrolment:

Provided further that if a state subject is likely to attain eighteen years of age on qualifying date, he shall be registered as voter on production of original Form-B issued by NADRA and number mentioned against his name for his prospective CNIC shall be entered in Electoral roll:

Provided further that the refugees settled in Pakistan not holding state subject certificate may be enrolled as voter on certification of a committee constituted by Commission for each constituency as he may deems fit;

(b) does not stand declared by a competent Court to be of unsound mind; and

(c) is or is deemed under Section 24, to be resident in the electoral area.

(2) The draft electoral roll prepared under sub-section (1), together with a notice inviting claims and objections within such period as may be specified by the Commission with respect thereto, shall be published in such manner as may be prescribed.

- (3) The Registration Officer shall make such additions, modifications or corrections in the draft electoral roll as may be required by any decision on any claim, or objection or as may be necessary for correcting any clerical, printing or other error.
- (4) After making additions, modifications or corrections, if any, under sub-section (3), the Registration Officer shall publish in the prescribed manner the final electoral roll for each electoral area.
- (5) (a) The Electoral Roll published under sub-section (4), upon issuance of its notification by the Commission, be deemed to be the Electoral Roll of the electoral area concerned and shall come into force immediately on such notification;
- (b) The existing electoral roll, for the time being enforce, shall continue to remain enforce and operative until the notification by the Commission under clause (a) is issued.
- (6) If the Commission, on account of any gross error or irregularity in the preparation of an electoral roll for any electoral area published under sub-section (4), considers it necessary so to do, he may by order direct that,-
- (i) the electoral roll for that area be amended, revised or corrected in such manner as the Commission may deem fit;
- (ii) the electoral roll or draft for that area shall stand cancelled and that an electoral roll for such area be prepared afresh in accordance with the provisions of this Act or Rules made thereunder.
- (7) An electoral roll shall be revised, amended or corrected in the prescribed manner, as and when necessary, so as-
- (i) (a) to correct any entry or supply any omission therein; or
- (b) to include the name of any qualified person whose name does not appear on such roll; or
- (c) to delete therefrom the name of any person who has died or who is or has become disqualified for enrollment on such roll.
- (ii) An electoral roll, as amended and corrected, from time to time, shall be maintained in the prescribed manner and shall, together with a notice inviting applications for further amendment and correction, be kept open to public inspection, and copies of such rolls shall be supplied to any person applying therefor, on payment of such fee as may be prescribed.

**22. Departure from normal procedure in exceptional circumstances.**— Where the Commission is satisfied that it is not possible to follow the procedure laid down for the preparation, amendment, revision and correction of an electoral roll in respect of any electoral area, it may direct that an electoral roll for such electoral area shall be prepared in such a manner as it deems fit.

**23. Access to register of births and deaths.**- The Registration Officer and any person authorized by him in this behalf shall have access to any register of births and deaths maintained under any law for the time being in force and may collect such information and take such extracts from such register as may be necessary for the purpose of this Act and every person in-charge of such register shall give such information and such extracts from the said register as the said Officer or person may require.

**24. Meaning of “resident”.**- (1) A person shall be deemed to be resident of an Electoral Area of his permanent address mentioned in his CNIC:

Provided that where a person desires to be enrolled in an Electoral Area where he is residing temporarily and his address as such is mentioned in his CNIC, he may be enrolled in Electoral Area of his temporary residence on the production of certificate of the Registration Officer of the Electoral Area of his permanent address to the effect that he is not enrolled as voter in that area.

(2) The wife of any such person as is referred to in sub-section (2) and such of his children as are entitled to be enrolled shall, if they ordinarily reside with such person be deemed to be resident in the electoral area in which such person is deemed to be resident under that sub-section.

(3) A person who is detained in prison or other legal custody shall be deemed to be resident in the electoral area in which he would have been resident if he had not been so detained.

(4) Where the residence of a State subject is in doubt, he may himself indicate the electoral area on the electoral roll of which he desires to be enrolled:

Provided that Registration Officer of Electoral Area of his permanent residence provides certificate regarding his non enrolment in the Electoral Area of his permanent residence as mentioned in the CNIC.

**25. No Person to be enrolled more than once or in more than one electoral area.**- (1) No person shall be entitled to be enrolled,-

- (a) on the electoral roll for any electoral area more than once; or
- (b) on the electoral rolls for more than one electoral area.

(2) Whoever contravenes the provisions contained in sub-section (1), shall be punished with imprisonment which may extend to one month and fine not less than rupees five thousand or both.

**26. Preparation and revision of electoral rolls.**- (1) The Commission may, at any time, by order direct that an electoral roll of any electoral area, be prepared afresh or revised, if he, for any reason, considers such preparation or revision to be necessary.

(2) The procedure provided for the preparation of the electoral rolls shall, as far as may be followed for the purpose of revision of such rolls.

**27. Validity of electoral rolls, etc. not affected by reason of any mistake.**-

An electoral roll shall not be invalid by reason of any mis-description of a person enrolled thereon, or of omission of the name of any person entitled to be so enrolled or of inclusion of the name of any person not so entitled.

**28. Commission power to include a name in an electoral roll.**- Subject to Section 26, the Commission may at any time before announcement of election schedule order,-

(a) the inclusion in an electoral roll of the name of any person entitled to be enrolled on such electoral rolls, and such name shall from the date of such order form part of the electoral roll;

(b) the exclusion from an electoral roll of the name of any person who has died or has become disqualified to be a voter, and such name shall, from the date of such order stand excluded from that roll; and

(c) the removal of the name of any person from an electoral roll where such removal becomes necessary due to the repetition of the name in the same electoral roll or in the electoral rolls of more than one electoral area.

**29. Breach of Official Duty.**- Where a Registration Officer, an Assistant Registration Officer or any other person appointed in connection with official duty under this Act, willfully or without reasonable excuse, commits breach of official duty by an act or omission, the Commission may suspend such officer or person and initiate proceedings against him and refer the case along with statement of allegation to the Government for disciplinary action.

**30. Summary trial of offences.**- The offence under this Chapter shall be tried in accordance with the provisions of Chapter XXII of the Code of Criminal Procedure, 1898.

## CHAPTER-V

### QUALIFICATIONS AND DIS-QUALIFICATIONS

31. **Qualifications and disqualifications for being a member.**- (1) Subject to the provisions of the Constitution and this Act, a person shall be qualified to be elected as and to be, a member if:

- (a) he is a State Subject;
- (b) he has attained the age of 25 years ;
- (c) his name appears on the electoral roll of any constituency in the Azad Jammu and Kashmir Territory or Pakistan;
- (d) he is of good character and is not commonly known as one who violates Islamic Injunctions;
- (e) he has adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as abstains from major sins; and
- (f) he is sagacious, righteous, honest, ameen and not profligate:

Provided that the provisions (d) and (e) above shall not apply to a person who is a non-muslim, but such a person shall have a good moral reputation.

(2) A person shall be disqualified for being elected or chosen and for being a member, if:

- (i) he is of unsound mind and stands so declared by a competent court; or
- (ii) he is an un-discharged insolvent unless a period of ten years has elapsed since his being adjudged as insolvent; or
- (iii) he has been, on conviction for any offence, sentenced to transportation for any term or imprisonment for a term of not less than two years unless a period of five years has elapsed since his release; or
- (iv) he holds any office of profit in the service of Azad Jammu & Kashmir or in the service of Pakistan, other than an office which is not a whole time office remunerated either by salary or by fee, or other than an office of Parliamentary Secretary, Advisor to the Government, Special Assistant to the Prime Minister or to the President or Chairman District Council or Municipal Committee or the Chairman and members of Zakat Council or Chairman of a Development Authority or Board as specified in the Second Schedule of Interim Constitution, 1974; or

- (v) he has been dismissed for misconduct from the service of Azad Jammu and Kashmir or the service of Pakistan unless a period of five years has elapsed since his dismissal; or
- (vi) he is in the service of any statutory body or anybody which is owned or controlled by the Government or in which the Government has a controlling share or interest; or
- (vii) he is propagating any opinion or acting in any manner, prejudicial to the ideology of Pakistan, the ideology of State's accession to Pakistan or the sovereignty, integrity of Pakistan or security of Azad Jammu and Kashmir or Pakistan or morality, or the maintenance of Public order, or the Integrity or independence of the Judiciary of Azad Jammu and Kashmir or Pakistan, or which defames or brings into ridicule the Judiciary of Azad Jammu and Kashmir or Pakistan, or the Armed Forces of Pakistan; or
- (viii) he has been removed or compulsorily retired from the service of Azad Jammu and Kashmir or Pakistan on the grounds of misconduct, unless a period of three years has elapsed since his removal or compulsorily retirement; or
- (ix) he has been in the Service of Azad Jammu and Kashmir or Pakistan or of any statutory body or anybody which is owned or controlled by the Government or the Government of Pakistan, or in which any of the Government has a controlling share or interest, other than an office exempted in clause (iv), unless he retires from such service; or
- (x) he is found guilty of corrupt or illegal practice under any other law for the time being enforce, unless a period of seven years has elapsed from the date on which that order takes effect; or
- (xi) he has been an office-bearer of a political party dissolved under Section 132 and has not before a declaration in respect of such party is made under sub-section (1) of that Section, resigned, or publicly announced disassociation from such party, unless a period of five years has elapsed from the date of such dissolution; or
- (xii) he has been convicted under Section 133, unless a period of five years has elapsed from the date of his release; or
- (xv) he is for the time being disqualified from being elected or chosen as a member of the Legislative Assembly of Azad

Jammu and Kashmir under any law for the time being enforce;  
or

- (xvii) he, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account or as a member of a Hindu undivided family, has any share or interest in a contract, not being a contract between a cooperative society and Government for the supply of goods to, or for the execution of any contract or the performance of any service undertaken by the Government:

Provided that the disqualification under this clause shall not apply to a person—

- (a) where the share or interest in the contract devolves on him by inheritance or succession or as a legatee, executor or administrator, until the expiration of six months, after it has so devolved on him or such longer period as the President may, in any particular case, allow; or
- (b) where the contract has been entered into by or on behalf of a public company as defined in the Companies Act, 1913 (VII of 1913), of which he is a share-holder but is neither a director holding an office of profit under the company nor a managing agent; or
- (c) where he is a member of a Hindu undivided family and the contract has been entered into by any other member of that family in the course or carrying on separate business in which he has no share or interest.

**Explanation I.**- In sub-clause (v), (viii) and (ix) of sub-section (2), ‘Service of Azad Jammu and Kashmir’ and ‘Service of Pakistan’ have the same meaning as assigned to them in Article 2 of the Azad Jammu and Kashmir Interim Constitution, 1974 and in Article 260 of the Constitution of Pakistan respectively.

**Explanation II.**- In sub-clause (xi) of sub-section (2) ‘office-bearer of a political party’ means an office bearer of the National, State or District set-up of the party otherwise than as a mere member of the working Central, District or other committee of party.

**Explanation III.**- In sub-clause (xvii) of sub-section (2) goods’ does not include agricultural produce or commodity grown or produced by him or such goods as, he is, under any Directive of Government or

any law for the time being in force, under a duty or obligation to supply:

- (xviii) he is having a bad reputation or known to be morally corrupt;
- (xix) he or any person on his behalf makes or threatens to make use of any force, show of arms or use of arms in any manner with the intention to nullify or disrupt elections or influence the result of election;
- (xx) he or any person on his behalf inflicts or threatens to inflict any injury, damage, harm or loss to any person or candidate so as to restrain him from voting or adversely affects the election process in any manner;
- (xxi) he has failed to file the required return of election expenses within time or it is proved that he has exceeded the permissible limit of election expenses;
- (xxii) he is a willful defaulter of any tax or other financial dues owed to the Government, a local Government or any financial institution including utility bills outstanding for six months or more;
- (xxiii) he possesses assets which are inconsistent with his declared assets or justifiable means, whether held in his own name or in the name of dependents or any other person or corporate body in whose name assets are held in trust or under any other formal or informal arrangements, whereby the defacto control of such assets including their sale, transfer or pecuniary interest, is retained by him;
- (xxiv) he fails to submit a statement under Section 78 or knowingly submits a false or incorrect statement; and
- (xxv) he does not have academic qualification of matriculation or equivalent from a recognized institution.

(3) if a person having been elected to the Azad Jammu and Kashmir Legislative Assembly as a candidate or nominee of a political party, withdraws himself from that party, he shall, from the date of such withdrawal, be disqualified from being a member of the Assembly for the unexpired period of his term unless he has been re-elected at a bye-election held after his disqualification.

(4) if a person having been elected as member of Azad Jammu and Kashmir Legislative Assembly other than as a nominee of a political party joins any party and then withdraws from that party, he shall, from the date of such withdrawal, stand disqualified from being a member of the

Assembly for the unexpired period of his term unless he has been re-elected at a bye-election held after his disqualification.

**CHAPTER-VI**  
**ELECTION**

**32. Appointment of Returning Officer, etc.** (1) The Commission shall appoint District Returning Officer for each District within Azad Jammu and Kashmir territory and Returning Officer for each Constituency for the purpose of holding elections:

Provided that a person may be appointed as Returning Officer for two or more constituencies.

(2) The Commission may appoint as many Assistant Returning Officers as may be necessary.

(3) An Assistant Returning Officer shall assist the Returning Officer in the performance of his functions under this Act and may, subject, to any condition imposed by the Commission, exercise and perform under the control of the Returning Officer, the powers and functions of the Returning Officer.

(4) It shall be the duty of a Returning Officer to do all such acts and things as may be necessary for effectively conducting an election in accordance with the provisions of this Act and the rules.

(5) Subject to the superintendence, direction and control of the Commission the District Returning Officer shall co-ordinate and supervise all work in the district in connection with the conduct of election and shall also perform such other duties and functions as may be entrusted to him by the Commission.

(6) Notwithstanding anything contained in any other law or order for the time being in force, the Commission may, at any time, for reasons to be recorded in writing, suspend any officer performing any duty in connection with an election or any other public functionary, or any member of Police force or any other law enforcing agency, who obstructs or prevents or attempts to obstruct or prevent the conduct of fair and impartial Poll or interferes or attempts to interfere with an elector when he records his vote or influences the Polling Staff or an elector or does any other act calculated to influence the result of election and make such arrangements as he may consider necessary for the performance of the functions of the officer so suspended.

(7) Where the Commission suspends any officer under sub-section (6), the Commission shall refer the matter to the appropriate authority for taking disciplinary action against such Officer.

- 33. Polling Stations.** (1) The Returning Officer shall, before such time as the Commission may fix, submit to the Commission or as the case may be to the District Returning Officer the list of polling stations he proposes to provide in a constituency for the purpose of election of a member for that constituency.
- (2) Any person aggrieved by the list of the polling station, prepared by the Returning Officer under sub-section (1), may file an appeal before the District Returning Officer, and any person aggrieved by the decision of District Returning Officer may file second appeal before the Commission.
- (3) The Commission or as the case may be, the District Returning Officer may make such alterations in the list of polling stations submitted under sub-section (1) as he may consider necessary and shall, at least fifteen days before the polling day, publish in the Official Gazette, the final list of the polling stations specifying the area and electors whereof will be entitled to vote at each polling station.
- (4) The Returning Officer shall be provided each constituency with polling stations according to the final list published under sub-section (2).
- (5) No polling station shall be located in any such premises as belong to, or, are under the control of, any candidate.

- 34. Presiding Officer and Polling Officers.**- (1) A Returning Officer shall appoint for each polling station a Presiding Officer and such number of Polling Officers and Polling Assistants to assist the Presiding Officer as the Returning Officer may consider necessary:

Provided that a person who is, or has at any time been, in the employment of any candidate shall not be appointed as a presiding officer, Polling Officer or Polling Assistant.

(2) A list of such Presiding Officers, Polling Officers and Polling Assistants shall be submitted to the Commission or as the case may be to the District Returning Officer at least fifteen days before the Polling day for its approval and no change in the personnel shall be made except with the approval of the Commission.

(3) A Presiding Officer shall conduct the poll in accordance with the provisions of this Act and the rules, shall be responsible for maintaining order at the polling station and shall report to the Returning Officer any fact or incident which may, in his opinion, effect the fairness of the poll:

Provided that during the course of the poll the Presiding Officer may entrust such of his functions as may be specified by him to any Polling Officer and it shall be the duty of the Polling Officer to perform the functions so entrusted.

(4) The Returning Officer shall authorise one of the Polling Officers to act in place of the Presiding Officer if the Presiding Officer is, at any time during the poll, by reason of illness or other cause, not present at the polling station, or is unable to perform his functions and any absence of the Presiding Officer, and the reasons therefor, shall, as soon as possible after the close of the poll, be reported to the Returning Officer.

(5) The Returning Officer may, at any time during the poll for reasons to be recorded in writing, suspend any Presiding Officer, Polling Officer or Polling Assistant and make such arrangements as he may consider necessary for the performance of the functions of the officer so suspended.

**35. Supply of Electoral rolls.**- (1) The Commission shall provide the Returning Officer for each constituency with copies of electoral rolls for all the electoral areas within that constituency.

(2) The Returning Officer shall provide the Presiding Officer of each polling station with copies of electoral rolls containing the names of the electors entitled to vote at that polling station.

**36. Notification for Election.**- (1) For the purpose of holding elections for constituting the Legislative Assembly, the Commission shall, by notification in the official Gazette call upon the electors to elect a member from each constituency and shall, in relation to each constituency, specify in the notification,-

- (a) a day on or before which nomination of the candidate is to be made;
- (b) a day for the scrutiny of nomination paper;
- (c) a day on or before which candidature may be withdrawn; and
- (d) a day, at least fifteen days after the withdrawal day for the taking of the poll.

(2) A Returning Officer shall, as soon as may be after the publication of a notification under sub-section (1), give public notice of the dates specified by the Commission in respect of, the constituency or constituencies of which he is the Returning Officer and the public notice shall be published at some prominent place or places within the constituency to which it relates.

(3) A public notice given under sub-section (2) shall also invite nominations and specify the time by which and the place at which nomination papers shall be received by the Returning Officer.

**37. Alteration in Election Programme.**- Notwithstanding anything contained in Section 36, the Commission may at any time after the issue of notification under sub-section (1) of that Section, make such alterations in the

programme announced in that notification for the different stages of the election as may in his opinion be necessary.

**38. Nomination for Election.**- (1) Any elector of a constituency may propose or second the name of any duly qualified person to be a member for that constituency.

(2) Every proposal shall be made by a separate nomination paper in the prescribed form which shall be signed by the proposer and the seconder and shall contain,-

(a) a declaration signed by the candidate that he has consented to the nomination and that he is not subject to any disqualification, for being, or being elected as a member; and

(b) a declaration signed by the proposer and the seconder that neither of them has subscribed to any other nomination paper either as proposer or seconder.

(3) Every 'nomination paper shall be delivered by the candidate, or his proposer or seconder to the Returning Officer who shall acknowledge the receipt of the nomination paper specifying the date and time of receipt:

Provided that a candidate may deliver or cause to be delivered to the Commission a duplicate of the nomination paper on or before the nomination day or may send it to the Commission by registered post so as to reach him on or before that day.

(4) A person may be nominated in the same constituency by more than one nomination paper.

(5) If any person on subscribes to more than one nomination paper all such nomination papers shall be void.

(6) The Returning Officer shall give a serial number to every nomination paper and endorse thereon the name of the person presenting it, and the date and time of its receipt, and inform such person of the time and place at which he shall hold scrutiny.

(7) The Returning Officer shall cause to be affixed at some conspicuous place in his office a notice of every nomination paper received by him containing the particulars of the candidate and the names of the proposer and seconder as shown in the nomination paper.

**39. Deposits.**- (1) Subject to the provisions of sub-section (2), no nomination paper delivered under Section 38 shall be accepted unless, -

(a) in case of a candidate from Azad Jammu and Kashmir Territory a sum of ten thousand rupees is deposited in cash with the Returning Officer or in a Government Treasury or Sub-

Treasury by the candidate or by any person on his behalf at the time of its delivery;

- (b) in case of a candidate from outside Azad Jammu and Kashmir Territory, a bank draft of two thousand rupees in favour of the Accountant General, Azad Jammu and Kashmir Government is presented to the Returning Officer along with the nomination paper.

(2) Not more than one deposit under sub-section (1) shall be required in the case of a person who has been nominated as a candidate by more than one nomination paper.

**40. Scrutiny.**- (1) The candidates, their election agents, proposers and seconders, and one other person authorised in this behalf by each candidate, may attend the scrutiny of nomination papers, and the Returning Officer shall give them reasonable opportunity for examining all nomination papers delivered to him under Section 38.

(2) The Returning Officer shall, in the presence of the persons attending the scrutiny under sub-section (1), examine the nomination papers and decide any objection raised by any such person to any nomination.

(3) The Returning Officer may, either of his own motion or upon any objection, conduct such summary enquiry as he may think fit and reject a nomination paper if he is satisfied that—

- (a) the candidate is not qualified to be elected as a member from the constituency for election from which he has been nominated;
- (b) the proposer or the seconder is not qualified to subscribe to the nomination paper;
- (c) any provision of Section 38 or Section 39 has not been complied with; or
- (d) the signature of the proposer or the seconder is not genuine;

Provided that-

- (i) the rejection of a nomination paper shall not invalidate the nomination of a candidate by any other valid nomination paper;
- (ii) the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial nature including an error in regard to the name, serial number in the Electoral Roll or other particulars of the candidate, his proposer or seconder and may allow any such defect to be remedied forthwith; and

(iii) the Returning Officer shall not enquire into the correctness or validity of any entry in the electoral roll.

(4) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting it and shall, in the case of rejection, record the reasons for rejection and in the case of an objection being raised to his decision to accept the nomination paper, record brief reasons for rejecting the objection.

(5) Any person aggrieved by an order under sub-section (4) may file an appeal within a prescribed period to the Commission whose decision shall be final.

(6) Announcement of the day and time appointed for the hearing of an appeal under sub-section (5) over the radio or by publication in the press shall be deemed to be sufficient notice of the day and time so appointed.

**41. Action on duplicate of nomination paper**.- (1) in a case in which the Returning Officer denies receipt of the nomination paper of a candidate and the candidate asserts that the duplicate of the nomination paper had been delivered, or sent by post to the Commission in accordance with the provision to sub-section (3) of Section 38 and produces a receipt issued by the Commission or by the post office on its having been so delivered or sent it shall be the duty of the Returning Officer to inform the Commission of such assertion.

(2) If the Commission is in receipt of the duplicate of the nomination paper he shall at the request of the Returning Officer forward it to the Returning Officer.

(3) A duplicate of a nomination paper forwarded to the Returning Officer under sub-section (2) shall be treated as if it were the original nomination paper delivered to him under sub-section (3) of Section 38 and the provisions of Section 40 shall apply to it accordingly.

**42. Publication of list of candidates**.- (1) The Returning Officer shall, after the scrutiny of nomination papers, prepare and publish in the prescribed manner a list of candidates who have been validly nominated.

(2) In case an appeal against rejection of a nomination paper has been accepted by the Commission the list of validly nominated candidates shall be revised accordingly.

**43. Withdrawal**.- (1) Any validly nominated candidate may, by notice in writing signed by him and delivered on or before the withdrawal day to the Returning Officer either by such candidate in person or by an Advocate authorised in this behalf in writing by such candidate, withdraw his candidature.

(2) A notice of a withdrawal under sub-section (1) shall in no circumstances be open to recall or cancellation.

(3) On receiving a notice of withdrawal under sub-section (1), the Returning Officer shall, if he is satisfied that the signature on the notice is that of the candidate cause a copy of the notice to be affixed at some conspicuous place in his office.

(4) The Returning Officer shall, on the day next following the withdrawal day, prepare and publish in the prescribed manner a list of contesting candidates.

**44. Retirement from election, etc.**– (1) A contesting candidate may retire from the contest by a notice in writing signed by him and delivered to the Returning Officer on any day not later than two days before the polling day either by such candidate in person or by an agent authorised in this behalf in writing by such candidate.

(2) No person who has given a notice of retirement under sub-section (1) shall be allowed to cancel the notice.

(3) The Returning Officer shall upon receiving a notice of retirement under sub-section (1) cause a copy thereof to be affixed at some conspicuous place in his office and also to be published in such manner as he may think fit.

(4) A person in respect of whom a notice of retirement has been published under sub-section (3) shall be deemed to have withdrawn his candidature under Section 43.

**45. Death of candidate after nomination.**– (1) If a validly nominated candidate who has not withdrawn his candidature dies, the Returning Officer shall, by public notice, terminate the proceedings relating to that election.

(2) Where proceedings relating to an election have been terminated under sub-section (1), fresh proceedings shall be commenced in accordance with the provisions of this Act as if for a new election.

**46. Postponement, etc. under certain circumstances.**– Where the proceedings relating to nomination, scrutiny or withdrawal cannot for reasons beyond the control of the Returning Officer take place on the day appointed therefor he may postpone or adjourn such proceedings and shall with the approval of the Commission by public notice fix another day for the proceedings so postponed or adjourned and if necessary also the day or days for any subsequent proceedings.

**47. Un-contested election.**– (1) Where after scrutiny under Section 40, there remains only one validly nominated candidate or were, after withdrawal under Section 43, or retirement under Section 44 there remains only one

contesting candidate, the Returning Officer shall so inform the Commission and forward to him all the nomination papers received by him from the constituency concerned and such other papers as may be specified by the Commission.

(2) The Commission shall, after such inquiry as he may deem necessary in any case, by notification in the Official Gazette declare the candidate referred to in sub-section (1) to be elected to the seat:

Provided that if after scrutiny any candidate indicates that he intends to file an appeal under sub-section (5) of Section 40, no person shall be declared elected until the period prescribed for filing such appeal has expired and no such appeal has been filed or, where an appeal is filed, until the disposal of such appeal.

(3) The Returning Officer shall submit to the Commission a return of the election in respect of which he has made a declaration under sub-section (1).

(4) The Commission shall publish in the Official Gazette, the name of the returned candidate.

**48. Contested election.**- (1) If there are more contesting candidates than one in respect of any constituency, the Returning Officer shall-

(a) allocate, subject to any direction of the Commission, one of the prescribed symbols to each contesting candidate, and in so doing shall, so far as possible, have regard for any preference indicated by the candidate;

(b) publish in such manner as the Commission may direct the names of contesting candidates arranged in the alphabetical order specifying against each the symbol allocated to him; and

(c) give public notice of the poll.

(2) The Returning Officer shall arrange to exhibit prominently at each polling station the name and symbol of each contesting candidate.

**49. Election Agent.**- (1) A candidate may appoint a person qualified to be elected as a member to be his election agent.

(2) The appointment of an election agent may at any time, be revoked in writing by the candidate and when it is so revoked or the election agent dies, another person may be appointed by the candidate to be his election agent.

(3) When an election agent is appointed, the candidate shall send to the Returning Officer a notice in writing of the appointment containing the name, father's name and address of the election agent.

(4) Where no appointment of an election agent is made under this Section, a candidate shall be deemed to be his own election agent and shall,

so far as the circumstances permit, be subject to the provisions of this Act both as a candidate and as an election agent.

- 50. Polling agent.**- (1) A contesting candidate or his election agent may before the commencement of the poll, appoint for each polling station not more than two polling agents if there only one booth, and not more than four polling agents if there be more than one booth, at such polling station, and shall give notice thereof in writing to the Presiding Officer.
- (2) The appointment of a polling agent under sub-section (1) may at any time be revoked by the candidate or his election agent and when it is so revoked or the polling agent dies another person may be appointed by the candidate or the election agent to be a polling agent and a notice of such appointment shall be given to the Presiding Officer.
- 51. Absence of candidates, etc. not to invalidate acts, etc.**- Where any act or thing is authorised by this Act to be done in the presence of the candidate, an election agent or a polling agent, the failure of such person to attend at the time and place appointed for the purpose shall not invalidate any act or thing otherwise validly done.
- 52. Hours of the Poll.**- The Returning Officer shall, subject to any direction of the Commission, fix the hours during which the poll shall be taken and give public notice of the hours so fixed.
- 53. Adjournment of poll in emergencies.**- (1) If at an election the proceedings at any polling station are interrupted or obstructed by any riot or open violence, or if at an election it is not possible to take the poll at any polling station on account of any natural calamity, or any other sufficient cause, the Presiding Officer shall report the circumstances to the Returning Officer who may adjourn the poll to a date to be notified later.
- (2) Whenever a poll is adjourned under sub-section (1), the Returning Officer shall immediately report the circumstances to the Commission and shall, as soon as may be with the previous approval of the Commission, appoint the day on which the poll shall recommence and fix the Polling Station at which, and the hours during which the poll will be taken and shall not count the votes cast at such election until such adjourned poll shall have been completed.
- (3) In every such case as aforesaid, the Returning Officer shall notify in such manner as the Commission may direct the date, place and hours of Polling fixed under sub-section (2).
- 54. Fresh poll in the case of destruction, etc. of ballot boxes.**- If at any election,-

- (a) any ballot box used at a polling station is unlawfully taken out of the custody of the Presiding Officer or is accidentally or intentionally destroyed or lost or is damaged or tampered with, to such an extent that the result of the poll at the polling station cannot be ascertained; or
  - (b) any error or irregularity which is likely to vitiate the poll is committed at a polling station the Returning Officer shall forthwith report the matter to the Commission.
- (2) The Commission may, on its own motion or on receipt of a report under sub-section (1), and for reasons to be recorded, either,-
- (a) declare the poll at that polling station to be void, appoint a day and fix the hours for taking a fresh poll at that polling station and notify the day so appointed and the hours so fixed in such manner as may deem fit; or
  - (b) if satisfied that the result of a fresh poll at that polling station will not, in any way, affect the result of the election or that the error or irregularity is not material, issue such directions to the Returning Officer as he may deem proper for the further conduct and completion of the election.
- (3) The provisions of this Act and the rules and orders made thereunder shall apply to every fresh poll taken under sub-section (2).

**55. Election by secret ballot.**- An election under this Act shall be decided by secret ballot and subject to the provisions of Section 56, every elector shall cast his vote by inserting, in accordance with the provisions of this Act in the ballot box a ballot paper in the prescribed form.

**56. Postal Ballot.**- (1) The following persons may cast their votes by postal ballot in such manner as may be prescribed, namely,-

- (a) a person referred to in sub-section (2) or sub-section (3) or sub-section (4) of Section 24; and
  - (b) a person appointed by the Returning Officer for the performance of any duty in connection with an election at a polling station other than the one at which he is entitled to cast his vote.
- (2) Any elector who, being entitled to do so, intends to cast his vote by postal ballot shall,-
- (a) in the case of a person referred to in clause (a) of sub-section (1), within ten days from the date of the publication of the notification under Section 36; and

(b) in the case of a person referred to in clause (b) of that sub-section, as soon as may be after his appointment, apply to the Returning Officer of the constituency in which he is an elector for a ballot paper for voting by postal ballot, and every such application shall specify the name of the elector, his address and his serial number in the electoral roll.

(3) The Returning Officer shall immediately upon the receipt of an application by an elector under sub-section (2) send by post to such elector a ballot paper and an envelope bearing on its face a form of certificate of posting, showing the date thereof, to be filled in by the proper official of the post office at the time of posting by the elector.

(4) An elector on receiving his ballot paper for voting by postal ballot shall in the prescribed manner record his vote and after so recording post the ballot paper to the Returning Officer in the envelope sent to him under sub-section (3) with the minimum of delay.

**57. Ballot boxes.**- (1) The Returning Officer shall provide each Presiding Officer with such number of ballot boxes as may be necessary.

(2) The ballot boxes shall be of such material and design as may be approved by the Commission.

(3) Not more than one ballot box shall be used at a time for the purpose of the poll at any polling station, or at any polling booth, where there are more than one polling booths at a polling station.

(4) At least half an hour before the time fixed for the commencement of the poll, the Presiding Officer shall,-

(a) ensure that every ballot box to be used is empty;

(b) show the empty ballot box to the contesting candidates and their election agents and polling agents whoever may be present;

(c) after the ballot box has been shown to be empty, close and seal it; and

(d) place the ballot box so as to be conveniently accessible to the electors and at the same time within the sight of himself and of such candidates or their election or polling agents as may be present.

(5) If one ballot box is full or cannot further be used for receiving ballot papers, the Presiding Officer shall seal that ballot box and keep it in a secure place and use another ballot box in the manner laid down in Sub-section (4).

(6) A Presiding Officer shall make such arrangements at the polling station that every elector may be able to mark his ballot paper in secret before the same is folded and inserted in the ballot box.

**58. Admission to the Polling Station.**- The Presiding Officer shall, subject to such instructions as the Commission may give in this behalf, regulate the number of electors to be admitted to the polling station at a time and exclude from the polling station all other persons, except,-

- (a) any person on duty in connection with the election;
- (b) the contesting candidates, their election agents and polling agents; and
- (c) such other persons as may be specifically permitted by the Returning Officer.

**59. Maintenance order at the polling station.**- (1) The Presiding Officer shall keep order at the polling station and may remove or cause to be removed any person who misconducts himself at a polling station or fails to obey any lawful orders of the Presiding Officer.

(2) Any person removed under sub-section (1) from a polling station shall not without the permission of the Presiding Officer again enter the polling station during the day and shall if he is accused of an offence in a polling station, be liable to be arrested without warrant by the Police Officer or member of Armed Forces.

(3) The powers under this Section shall not be so exercised as to deprive an elector of an opportunity to cast his vote at the polling station at which he is entitled to vote.

**60. Voting Procedure.**- (1) Where an elector presents himself at the polling station to vote, the Presiding Officer shall issue a ballot paper to the elector after satisfying himself about the identity of the elector and shall for that purpose require the elector to produce CNIC issued by NADRA or photo bearing Identity Card for refugees of Jammu and Kashmir 1989 and afterward, issued by the Government:

Provided that the expired CNIC shall also be valid for casting vote.

**Explanation:-** Enrollment as a voter on the basis of original Form-B shall not entitle a person to cast vote unless he produces original CNIC.

- (2) Before a ballot paper is issued to an elector,-
- (a) the number and name of the elector as entered in the electoral roll shall be called out;
  - (b) a mark shall be placed on the electoral roll against the number and name of the elector to indicate that a ballot paper has been issued to him;

- (c) a ballot paper shall on its back be stamped with the official mark and initialed by the Presiding Officer; and
  - (d) the Presiding Officer shall record on the counterfoil of the ballot paper the number of the elector on the electoral roll, stamp it with the official mark, put his initials on it and obtain on it in indelible ink, the thumb impression of the elector.
- (3) A ballot paper shall not be issued to a person who,-
- (a) refuses to receive the personal marks with indelible ink; and
  - (b) does not produce the CNIC or a photo bearing identity card for refugees of Jammu and Kashmir 1989 and afterward, issued by the Government.
- (4) If a contesting candidate or his election agent or polling agent alleges that an elector to whom a ballot paper is about to be issued already has one or more ballot papers in his possession, the Presiding Officer may require the elector to satisfy him that he does not have any other ballot paper in his possession and may also take such measures as he thinks fit to ensure that such elector does not insert more than one ballot paper in the ballot box.
- (5) On receiving the ballot paper, the elector shall,-
- (a) forthwith proceed into the place reserved for marking the ballot paper;
  - (b) put the prescribed mark on the ballot paper at any place within the space containing the name and symbol of the contesting candidate for whom he wishes to vote; and
  - (c) after he has so marked the ballot paper, fold and insert it in the ballot box.
- (6) The elector shall vote without undue delay and shall leave the polling station immediately after he has inserted his ballot paper in the ballot box.
- (7) Where an elector is blind or is otherwise so incapacitated that he cannot vote without the assistance of a companion the Presiding Officer shall allow him such assistance and thereupon such elector may do with such assistance anything which an elector is required or permitted to do under this Act.

**61. Tender ballot Paper.**- (1) If a person representing himself to be an elector applies for a ballot paper when another person has already represented himself to be that elector and has voted under the name of the person so applying, he shall be entitled, subject to the provisions of this Section, to receive a ballot paper (hereinafter referred to as 'tendered ballot Paper') in the same manner as any other elector.

(2) A tendered ballot paper shall, instead of being put into the ballot box be given to the Presiding Officer who shall endorse thereon the name and number in the electoral roll of the person applying for it and place it in a separate packet endorsed with the name of the candidate for whom such person wishes to vote.

(3) The name of the person applying for a ballot paper under sub-section (1) and his number on the electoral roll shall be entered in a list (hereinafter referred to as 'the tendered votes list') to be prepared by the Presiding Officer.

**62. Challenge of electors.**- (1) If, at the time a person applies for a ballot paper for the purpose of voting, a candidate or his polling agent declares to the Presiding Officer that he has reasonable cause to believe that person has already voted to the election, at the same or another polling station, or is not the person against whose name entered in the electoral roll he is seeking to vote and undertakes to prove the charge in a court of law and deposits with the Presiding Officer in cash such sum as may be prescribed, the Presiding Officer may after warning the person of the consequences and obtaining his thumb impression and if he is literate also his signature, on the counterfoil issue a ballot paper (hereinafter referred to as "challenged ballot paper") to that person.

(2) If the Presiding Officer issues a ballot paper under sub-section (1) to such person he shall enter the name and address of that person in a list to be prepared by him (hereinafter referred to as "the challenged votes list") and obtain thereon the thumb impression and if he is literate also the signature of that person.

(3) A ballot paper issued under sub-section (1) shall, after it has been folded by the elector, be placed in the same condition in a separate packet bearing the label "challenged ballot papers" instead of being placed in the ballot box.

**63. Spoilt ballot papers.**- (1) An elector who has inadvertently so spoilt his ballot paper that it cannot be used as a valid ballot paper may, upon proving the fact of inadvertence to the satisfaction of the Presiding Officer and returning the ballot paper to him, obtain other ballot paper and cast his vote by such other ballot paper.

(2) The Presiding Officer shall forthwith cancel the ballot paper returned to him under sub-section (1) make a note to that effect on the counterfoil over his own signature and sign the cancelled ballot paper and place it in a separate packet labeled "Spoilt Ballot Papers".

- 64. Voting after close of Poll.**- No person shall be given any ballot paper or be permitted to vote after the hour fixed for the close of the poll except the persons who at that hour are present within the building, room, tent or enclosure in which the polling station is situated and have not voted but are waiting to vote.
- 65. Proceedings at the close of the poll.**- (1) Immediately after the last of such persons, if any as are present and waiting to vote as mentioned in Section 64, has voted, the Presiding Officer shall in the presence of such of the contesting candidates, election agents and polling agents as may be present, proceed with the count of votes.
- (2) The Presiding Officer shall give such of the contesting candidates, election agents and polling agents as may be present reasonable facility of observing the count and give them such information with respect thereto as can be given consistently with the orderly conduct of the count and the discharge of his duties in connection therewith.
- (3) No person other than the Presiding Officer, the Polling Officer, any other person on duty in connection with the poll, the contesting candidates, their election agents and polling agents shall be present at the count.
- (4) The Presiding Officer shall,-
- (a) open the used ballot box or ballot boxes and count the entire lot of ballot papers taken out there from;
  - (b) open the packet labeled, challenged ballot paper, and include the ballot papers therein in the count;
  - (c) count, in such manner as may be prescribed, the votes cast in favour of each contesting candidate excluding from the count the ballot papers which bear-
    - (i) no official mark and initial of the Presiding Officer;
    - (ii) any writing or any mark other than the mark of his thumb, the official mark, the initials of the Presiding Officer and the prescribed mark, or to which a piece of paper or any other object of any kind has been attached;
    - (iii) no prescribed mark indicating the contesting candidate for whom the elector has voted; or
    - (iv) any mark from which it is not clear for whom the elector has voted, provided that a ballot paper shall be deemed to have been marked in favour of a candidate if the whole or more than half of the area of the prescribed mark appears clearly within the space containing the name and symbol of that candidate and where the prescribed mark

is divided equally between two such spaces, the ballot paper shall be deemed not to show clearly for whom the elector has voted.

- (5) The Presiding Officer may recount the votes,-
  - (a) of his own motion if he considers it necessary; or
  - (b) upon the request of a contesting candidate or an election agent present if in his opinion the request is not unreasonable.
- (6) The valid ballot papers cast in favour of each contesting candidate shall be put in separate packets and each such packet shall be sealed and shall contain a certificate as to the number of ballot papers put in it and shall also indicate the nature of the contents thereof specifying the name and symbol of the contesting candidate to whom the packet relates.
- (7) The ballot papers excluded from the count shall be put in a separate packet indicating there on the total number of ballot papers contained therein.
- (8) The packets mentioned in sub-section (6) and (7) shall be put in a principal packet which shall be sealed by the Presiding Officer.
- (9) The Presiding Officer shall immediately after the count, prepare a statement of the count in such form as may be prescribed showing therein the number of valid votes polled by each contesting candidate and the ballot papers excluded from the count.
- (10) The Presiding Officer shall also prepare in the prescribed form a ballot paper account showing separately,-
  - (a) the number of ballot papers entrusted to him;
  - (b) the number of ballot papers taken out of the ballot boxes and counted;
  - (c) the number of tendered ballot papers;
  - (d) the number of challenged ballot papers;
  - (e) the number of un-issued ballot papers; and
  - (f) the number of spoilt ballot papers.
- (11) The Presiding Officer shall, if so requested by any candidate or election agent or polling agent present give him certified copy of the statement of the count and the ballot paper account.
- (12) The Presiding Officer shall seal in separate packets,-
  - (a) the un-issued ballot papers;
  - (b) the spoilt ballot papers;
  - (c) the tendered ballot papers;
  - (d) the challenged ballot papers;
  - (e) the marked copies of the electoral rolls;

- (f) the counterfoils of used ballot papers;
- (g) the tendered votes list;
- (h) the challenged votes list; and
- (i) such other papers as the Returning Officer may direct.

(13) The Presiding Officer shall obtain on each statement and packet prepared under this Section the signature of such of the contesting candidates or their election agents or polling agents as may desire to sign it.

(14) A person entitled to sign a packet or statement under sub-section (13) may if he so desires also affix his seal to it.

(15) After the close of the proceeding under the foregoing sub-sections, the Presiding Officer shall in compliance with such instructions as may be given by the Commission in this behalf cause the packets the statement of the count and the ballot paper account prepared by him to be sent to the Returning Officer together with such other records as the Commission may direct.

**66. Consolidation of result.**- (1) The Returning Officer shall give the contesting candidates and their election agents a notice in writing of the day, time and place for the consolidation of the results and in the presence of such of the contesting candidates and election agents as may be present consolidate in the prescribed manner the results of the count furnished by the Presiding Officers including therein the postal ballots received by him before the time aforesaid.

(2) Before consolidating the results of the count, the Returning Officer shall examine the ballot papers excluded from the count by the Presiding Officer and if he finds that any such ballot paper should not have been so excluded, count it as a ballot paper cast in favour of the contesting candidate for whom the vote has been cast thereby.

(3) The Returning Officer shall also count the ballot papers received by him by post in such manner as may be prescribed and include the votes cast in favour of each contesting candidate in the consolidated statement except those which he may reject on any of the grounds mentioned in sub-section (4) of Section 65.

(4) The ballot papers rejected by the Returning Officer under sub-section (3) shall be shown separately in the consolidated statement.

(5) The Returning Officer shall not recount the valid ballot papers in respect of any polling station unless,-

- (a) the count by the Presiding Officer is challenged in writing by a contesting candidate or his election agent and the Returning

Officer is satisfied about the reasonableness of the challenge;  
or

(b) he is directed so to do by the Commission.

- 67. Equality of Votes.**- Where after consolidation of the results of the count under Section 66, it is found that there is equality of votes between two or more contesting candidates and the addition of one vote for one such candidate would entitle him to be declared elected, the Returning Officer shall forthwith draw a lot in respect of such candidates, and the candidate on whom the lot falls shall be deemed to have received the highest number of votes entitling him to be declared elected. The lot shall be drawn in the presence of such of the contesting candidates and their election agents as may present. The Returning Officer shall record the proceedings in writing and obtain thereon the signatures of such candidates and election agents as have been witnesses to the proceedings.
- 68. Declaration of results.**- (1) The Returning Officer shall after obtaining the result of the count under Section 66 or of the drawl of the lot under Section 67, declare by public notice the contesting candidate who has or is deemed to have received the highest number of votes to be elected.
- (2) The public notice shall contain the name of and the total number of votes received by each contesting candidate.
- (3) The Returning Officer shall, immediately after publication of the notice under sub-section (1), submit to the Commission a return of the election in the prescribed form together with a copy of the consolidated statement.
- (4) The Commission shall publish in the Official Gazette the name of the returned candidate.
- 69. Resealing of packets and supply of copies.**- The Returning Officer shall,-
- (a) immediately after preparing the consolidated statement and the return of election, reseal in the prescribed manner the packets and statements opened by him for the purpose of consolidation permitting such of the candidates and their election agents as may be present to sign the packets and affix their seals to such packets if they so desire; and
- (b) supply duly attested copies of the consolidated statement and the return of election to such of the candidates and their election agents as may desire to have them.
- 70. Return on forfeiture of deposit.**- (1) After the termination of the proceedings relating to an election under Section 45 where the proceedings have been so terminated, or after the declaration of the result of an election

under Section 47, or Section 68, the deposit made under Section 24 in respect of any candidate shall be returned to the person making it or to his legal representative except the deposit in respect of a candidate who has received less than one eighth of the total number of votes cast at the election.

(2) A deposit which is not required to be returned under sub-section (1) shall be forfeited to the Government.

**71. Documents to be sent to and retained by the Commission.**- (1) The Returning Officer shall forward to the Commission,-

- (a) the packets containing the ballot papers each of which shall be sealed with the seal of the Presiding Officer or if opened by the Returning Officer with seal of the Returning Officer;
- (b) the packets containing the counterfoils of issued ballot papers;
- (c) the packets containing the marked copies of the electoral rolls;
- (d) the packets containing the ballot paper account;
- (e) the packets containing the tendered ballot papers, the challenged ballot papers, the tendered votes list and the challenged votes list; and
- (f) such other papers as the Commission may direct.

(2) The Returning Officer shall endorse on each packet forwarded under sub-section (1) the description of its contents, the date of the election to which the contents relate and the name and number of the constituency for which the election was held.

(3) The Commission shall retain the documents contained in the packets received under sub-section (1) for a period of one year from the date of their receipt and thereafter shall, unless otherwise by a Tribunal, cause them to be destroyed.

**72. Public inspection of documents.**- The documents retained by the Commission under Section 71, except the ballot paper shall be open to public inspection at such time and subject to such conditions as may be prescribed and the Commission shall upon an application made in this behalf and on payment to such fee and subject to such conditions as may be prescribed furnish copies of or extracts from those documents.

**73. Order for production of documents.**- (1) A tribunal may order the opening of packets of counterfoils and certificates or the inspection of any counted ballot papers.

(2) An order under sub-section (1) may be made subject to such conditions as to persons, time, place and mode of inspection, production of

documents and opening of packets as the Tribunal making the order may think expedient:

Provided that in making and caring into effect an order, for the inspection of counted ballot papers care shall be taken that no vote shall be disclosed until it has been held by the Tribunal to be invalid.

(3) Where an order is made under sub-section (1), the Production by the Commission of any document in such manner as may be directed by the order shall be conclusive evidence that the document relates to the election specified, in the order and any endorsement or any packet of ballot papers so produced shall be *prima facie* evidence that the ballot papers are what the endorsement states them to be.

(4) The production from proper custody of a ballot paper purporting to have been used at an election and of a counterfoil having a number shall be *prima facie* evidence that the elector whose vote was given by that ballot paper was the elector who had on the electoral roll the same number as was written on the counterfoil.

(5) Save as provided in this Section, no person shall be allowed to inspect any rejected or counted ballot paper in the possession of the Commission.

## **CHAPTER-VII**

### **ELECTION EXPENSES**

**74. Election Expenses.**— In this Chapter, ‘election expenses’ means any expenditure incurred or payment made, whether by way of gift, loan, advance, deposit or otherwise, for the arrangement, conduct or benefit of, or in connection with, or incidental to, the election of a candidate, including expenditure on account of issuing circulars or publications or otherwise presenting to the voters the candidate or his views, aims, or objects, but does not include the deposit made under Section 39.

**75. Restriction on election expenses.**- (1) No person shall, except to the extent provided in sub-section (2) make any payment whatsoever towards the election expenses of a candidate except to the election agent of such candidate.

(2) No person other than the election agent of a contesting candidate shall incur any election expenses of such candidate:

Provided that,-

- (i) a contesting candidate himself may incur a personal expenditure in connection with his election of an amount not exceeding “ten lac” rupees; and.
- (ii) any person may if so authorised by the election agent in writing specifying a maximum amount to the extent of such

amount make payment for stationery, postage, telegram and other petty expenses.

(3) The election expenses of a contesting candidate excluding the personal expenditure incurred by such candidate shall not exceed twenty five lac rupees.

(4) Any candidate incurring personal expenditure and any person making any payment under sub-section (2) shall within fourteen days of the declaration of the result of the election send to the election agent a statement of such expenditure or particulars of such payment.

(5) An election agent shall by a bill stating the particulars and by a receipt voucher for every payment made in respect of election expenses except where the amount is less than twenty five rupees.

**76. Return of Election Expenses.**- (1) Every contesting candidate shall within thirty five days after the publication of the name of the returned candidates under Section 47 or Section 68, submit to the Returning Officer a return of election expenses in the prescribed form containing,-

- (a) a statement of all payments made by him together with all the bills and receipts;
- (b) a statement of the amount of personal expenditure if any, incurred by the contesting candidate;
- (c) a statement of all disputed claims of which the election agent is aware;
- (d) a statement of all unpaid claims if any of which the election agent is aware; and
- (e) a statement of all moneys, securities or equivalent of money received from any person for the purpose of election expenses specifying the name of every such person.

(2) The return submitted under sub-section (1) shall be accompanied by an affidavit/sworn severally by the contesting candidate and his election agent, or where a contesting candidate is his own election agent, only by such candidate.

**77. Inspection of Returns, etc.**- (1) The return and documents, submitted under Section 76 shall be kept by the Returning Officer in his office or at such other convenient place as he may think fit and shall, during one year from the date of their receipt by him, be open to inspection by any person on payment of the prescribed fee.

(2) The Returning Officers shall on an application made in this behalf and payment of the prescribed fee give any person copies of any return or document kept under sub-section (1) or of any part thereof.

**78. Declaration of Assets.**- (1) Any person who desires to contest elections of the Legislative Assembly shall submit to the Chief Election Commissioner a statement of properties and assets, both movable and immovable whether within or outside Azad Jammu and Kashmir which he owns or has in his possession or under his control, directly or indirectly, either in his name or in the name of any other person and shall also furnish such other information as may be required at the time of filling of nomination paper.

**Explanation.**- 'Property' shall include,-

- (a) lands, rural or urban, all types of buildings and structures whether completed or under constructions, compounds and enclosures of any types, factories and firms registered or otherwise;
- (b) all types of machines, whether fixed or movable including mechanical transport, tractors and similar machines but excluding machine used for house-hold purposes;
- (c) jewellery, precious stones of all types in any form, pearls, gold, silver and other precious metals in any form;
- (d) contracts, deports, import and export licenses, route permits, agencies granted to or obtained by a person in his own name or in the name of any other person, from the Government or any corporation or institution including autonomous and semi-autonomous body or association, controlled by the Government or in which the Government has any interest;
- (e) certificates, insurance policies, securities, bonds, bank balances, whether within or outside Azad Jammu and Kashmir, cash in any type of currency, shares stocks, debentures or any other instrument carrying pecuniary benefits or advantage to a person; and
- (f) any other movable or immovable property not being a property used for house-hold purposes.

(2) He shall also likewise submit details of his children and other dependents and names of educational institution where they are studying and the annual expenses incurred upon them.

(3) Upon receiving a statement under sub-sections (1) and (2) the Chief Election Commissioner may determine the correctness or otherwise of the statement and also the legality or the propriety of acquisition of properties as mentioned in sub-section (2):

Provided that the person concerned shall be given reasonable opportunity of being heard.

(4) Every Member of the Legislative Assembly shall submit to the Commissioner a statement of properties and assets mentioned in this Section annually.

- 79. Punishment.**- A person who being required to submit to the Commission a Statement of his properties and assets under Section 78 fails to submit statement or knowingly submits a false or incorrect statement shall be punishable by court of competent jurisdiction, with rigorous imprisonment for a term which may extend to seven years, and shall be disqualified from contesting elections for 10 years and fine or forfeiture of the whole or part of his properties and assets.

#### **CHAPTER -VIII**

##### **ELECTION TO RESERVED SEATS**

- 80. Elections to reserved seats.**- (1) Nothing in Chapter VI and VII shall apply to an election to fill a seat reserved for women, Ulema-i-Din or Mushaikh, State Subjects residing abroad and Technocrats and Professionals in the Legislative Assembly.

(2) The members for the seats reserved for women, Ulema-i-Din or Mushaikh, State subjects residing abroad and Technocrats and Professionals in the Legislative Assembly shall be elected by persons directly elected to the other seats in the Legislative Assembly.

(3) The Commission shall hold and conduct the election to fill the seats reserved for women, Ulema-i-Din or Mushaikh, State Subjects residing abroad and Technocrats and Professionals in the Legislative Assembly in such manner as he may think fit.

#### **CHAPTER-IX**

##### **ELECTION DISPUTES**

- 81. Election petition.**- (1) No election shall be called in question except by an election petition made by a candidate for that election.

(2) An election petition shall be presented to the Commissioner within such time as may be prescribed and shall be accompanied,-

(a) in the case of a petitioner residing in Azad Jammu & Kashmir Territory, by a receipt showing that a sum of one thousand rupees has been deposited in a Government treasury or sub-Treasury or;

(b) in the case of a petitioner residing outside Azad Jammu and Kashmir Territory, by a Bank draft of one thousand rupees in favour of the Accountant General Azad Jammu and Kashmir Government as security for the costs of the petition.

- 82. Parties to the petition.**- The petitioner shall join as respondents to his election petition,-
- (a) all contesting candidates; and
  - (b) any other candidate against whom any allegation, if any, of any corrupt or illegal practice is made and shall serve personally or by registered post on each such respondent a copy of his petition.
- 83. Contents of petition.**- (1) Every election petition shall contain,-
- (a) a precise statement of the material facts on which the petitioner relies;
  - (b) full particulars of any corrupt or illegal practice or other illegal act alleged to have been committed, including as full a statement as possible of the names of the parties alleged to have committed such corrupt or illegal practice or illegal act and the date and place of the Commission of such practice or act; and
  - (c) the relief claimed by the petitioner.
- (2) A petitioner may claim as relief any of the following declarations namely,-
- (a) that the election of the returned candidate is void;
  - (b) that the election of the returned candidate is void and that the petitioner or some other person has been duly elected;
  - (c) that the election as a whole is void.
- (3) Every election petition and every schedule or annex to that petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure 1908, for the verification of pleadings.
- 84. Procedure on receipt of petition by the Commission.**- (1) The Commission shall return an election petition to the petitioner if it finds that it has not been presented within the time prescribed therefore or is not accompanied by a receipt of the deposit required to be made under sub-section (2) of Section 81.
- (2) If an election petition is not returned under sub-section (1), the Commission shall refer it for trial to a tribunal.
- 85. Appointment of Tribunal.**- (1) For the trial of election petitions under this Act, the Commissioner in consultation with the Chief Justice of High Court shall appoint as many Election tribunals as may be necessary.
- (2) An Election Tribunal shall consist of a person who is, or, has been a Judge of the High Court or any High Court of Pakistan, or a District and

Session Judge, who is, or, has been qualified to be a Judge of the High Court.

**86. Place of Trial.**- The trial of an election petition shall be held at such place or places as the Tribunal may think fit and shall decide the petition within six months.

**87. Government Advocate to assist the Tribunal.**- The Government Advocate shall, if a tribunal so requires, assist the Tribunal at the hearing of an election petition in such manner as it may require.

**88. Appearance before Tribunal.**- Any appearance, application or act before a Tribunal may be made or done by a party in person or by an advocate or any other person entitled or allowed to plead in any civil court and duly appointed to act on his behalf:

Provided that the Tribunal may, where it considers it necessary direct any party to appear in person.

**89. Procedure before Tribunal.**- (1) Subject to the provisions of this Act and the rules, every election petition shall be tried as nearly as may be in accordance with the procedure for the trial of suits under the Code of Civil Procedure, 1908:

Provided that the Tribunal may,-

(a) make a memorandum of the substance of the evidence of each witness as his examination proceeds unless it considers that there is special reason for taking down the evidence of any witness in full; and

(b) refuse to examine a witness if it considers that his evidence is not material or that he has been called on a frivolous ground for the purpose of delaying the proceedings.

(2) Subject to the provisions of this Act, the Qanoon-e-Shahdat Order 1984 as adapted shall apply for the trial of an election petition.

(3) The tribunal may, at any time, upon such terms and on payment of such fee it may direct, allow a petition to be amended in such manner as may, in its opinion, be necessary for ensuring a fair and effective trial and for determining the real questions at issue, so however that no new ground of challenge to the election is permitted to be raised.

(4) At any time during the trial of an election petition, the Tribunal may call upon the petitioner to deposit such further sum by way of security in addition to the sum deposited under Section 81, as it may think fit.

**90. Dismissal of petition during trial.**- The Tribunal shall dismiss an election petition, if,-

- (a) the provisions of Section 82 or Section 83 have not been complied with; or
- (b) the petitioner fails to make the further deposit required under sub-section (4) of Section 89.

**91. Powers of the Tribunal.**- (1) The Tribunal shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and shall be deemed to be a civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

(2) For the purpose of enforcing attendance of witnesses, the Jurisdiction of the Tribunal shall extend to the whole of the Azad Jammu and Kashmir Territory.

**92. Further provisions relating to evidence and witnesses.**- (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no document shall be inadmissible in evidence at the trial of an election petition only on the ground that it is not duly stamped or registered.

(2) No witness shall be excused from answering any question as to any matter in issue, or relevant to a matter in issue in the trial of an election petition upon the ground that the answer to such question may incriminate or tend to incriminate him or that it may expose or tend to expose him to any penalty for Forfeiture but no witness shall be required or permitted to state for whom he has voted at an election.

(3) A witness who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the Tribunal and an answer given by him to a question put by or before the Tribunal shall not, except in the case of any criminal proceeding for perjury in respect of his evidence, be admissible in evidence against him in any civil or criminal proceedings.

(4) A certificate of indemnity granted to any witness under sub-section (3) may be pleaded by him in a court and shall be a full and complete defence to or upon any charge under Chapter IX-A of the Azad Penal Code or under this Act, arising out of the matter to which such certificate relates, but it shall not be deemed to relieve him from any disqualification in connection with an election imposed by any law for the time being in force.

(5) The reasonable expenses incurred by any person in attending to give evidence may be allowed to him by the Tribunal and shall, unless the Tribunal otherwise directs be deemed to be part of the costs.

**93. Recrimination where seat is claimed.**- (1) Where in an election petition a declaration is claimed that a candidate other than the returned candidate

has been duly elected, the returned candidate or any other party may produce evidence to prove that the election of such other candidate would have been declared void had he been the returned candidate and had a petition been presented calling his election in question:

Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has within the fourteen days next following the commencement of the trial, given notice to the Tribunal of his intention so to do and has also deposited the security referred to in Section 81.

(2) Every notice referred to in sub-section (1) shall be accompanied by a statement of the case and all the provisions relating to the content verification trial and procedure of an election petition, or to the security deposit in respect of an election petition shall apply to such a statement as if it were an election petition.

**94. Conclusion of Trial.**- (1) The Tribunal may, upon the conclusion of the trial of an election petition make an order, –

- (a) dismissing the petition;
- (b) declaring the election of the returned candidate to be void;
- (c) declaring the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been duly elected; or
- (d) declaring the election as a whole to be void.

(2) Save as provided in sub-section (3), the decision of a Tribunal on an election petition shall be final.

(3) Any person aggrieved by a decision of the tribunal may, within thirty days of the announcement of the decision, appeal to the Supreme Court and the decision of the Supreme Court on such appeal shall be final.

**95. Ground for declaring election of Returned Candidate void.**- (1) The Tribunal shall declare the election of the Returned Candidate to be void if it is satisfied that,-

- (a) the election of the returned candidate has been procured or induced by any corrupt or illegal practice; or
- (b) a corrupt or illegal practice has been committed by the returned candidate or his election agent or by any other person with the connivance of the candidate or his election agent.

(2) The election of a returned candidate shall not be declared void on the ground,-

- (a) that any corrupt or illegal practice has been committed if the Tribunal is satisfied that it was not committed by, or with the

consent or connivance of that candidate or his election agent and that the, candidate and the election agent took all reasonable precautions to prevent its Commission; or

- (b) that any of the other contesting candidates was on the nomination day, not qualified for, or was disqualified from being elected as a member.

**96. Ground for declaring a person other than a returned candidate elected.**-

The Tribunal shall declare the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been duly elected, if it is so claimed by the petitioner or any of the respondents and the Tribunal is satisfied that the petitioner or such other contesting candidate was entitled to be declared elected.

**97. Ground for declaring election as a whole void.**- The tribunal shall declare the election as a whole to be void if it is satisfied that the result of the election has been materially affected by reason of,-

- (a) the failure of any person to comply with the provisions of this Act or the rules; or
- (b) the prevalence of extensive corrupt or illegal practice at the election.

**98. Decision in case of equality of votes.**- (1) Where, after the conclusion of the trail, it appears that there is an equality of votes between two or more contesting candidates, and the addition of one vote for one such candidate would entitle him to be declared elected, the tribunal shall so inform the Commission. In the event that no appeal is filed against the decision of the Tribunal, the Commission shall, after expiry of the period specified for the filing of an appeal, direct a fresh poll to be taken in respect of the said candidate, and fix a date for such poll, but otherwise, the Commission shall await the result of the appeal and shall act as above only if the decision of the Tribunal is upheld in appeal on all points.

(2) All the provisions of this Act relating to polling, counting of votes, preparation of ballot paper account, declaration of result and preservation and inspection of documents shall apply to the fresh poll as at an election held under the provisions of this Act.

**99. Other provision relating to Tribunal.**- (1) An order of a Tribunal, under Section 94 shall take effect on the date on which it is made and shall be communicated to the Commission who shall publish it in the Official Gazette.

(2) The Tribunal, shall, after an election petition has been disposed off, forward the record thereof to the Commission who shall retain such record

for a period of five years from the date of its receipt and shall thereafter cause it to be destroyed.

- 100. Withdrawal of petition.**- An election petition may be withdrawn,—
- (a) before a Tribunal has been appointed, by leave of the Commission; and
  - (b) after a Tribunal has been appointed, by leave of the Tribunal.
- 101. Abatement of death of petitioner.**- (1) An election petition shall abate on the death of sole petitioner or of the sole survivor of several petitioners.
- (2) Where a petition abates under sub-section (1) after a Tribunal has been appointed, notice of the abatement shall be given by the Tribunal to the Commission.
- 102. Death or withdrawal of respondent.**- If, before the conclusion of the trial of an election petition, a respondent dies or gives notice in the prescribed form that he does not intend to contest the petition, and no respondent remains to contest the petition, the Tribunal shall, without any further hearing, or after giving such persons as it may think fit an opportunity of being heard, decide the case ex-parte.
- 103. Failure of petitioner to appear.**- Where, at any stage of the trial of an election petition, no petitioner makes an appearance, the Tribunal may dismiss the petition for default, make such order as to costs as it may think fit.
- 104. Order as to costs.**- (1) The Tribunal shall, when making an order under Section 94, also make an order determining in its discretion the costs and specifying the persons by and to whom such costs are to be paid.
- (2) If, in any order as to costs under sub-section (1), there is a direction for the payment of costs by any party to any person, such costs shall, if they have not already been paid, be payable in full, and shall upon application in writing in that behalf made to the Commission within six months of the order by the person to whom costs have been awarded, be paid, as far as possible, out of the security of costs deposited by such party.
- (3) Where no costs have been awarded against a party who has deposited security for costs, or where no application for payment of costs has been made within the aforesaid six months, or where a residue remains after costs have been paid out of the security, such security or the residue thereof as the case may be, shall upon application in writing therefor by the person who made the deposit or by his legal representative, be returned by the Commission to the person making the application.
- (4) Any order for costs may be enforced upon application in writing made to the principal civil court of original jurisdiction of the district in which the

person from whom the costs are to be recovered resides or owns property, or of the district in which the constituency, or any part, of the constituency, to which the disputed election relates is situated, as if such order were a decree passed by that court:

Provided that no proceeding shall be brought under this sub-section except of costs which have not been recovered by an application under sub-section (2).

**105. Directions in certain matters.**- Anything required to be done for carrying out the purposes of this Act, for which no provision or no sufficient provision exists shall be done by such authority and in such manner as the Commission may direct.

**106. Code of Conduct.**- (1) Without prejudice to sub-section (2), all political parties and candidates shall strictly adhere to the following code of conduct,-

- (i) the parties and candidates shall abide by all the laws, rules, regulations and directions issued by the Commission, from time to time, relating to smooth conduct of elections and the maintenance of public order;
- (ii) incitements to violence or show of arms, resort to violence during meetings, procession or during polling hours shall be strictly avoided by contesting candidates and their supporters;
- (iii) contesting candidates shall dissuade their workers or sympathizers from destroying any ballot paper or any official mark on the ballot paper or any other material used for election process;
- (iv) wall chalking as part of an election campaign shall be prohibited in all forms;
- (v) no person or a political party shall affix posters, hoardings or banners, if any, larger than the size determined by the Commissioner;
- (vi) contesting candidates and their supporters shall refrain from speeches calculated to arouse parochial and sectarian feelings and controversy of conflicts between genders, sects, communities and linguistic groups;
- (vii) the political parties and contesting candidates and their supporters shall refrain from deliberate dissimulation of false and malicious information and shall not indulge in forgeries or dis-information to defame other political parties/leaders.

The use of abusive language against the leaders and the candidates shall be avoided at all cost;

- (viii) the political parties and candidates shall firmly refrain their workers from exerting undue pressure against the print and electronic media, including newspaper offices and printing press and resorting to violence of any kind against the media; and
- (ix) the political parties shall endeavor to take necessary steps to ensure discipline within the party, its candidates, employees and supporters and guide them to follow this code, comply with laws and regulation, commit no election irregularities.

(2) In addition to code of conduct mentioned in sub-section (1), the Commission may issue before an elections additional code of conduct as may be deemed necessary for him for free, fair and transparent election and to ensure law and order situation in consultation with representatives of all political parties.

(3) The code of conduct issued under sub-section (1) and (2), shall be binding on all concerned.

(4) The returning officer and District Magistrate shall be responsible for implementation of Code of Conduct issued under this Section.

(5) Whoever contravenes the provision of the Code of Conduct issued under this Section shall be liable to punishment with imprisonment which may extend to one year or with fine which may extend or Rs. one lac or with both.

## **CHAPTER-X**

### **OFFENCE PENALTY AND PROCEDURE**

**107. Corrupt practice.**- A Person is guilty of corrupt practice punishable with imprisonment for term which may extend to two years, or with fine which may extend to one thousand rupees, or with both if he,-

- (1) contravenes the provisions of Section 75;
- (2) is guilty of bribery, personation or undue influence;
- (3) makes or publishes a false statement-
  - (a) concerning the personal character of a candidate or any of his relations calculated to adversely affect the election of such candidate or for the purpose of promoting or procuring the election of another candidate unless he proves that he has reasonable grounds for believing, and did believe, the statement to be true;

- (b) relating to the symbol of a candidate, whether or not such symbol has been allocated to such candidate; or
- (c) regarding the withdrawal of a candidate;
- (4) calls upon or persuades any person to vote, or to refrain from voting, for any candidate on the ground that he belongs to a particular religion, community, race, caste, sect, or tribe;
- (5) knowingly, in order to support or oppose a candidate lets, lends, employs, hires, borrows or uses any vehicle or vessel for the purpose of conveying to or from the polling station any elector except himself and members of his immediate family; or
- (6) causes or attempts to cause any person present and waiting to vote at the polling station to depart without voting.

**108. Illegal practice.**- A person is guilty of illegal practice Punishable with fine which may extend to “five thousand” rupees, if he,-

- (a) fails to comply with the provisions of Section 76;
- (b) obtains or procures, or attempts to obtain or procure, the assistance of any person in the service of Azad Jammu & Kashmir or in the service of Pakistan to further or hinder the election of a candidates;
- (c) votes or applies, for a ballot paper for voting at an election knowing that he is not qualified for, or is disqualified from, voting;
- (d) votes or applies for ballot paper for voting more than once in the same polling station;
- (e) votes or applies for a ballot paper for voting in more than one Polling Station for the same election;
- (f) removes a ballot paper from a polling station during the poll; or
- (g) knowingly induces or procures any person to do any of aforesaid acts.

**109. Bribery.**- A person is guilty of bribery if he, directly or indirectly by himself or by any other person on his behalf,-

- (1) receives or agrees to receive or contracts for any gratification for voting or refraining from voting, or for being or refraining from a candidate at, or for withdrawing from, an election;
- (2) gives, offers or promises any gratification to any person:-
  - (a) for the purpose of inducing,—
    - (i) a person to be or to refrain from being, a candidate at an election;
    - (ii) a voter to vote, or refrain from voting, at an election; or
    - (iii) a candidate to withdraw from an election; or
  - (b) for the purpose of rewarding,—

- (i) a person for having been, or for having refrained from being, a candidate at an election;
- (ii) a voter for having voted or refrained from voting at an election; or
- (iii) a candidate for having withdrawn from election.

**Explanation.**— In this Section ‘gratification’ includes a gratification in money or estimable in money and all forms of entertainment or employment.

**110. Personation.**- A person is guilty of personation if he votes, or applies for a ballot paper for voting, as some other person whether that other person is living or dead or fictitious.

**111. Undue influence.**- (1) A person is guilty of undue influence, if he,-

- (a) in order to induce or compel any person to vote or refrain from voting, or to offer himself as a candidate, or to withdraw his candidature at an election directly or indirectly by himself or by any other person on his behalf-
  - (i) makes or threatens to make use of any force, violence or restraint;
    - inflicts or threatens to inflict an injury, damage, harm or loss;
  - (ii) calls down or threatens to call down divine displeasure or the displeasure of any saint or pir;
  - (iii) gives or threatens to give any religious sentence; or
  - (iv) use any official influence or governmental patronage; or
- (b) on account of any person having voted or refrained from voting or having offered himself as a candidate or having withdrawn his candidature does any of the acts specified in clause (1); or
- (c) by abduction, duress or any fraudulent device or contrivance-
  - (i) impedes or prevents the free exercise of the franchise by an elector; or
  - (ii) compels, induces or prevails upon any elector to vote or refrain from voting.

**Explanation.**- In this Section, “harm” Includes social ostracism or ex-communication or expulsion from any caste or community.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with rigorous imprisonment, which may extend to six months, or with fine which may extend to “ten thousand” rupees, or with both.

**112. Prohibition of public meetings, etc.**- (1) No person shall convene hold or attend any public meeting, and no person shall promote or join in any procession within the area of any constituency, during a period of forty eight

hours ending at midnight following the conclusion of the poll for any election in that constituency.

**113. Prohibition of canvassing in or near polling station.**- A person is guilty of an offence punishable with fine which may extend to “five thousand” rupees if he, within a radius of four hundred yards of the polling station, on the polling day,-

- (a) canvasses for votes;
- (b) solicits the vote of any elector;
- (c) persuades any elector not to vote at the election or for a particular candidate; or
- (d) exhibits except with the permission of the Returning Officer and at a place reserved for the candidate or his election agent beyond the radius of one hundred yards of the polling station, any notice, sign, banner or flag designed to encourage the electors to vote, or discourage the electors from voting for any contesting candidate.

**114. Disorderly conduct near polling station.**- A person is guilty of an offence punishable with imprisonment for a term which may extend to three months or with fine which may extend to five thousand rupees or with both, if he, on the polling day,-

- (a) uses, in such manner audible within the polling station, any gramophone, megaphone, loudspeaker or other apparatus for reproducing or amplifying sound;
- (b) persistently shouts in such manner as to be audible within the polling station;
- (c) does any act which-
  - (i) disturbs or causes annoyance to any elector visiting a polling station for the purpose of voting; or
  - (ii) interferes with the performance of the duty of Presiding Officer or any Polling Officer, Polling Assistant and other person performing any duty at a polling station; or
- (d) abets the doing of any of the aforesaid acts.

**115. Tempering with papers.**- (1) Except as provided in sub-section (2), a person is guilty of an offence punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both, if he,-

- (a) intentionally defaces or destroys any nomination paper, ballot paper or official mark on a ballot paper;

- (b) intentionally takes out of the polling station any ballot paper or puts into any ballot box any ballot paper other than the ballot paper he is authorized by law to put in;
- (c) without due Authority-
  - (i) supplies any ballot paper to any person;
  - (ii) destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers in use for the purpose of election; or
  - (iii) breaks any seal affixed in accordance with the provision of this Act;
- (d) forges any ballot paper or official mark;
- (e) causes any delay or interruption in the beginning, conduct or completion of the procedure required to be immediately carried out on the close of the poll.

(2) A Returning Officer, Polling Officer or any other Officer or clerk on duty in connection with the election who is guilty of an offence under subsection (1) shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

**116. Interference with the secrecy of voting.**- A person is guilty of an offence punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both if he,-

- (a) interferes or attempts to interfere with an elector when he records his vote;
- (b) in any manner obtains or attempts to obtain in a polling station information as to the candidate or candidates for whom a elector is about to vote or has voted; or
- (c) Communicates at any time any information obtained in a polling station as to the candidate for whom a elector is about to vote or has voted.

**117. Failure to maintain secrecy.**- A Returning Officer, Assistant Returning Officer, Polling Officer, any other officer or official or any candidate or agent or a candidate attending a polling station or any person attending at the counting of votes, is guilty of an offence punishable with imprisonment for a term which may extend to six months, or with fine which may extend to thousand rupees, or with both, if he-

- (a) fails to maintain or aid in maintaining the secrecy of voting;

- (b) communicates to any person before the poll is closed, except for any purpose authorized by any law, any information as to the official mark; or
- (c) communicates any information obtained at the counting of votes as to the candidates for whom any vote is given or a preference is recorded on any particular ballot paper.

**118. Official not to influence voters.**- A Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer, any other officer or official on duty in connection with the election, or any member of a police force, is guilty of an offence punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both, if he, in the conduct or management of an election or maintenance or order at a polling station,-

- (a) persuades any person to give his vote;
- (b) dissuades any person from giving his vote;
- (c) influences in any manner the voting of any person; or
- (d) does any other act calculated to influence the result of the election.

**119. Breaches of official duty in connection with election.**- A Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer or any other person employed by any such officer in connection with his official duties imposed by or under this Act or any person required under subsection (2) of Section 5 to perform any function or render any assistance is guilty of an offence punishable with fine which may extend to one thousand rupees if he, willfully and without reasonable cause, commits breach or any such official duty, by act or omission or fail to perform such functions or render such assistance.

**120. Assistance by Government Servant.**- A person in the service of Azad Jammu and Kashmir or Pakistanis guilty of an offence punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both, if he misuses his official position in a manner calculated to influence the result of the election.

**121. Certain Powers of a police officer.**- A Police Officer or member of Armed Forces may,-

- (a) arrest without warrant, notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), any person—
  - (i) who, commits personation or an offence under Section 114 if the Returning Officer directs him to so arrest such person;

- (ii) who, being removed from the polling station by the presiding officer Under Section 59 commits any offence at the polling station;
  - (b) remove any notice, sign banner or flag used in contravention of Section 113; and
  - (c) seize any instrument or apparatus used in contravention of Section 114 and take such steps, including use of force, as may be reasonably necessary for preventing such contravention.
- 122. Certain offences cognizable.**- Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), an offence under Section 107 or Section 113 or sub-section (1) of section 115 shall be cognizable offence.
- 123. Prosecution for offences by public officers.**- (1) No Court shall take cognizance of an offence under sub-Section (2) of Section 115, Section 117, Section 118, Section 119 or section 120 except upon a complaint in writing made by order of, or under authority from the Commissioner.
- (2) The Commissioner shall, if he has reasons to believe that any offence specified in sub-section (1) has been committed, cause such inquiries to be made or prosecution to be instituted as he may think fit.
- (3) In respect of an offence specified in sub-section (1), Section 494 of the Code of Criminal Procedure, 1898, (Act V of 1898) shall have effect as if, after word and comma, “may,” therein, the words “if so directed by the Chief Election Commissioner and” were inserted.
- 124. Certain offences triable by the Registration Officer.**- Not withstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Registration Officer, if so authorized by the Government in this behalf, may, -
- (a) exercise the powers of Magistrate of the first class under the said Code in respect of the offences punishable under section 172, 173, 174, 175, 177, 178, 179, 180, 182, 186, 187, 188, 189, 191, 196, 197, 198, 199, 200, 464, and 471 of Azad Penal Code, 1860 (Act XL of 1860); and
  - (b) take cognizance of such offence and shall try it summarily in accordance with the provisions of the said Code relating to summary trial.
- 125. Limitation for prosecution for corrupt or illegal practices.**- No prosecution for an offence under Section 107 or section 108 shall be commenced except,-
- (a) within six months of the commission of the offence; or

- (b) if the election at which the offence was committed is subject to an election petition and the Tribunal has made an order in respect of such offence, within three months of the date of such order.

## **CHAPTER-XI**

### **POLITICAL PARTIES**

**126. Formation of certain political party prohibition.**- (1) No political party shall be formed with the object of propagating any opinion or acting in any manner prejudicial to the Islamic Ideology or Ideology of State's Accession to Pakistan or the sovereignty and Integrity of Pakistan or Security of Azad Jammu and Kashmir or Pakistan or morality, or the maintenance of public order.

- (2) No person shall form, organize, set-up or convene a foreign aided party or in any way be associated with any such party.

**Explanation.**— In sub-section (2) 'Foreign aided party' means a political party which,-

- (a) has been formed organized at the instance of any Government or political party of a foreign country; or
- (b) is affiliated to or associated with any Government or political party of a foreign country; or
- (c) receives any aid, financial or otherwise, from any Government or political party of a foreign country, or any portion of its funds from foreign nationals.

**127. Political Parties to submit accounts, etc.**- Every Political Party shall, in such manner and form and at such time as may be provided by rules made by the Government, account for the source of its funds and submit its finances and accounts to audit by, an officer or authority authorized by the Commission in this behalf:

Provided that every political party in existence at the time of commencement of this Act, shall account for the source of its funds, and submit its finances and accounts to audit, within fifteen days of the publication of the rules made under this Act.

**128. Registration of Political Parties.**- (1) Every political party in existence at the commencement of this Act shall, within two month of such commencement and every political party formed after such commencement shall, within two month of its being formed, apply to the Commission for registration.

- (2) An application under sub-section (1), shall be made on behalf of a political party by such person and in such form, and shall be accompanied by such documents besides a copy of its constitution, a list of the names of

all its office bearers at the state level and a statement of its total membership in each district, as the Commission may, by notification in the official Gazette, specify.

(3) The Commission shall register a political party applying for registration in accordance with sub-section (2), if it is satisfied that the political party,-

- (a) has published a formal manifesto, that is to say, the party's foundation document or constitution giving its aims and objectives and provided therein for elections of its office-bearers being held periodically; or
- (b) has under taken to publish any amendment to any document referred to in clause (a), as and when such amendment is made;
- (c) has belief in the Ideology of Pakistan or the Ideology of the State's accession to Pakistan and the integrity and sovereignty of Pakistan; and
- (d) has submitted its accounts as required by Section 127.

(4) If a political party which has been registered under sub-section (3),-

- (a) fails, or has failed to submit its accounts within the period specified in Section 127 or the rules made thereunder; or
- (b) fails to hold election of any office-bearer within the time allowed by, and in accordance with, its constitution and rules; or
- (c) propagates any opinion, or acts in any manner prejudicial to the Ideology of Pakistan or the Ideology of the State's accession to Pakistan, or the sovereignty and integrity of Pakistan or security of Azad Jammu and Kashmir or Pakistan, or morality or the maintenance of public order, or the integrity or independence of the judiciary of Azad Jammu and Kashmir or Pakistan, or defames or brings into ridicule the judiciary of Azad Jammu and Kashmir or Pakistan or the Armed Forces of Pakistan; or
- (d) receives any aid, financial or otherwise, from the Government or any political party of a foreign country, or any portion of its funds from foreign nationals; or
- (e) does or omits to do any such act or things as would have resulted in registration being refused to it in the first instance, then, without prejudice to any action that may be taken in respect of the political party under Section 131, the

Commission may, after giving the political party an opportunity of showing cause against the action proposed to be taken, cancel its registration or as the case may be, revoke declaration made in its favour under sub-section (4) of Section 129.

(5) The cancellation of the registration of a political party under sub-section (4), shall be notified by the Commission in the official Gazette.

(6) A political party which has not been registered under sub-section (3) or the registration of which has been cancelled under sub-section (4), shall not be eligible to participate in an election to a seat in the Legislative Assembly of Azad Jammu and Kashmir or the Azad Jammu and Kashmir Council or to nominate or put up a candidate at any such election.

**129. Certain political parties to be eligible to participate in elections.**- (1)

Save as expressly provided herein, the provision of Section 128, shall apply mutatis mutandis where a political party seeks or has obtained declaration under sub-section (4).

(2) The Commission shall, by notification in the official Gazette, call upon the political parties which had complied with the provisions of Section 127, but had not applied for registration under Section 128, to furnish to the Commission within such times, as may be specified, in the notification, answers to a questionnaire published therewith.

(3) Answers to a questionnaire referred to in sub-section (2), shall be furnished on behalf of a political party by such persons, and shall be accompanied by such documents, besides, a copy of its constitution and manifesto, a list of the names of its office bearers at the national level and a statement of its total membership in each district as may be specified in the notification published under the said sub-section.

(4) If after giving a political party, which has furnished answers to the questionnaire as required by sub-section (2), an opportunity of being heard, the Commission is satisfied that the party has fulfilled the requirements of sub-section (3) of Section 128, the Commission shall declare the political party by notification in the official Gazette to be eligible to participate in an election to a seat in the Legislative Assembly and to nominate or put up a candidate at any such election.

**130. Merger of Parties.**- (1) Any political party registered under Section 128, or declared under Section 129, to be eligible to participate in an election to a seat in the Legislative Assembly, may, by a resolution passed by the chief decision making body of that party at the national level, decide to merge with

another such political party so as to be absorbed by the latter party, which shall, nevertheless, retain its name and identity.

(2) Upon the acceptance of the merger by the latter party and its approval by the Commission,-

- (a) the merging party shall be deemed to have been dissolved and its assets and liabilities franchises and powers shall become vested in the latter party, and its members shall be deemed to have become members of the latter party for all intents and purposes; and
- (b) any act done, or proceeding initiated, by any such member shall be deemed to have taken and initiated as a member of the latter party.

**131. Lawful political activities.**- Subject to the provisions of Section 126, it shall be lawful,-

- (a) for anybody of individuals or an association of person to form, organize or set-up a political party; or
- (b) for any person, not being in the service of Azad Jammu and Kashmir or Pakistan;
  - (i) to be a member or office-bearer of, or be otherwise associated with, a Political party; or
  - (ii) for the purpose of an election to be held under the constitution, to hold himself out or any other person, not being a person in the service of Azad Jammu and Kashmir or Pakistan, as a member or to have the support of a political party, the formation, organization or setting up of which is not prohibited by this Act.

**132. Dissolution of political parties.**- (1) Where the Government is satisfied that a political party is a foreign aided party or has been formed or is operating in a manner prejudicial to the Islamic Ideology or Ideology of State's accession to Pakistan or the sovereignty and Integrity of Pakistan or security of Azad Jammu and Kashmir or Pakistan, or morality, or maintenance, of public order or has contravened the provisions of Section 127, it shall make such a declaration and publish the same in the official Gazette, and upon such publication, the political party concerned shall, subject to the provisions of sub-section (2) stand dissolved, and its all properties and funds shall be forfeited to the Government.

(2) Within fifteen days of the making of a declaration under sub-section (1) the Government shall refer the matter to the Supreme Court whose decision on such reference shall be final.

**133. Penalty.**- (1) Any person who, after the dissolution of a political party under Section 132, holds himself out as a member or office bearer of that party, or acts for, or otherwise associates himself with, that party, shall be punishable with imprisonment for a term which may extend to three years, or with fine or with both.

(2) If any person who was an office-bearer of a political party at the time of its dissolution under sub-section (2) of Section 132 indulges or takes part in any political activity within five years of its dissolution, he shall be punishable with imprisonment for a term which may extend to three years or with fine, or with both.

(3) Any person who contravenes the provisions of Section 131, shall be punishable with imprisonment for a term which may extend to three years, or with fine or with both.

**134. Sanction for prosecution.**- No prosecution under this Act shall be instituted against any person without the previous sanction in writing of the Government.

## **CHAPTER-XII**

### **COMPOSITION OF LEGISLATIVE ASSEMBLY**

**135. Composition of the Legislative Assembly.**- (1) The Legislative Assembly shall consist of such number of members as mentioned in Article 22 of the Constitution.

(2) The terms "Technocrat and professional" referred and used in clause (e) of sub-article (1) of Article 22 of the Constitution, shall include as Agriculturist, Economist, Educationist, Lawyer, Doctor, Engineer, Scientist, with at least ten years' experience, or any person having special education in any branch of knowledge with the same experience.

## **CHAPTER-XIII**

### **MISCELLANEOUS**

**136. Jurisdiction of Courts Barred.**- (1) No court shall question the legality of any action taken in good faith by or under the authority of the Commission, a Returning Officer, Presiding Officer or Polling Officer or any decision given by any of them or by any other Officer or authority appointed under this Act or the rules.

(2) No Court shall question the validity of the electoral rolls prepared under this Act or the legality or propriety of any proceedings or action taken there-under by or under the authority of the Commission or the Registration Officer.

**137. Protection of action taken in good faith.**- No suit, prosecution or other legal proceeding shall lie against the Commission or any officer or other

person in respect of anything which is in good faith done or intended to be done under or in pursuance of this Act or any order made, or direction given, thereunder.

**138. Power to make Rules.**- The Government, may, in consultation with the Commission make rules for carrying out the purposes of this Act.

**139. Repeal and Saving.**- (1) The following laws are hereby repealed:-

- (a) The AJ&K Electoral Rolls Ordinance, 1970;
- (b) The AJ&K Legislative Assembly Ordinance, 1970;
- (c) The AJ&K Delimitation of Constituencies Ordinance, 1970;
- (d) The AJ&K Legislative Assembly (Elections) Ordinance, 1970;  
and
- (e) The AJ&K Political Parties Act, 1987.

(2) Notwithstanding the repeal of the laws mentioned in sub-section (1), all actions taken, notifications issued, rules framed, proceedings initiated, decisions made, duties conferred, which are not contrary to any provision of this Act shall be deemed to have been validly taken, issued, framed, initiated, made and conferred under this Act.

(3) Notwithstanding anything contained in this Act, all rules, regulations, by laws, notification, orders issued immediately before the commencement of this Act, which were enforced in Azad Jammu and Kashmir shall continued in force until altered, repealed or amended by the appropriate authority.

**(Gulfraz Ahmed Khan)**  
Section Officer (Legislation)

## **SCHEDULE-I**

[See Section 17 (1) (a)]

Seats in the Legislative Assembly for Azad Jammu and Kashmir territory;

District	Seats	
Neelum Valley	1	
Muzaffarabad	6	
Kotli	5	
Mirpur	4	
Poonch and Sudhnuti	6	For the purposes of this Act, District Poonch and Sudhnuti (Pallandri) shall be treated as one district.
Bagh	4	
Bhimber	3	

## **SCHEDULE-II**

### **[See Section 17 (1) (b)]**

Seats in the Legislative Assembly for the areas in the Provinces of the Punjab, Baluchistan, Sindh and Khyber Pakhtunkhwa, Islamabad Capital Territory, (Federal Capital and Federally Administered Tribal Areas).

(a)	Seats for the State Subjects of the occupied areas of the District of Anantnag (Islamabad) Baramula and Muzaffarabad now residing in the provinces of the Punjab, Baluchistan, Sindh, Khyber Pakhtunkhwa and Islamabad Capital Territory, (Federal Capital and Federally Administered Tribal Areas).	Seats 6
(b)	(b) Seats for the State Subjects from occupied areas of districts of Jammu, Kathua, Reasi, Udhampur, Poonch State and Mirpur as existed on the 14th day of August, 1947 and Mangla Dam affectees who are now residing in any of the province of Pakistan.	6