

**THE AZAD JAMMU AND KASHMIR STATE COUNCIL  
(ELECTIONS) ORDINANCE, 1970  
(Ordinance X of 1970)**

WHEREAS it is necessary to provide for the conduct of Elections to the State Council and for matters connected therewith and incidental thereto ;

Now, THEREFORE, in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance :-

**CHAPTER I  
PRELIMINARY**

1. **Short title, extent and commencement:-** (1) This Ordinance may be called the Azad Jammu and Kashmir State Council (Elections) Ordinance, 1970.  
  
(2) It extends to the whole of Azad Jammu and Kashmir territory and shall also apply to all State Subjects mentioned in clause (2) or clause (3) of section 2 of the Azad Jammu and Kashmir State Council Ordinance, 1970.  
  
(3) It shall come into force at once.
2. **Definitions:-** In this Ordinance, unless there is anything repugnant in the subject or context:
  - (i) 'ballot paper account' means a ballot paper account prepared under sub-section (10) of section 35 ;
  - (ii) 'candidate' means a person proposed as a candidate for election as a member;
  - (iii) 'Commissioner' means the Election Commissioner appointed or deemed to be appointed under the Azad Jammu and Kashmir Electoral Rolls Ordinance, 1970 (Ordinance I of 1970);
  - (iv) 'constituency' means a constituency delimited under the Azad Jammu and Kashmir Delimitation of Constituencies Ordinance, 1970 (Ordinance VII of 1970), for the purpose of election of a member;

- (v) 'contesting candidate' means a candidate who has been validly nominated for election as a member and has not withdrawn his candidature ;
- (vi) 'election 'means selection to a seat of a member held under this Ordinance;
- (vii) 'election agent' means an election agent appointed by a candidate under section 20 and, where no such appointment is made, the candidate acting as his own election agent;
- (viii) 'election petition' means an election petition made under section 49;
- (ix) 'elector' in relation to a constituency, means a person who is enrolled on the electoral roll for that constituency;
- (x) 'electoral roll' means an electoral roll prepared under section 8 of the Azad Jammu and Kashmir Elector Rolls Ordinance, 1970;
- (xi) 'member' means a member of the State Council;
- (xii) 'nomination day ' means the day appointed under section 10 for the nomination of candidates ;
- (xiii) 'polling agent' means a polling agent appointed under section 21 ;
- (xiv) 'Polling Assistant' means a Polling Assistant appointed under section 8 for a polling station ;
- (xv) 'polling day' means the day on which poll is taken for an election;
- (xvi) 'Polling Officer' means a Polling Officer appointed under section 8 for a polling station ;
- (xvii) 'prescribed' means prescribed by rules made under this Ordinance ;
- (xviii) 'Presiding Officer' means a Presiding Officer appointed under section 8 for a polling station and includes a Polling Officer exercising the powers and performing the functions of Presiding Officer;

- (xix) 'returned candidate' means a candidate who has been declared elected as a member under this Ordinance ;
- (xx) 'Returning Officer' means a Returning Officer appointed under section 6 and includes an Assistant Returning Officer exercising the powers and performing the functions of Returning Officer;
- (xxi) 'scrutiny day' means the day appointed under section 10 for the scrutiny of nomination papers;
- (xxii) 'spoilt ballot paper' means a ballot paper which has been spoiled and is returned to the Presiding Officer under section 33 ;
- (xxiii) 'State Council' means the State Council provided for in the Azad Jammu and Kashmir State Council Ordinance, 1970;
- (xxiv) 'Tribunal' means an Election Tribunal appointed under section 53 for the trial of election petitions ;
- (xxv) 'withdrawal day' means the day appointed under section 10 on or before which candidature may be withdrawn.

## CHAPTER II ELECTION COMMISSIONER

3. **Delegation of Powers:-** The Commissioner may authorise any of his officers to exercise and perform all or any of his powers and functions under this Ordinance.
4. **Assistance to the Commissioner:-** (1) The Commissioner may require any person or authority to perform such functions or render such assistance for the purposes of this Ordinance as he may direct.
- (2) All authorities of the Government shall assist the Commissioner in the performance of his functions and for this purpose the President may, after consultation with the Commissioner, issue such directions as he may consider necessary.

### CHAPTER III QUALIFICATIONS AND DISQUALIFICATIONS

5. **Qualifications and disqualifications for being a member:-** (1) Subject to the provisions of the Azad Jammu and Kashmir State Council Ordinance, 1970 (Ordinance VI of 1970), and sub-section (2) of this section, a person shall be qualified to be elected as, and to be, a member if:
- (a) he is a State Subject as denned in sub-section (f) of section 3 of the Azad Jammu and Kashmir Electoral Rolls Ordinance, 1970 (Ordinance I of 1970);
  - (b) he has attained the age of twenty-five years; and
  - (c) his name appears on the electoral roll of any constituency in the Azad Jammu and Kashmir Territory or West Pakistan.
- (2) A person shall be disqualified from being elected as, and from being, a member if:
- (a) he is of unsound mind and stands so declared by a competent Court; or
  - (b) he is an undischarged insolvent, unless a period of ten years has elapsed since his being adjudged as insolvent; or
  - (c) he has been, on conviction for any offence, sentenced to transportation for any term or to imprisonment for a term of not less than two years, unless a period of five years, or such less period as the President may allow in any particular case, has elapsed since his release; or
  - (d) he has been a Minister at any time following the 10th of October 1969, unless a period of one year, or such less period as the President may allow in any particular case, has elapsed since he ceased to be a Minister; or
  - (e) he holds any office 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 remunerated either by salary or by fee; or
  - (f) 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, or such less period as the President may allow in any particular case, has elapsed since his dismissal; or

- (g) he, whether by himself or by any person or body of person 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 services undertaken by, Government:

Provided that the disqualification under clause (g) shall not apply to a person:

- (i) 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
- (ii) where the contract has been entered into by or on behalf of a public company as denned in the Companies Act, 1913 (VII of 1913), of which he is a shareholder but is neither a director holding an office of profit under the company nor a managing agent; or
- (iii) 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 of carrying on a separate business in which he has no share or interest.

#### **CHAPTER IV ELECTION**

6. **Appointment of Returning Officer, etc:-** (1) The Commissioner shall appoint a Returning Officer for each constituency for the purpose of election of a member for that constituency; and a person may be appointed as Returning Officer for two or more constituencies.

(2) The Commissioner 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 Ordinance and may subject to any condition imposed by the Commissioner, 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 Ordinance and the rules.

7. **Polling stations:-** (1) The Returning Officer shall, before such time as the Commissioner may fix, submit to the Commissioner a list of polling stations he proposes to provide in a constituency for the purpose of election of a member for that constituency.

(2) The Commissioner 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 polling stations specifying the area the electors whereof will be entitled to vote at each polling station.

(3) The Returning Officer shall provide each constituency with polling stations according to the final list, published, under sub-section (2).

(4) No polling station shall be located in any such premises as belong to, or are under the control of any candidate.

8. **Presiding Officers and Polling Officers:-** (1) A Returning Officer shall appoint for each polling station a Presiding Officer and such number of Polling Officers and Polling Assistant 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 Presiding Officer shall conduct the poll in accordance with the provisions of this Ordinance 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,

(3) 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 therefore, shall, as soon as possible after the close of the poll, be reported to the Returning Officer.

(4) 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.

9. **Supply of Electoral rolls:-** (1) The Commissioner 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.

10. **Notification for election:-** (1) For the purpose of holding elections for constituting the State Council, the Commissioner 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 for the nomination of candidates;
- (b) a day for the scrutiny of nomination papers;
- (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 Commissioner in respect of the constituency of 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 before which and the place at which nomination papers shall be received by the Returning Officer.

11. **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.

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

(5) If any person subscribes to more than one nomination paper, all such nomination papers, except the one received first by the Returning Officer, 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.

12. **Deposits:-** (1) Subject to the provisions of sub-section (2), no nomination paper delivered under section 11 shall be accepted unless:

(a) in case of a candidate from Azad Jammu and Kashmir Territory a sum of five hundred 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 five hundred rupees in favour of the Accountant-General, Azad Jammu and Kashmir Government, is presented to the Returning Officer alongwith 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.

13. **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 11.

(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 11 or section 12 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 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 a brief statement of the reasons therefore.

(5) Where the nomination of a candidate has been rejected under this section, an appeal shall lie within the prescribed period to the Commissioner and any order passed on such appeal shall be final.

14. **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 candidate, who have been validly nominated.

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

15. **Withdrawal:-** (1) Any validly nominated candidate may, be 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 agent 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 circumstance's 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.

16. **Death of a 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 Ordinance as if for a new election.

17. **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 therefore, he may postpone or adjourn such proceedings and shall, with the approval of the Commissioner, 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.

18. **Uncontented election:-** (1) Where, after scrutiny under section 13, only one person remains as a valid nominated candidate for election as a member from a constituency or where after withdrawal under section 15 only one person is left as a contesting candidate, the Returning Officer shall, by public notice, declare such candidate to be elected to the seat:

Provided that if after scrutiny any candidate indicates that he intends to make an appeal under sub-section (5) of section 13 against the rejection of his nomination paper, no person shall be declared elected uncontested 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.

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

(3) The Commissioner shall publish in the Official Gazette the name of the returned candidate.

19. **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 Commissioner, 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 Commissioner 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.

20. **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 Ordinance both as a candidate and as an election agent.

21. **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 be 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.
22. **Absence of candidates etc., not to invalidate acts, etc:-** Where any act or thing is authorised by this Ordinance 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.
23. **Hours of the poll:-** The Returning Officer shall, subject to any direction of the Commissioner, fix the hours during which the poll shall be taken and give public notice of the hours so fixed.
24. **Stopping of the poll:-** (1) The Presiding Officer of a polling station shall stop the poll and inform the Returning Officer that he has done so if:
- (a) the poll at the polling station is, at any time so interrupted or obstructed for reason beyond the control of the Presiding Officer that it cannot be resumed during the polling hours fixed under section 23 ; or
- (b) any ballot box used at the 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.
- (2) Where a poll has been stopped under sub-section (1), the

Returning Officer shall immediately report the circumstances to the Commissioner and the Commissioner shall direct a fresh poll at that polling station, unless he is satisfied that the result of the election has been determined by the polling that has already taken place at that polling station taken with the results of the polling at other polling stations in the same constituency.

(3) Where the Commissioner orders a fresh poll under sub-section (2), the Returning Officer shall, with the approval of the Commissioner:

- (a) appoint a day for a fresh poll and fix the place at which and the hours during, which such fresh poll shall be taken ; and
- (b) give public notice of the day so appointed and the place and hours so fixed.

(4) At a fresh poll taken under sub-section (3) at a polling station, all electors entitled to vote thereat shall be allowed to vote and no vote cast at the poll stopped under sub-section (1) shall be counted ; and the provisions of this Ordinance and the rules and orders made thereunder shall apply to such fresh poll.

25. **Election by secret ballot:-** An election under this Ordinance shall be decided by secret ballot and, subject to the provisions of section 26, every elector shall cast his vote by inserting, in accordance with the provisions of this Ordinance, in the ballot box, a ballot paper in the prescribed form.
26. **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 subsection (4) of section. 12 of the Azad Jammu and Kashmir Electoral Rolls Ordinance, (Ordinance I of 1970) ; 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) An elector who, being, entitled to do so intends to cast this 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 10, 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.

27. **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 Commissioner.
- (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;

(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.

28. **Admission to the polling station:-** The Presiding Officer shall, subject to such instructions as the Commissioner 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.

29. **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 a police officer.

(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.

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) he shall be required to receive a personal mark, made with indelible ink, on the thumb or any other finger of either hand;
- (b) the number and name of the elector as entered in the electoral roll shall be called out;
- (c) 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;
- (d) the ballot paper shall on its back to be stamped with the official mark ; and
- (e) the number of the elector on the electoral roll shall be marked in writing on the counterfoil by the Presiding Officer who shall also stamp the counterfoil with the official mark.

(3) A ballot paper shall not be issued to a person who refuses to receive the personal mark with indelible ink or if he already bears such mark or the remnants of such mark.

(4) If a contesting candidate or his election 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) The elector, on receiving the ballot paper, shall:

- (a) forthwith proceed to the place reserved for making 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, fold the ballot paper 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 that 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 Ordinance.

31. **Tendered ballot papers:-** (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.

32. **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 that person has already voted at 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.

33. **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 another 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 labelled "Spoilt Ballot Papers".

34. **Voting after close of:-** 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.

35. **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 34, 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 persons 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 therefrom ;
- (b) open the packet labelled, '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 ;
  - (ii) any writing or any mark other than the official mark 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 thereon 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 a 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 one 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 subsection (13) may, if he so desires, also affix his seal to it.

(15) After the close of the proceeding under the foregoing subsections, the Presiding Officer shall, in compliance with such instructions as may be given by the Commissioner 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 Commissioner may direct.

36. **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 35.

(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 Commissioner.

37. **Equality of votes:-** Where, after consolidation of the results of the count under section 36, 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 be 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 proceeding.

38. **Declaration of results:-** (1) The Returning Officer shall, after obtaining the result of the count under section 36 or of the drawal of the lot under section 37, 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 Commissioner a return of the election in the prescribed form together with a copy of the consolidated statement.

(4) The Commissioner shall publish in the official Gazette the name of the returned candidate.

39. **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.

40. **Return on forfeiture of deposit:-** (1) After the termination of the proceedings relating to an election under section 16 where the proceedings have been so terminated, or after the declaration of the result of an election under section 18, or section 38, the deposit made under section 12 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.

41. **Documents to be sent to and retained by the Commissioner:-**

(1) The Returning Officer shall forward to the Commissioner:

(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) a packet 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 Commissioner 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 Commissioner 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.

42. **Public inspection of documents:-** The documents retained by the Commissioner under section 41, except the ballot paper, shall be open to public inspection at such time and subject to such conditions as may be prescribed and the Commissioner shall, upon an application made in this behalf and on payment of such fee and subject to such conditions as may be prescribed, furnish copies of, or extracts from, those documents.

43. **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 carrying into effect an order for the inspection of counted ballot paper, 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 Commissioner 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 *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 in this section provided, no person shall be allowed to inspect any rejected or counted ballot paper in the possession of the commissioner.

## CHAPTER V ELECTION EXPENSES

44. **Definition:-** 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 the expenditure on account of issuing circulars or publications or otherwise presenting to the electors the candidate or his views, aims or objects, but does not include the deposit made under section 12.
45. **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 two hundred 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 fifteen thousand 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.

46. **Return of election expenses:-** (1) Every election agent of a contesting candidate shall, within thirty five days after the publication of the name of the returned candidates under section 18, or section 38, 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 in his own election agent, only by such candidate.

47. **Inspection of returns, etc:-** (1) The return and document, submitted under section 46 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 Officer 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.

## **CHAPTER VI ELECTION TO SEATS RESERVED FOR WOMEN**

48. **Election to women's seat:-** (1) Nothing in Chapters IV and V shall apply to an election to fill a seat reserved for women in the State Council.

(2) The member for the seat reserved for women in the State Council shall be elected by persons elected to the other seats in the State Council.

(3) The Commissioner shall hold and conduct the election to fill the seat reserved for women in the State Council in such manner as he may think fit.

## **CHAPTER VII ELECTION DISPUTES**

49. **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 and 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.

50. **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.

51. **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; or
- (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.

52. **Procedure on receipt of petition by the Commissioner:-** (1) The Commissioner shall return an election petition to the petitioner if he 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 49.
- (2) If an election petition is not returned under sub-section (1), the Commissioner shall refer it for trial to a tribunal.
53. **Appointment of Tribunal:-** (1) For the trial of election petitions under this Ordinance, the Commissioner shall appoint as many Election Tribunals as may be necessary.
- (2) A tribunal shall consist of a person who is, or has been, or is, or at the time of his retirement as a District and Sessions Judge was, qualified to be, a Judge of the High Court.
54. **Power to transfer Petition:-** (1) The Commissioner, either of his own motion or on an application made in this behalf by any of the parties, may, at any stage, transfer an election petition from one Tribunal to another Tribunal, and the Tribunal to which the election petition is so transferred shall proceed with the trial of the petition from the stage at which it is transferred :
- Provided that the Tribunal to which an election petition is so transferred may, if it thinks fit, recall and examine any of the witnesses already examined.
55. **Place of trial:-** The trial of an election petition shall be held at such place or places, as the Tribunal may think fit.
56. **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.
57. **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.

58. **Procedure before Tribunal:-** (1) Subject to the provisions of this Ordinance 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 Ordinance, the Evidence Act, 1872, 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 as 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 49, as it may think fit.

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

- (a) the provisions of section 50 or section 51 have not been complied with; or
- (b) the petitioner fails to make the further deposit required under sub-section (4) of section 58.

60. **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.

61. **Further provision 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 each 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 subsection (3) may be pleaded by him in any court and shall be a full and complete defence to or upon any charge under Chapter IXA of the Azad Penal Code or under this Ordinance, 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.

62. **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 questions :

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 49.

(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.

63. (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 High Court on any of the ground enumerated in section 100 of the Code of Civil Procedure, 1908 (Act V of 1908) and the decision of the High Court on such appeal shall be final. Every such appeal shall be heard by a Division Bench of two Judges of the High Court.

64. **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 nomination of the returned candidate was invalid; or

- (b) the returned candidate was not, on the nomination day, qualified for, or was disqualified from being elected as a member; or
- (c) the election of the returned candidate has been procured or induced by any corrupt or illegal practice; or
- (d) 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 precaution 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.

65. **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.

66. **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 Ordinance or the rules; or
- (b) the prevalence of extensive corrupt or illegal practice at the election.

67. **Decision in case of equality of votes:-** (1) Where, after the conclusion of the trial, 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 the declared elected, the Tribunal shall so inform the Commissioner. In the event that no appeal is filed against the decision of the Tribunal, the Commissioner 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 candidates, and fix a date for such poll, but otherwise, the Commissioner 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 Ordinance 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 Ordinance.
68. **Other provisions relating to Tribunal:-** (1) An order of a Tribunal under section 63 shall take effect on the date on which it is made and shall be communicated to the Commissioner who shall publish it in the official Gazette.
- (2) The Tribunal, shall, after an election petition has been disposed of, forward the record thereof to the Commissioner 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.
69. **Withdrawal of petition:-** (1) An election petition may be withdrawn:
- (a) before a Tribunal has been appointed, by leave of the Commissioner ; and
- (b) after a Tribunal has been appointed, by leave of the Tribunal.
70. **Abatement on death of petitioner:-** (1) An election petition shall abate on the death of a 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 Commissioner.

71. **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*.
72. **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, and make such order as to costs as it may think, fit.
73. **Order as to costs:-** (1) The Tribunal shall, when making an order under section 63, 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 Commissioner 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 for 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 therefore by the person who made the deposit or by his legal representative, be returned by the Commissioner 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 in respect of costs which have not been recovered



by an application under subsection (2).

## CHAPTER VIII OFFENCE PENALTY AND PROCEDURE

74. **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 section 45;
  - (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 had 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.
75. **Illegal practice:-** A person is guilty of illegal practice punishable with fine which may extend to five hundred rupees, if he:
- (1) fails to comply with the provisions of section 46 ;

(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.

76. **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.

77. **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.

78. **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 person 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 candidate or having withdrawn his candidature, does any of the acts, specified in clause (1); or

(3) by abduction, duress or any fraudulent device or 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

refrain from voting.

*Explanation:-* In this section, "harm" includes social ostracism or ex-communication or expulsion from any caste or community.

79. **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.

80. **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.

81. **Disorderly conduct near polling station:-** A person is guilty of an offence punishable with imprisonment for a tenure 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.

82. **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.

83. **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.

84. **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 mark; 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.

85. **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, for 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.

86. **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 may extend to five hundred rupees, if he wilfully and without reasonable cause; commits breach of any such official duty, by act or omission.

87. **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.

88. **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 81 if the Presiding Officer directs him to so arrest such person ;
  - (b) who, being removed from the polling station by the Presiding Officer under section 29 commits any offence at the polling station;
- (2) remove any notice, sign, banner or flag used in contravention

of section 80; and

(3) seize any instrument or apparatus used in contravention of section 81 and take such steps, including use of force, as may be reasonably necessary for preventing such contravention.

89. **Certain offences cognizable:-** Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), an offence under section 74 or section 80 or sub-section (1) of section 82 shall be a cognizable offence.
90. **Prosecution of offences by public officers:-** (1) No court shall take cognizance of an offence under sub-section (2) of section 82, section 84, section 85, section 86, or section 87, 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.
91. **Limitation for prosecution for corrupt or illegal practices:-** No prosecution for an offence under section 74 or section 75, 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 a Tribunal has made an order in respect of such offence, within three months of the date of such order.
92. **Commissioner to ensure fair election etc:-** Save as otherwise provided, the Commissioner may issue such instructions and exercise such powers, including the power to revise an order passed by any officer under this Ordinance or the rules, and make such consequential orders as may, in his opinion, be necessary for ensuring that an election is conducted honestly, justly and fairly, and in accordance with the provision of this Ordinance and the rules.
93. **Jurisdiction of courts barred:-** No court shall question the legality of any action taken in good faith by or under the authority of the Commissioner, 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 Ordinance or the rules.

94. **Protection of action taken in good faith:-** No suit, prosecution or other legal proceeding shall lie against the Commissioner 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 Ordinance or of any rule or order made or any direction given thereunder.
95. **Power to make rules:-** The Government may, in consultation with the Commissioner, make rules for carrying out the purposes of this Ordinance.
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