

**THE AZAD GOVT. OF THE STATE OF JAMMU & KASHMIR,
LAW & PARLIAMENTARY AFFAIRS SECRETARIAT,
MUZAFFARABAD.**

Dated the October 7, 1978.

No. 3375/SL/78. The following Ordinance made by the President on the 7th day of October 1978, is hereby published for general information:-

(ORDINANCE LXXVI OF 1978)

AN

ORDINANCE

to provide the measures for the preservation and protection of antiquities

WHEREAS it is expedient to provide the law for the preservation and protection of antiquities and to provide for the matters connected therewith or ancillary thereto ;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action ;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 41 of the Azad Jammu and Kashmir Interim Constitution Act, 1974, the President is pleased to make and promulgate the following Ordinance :-

1. **Short title, extent and commencement.**- (1) This Ordinance may be called the Antiquities Ordinance, 1978.
 - (2) It extends to the whole of Azad Jammu and Kashmir.
 - (3) It shall come into force at once.
2. **Definitions.**- In this Ordinance, unless there is anything repugnant in the subject or context;-
 - (a) 'Advisory Committee' means the Advisory Committee constituted under Section 3;
 - (b) 'ancient' means belonging or relating to any period prior to May , 1857;
 - (c) 'antiquity' means :-
 - (i) any ancient product of human activity, movable or immovable, illustrative of are architecture, craft, custom, literature, morals politics, religion,

VOLUME V (1978-1979)

warfare or science or of any aspect of civilization or culture;

- (ii) any ancient object or site of historical, anthropological, military or scientific interest;
 - (iii) any national monument ; and
 - (iv) any other object or class or such objects declared by the Government, by notification in the official Gazette, to be an antiquity for the purposes of this Ordinance ;
- (d) 'dealer' means a person engaged in the business of buying and selling antiquities ; and 'deal in antiquities' means to carry on such business;
- (e) 'export' means taking out of Azad Jammu and Kashmir by any means;
- (f) 'Government' means the Azad Government of the State of Jammu and Kashmir;
- (g) 'immovable antiquity' means an antiquity of any of the following descriptions, namely :-
- (i) Any archaeological deposit on land or under water;
 - (ii) Any archaeological mound, tumulus, burial place or place of internment, or any ancient garden, structure, building, erection or other work of historical, archaeological, military or scientific interest;
 - (iii) any rock, cave or other natural object of historical archaeological, artistic or scientific interest containing sculpture, engraving, inscription or painting of such interest and includes:-
 - (1) any gate, door, window, panelling, dado, ceiling, inscription, wall-painting, wood work, metal work or sculpture or any other thing which is attached or fastened to an immovable antiquity ;
 - (2) the remains of an immovable antiquity;
 - (3) the site of an immovable antiquity;

VOLUME V (1978-1979)

- (4) such portions of land or water adjoining the site of an immovable antiquity as are reasonably required for fencing or covering or otherwise preserving such antiquity;
 - (5) the reasonable means of access to, and convenient inspection of an immovable antiquity; and
 - (6) any urban site, street, group of buildings or public square of special value which the Government being of the opinion that its preservation is a matter of public interest by reason of its arrangement, architecture or materials of construction, by notification in the official Gazette, declares to be an immovable antiquity for the purposes of this Ordinance;
- (h) 'national monument' means any building, structure, erection, place of internment, garden, portion of land or any other place or thing of national importance as may be determined and notified as such from time to time by the Government in consultation with Advisory Committee;
- (i) 'owner' includes –
 - (i) any person legally competent to act on behalf of the owner, when by reason of infancy or other disability the owner is unable to act;
 - (ii) a joint owner invested with powers of management on behalf of himself and other joint owners and the successor in interest of such owner; and
 - (iii) any manager or trustee exercising the powers of management and the successor in office of such manager or trustee;
- (j) 'Protected antiquity' means an antiquity which is declared under Section 10, to be a protected antiquity;
- (k) 'rules' means rules made under this Ordinance ;
- (l) "Secretary' means the Secretary of Archaeology, Government of Azad Jammu and Kashmir, and includes an officer authorised by him to exercise or perform all or

any of the powers or function of the Secretary under this Ordinance.

3. **Advisory Committee:-** For the purposes of this Ordinance the Government shall constitute an Advisory Committee consisting of the following members, namely :-
 - (a) the Secretary, who shall also be its Chairman;
 - (b) One representative each of the Education Department, Tourism Department;
 - (c) Three other persons having special knowledge of antiquities, to be nominated by the Azad Government of the State of Jammu and Kashmir.

(2) No act or proceeding of the Advisory Committee shall be deemed to be invalid by reason only of the existence of a vacancy in, or defect in the constitution of the Committee.
4. **Dispute as to whether any product, etc. is an antiquity:-** if any question arises whether any product, object or site is an antiquities within the meaning of this Ordinance it shall be referred to the Government which shall, after consultation with the Advisory Committee, decide the same, and the decision of the Government shall be final.
5. **Custody, preservation, etc. of certain antiquities:-** (1) Where the Secretary receives any information or otherwise has the knowledge of the discovery or existence of an antiquity of which there is no owner, he shall, after satisfying himself as to the correctness of the information or knowledge, take such steps as he may consider necessary for the custody, preservation and protection of the antiquity.

(2) Where the owner of an antiquity is not traceable, the Secretary may, with the approval of the Government, take such steps as he may consider necessary for the custody, preservation and protection of the antiquity.
6. **Power of entry, inspection etc:-** (1) The Secretary may, after giving reasonable notice , enter into, inspect and examine any premises, place or area which or the sub-soil of which he may have reason to believe to be, or to contain an antiquity and may cause any site, building, object or any antiquity or the remains of any antiquity in such premises, place or area to be photographed, copied or reproduced by any process suitable for the purpose.

(2) The owner or occupier of the premises, place or area shall afford all reasonable opportunity and assistance to the Secretary for the purpose of sub-section (1).

(3) No photograph, copy or reproduction taken or made under or for the purpose of sub-section (1) shall be sold or offered for sale except by or with the consent of the owner of the object of which the photograph, copy or the reproduction has been taken or made.

(4) Where substantial damage is caused to any property as a result of the inspection under sub-section (1), the Secretary shall pay to the owner thereof reasonable compensation for the damage.

7. **Acquisition of land containing antiquities:-** If the Government has reasonable grounds to believe that any land contains any antiquity it may acquire such land or any part thereof under the land Acquisition Act, 1894 (I of 1894) as for a public purpose.

8. **Purchase taking lease, etc. of antiquity:-** (1) The Secretary may, with the previous sanction of the Government, purchase, or take lease or accept a gift or bequest of an antiquity.

(2) The Secretary may receive voluntary contributions and donations for the acquisition, preservation or restoration of antiquities and may make suitable arrangements for the management and application of the funds created by such contributions and donations:

Provided that a contribution or donation made for any specified purpose shall not be applied to any purpose other than that for which it has been made.

9. **Right of pre-emption in case of a sale of antiquity:-** (1) where the Secretary receives any information or otherwise has the knowledge that any antiquity or any immovable property containing an antiquity is offered for sale or is about to be sold, he may, with the approval of the Government, exercise the right of pre-emption with respect to such antiquity or property and, if he intends to exercise the right, shall give to the person competent to serve a notice in writing accordingly.

(2) If the Secretary does not exercise with respect to any antiquity or property the right of pre-emption within a period of three months from the date of notice given under sub-section (1), the antiquity or property be sold to any person after the expiry of

the said period and a notice of such sale shall be given to the Secretary.

(3) Save as provided in sub-section (2), no antiquity or property in respect of which a notice under sub-section (1), has been given shall be sold to any person.

(4) All sales in contravention of sub-section (3) shall be void and the antiquity or property so sold shall be forfeited to the Government.

10. **Declaration of protected antiquities.-** (1) The Government may, by notification in the official Gazette, declare any antiquity to be a protected antiquity for the purposes of this Ordinance.

(2) A Copy of a notification under sub-section (1) shall be served on the owner on the antiquity and, in the case of an immovable antiquity, shall also be fixed up in a conspicuous place of or near the antiquity.

(3) A notification under sub-section (1), shall unless it is cancelled by the Government, be conclusive evidence of the fact that the antiquity to which it relates is antiquity for the purposes of this Ordinance.

(4) Ancient monuments shall be deemed to be protected antiquities for the purposes of this Ordinance.

11. **Representation against declaration of protected antiquities.-** (1) The owner of an antiquity to which a notification under section 10, relates, or any person having any right or interest in the antiquity, may, within three months of the service of a copy of the notification, make a representation in writing to the Government against the notification.

(2) Upon the receipt of a representation under sub-section (1) against a notification, the Government, after giving the person making it an opportunity if being heard and after consultation with the Advisory Committee, may, if it is satisfied that there are good and sufficient reasons for objection to the notification, cancel it.

12. **The guardianship of antiquity by agreement:-** (1) The owner of any immovable antiquity may, by an agreement in writing constitute the secretary, the antiquity or protected guardian of such antiquity and the Secretary, may, with the previous sanction of the Government, accept such guardianship.

(2) Where the Secretary has accepted the guardianship of an antiquity in pursuance of an agreement under sub-section (1), the owner shall, except as expressly provided in this Ordinance and in the agreement, have the same right, title and interest in and to the antiquity as if the Secretary had not been constituted the guardian thereof,

(3) An agreement under this Section in relation to an antiquity may provide for all or any of the following matters, namely:-

- (a) the maintenance of the antiquity;
- (b) the custody of the antiquity and the duties of any person who may be employed to watch it;
- (c) the restrictions upon the right of the owner to alienate, destroy, remove, alter or deface the antiquity or to build on or near the site of the antiquity;
- (d) the facilities of access to be allowed to the public;
- (e) the facilities to be allowed to persons deputed by the owner or the Secretary for inspection and maintenance of antiquity;
- (f) the expenses to be incurred in connection with the preservation of the antiquity and payment of such expenses if incurred by the owner;
- (g) compensation to be paid for any loss sustained by the owner or occupier or any other person as a result of the enforcement or observance of the agreement; and
- (h) any other matter concerned with the custody, management and preservation of the antiquity.

(4) The terms of an agreement under this section may be altered from time to time with the sanction of the Government and with the consent of the owner.

(5) An agreement under this section in relation to an antiquity may be terminated upon six month's notice in writing given by the Secretary, with the previous sanction of the Government, to the owner or by the owner to the Secretary.

13. **Purchasers at certain sales and persons claiming through owner bound by agreement entered into by owner.-** Notwithstanding anything contained in any other law for the time being in force, every person, who at a sale for the recovery

of arrears of land revenue or any other public demand, purchases any land or property, or any right or interest in land or property, which contains, or in which is situated an antiquity in respect of which an agreement under section 12 subsists, and every person claiming any title to any antiquity from, through or under an owner who entered into such agreement, shall be bound by such agreement.

14. **Application of endowment for maintenance and preservation of antiquity.**-(1) Where any endowment has been created for the maintenance and preservation of any protected antiquity, for or that purpose among others, and the owner or other person competent in this behalf fails in the proper application of such endowment and, when proposed to him by the Secretary refuses or fails to enter into an agreement under section 12, the Secretary may, for the proper application of such endowment or part thereof, institute a suit in the Court of the District Judge, or, where the estimated cost of maintaining and preserving the antiquity does not exceed one thousand rupees, make an application to the District Judge.
- (2) On the hearing of an application under sub-section (1), the District Judge may summon and examine the owner and any person whose evidence appears to him necessary, and may pass, an order for the proper application of the endowment or of any part thereof, and any such order may be executed as if it were the decree of a Civil Court.
15. **Compulsory acquisition of protected immovable antiquity.**-(1) If the Government apprehends that a protected immovable antiquity is in danger of being destroyed, injured or allowed to fall into decay, it may, acquire such antiquity or any part thereof under the Land Acquisition Act, 1894 (I of 1894), as for a public purpose.
- (2) The power of compulsory acquisition under sub-section(1) shall not be exercised in the case of :-
- (a) any antiquity which or any part of which is periodically used for religious observances; or
- (b) any antiquity which is the subject of a subsisting agreement under section 12.
16. **Compulsory acquisition of movable antiquities.**-(1) if the Government, is of the opinion that a movable antiquity should, by reason of its cultural, historical or archaeological importance,

be acquired for the purpose of preservation, the Government may, by order in writing addressed to the owner acquire such antiquity ;Provided that the power to acquire under this sub-section shall not extend to –

- (a) any image or symbol in actual use for the purpose of any religious observance ; or
- (b) anything which the owner desires to retain on any reasonable ground personal to himself or to any of his ancestors to any member of his family.

(3) When an order under sub-section (1) has been served upon the owner, the antiquity to which the owner relates shall immediately vest in the Government free from all encumbrances and the owner shall be entitled to compensation, the amount of which shall be determined in the manner, and in accordance with the principles, hereinafter set out, that is to say –

- (a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement ;
- (b) where on such agreement can be reached, the Government shall appoint as arbitrator a person who has been, or is qualified for appointment as, a Judge of High Court;
- (c) at the commencement of the proceedings before the arbitrator, the Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation;
- (d) the arbitrator in making his award shall have regard to the price which the antiquity is likely to fetch on a sale in open market between a buyer and a seller independent of each other;
- (e) an appeal shall lie to the High Court against any award of an arbitrator except in case where the amount thereof does not exceed an amount prescribed in this behalf by rules ; and
- (f) save as provided in this sub-section and in any rules made in this behalf, nothing in any law for the time being in force shall apply to arbitrations under this sub-section.

17. **Protection of place of worship from misuse, etc.-** (1) A place of worship or shrine, being an antiquity maintained by the Government, shall not be used for any purpose inconsistent with its character.
- (2) A place of worship or shrine in respect of which the Secretary has accepted guardian ship in pursuance of an agreement under section 12 shall, unless the agreement otherwise provides, be maintained by the person in whom it is vested or, if there is no such person, by the Government;
- (3) Where any antiquity in respect of which the Government has acquired any right under this Ordinance or the Secretary has accepted guardianship is periodically used for religious worship or observances by any community, the Secretary shall provide for the protection of such antiquity from pollution or desecration;
- (a) by prohibiting the entry therein, except in accordance with the conditions prescribed with the concurrence of the person in charge of the antiquity of any person not entitled so to enter by the religious usages of the community by which the antiquity is used ; and
- (b) by taking with the concurrence of the persons in charge of the antiquity such other action as he may think necessary for the purpose.
- (4) Whoever contravenes the provisions of sub-section (3) shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.
18. **Restriction on use of protected immovable antiquity.-** A protected immovable antiquity shall not be used for any purpose inconsistent with its character or for a purpose other than that directly related to its administration and preservation.
19. **Prohibition of destruction, damage etc. of protected antiquities.-**(1) No person shall, except for carrying out the purposes of this Ordinance, destroy, break, damage, alter, injure, deface or mutilate or scribble, write or engage any inscription or sign on, any antiquity or take manure from any protected antiquity.
- (2) Whoever contravenes the provisions of sub-section (1) shall be punishable with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) The Court trying an offence under sub-section (2) may direct that the whole or any of the fine recovered shall be applied in defraying the expenses of restoring the antiquity to the condition in which it was before the commission of the offence.

20. **Restriction on repairs, renovation, etc. of protected immovable antiquity:-** (1) The owner of a protected immovable antiquity shall not make any alteration or renovation in or addition to the antiquity:

Provided that he may, with the permission of the Secretary, make minor adjustment considered necessary for the day to day use of the antiquity:

Provided further that the work for which permission has been given shall be carried out under the supervision of the Secretary or a person authorised by him in this behalf.

(2) Whoever contravenes the provision of sub-section (1) shall be punishable with rigorous imprisonment for a term which may extend to one year, or with fine, or with both.

21. **Direction to the owner to take measures for preservation of antiquity:-** (1) Where the Secretary considers that any antiquity is not being preserved or conserved properly by its owner, the Secretary may, by order in writing direct the owner to take such measures for its proper preservation and conservation, and within such time, as may be specified in the order.

(2) if the owner fails to take the measures specified in the order referred to in sub-section (1), the Secretary may take all such measures in respect of the antiquity and the expenses incurred for the purpose shall be recoverable from the owner as an arrear of land revenue.

22. **Execution of development schemes and new constructions in proximity to immovable antiquity:-** Notwithstanding anything contained in any other law for the time being in force, no development plan or scheme or new construction on, or within a distance of two hundred feet of, a protected immovable antiquity shall be undertaken or executed except with the approval of the Secretary.

23. **Prohibition of bill posting, neon sign, other kinds of advertisement etc.-** (1) No person shall put any neon signs or other kinds of advertisement, including bill posting, commercial signs, poles or pylon, electricity or telephone cables and television aerials, on or near any protected immovable antiquity.

(2) Whoever contravenes the provision of sub-section (1) shall be punishable with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

(3) The court trying an offence under sub-section (2) may direct that the whole or any part of the fine recovered shall be applied in defraying the expenses of restoring the antiquity to the condition in which it was before the commission of the offence.

24. **Penalty for counter feiting etc. of antiquity.**- (1) Whoever counterfeits, or commits forgery in respect of any antiquity with intent to commit fraud or knowing it to be likely that fraud will thereby be committed, or causes anything to appear like, or to be believed to be, an antiquity with intent to cause wrongful gain to one person or wrongful loss to another person, shall be punishable with imprisonment for a term which may extend to six months or with fine, or with both.

(2) The Court trying an offence under sub-section (1) may direct that anything the making or forging of which has constituted such offence shall stand forfeited to the Government.

25. **Dealing in antiquities.**- (1) No person shall deal in antiquities except under, and in accordance with a licence granted by the Secretary.

(2) Every dealer shall maintain a register in such manner and form Secretary may prescribe from time to time.

(3) A licence granted under sub-section (1) may be cancelled by the Secretary for the breach of any condition of the licence.

(4) The Secretary may, with a view to securing compliance with the provisions of this section:-

- (a) require any person dealing in antiquities to give such information in his possession with respect to any business carried on by him as the Secretary may demand;
- (b) inspect or cause to be inspected any book, register or other document belonging to or under the control of any person dealing in antiquities; and
- (c) enter and search, or authorise any officer subordinate to him to enter and search any premises and seize, or authorise any such officer or a police officer, to seize,

any antiquity in respect of which he has reasons to believe that a contravention of any provision of this section or a breach of any condition of the licence has been committed.

(5) Whoever contravenes the provision of this section shall be punishable with rigorous imprisonment for a term which may extend to three years, or with fine or with both.

(6) The Court trying an offence under sub-section (5) may direct that any antiquity in respect of which the offence has been committed shall stand forfeited to the Government.

26. **Export of antiquities.**- No person shall export any antiquities except under a licence to be granted by the Secretary.

27. **Traffic immovable antiquities.**- (1) if the Government apprehends that movable antiquities in any place in Azad Jammu and Kashmir are being sold or removed to the detriment of Azad Jammu and Kashmir it may, by notification in the official Gazette, prohibit or restrict the movement of any such antiquity or any class of such antiquities for such period and between such places in Azad Jammu and Kashmir as may be specified in the notification, except with, and in accordance with the terms of, the written permission of the Secretary.

(2) Whoever contravenes the provisions of a notification under sub-section (1) shall be punishable with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) The Court trying an offence under sub-section (2) may direct that any antiquity in respect of which the offence has been committed shall stand forfeited to the Government.

28. **Regulation of mining, quarrying, etc.**- (1) If the Government is of the opinion that for the purpose of protecting or preserving any immovable antiquity it is necessary so to do, it may, by notification in the official Gazette, prohibit or restrict, within such area as may be specified therein, mining, quarrying, excavating, blasting and other operations of a like nature, or the movement of heavy vehicles, except under and in accordance with the terms of a licence granted by the Secretary and rules, if any, made in this behalf.

(2) Any owner or occupier of land who sustains any loss by reason of any prohibition or restriction by a notification under

sub-section (1) shall be paid reasonable compensation for such loss.

(3) Whoever contravenes the provisions of sub-section (2) shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

29. **Prohibition of archaeological excavation or exploration**

without licence.- (1) No person shall make on any land any excavation or exploration for archaeological purposes, or unearth or make any digging in any land or site for taking out antiquities, except under, and in accordance with, a licence granted by the Secretary.

(2) A licence under sub-section (1) in respect of any land shall not be granted to any person other than the owner of the land except in accordance with the term of an agreement with the owner, and any such agreement may provide for :-

- (a) the restriction of the owner's rights in respect of the use and occupation of such land;
- (b) the compensation or any other consideration to be paid to the owner ; and
- (c) any other matter connected with the use of the land for the purpose of such excavation.

(3) A licence under subsection (1) shall not be refused to an owner if undertakes to carry in the excavation in such manner that it will not result in the loss if archaeological or historical material which in the national interest should be preserved.

(4) Whoever contravenes the provisions of subsection (1) shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(5) The Court trying an offence under sub-section (4) may direct that any object found in the course of an excavation, exploration, unearthing or digging constituting such offence shall stand forfeited to the Government.

30. **Prohibition of making copies of protected antiquities without**

licence.- No person shall for any commercial purpose, make a cinematograph film of any protected antiquity or any part thereof except under, and in accordance with a licence granted by the Secretary.

31. **Right of access to protected immovable antiquities:-** Subject to the provisions of this Ordinance and the rules the public shall have a right of access to any immovable protected antiquity maintained by the Government under this Ordinance.
32. **Penalty.-** A contravention of any provision of this Ordinance or the rules shall, where no punishment has been specifically provided, be punishable with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.
33. **Jurisdiction to try offences.-** No Court shall take cognizance of an offence punishable under this Ordinance except upon a complaint in writing made by an officer generally or specially empowered in this behalf by the Government and no Court inferior to that of a Magistrate of the first class shall try any such offence.
34. **Power to arrest without warrant.-** (1) The Secretary or any officer duly empowered by him in this behalf may arrest without warrant any person against whom reasonable suspicion exists of his having committed any offence under Sections 19, 25, 26, 27, or 29.
- (2) Subject to sub-section (3), every person arrested under sub-section (1) shall be taken forthwith to the officer in charge of the nearest Police Station.
- (3) The Secretary or the officer arresting any person, or the officer in charge of a Police Station to whom any person is taken under subsection (2), shall either admit him to bail to appear before the Magistrate having jurisdiction or have him taken in custody before such Magistrate.
35. **Confiscated antiquities to be made over to Secretary.-** Any antiquity which is confiscated or forfeited under this Ordinance shall be made over to the Secretary for custody, preservation and protection.
36. **Indemnity.-** No suit, prosecution or other legal proceeding shall lie against Government or any person for any thing which is in good faith done or intended to be done under this Ordinance.
37. **Power to make rules.-** (1) The Government may, after previous publication, make rules for carrying out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for:-

- (a) the form and the conditions of any licence granted under this Ordinance;
- (b) regulation of admission of the public to any immovable protected antiquity;
- (c) the levy of fees for the grant of any licence under this Ordinance and for admission of the public to an immovable protected antiquity;
- (d) the procedure to be followed in arbitrations, the principles to be followed in apportioning the costs of proceedings before the arbitrator and on appeal, and the maximum amount of an award against which no appeal shall lie, under sub-section (2) of Section 16;
- (e) such other matters as are or may be required for carrying into effect the provisions of this Ordinance.

(3) Rules made under this Section may provide that the contravention of any of the provision thereof or of any condition of licence granted under this Ordinance shall be punishable with fine which may extend to five hundred rupees.

(Mohammad Ibrahim Khan)
President,
Azad Jammu and Kashmir.

Sd/- (Sardar Aftab Ahmed Khan)
Secretary Law.