

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

Dated the 4th October, 1980.

No. 5600/LD/80. The following Ordinance made by the President on the 4th day of October, 1980, is hereby published for general information:-

(ORDINANCE CLXVII OF 1980)

AN

ORDINANCE

to provide for the protection of the legitimate rights and interests of the citizens in their dealings with public servants and other functionaries and to improve the efficiency of public services and suppress corrupt practices

WHEREAS it is expedient to provide for the protection of the legitimate rights and interests of the citizens in their dealings with public servants and other functionaries and to improve the efficiency of public services and suppress corrupt practices;

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 Azad Jammu and Kashmir Administrative Vigilance Commission Ordinance, 1980.
 - (2) It shall come into force at once.
 - (3) It extends to the whole of Azad Jammu and Kashmir.
 - (4) It shall apply to -
 - (a) all agencies, public servants and other functionaries under the administrative control of the Government; and
 - (b) Such agencies, public servants and other functionaries operating or working in the Azad Jammu and Kashmir as are under the administrative control of the Council but in respect of whom the Council authorises the Commission to exercise powers under the provisions of this Ordinance :

Provided that the Government may by notification exempt specified public servants, other functionaries are agencies from the operation of all or any of the provisions of this Ordinance.

2. **Definitions.-** In this Ordinance unless the subject or context requires otherwise.-

- (i) 'administrative excess' means a decision, recommendation, act or omission which.
 - (a) is contrary to law, rules, regulations or established practice; or
 - (b) is patently perverse, unreasonable, unjust, biased, oppressive, or discriminatory; or
 - (c) is based on irrelevant grounds; or
 - (d) involves the exercise of power or the failure or refusal to do so, for corrupt or improper motives; or
 - (e) has been unduly delayed or withheld.
- (ii) 'agency' means a department or office of Government or any of its units or branches and includes a local body, a statutory corporation established, or a company whole or partly controlled, by Government, and any officer, employee or member thereof acting or purporting to act in exercise of his duties;
- (iii) 'Chairman' means the Chairman of the Commission;
- (iv) 'Commission' means the Azad Jammu and Kashmir Administrative Vigilance Commission;
- (v) 'Government' means the Azad Government of the State of Jammu and Kashmir;
- (vi) 'member' means member of the Commission;
- (vii) 'Ordinance' means the Azad Jammu and Kashmir Administrative Vigilance Commission Ordinance, 1980 ;
- (viii) 'President' means the President of Azad Jammu and Kashmir ;
- (ix) 'Public servant' means a public servant as defined in Section 21 of the Penal Code, 1860 (XLV of 1860) and includes a Minister, Advisor and also the Chairman, Managing Director, Director or other officer or employee of a statutory corporation or a company referred to in clause (ii) appointed by or with the

approval of Government or paid out of the fund of such corporation or company.

CHAPTER-II
CONSTITUTION OF THE COMMISSION

3. (1) There shall be established a Commission to be known as the Azad Jammu and Kashmir Administrative Vigilance Commission.
(2) The Commission shall act independently and shall not be subject to the direction of any executive authority.
4. (1) The Commission shall consist of a Chairman and such number of members as may be determined by the President.
(2) The Chairman and the Members shall be appointed by the President:

Provided that no person shall be appointed as Chairman or member who belongs to any political party or is involved in any political activity.

(3) The Chairman and the members shall hold office during the pleasure of the President.
(4) The seniority amongst members shall be determined in the prescribed manner.
5. (1) The Chairman shall carry the status of a Minister/Advisor and shall receive such salary, allowances and other benefits as may be determined by the President.
(2) A member shall carry such status as may be determined by the President in consultation with the Chairman and shall receive such salary allowances and other benefits as may be determined by the President.
6. When a temporary vacancy occurs in the office of the Chairman, the senior most members shall act as the Chairman till the appointment of a regular incumbent.
7. The Commission may, whenever it thinks fit, establish vigilance committees or other committees at specified places for carrying out such functions of the Commission as are assigned to them by the Commission.
8. (1) The Chairman shall be the Chief Executive of the Commission.
(2) The Commission shall regulate its own procedure for the conduct of its business or the exercise of its powers.

- (3) The Chairman may distribute the work of the Commission amongst its members and may from time to time vary such distribution.
9. (1) The Commission may appoint such officers and employees as it may deem necessary to discharge its responsibilities under the Ordinance.
- (2) The Commission may prescribe the terms and conditions of appointments of its officers and employees with the approval of the President.
10. The Commission may set up standing advisory Committees or appoint advisors with or without remuneration to assist it in the discharge of its duties under the Ordinance.
11. (1) The Commission may appoint vigilance officers or vigilance committees for any agency to carry out its functions in that agency.
- (2) The Commission may specify the duties and functions of such vigilance officers or vigilance committees.

CHAPTER-III

FUNCTIONS OF THE COMMISSION

12. (1) The Commission may, on a complaint or of its own motion, investigate any act pertaining to any agency, a public servant or other functionary.
- (2) Nothing contained in sub-section (1) shall be deemed to preclude the commission from entertaining and investigating a complaint or representation made to it by a public servant or other functionary against the agency in which he is or has been working in respect of any of the matters relating to his service.
13. The Commission may, whenever it thinks fit inspect or cause to be inspected any office or unit of an agency for any of the purposes of the Ordinance.
14. (1) The Commission may examine or cause to be examined any law, rule, regulation, procedure, practice or form of any agency which in its opinion is deficient ambiguous or hinders speedy redress, or is a source of inconvenience to the public or otherwise contributes towards the commission of administrative excesses.
- (2) The Commission may obtain the opinion of the agency concerned in that matter referred to in sub-section (1) and of its own experts or advisors and make recommendation for the alteration or substitution of any law, rule, regulation, procedure, practice or form.

15. The Commission may inquire into areas of misuse or abuse of power or corruption for suggesting remedial measures including enactment of legislation.
16. For carrying out the objectives of the Ordinance, the Commission may arrange for studies to be made or research to be conducted.

CHAPTER-IV
POWERS OF THE COMMISSION

17. All public servants and other functionaries shall when required to do so, assist the Commission in the discharge of its responsibilities under the Ordinance.
18. The Commission may, in the interest of administrative justice, while dealing with individual cases or otherwise require an agency to define its powers more precisely, lay down the criteria for exercise of discretion, prescribe time limits for the disposal of particular case, frame rules whenever necessary and may require compliance of its direction within a specified time.
19. If the Commission has reason to believe that any public servant or other functionary has acted in a manner warranting criminal or disciplinary proceedings against him it may refer the matter to the appropriate authority for necessary action to be taken within the time specified.
20. (1) The Commission shall have the powers of a civil court under the Code of Civil Procedure, 1908 (V of 1908), as in force in Azad Jammu and Kashmir, in respect of the following matter namely:-
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of any document;
 - (c) receiving evidence on affidavit; and
 - (d) issuing commission for the examination of any witness or document.
 - (2) The Commission shall have the power to require any person to furnish information on such points or matters as in the opinion of the Commission, may be useful for, or relevant to, the subject matters of an inquiry.
 - (3) The Commission may appoint any person for recording evidence and examining documents in connection with the proceedings under the Ordinance.
 - (4) A person appointed under sub-section (3) shall have all the powers of the Commission under sub-section (1) and (2) and

shall present to the Commission a summary of the issues and findings in the case.

(5) The Commission shall have the same powers as the High Court has to punish any person who –

- (a) abuses, interfere with or obstructs the process of the Commission in any way or disobeys any order of the Commission passed under sub-section (1) or sub-section (2) ;
- (b) scandalizes the Commission or otherwise does anything which tends to bring the Commission, its Chairman or member in relation to his office, into hatred, ridicule or contempt;
- (c) does anything which tends to prejudice the determination of a matter pending before the Commission; or
- (d) does any other thing which, by any other law, constitutes contempt of court:

Provided that fair comment made in good faith and in public interest on the working of the Commission or on its final report after the completing of the investigation shall not constitute contempt of the Commission.

(6) The exercise of the power conferred on the Commission by sub-section (5) shall be regulated by rules made by the Commission.

- 21. The Commission may prescribe the manner in which complaints are to be, to, received by and dealt with by it and the scope and the manner in which investigations are to be made and reports or replies sent to it.
- 22. (1) If, having considered a complaint and such other material as it deems fit the Commission is of the opinion that the act complained of amounts to an administrative excess, it shall communicate its findings advising the agency concerns,-
 - (a) to consider the matter further;
 - (b) to modify or cancel an act or a decision;
 - (c) to alter a regulation or a ruling;
 - (d) to explain more fully the act or decision in question;
 - (e) to dispose of the case within a specified time; or
 - (f) to take any other step.

- (2) If the Commission as desires, the agency shall within such time as may be specified, inform it about the action taken on its advice or the reasons for that complying with the same.
- (3) Where the Commission has been authorised by the Council under clause (b) of sub-section (4) of Section 1 of the Ordinance to exercise powers under the provisions of the Ordinance in respect of agencies, public servants or other functionaries under the administrative control of the Council, the Commission shall communicate its advice as specified under sub-section (1) to the agency concerned and if the agency does not inform the Commission about the action taken on its advice or the reason for not complying with it within such time as may be specified, the Commission may communicate its recommendations to the Council for suitable action.
23. If there is a difference of opinion between the Commission and an agency with regard the implementation of an advice given by the Commission, the Commission may refer the matter to the President whose decision shall be final.
24. If any agency, public servant or other functionary fails to comply with a direction of the Commission, it may besides taking other action under the Ordinance refer the matter to the appropriate authority for taking disciplinary action against the person disregarding the direction of the Commission.
25. (1) The Commission may, where necessary, call upon a public servant, other functionary or an agency to show cause why cost and compensation be not awarded to an aggrieved party, for any loss or damage suffered by him on account of any administrative excess, committed by such public servant, other functionary or agency, and after considering the explanation, and hearing such public servant, other functionary or agency, if necessary, award reasonable cost or compensation to the aggrieved party.
- (2) The cost or compensation awarded under sub-section (1) shall be recoverable as arrears of land revenue.
26. The Commission may delegate any of its powers to any of its officers or to vigilance officer or a vigilance committee, to be exercised subject to such conditions as may be laid down provided that the power to make a report under subsection (1) of Section 27 shall not be so delegated.

CHAPTER--V
ANNUAL AND OTHER REPORTS

27. (1) The Commission shall publish an annual report of its activities within three months of the close of the financial year to which it relates.
- (2) The Commission may, from time to time publish its conclusion, recommendations or suggestions in respect of any case or matter dealt with by it under the ordinance.
- (3) The Commission may, where the conduct of a public servant, other functioning or agency is proposed to be criticized in the report under sub-section (1) or as matters under sub-section (2), give the public servant, other functionary or agency as the case may be, an opportunity to explain his or its position and after considering such explanation as may be offered decide whether the proposed criticism would stand, be modified or be not published.

CHAPTER VI
MISCELLANEOUS

28. The provisions of the Ordinance shall take effect notwithstanding anything to the contrary contained in any other law for the time being in force.
29. (1) Except as otherwise provided no action taken, order made, things done or powers exercised under the Ordinance shall be called in question by or before any court or authority.
- (2) No suit or legal proceeding shall lie against the Chairman or any member or servant or advisor or expert of the Commission or any officer appointed under sub-section (3) of Section 20 or a vigilance officer or a vigilance committee appointed under Section 7 and 11 for anything done in good faith under the provision of the Ordinance.
30. The Commission may make rules for carrying out the purposes of the Ordinance.
31. **Savings.-** Notwithstanding any judgment, decree or order of any court including High Court, every thing done, all actions taken, notifications issued, orders or appointments made, proceedings initiated, jurisdiction or powers exercised under the provisions of the Azad Jammu and Kashmir Administrative Vigilance Commission Ordinance, 1980 (Ordinance XXI of 1980) or its succeeding Ordinances issued

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from time to time shall be deemed to have been validly done,
taken, issued, made, initiated or exercised under this
Ordinance -

(Mohammad Hayat Khan)
President
Azad Jammu & Kashmir

Sd/- (Khalil Ahmed Qureshi)
Secretary Law.