

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

Dated the 2nd October, 1979.

No. 4605/SL/79. The following Ordinance made by the President on the 1st day of October, 1979, is hereby published for general information:-

(ORDINANCE CXXX OF 1979)

AN

ORDINANCE

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

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

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 and commencement.-** (1) This Ordinance may be called the Azad Jammu and Kashmir Legislative Assembly (Elections) (Amendment) Ordinance, 1979.

(2) It shall come into force at once.

2. **Amendment of Section 5, Ordinance X of 1970.-** In the Azad Jammu and Kashmir Legislative Assembly (Elections) Ordinance, 1970, (Ordinance X of 1970), hereinafter referred to as the said Ordinance, in Section 5, in sub-section (2), in clause (d), after sub-clause (vii) the following new sub-clause shall be inserted, and the existing sub-clause (Viii) shall be renumbered as sub-clause (ix),-

"(viii) he has, during the period of two months preceding the publication of the notification under Section 10, been a member or supporter of or associated with, a political

party, unless he is put up by that political party as a candidate; or"

3. **Insertion of Section 10-A, Ordinance, X of 1970.**- In the Azad Jammu and Kashmir Legislative Assembly (Elections) Ordinance, 1970 (Ordinance X of 1970), after Section 10, the following new Section shall be inserted, namely :-

"10-A. **Elections to be held on the basis of Proportional Representation.**- (1) Notwithstanding anything contained in any law for the time being in force, elections to the seats in the Legislative Assembly, except the seats reserved for women shall be held on the basis of proportional representation in accordance with the provisions of this Ordinance and law.

(2) Nothing in this Ordinance shall be deemed to affect the right, to be declared elected to a seat in the Legislative Assembly of a person who is the only contesting candidate for election to such seat or who has secured the highest number of votes and has contested election to such seat-

(a) otherwise than as the candidate or nominee of a political party, hereinafter referred to as an independent candidate; or

(b) as the candidate or nominee of a political party such as is referred to in clause (c) of sub-section (3) of Section 38:

Provided that such person has secured more than fifty percent of the total number of valid votes cast at the election."

4. **Substitution of Section 37, 38 and 39, Ordinance X of 1970:-** In the said Ordinance, for Section 37, 38 and 39, the following shall be substituted, namely:-

"37. **Compilation of votes by the Commissioner in-respect of elections.**- (1) The Resuming Officer shall, after obtaining the result of the count under Section 36 intimate, the results of count to the Commissioner.

(2) The Commissioner shall compile the enumeration of votes cast for election to the seats in the Legislative Assembly received from the Returning Officer in each District and Pakistan

and determine the total number of valid votes polled by persons contesting the election as the candidates or nominees of each political party and the independent candidates.-

Explanation.- In this sub-section, and in the succeeding provisions of this Ordinance, "political party" means a political party registered under the Azad Jammu and Kashmir Political Parties Ordinance, 1979.

(3) The votes polled, by the persons contesting the election as the candidates or nominees of a political party shall be deemed, for the purposes of this Ordinance, to be votes secured by or cast for that political party:

Provided that, in the case of a person contesting election to more than one seat, in the Legislative Assembly as the candidate or nominee of political party, only the votes polled by him in the constituency in which he had polled the highest percentage of votes shall be deemed to be votes secured by or cast for that political party and the votes polled by him in any other constituency shall be treated as having been polled by an independent candidate.

38. **Declaration of results by the Commissioner:-** (1) Commissioner shall calculate the total number of valid votes secured by each political party in respect election to the seats in the Legislative Assembly allocated to a District and to the seats in the Legislative Assembly reserved for the State Subjects who are now residing in any of the Provinces, the Punjab, Baluchistan, Sindh, North-West Frontier Province, Federal Capital and Federally Administered Tribal Areas and shall then ascertain the proportion which the votes secured by each party bears to the aggregate of the valid votes cast at the election, excluding the votes polled, or treated as having been polled, by the independent candidates as also the constituencies in which there was only one contesting candidate.

(2) On the basis of the calculations done under section (1), the Commissioner shall ascertain the number of the seats referred to in that sub-section to which each political party is entitled on the principle set out in sub-section (3).

(3) A political party shall be entitled to such number of the seats in the Legislative Assembly allocated to a District and State Subject residing in the Provinces of Pakistan as bears to the total number of such seats the same proportion as the total number of

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valid votes secured by that party at the election to such seats bears to the aggregate of the valid votes cast at the said election, excluding –

- (a) the votes polled, or treated as having been polled by the independent candidate ;
- (b) the constituencies in which there was only one contesting candidate ; and
- (c) the votes secured by a political party which does not fulfill either of the following conditions, namely :-
 - (i) the number of votes secured by it through out Azad Jammu and Kashmir and Pakistan at the election to the seats in the Legislative Assembly is not less than five percent of the aggregate of the valid votes cast at the said election ; or
 - (ii) not less than three of its candidates or nominees have become entitled to be declared elected to the seats in the Legislative Assembly :

Provided that no political party such as is referred to in clause (c) shall be entitled to any such seat.

(4) The candidates of each political party who have, from amongst the candidates of the political parties secured the highest number of votes in the constituencies in which they were candidates shall be listed for the Legislative Assembly in the descending order of the percentage of vote which they have secured:

Provided that such candidates in constituencies in which independent candidates are entitled to be declared elected shall not be included in such list.

(5) The Commissioner shall then declare elected to the Legislative Assembly such number of candidates belonging to each political party, in the order in which their names appear in the list referred to in sub-section (4), as is equal to the number of seats to which that party is entitled under sub-section (2):

Provided that no candidate who has polled less than one eighth of the total number of valid votes cast in a constituency shall be entitled to be so declared elected.

(6) Where the candidate of a political party securing the highest number of votes in a constituency cannot be declared elected due to the fact that the number of candidates equal to the number of seats to which that political party is entitled under sub-section (2) has already become entitled to be declared elected under sub-section (5), or where the candidate who has secured the highest number of votes in the constituency is an independent candidate who has not secured more than fifty per-cent of the total number of valid votes cast in the constituency, the candidate who belongs to a political party and has secured the second highest number of votes in that constituency shall he declared elected, if his party has sufficient entitlement to its credit.

(7) If the candidate securing the second highest number of votes in a constituency who cannot be declared elected for the reason stated in sub-section (6), then the candidate who belongs to a political party and has secured the highest number of votes after him in that constituency shall he declared elected, if the party to which he belongs has sufficient entitlement to its credit; and so on, until a candidate is declared elected from that constituency:

Provided that, where no candidate can be declared elected from a constituency because-

- (a) no political party has entitlement left to its credit;
- (b) no political party having entitlement left to its credit has put up a candidate from that constituency; or
- (c) no candidate put up a political party having entitlement left to its credit has secured not less than one eighth of the total number of valid votes cast in the constituency;

then, notwithstanding anything contained in the proviso to sub-section (5), the candidate who belongs to a political party and has secured the highest number of votes in that constituency shall be declared elected.

39. **Removal of difficulties and adaptation.**- (1) if any difficulty arises in giving effect to any of the provision of this Ordinance, the President may make such provision for the removal of the difficulty as he may deem fit.

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(2) For the purpose of bringing the provisions or any of the laws relating to elections to the Legislative Assembly into accord with the provisions of this Ordinance, President may by order make such adaptations, modifications, additions or omissions as he may deem necessary or expedient.

(3) Any court, tribunal or authority empowered to enforce any of the laws referred to in sub-section (2) shall, notwithstanding that no adaptations have been made in such law by an order made under that sub-section, construe the law with all such adaptations as are necessary to bring it into accord with the provision of this Ordinance."

(Brigadier Mohammad Hayat Khan)
President,
Azad Jammu & Kashmir.

Sd/- (Khalil Ahmed Qureshi)
Secretary Law