

**AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW AND PARLTAMENTARY AFFAIRS DEPARTMENT
MUZAFFARABAD**

Dated the 14th January, 1987.

No. 114-118/LD/Leg(A) 87. The following Act of the Assembly received by the ascent of the President on the 8th day of January, 1987, is hereby published for general information:-

(ACT II OF 1987)

AN

ACT

to amend the Azad Jammu and Kashmir Legislative Assembly (Elections) Ordinance, 1970.

WHEREAS it is expedient to amend the Azad Jammu and Kashmir Legislative Assembly (Elections) Ordinance, 1970 (Ordinance X of 1979) for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. **Short title and Commencement.** - (1) This Act may be called the Azad Jammu and Kashmir Legislative Assembly (Elections) (Amendment) Act, 1987.
(2) It shall come into force at once.
2. **Amendment of Section 2, Ordinance X of 1970.**- In Azad Jammu and Kashmir Legislative Assembly (Elections) Ordinance, 1970 (Ordinance X of 1970), hereinafter referred to as the said Ordinance, in Section 2, after clause (xxiv), the following new clause (xxv) shall be inserted, namely.-
“(xxv) ‘Validly nominated’ means a candidate whose nomination has been accepted; “ or
existing clause (xxv) shall re-numbered as clause (xxvi).
3. **Amendment of Section 5, Ordinance X of 1970.**- In the said Ordinance, in Section 5,-
 - (a) in sub-section (1), after clause (c) the following shall be added, namely.-
 - “(d) he is of good character and is not commonly known as one who violates Islamic Injunction;
 - (e) he has adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as abstains from majority.
 - (f) he is sagacious, righteous, honest, ameen not profligate;

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

For sub-section (2) the following shall be substituted, namely:-

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

- (a) if;
 - (i) he is of unsound mind and stands so declared by a competent court; or
 - (ii) he is an undercharged 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 and Kashmir or in the service of Pakistan, other than an office which is not a whole time office of Parliamentary Secretary or Chairman District Council or Municipal Committee or as specified in the second schedule of Interim Constitution Act, 1974; or
 - (v) he has been dismissed for mis-conduct 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 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 the state's accession to Pakistan or the sovereignty, integrity or Pakistan, or security 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 compulsory retirement; or
- (ix) he has been in the service of Azad Jammu and Kashmir or Pakistan or 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, unless a period of two years has elapsed since he ceased to be in such service; or
- (x) he is found guilty of corrupt or illegal practice under any other law for the time being in force, unless a period of seven years has elapsed from the date on which that order takes effect; or
- (xi) he has, at any time on or after the ninth day of September, 1979, been an office-bearer of a political party dissolved under section (9) of the Azad Jammu and Kashmir Political Parties Ordinance, 1979 and has not, before a declaration in respect of such party is made under subsection (1) of that section, resigned, or publicly announced dis-association, 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 (10) of the Azad Jammu and Kashmir political Parties Ordinance, 1979, unless

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a period of five years has elapsed from the date of his release; or

- (xiii) he is a an office bearer of a political party which is not eligible under the political parties Ordinance, 1979, to participate in an election to a seat in the Legislative Assembly or to nominate or put up a candidate at any such election;
- (xiv) he is an office bearer of a political party which has not been registered, or the registration of which has been cancelled, under the Azad Jammu and Kashmir Political Ordinance, 1979; or
- (xv) he is for the time being dis-qualified from being elected or chosen a member of the Legislative Assembly of Azad Jammu and Kashmir under any law for the time being in force; or
- (xvi) he has, during the period of two months preceding the publication of the notification under Section 10, been a member or supporter of or associated with, a registered political party, unless he is put up by that political party as a candidate:

Provided that nothing herein contained shall affect the members or office-bearer of a party referred to in section 7 of the Political Parties Act, 1987(Act I of 1987), which, at any time on or after the sixth day of April, 1985, has merged with any other such party in accordance with the provisions of that section, and any proceeding pending or initiated before the Commissioner shall be decided on that basis; or

- (xvii) he, whether by himself or by any person or body of persons in trust for him 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 execution any contract or the performance of any service undertaken by, 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 public company as defined in the Companies Act, 1913 (Act 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 Section 2 of Azad Jammu and Kashmir Interim Constitution Act, 1974 and in Article 260 of the Constitution of Pakistan respectively.

Explanation-II.- In sub-clause (xi) of sub-section (2) 'office-bearer of party' means an office-bearer of the National or District set up of the party otherwise than as a mere member of 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 duty or obligation to supply.

(xviii) he is having a bad reputation or known to be morally corrupt.

(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 dis-qualification.

(4) If a person having been elected as member of Azad Jammu and Kashmir Legislative Assembly other than as nominee of a political party joins any party then withdraws from that party, he shall, from the date of such withdrawal, stand disqualified being a member of the Assembly for the un-expired period of his term unless he has been re-elected at a bye election held after his disqualification.

4. **Amendment of Section 10, Ordinance X of 1970.-** In the said Ordinance, in Section 10.-

(a) in sub-section (1) for clause (a) the following shall be substituted, namely:-

“(a) a day on or before which nomination of the candidate is to be made”...

(b) in sub-section (3) for the word ‘before’ the word ‘by’ shall be submitted.

5. **Insertion of Section 10-A, Ordinance X of 1970.-** In the said Ordinance, after Section 10, the following new Section shall be inserted, namely:-

10-A. Alteration in Election Programme.- Notwithstanding anything contained in Section 10, the Commissioner may at any time after 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.

6. **Amendment of Section 13, Ordinance X of 1970.-** In the said Ordinance Section 13,-

(a) In sub-section (3), in clause (d), in sub-clause (ii) of the proviso, between the word ‘nature’ and the words and comma including an error in regard to the name, serial number in the Electoral Roll or other particulars of the candidate, his proposer, or seconder, shall be inserted.

- (b) for sub-section (4) and (5) the following shall be substituted, namely:-

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

(5) any person aggrieved by an order under sub-section (4), may file an appeal within a prescribed period to the Commissioner 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.”

7. **Omission of Section 15-A, Ordinance X of 1970.-** In said Ordinance, Section 15-A, shall be Omitted.

8. **Substitution of Section 18, Ordinance X of 1970.-** In the said Ordinance, for Section 18, the following shall be substituted, namely:-

“18. **Un-contested election.-** (1) Where after scrutiny under Section 13, there remains only one validly nominated candidate or where, after withdrawal under Section 15, there remains only one contesting candidate, the Returning Officer shall so inform the Commissioner 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 Commissioner.

(2) The Commissioner 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 the seat;

Provided that, if after scrutiny any candidates indicate that he intends to file an appeal under sub-section (5) of Section 13, 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.”

9. **Substitution of Section 24, Ordinance X 1970.**- In the said Ordinance, for Section 24, the following shall be substituted, namely:-

“24. 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 Commissioner and shall, as soon as maybe with the previous approval of the Commissioner, 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 Retiring Officer shall notify in such manner as the Commissioner may direct the date, place and hours of polling fixed under sub-section (2).”

10. **Insertion of Section 24-A, Ordinance X of 1970.**- In the said Ordinance in Section 24, the following new section 24-A, shall be inserted namely:-

“24-A. Fresh poll in the case of distraction, etc. of ballot boxes.-

(1) If at any election.-

(a) any ballot box used at a polling station is unlawfully taken out of the custody of 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 committed at a polling station the Returning Officer shall forthwith report the matter to the Commissioner.

(2) The Commissioner may, on his own motion or on receipt of a report under sub-section (1), and for reason 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, effect 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)”

11. **Amendment of Section 29, Ordinance X of 1970.-** In the said Ordinance, in Section 29, in sub-section (2), after the words ‘Police Officer’, at the end, the words ‘or member of the armed forces’ shall be added.

12. **Substitution of Section 30, Ordinance X of 1970.-** In the said Ordinance, for Section 30, the following shall be substituted, namely:-

“30. **Voting procedure.-** (1) where an elector presents himself at the polling station to vote, the Presiding Officer shall, after satisfying himself about the identity of the elector, issue to him a ballot paper.

(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 counter foil 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 obtained on it the thumb impression of the elector;
- (e) he shall be required to receive a personal mark, made, with indelible ink on the thumb or any other finger of either hand.
- (3) A ballot paper shall not be issued to a person who refuses to put thumb impression on the counter foil or whose thumb bears traces of its having already been used for putting the impression.
- (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 insure 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 in to 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 there upon such elector may do with such assistance anything which an elector is required or permitted to do under this act.”

13. **Amendment of Section 35, Ordinance X of 1970.**- In the said Ordinance, in Section 35, in sub-section (4), -
- (i) in clause (c)-
 - (a) in sub-clause (i), after the word 'mark' at the end, the words and initials of the Presiding Officer' shall be added; and
 - (b) for sub-clause (ii), the following shall be substituted, namely:-

“(ii) any writing or any mark other than the mark of his thumb, the official mark, the initials of the Presiding Officer and the proscribed mark or to which a piece of paper or any other object of any kind has been attached.”
 - (c) in sub-clause (iv) the word 'or' at the end shall be omitted: and
 - (d) sub-clause (v) shall be omitted.
 - (ii) in sub-section (12), clause (j) shall be omitted.
14. **Amendment of Section 40, Ordinance X of 1970.**- In the said Ordinance, in Section 40, in sub-section (1) the following words, at the end, 'or' who has retired from contest under Section 15-A, shall be omitted.
15. **Addition of Section 47-A, Ordinance X of 1970.**- In the said Ordinance, after Section 47, the following new Section 47-A shall be added namely:-

“47-A. Notwithstanding anything contained in this ordinance or any other law for the time being enforce, the provisions of section 44 to 47 shall not apply to the contesting candidates in the general election 1985.”
16. **Substitution of Chapter VI of Ordinance X of 1970.**- In the said Ordinance, for Chapter VI, the following shall be substituted.-

**“CHAPTER VI
ELECTION TO SEATS RESERVED FOR WOMEN,
ULEME DIN, MASHAIKH' STATE SUBJECTS
RESIDING ABROAD AND TECHNOCRATES AND
PROFESSIONALS.**

48. (1) Nothing in Chapter IV and V shall apply to an election to fill a seat reserved for women, Ulemai Din or Mashaikh, State Subjects residing abroad and Technocrats and professionals from the Legislative Assembly.

(2) The members for the seats reserved for women, Ulemai

Din or Mashaikh, State Subjects residing abroad and Technocrats and professionals in Legislative Assembly shall be elected by persons directly elected to the other seats in the Legislative Assembly.

(3) The Commissioner shall hold and conduct the election to the fill the seats reserved for women, Ulemai Din or Mashaikh, State Subjects residing abroad and Technocrats and professionals, in the Legislative Assembly in such manner as he may think fit.”

17. **Amendment of Section 53, Ordinance X of 1970.-** In the said Ordinance in Section 53, for sub-section (2) the following shall be substituted, namely:-

“(2) An Election Tribunal shall consist of a person who is, or, has been Judge of the Azad Jammu and Kashmir High Court or any High Court of Pakistan, or a District and Sessions Judge, who is, or, has been qualified to be, a Judge of the High Court.”

18. **Amendment of Section 86, Ordinance X of 1970.-** In the said Ordinance in Section 86,-

- (a) after the word and comma ‘Ordinance’, the words, brackets and figures ‘or any person required under sub-section (2) of Section 4, to perform any functions or render any assistance, shall be inserted ; and
- (b) after the word ‘omission’ at the end, the comma and words ‘or fails to perform such functions or render such assistance shall be added.

19. **Amendment of Section 88, Ordinance X of 1970.-** In the said Ordinance, in Section 88, after the words ‘Police Officer’ twice occurring, the words ‘member of the armed forces’ shall be inserted.

20. **Substitution of Section 92, Ordinance X of 1970.-** In the said Ordinance for Section 92, the following shall be substituted, namely:-

“92. Commissioner to ensure fair election etc.- Save as otherwise provided the Commissioner may.-

- (a) Stop the polls at any stage of the election if he is convinced that he 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) revision an order passed by an officer under this Ordinance, or the rules, including rejection of ballot

papers; and

- (c) issue such instructions and exercise such powers, and make such consequential orders, as may, in this opinion, be necessary for ensuring that the election is conducted honestly, justly and fairly, and in accordance with the provisions of this Ordinance, and the Rules.”

21. **Insertion of Section 92-A, Ordinance X of 1970.**- In the said Ordinance, after section 92, the following new Section shall be inserted, namely:-

“92-A. Directions of Commissioner in certain matters.- Anything required to be done for carrying out the purposes of this Ordinance, for which no provision or no sufficient provision exists shall be done by such authority and in such manner as the Commissioner may direct.”

22. **Savings.**- Notwithstanding any judgment, decree or order of any court including High Court everything done, all action taken, notifications issued, orders or appointments made, proceedings initiated, jurisdiction or powers exercised under the provisions of Azad Jammu and Kashmir Legislative Assembly (Elections) (Amendment) Ordinance, 1977 (Ordinance VI of 1977) or its succeeding Ordinances issued from time to time shall be deemed to have been validly done taken, issued, made, initiated or exercised under this Act.

23. **Repeal.**- The Azad Jammu and Kashmir Legislative Assembly (Elections) (Amendment) Ordinance, 1986 (Ordinance XLII of 1986), is hereby repealed.

Sd/-

(Syed Atta Mohy-ud-Din Qadri)
Deputy Secretary Law