

**THE AZAD JAMMU AND KASHMIR PRESIDENTIAL
ELECTIONS OFFENCES AND ENQUIRIES ORDINANCE, 1970
(Ordinance XI of 1970)**

*(Passed under Government Order No. 3864-3914\SL\70,
dated the 2nd October, 1970.)*

AN ORDINANCE

*to provide for the punishment of malpractices in connection with
elections to the office of the President.*

WHEREAS it is expedient to provide for the punishment of malpractices in connection with the elections to the office of the President, Azad Government of the State of Jammu and Kashmir ;

AND WHEREAS the President is satisfied that circumstances exist which render immediate legislation necessary ;

Now, THEREFORE, in exercise of the powers conferred by section 24 of the Azad Jammu and Kashmir Government Act, 1970, the President is pleased to make and promulgate the following Ordinance :-

1. **Short title and commencement:-** (1) This Ordinance may be called the Azad Jammu and Kashmir Presidential Election Offences and Enquiries Ordinance, 1970.

 (2) It shall come into force at once.
2. **Definition:-** Unless there is anything repugnant in the subject or context:
 - (i) 'election' means an election to the office of the President Azad Government of the State of Jammu and Kashmir;
 - (ii) 'Government' means the Azad Government of the State of Jammu and Kashmir;
 - (iii) 'rules' means rules, framed under section 30 of the Azad Jammu and Kashmir Government Act, 1970, in relation to the election of the President, Azad Government of the State of Jammu and Kashmir;

(iv) 'Commissioner' means Election Commissioner appointed or deemed to be appointed under the Azad Jammu and Kashmir Electoral Rolls Ordinance, 1970 (Ordinance I of 1970).

3. **Corrupt practice:-** A person is guilty of corrupt practice 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, if he :

- (1) contravenes the provision of rule 42;
- (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 affected the election of such candidate or for the purpose of promoting or procuring the election of another candidate unless he proves that he had reasonable grounds for believing, and did believe, the statement ;
 - (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;
 - (d) 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;
 - (e) existingly, in order to support or oppose a candidate lets; lends; employs, hires, borrows or use 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
 - (f) causes or attempts to cause any person present and waiting to vote at the polling station to depart without voting.

4. **Illegal practice:-** A person is guilty of illegal practice punishable with one which may extend to five hundred rupees, if he:

- (1) fails, to comply with the provisions of rule 3 ;

(2) obtains or procures or attempts to obtain or procure the assistance of any person in the service of Azad Jammu and Kashmir or in the service of Pakistan to further or hinder the election of a candidate ;

(3) votes or applies for a ballot paper for voting at an election knowing that he is not qualified for, or is disqualified from, voting;

(4) votes or applies for ballot paper for voting more than once in the same polling station ;

(5) votes or applies for a ballot paper for voting in more than one polling station for the same election;

(6) removes a ballot paper from a polling station during the poll;
or

(7) knowingly induces or procures any person to do any of aforesaid acts.

5. **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 being 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) an elector 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) an elector for having voted or refrained from voting at an

election; or

(iii) a candidate for having withdrawn from an election;

Explanation:- In this section, 'gratification' includes a gratification in money or estimable in money and all forms of entertainment or employment.

6. **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.

7. **Undue influence:-** A person is guilty of undue influence, if he:
(1) 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 on his behalf:

(a) makes or threatens to make use of any force, violence or restraint;

(b) inflicts or threatens to inflict any injury, damage, harm or loss;

(c) calls down or threatens to call down divine displeasure or the displeasure of any saint or 'pir';

(d) gives or threatens to give any religious sentence ; or

(e) use any official influence or governmental patronage; or

(2) 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

(3) by abduction, duress or any fraudulent device of contrivance:

(a) impedes or prevents the free exercise of the franchise by an elector; or

(b) compels, induces or prevails upon any "elector to vote or refraining from voting.

Explanation:- In this section, 'harm' includes social ostracism or excommunication or expulsion from any caste or

community.

8. **Prohibition of public meetings, etc. during certain period:-**

(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 mid-night following the conclusion of the poll for any election in that constituency.

(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 one thousand rupees, or with both.

9. **Prohibition of canvassing in or near polling station:-** A person is guilty of an offence punishable with fine which may extend to two hundred and fifty rupees if he, within a radius of, four hundred yards of the polling, station, on the polling day:

(1) canvasses for votes;

(2) solicits the vote of any elector;

(3) persuades any elector not to vote at the election or for a particular candidate; or

(4) 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.

10. **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 two hundred and fifty rupees, or with both, if he, on the polling day:

(1) uses, in such manner audible within the polling station, any gramophone, megaphone, loudspeaker, or other apparatus for reproducing or amplifying sounds;

(2) persistently shouts in such manner as to be audible within the polling station;

- (3) does any act which:
 - (a) disturbs or causes annoyance to any elector visiting a polling station for the purpose of voting; or
 - (b) 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
- (4) abets the doing of any of the aforesaid acts.

11. **Tampering 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 five hundred 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 authorised 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 provisions of this Ordinance;
- (d) forges any ballot paper or official mark ; or
- (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, Assistant Returning Officer, Presiding Officer, Polling Officer, or any other officer or clerk on duty in connection with the election, who is guilty of an offence under sub-section (1), shall be punishable with imprisonment for term

which may extend to two years, or with fine which may extend to one thousand rupees; or with both.

12. **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 hundred rupees or with both, if he:

(1) interferes or attempts to interfere with an elector when he records his vote;

(2) in any manner obtains or attempts to obtain in a polling station information as to the candidate for whom an elector is about to vote or has voted ; or

(3) communicates at any time any information obtained in a polling station as to the candidate for whom an elector is about to vote or has voted.

13. **Failure to maintain secrecy:-** A Returning Officer, Assistant Returning Officer or Polling Officer, or any candidate, election agent or polling agent 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 five hundred rupees, or with both, if he:

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

(2) communicates, except for any purpose authorised by any law, to any person before the poll is closed any information as to the official marks; or

(3) communicates any information obtained at the counting of votes as to the candidate for whom any vote is given by any particular ballot paper.

14. **Officials not to influence voters:-** A Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer or any other officer or clerk performing a duty in connection with an election, or any member of 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 hundred rupees, or with both if he in the conduct or management of an election or maintenance of order at a polling station:

- (1) persuades any person to give his vote ;
- (2) dissuades any person from giving his vote ;
- (3) influences in any manner the voting of any person ; or
- (4) does any other act calculated to influence the result of the election.

15. **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 officer in connection with his official duties imposed by or under this Ordinance, is guilty of an offence punishable with fine which extend to five hundred rupees, if he wilfully and without reasonable cause ; commits breach of any such official duty, by act or omission.
16. **Assistance by Government Servant:-** A person in the service of Azad Jammu and Kashmir is guilty of an offence 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, if he misuses his official position in a manner calculated to influence the result of the election.
17. **Certain powers of a Police Officer:-** A Police Officer may:
- (1) arrest without warrant, notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898) any person :
 - (a) who, commits personation or an offence under section 10, if the Presiding Officer directs him to so arrest such person;
 - (b) who, being removed from the polling station by the Presiding Officer under rule 26 commits any offence at the polling station;
 - (2) removes any notice, sign, banner or flag used in contravention of section 9 ; and
 - (3) seize any instrument or apparatus used in contravention of section 10 and take such steps, including use of force, as may be reasonably necessary for preventing such contravention.

18. **Certain offences cognizable:-** Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), an offence under section 3 or section 9 or sub-section (1) of section 11 shall be a cognizable offence.
19. **Prosecution of offences by public officers:-** (1) No court shall take cognizance of an offence under sub-section (2) of section 11, section 13, section 14, section 15 or section 16, except upon a complaint in writing made by order of or under authority from, the Commissioner.
- (2) The Commissioner shall, if he has reason to believe that any offence specified in sub-section (1) has been committed, cause such enquiries to be made or prosecution to be instituted as he may think fit.
20. **Limitation for prosecution for corrupt or illegal practice:-** No Prosecution for an offence under section 3 or section 4, shall be commenced except under section 3 or section 4, shall be commenced except, within six months of the commission of the offence.
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