

**THE AZAD JAMMU & KASHMIR
OFFICIAL MISDEMEANOUR ACT OF 1948.**

(Sanctioned by the Azad Jammu and Kashmir Government under Council Order No. 254 Dated the 13th March, 1948.

Whereas it is expedient to define and to consolidate the law relating to misdemeanour of persons holding any office under the Azad Jammu and Kashmir Government, it is hereby enacted as follows :-

1. **Title, extent and commencement:-** (i) This Act shall be called the Official Misdemeanour Act of 1948.
 - (ii) It extends to all the territories that are or may come under the administration of Azad Jammu and Kashmir Government.
 - (iii) It shall come into force forthwith.

2. **Definitions:-** In this Act:
 - (1) 'Government' means and denotes the Azad Jammu and Kashmir Government ;
 - (2) 'Court' means the court of a Magistrate of first class having jurisdiction ;
 - (3) To oppress denotes and includes the use of force physical or moral, against another person and the employment of any method, so as to make any person do what he cannot be compelled to do legally or to omit to do anything which he is legally entitled to do except in accordance with law for the time being in force and within the strict limits of such law.
 - (4) The explanation and definitions in Chapter II of the Indian (now Pakistan) Penal Code, shall as far as possible, apply to the provisions of this Act.

3. **What is misdemeanour:-** Any person holding office under the Azad Jammu and Kashmir Government, shall be deemed to be guilty of misdemeanour if :-

- (a) he oppresses any citizen of Jammu and Kashmir State within his jurisdiction, under the colour of his office or authority ;
or
- (b) he wilfully disobeys or omits, forbears or neglects to execute any lawful order or instructions of the Ministry of the Government or his superior officers ; or
- (c) he is guilty of wilful breach of trust or neglect of the duties of his office : or
- (d) being a Minister, Head of Department or being a person employed or concerned in the collection of revenue or administration of justice, he is concerned or has any dealings or transactions by way of trade or business in any part of Azad Jammu and Kashmir State for the benefit either of himself or of any other person otherwise than as a shareholders in any joint stock company or trading corporation, having been specially permitted to do so; or
- (e) demands accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person any gratification, gift, gratuity or reward other than legal remuneration, as a motive or reward for doing or for forbearing to do any official act, for showing or for forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or with any person, as such except in accordance with such rules as may be made by the Government as to the receipt of presents.

4. **Punishment for Misdemeanour:-** Any person who commits misdemeanour shall on conviction by a Magistrate of the first class, be punished with imprisonment of either description for a term which may extend to three years or with fine or both and shall in addition be liable to be dismissed from his office or appointment.
5. **Forfeiture of property:-** If a person is convicted of misdemeanour, the property involved in any gift, gratuity or illegal gratification or the full value thereof shall be forfeited to the Government but the Court may order the same or any part thereof to be restored to the person to whom it originally belonged or to be awarded to another person who in the opinion of the court, was responsible for exposing the accused , whether lie is a prosecutor, an informer or any other person :

Provided that a similar order may be made by the Court in respect of the whole or any part of the fine that may be imposed under the foregoing section.

6. **Exceptions and exemptions:-** Notwithstanding any thing contained in this Act, if any person at the time of his appointment to any office under the Government is concerned with or is engaged in any trade or business, he may during the term of his office with the sanction of the Government and subject to general conditions or restrictions that may be prescribed by the Government retain his concern or interest in the trade or business and in such a case he shall not be liable to any penalties prescribed by this Act.
 7. **Commencement of proceedings:-** No Court shall take cognizance of any offence under this Act, except on a complaint by or with the sanction of the Head of the Department in the case of person other than Heads of Departments and Ministers, and the Government in the case of the Head of the Departments or Ministers of the Government.
 8. **Power of Police:-** An offence under this Act shall not be cognizable except when the Head of the Department or the Government who are competent to accord sanction or launch prosecution under section 7, as the case may be, directs that the investigation shall be made by the police in which case the case shall be dealt with as a cognizable case and the necessary complaint or sanction by the authority concerned shall be presumed.
 9. **Withdrawal of complaints:-** Any case falling under the purview of this Act shall be withdrawn only by the authority competent to file the complaint or accord sanction for the same.
 10. **Bail:-** An offence under this Act shall be bailable and the court may issue a warrant in the first instance against the accused but it shall not be compoundable except as provided for under Section 9.
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