

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

Dated the 8th November, 1981

No. 8300/SL/81. The following Ordinance made by the President on the 8th day of November, 1981, is hereby published for general information.

(ORDINANCE CCXVI OF 1981)

AN

ORDINANCE

to provide for speedy trial of certain offences committed or attempted to be committed by the holders of representative offices.

WHEREAS it is expedient to provide for speedy trial of certain offences committed or attempted to be committed by the holders of the representative offices in the manner 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, Extent and Commencement.**- (1) This Ordinance may be called the Holders of the Representative Offices (Trial of offences) Ordinance, 1981.
 - (2) It extends to the whole of Azad Jammu and Kashmir and shall apply to all State Subjects wherever they may be.
 - (3) It shall come into force at once.
2. **Definitions:-** In this Ordinance, unless there is anything repugnant in the subject or context,-
 - (a) 'Assembly' means the Legislative Assembly of Azad Jammu and Kashmir;
 - (b) 'Chief Executive' means the Chief Executive of Azad Jammu and Kashmir;
 - (c) 'Council' means the Azad Jammu and Kashmir Council constituted under the Azad Jammu and Kashmir Interim Constitution Act, 1974;
 - (d) 'Government' means the Azad Government of the State Jammu and Kashmir;

- (e) 'Holder of Representative Office' means a person who has held at any time during the period from the 1st December, 1970 to the 31st October, 1977:-
- (i) under the Azad Jammu and Kashmir Government Act, 1970, the office of President, Speaker, Minister or Member of the Assembly; or
 - (ii) under the Azad Jammu and Kashmir Interim Constitution Act, 1974, the office of President, Speaker, Prime-Minister, Minister, Advisor of the Council or member of the Assembly or of the Council:

Provided that for the purposes of this Ordinance any person in respect of whom a nomination paper was filed and he was a candidate for the elections to the Assembly, which were held in the year 1970, 1975 or were to be held at any time during the year 1977 any person who has, at any time, been a President, Assistant, Advisor to President, Advisor or Special Assistant to Prime Minister, during the period December, 1970 and August, 1977, shall be deemed to be a holder of representative office.

- (f) 'President' means the President of Azad Jammu and Kashmir;
- (g) 'Scheduled Offence' means an offence specified in the Schedule;
- (h) 'Special Court' means a Special Court established under this Ordinance and includes a Special Court established at any time before the commencement of this Ordinance;
- (i) 'Supreme Court' means the Supreme Court of Azad Jammu and Kashmir.

3. **Ordinance not to derogate from other laws.-** The provisions of this Ordinance shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any holder of representative office from any proceeding which might, apart from this Ordinance be instituted against him.

4. **Establishment of Special Court.-** (1) The President may, by notification in the official Gazette, establish one or more Special Courts for the purposes of this Ordinance.
- (2) Each Special Court shall consist of a person who is or has been a Judge of Supreme Court or High Court.
- (3) A seat of Special Court established under this Ordinance, or a Special Court established at any time before the commencement of this Ordinance, shall be at Muzaffarabad or at such place as the President may, by notification in the Official Gazette, specify in this behalf.
5. **Transfer.-** (1) If the President establishes more than one Special Courts, he may, by notification in the Official Gazette, distribute the business among such Courts or direct the transfer of any case from one Special Court to another special Court, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.
- (2) The Special Court to which such case is transferred shall deal with the same as if it had been originally presented to, such Court.
6. **Offence to be tried by Special Court.-** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), or in any other law for the time being in force, a scheduled offence committed by a holder of representative office shall be tried exclusively by a Special Court.
- (2) No person shall be prosecuted under the provisions of this Ordinance except with the sanction of the Government;
- Provided that any sanction accorded under the provisions of the Holders of Representative Offices (Trial of Offences) Ordinance 1978 (Ordinance VIII of 1978) or its succeeding Ordinances issued from time to time for the prosecution of a holder of representative office in one capacity shall be deemed to included all offices held by him for which he has been or may be prosecuted under the provisions of this Ordinance.
- (3) Any prosecution sanction accorded at any time after the enforcement of the Holders of Representative Offices (Trial of Offences) Ordinance, 1978 (Ordinance VIII of 1978) shall be deemed to have been validly accorded under this Ordinance and shall be conclusive proof of the fact that it was accorded after due process of the case and that it complies with the provisions of the relevant laws.

(4) The provision of sub-section (2) shall apply to all cases including appeals pending before any Court.

(5) The legality or propriety of any order passed by the Government under this Ordinance shall not be called in question in any Court including a Special Court or the Appellate Court thereof.

(6) A person who is convicted for a scheduled offence shall stand disqualified for a period of seven years from being elected or chosen as a member of Assembly or of the Council.

7. **Powers and procedure of Special Court.**- (1) A Special Court may pass any sentence authorized by law and shall have all the powers conferred by the Code of Criminal Procedure, 1898 (Act V of 1898), on a High Court exercising original jurisdiction.

(2) Notwithstanding anything contained in any other law for the time being in force, a scheduled offence shall be tried under the provisions of this Ordinance and a Special Court shall also have power to conduct its proceedings and regulate its procedure in all respects as it deems fit.

(3) No trial before a Special Court shall be adjourned for any purpose unless the Special Court is of opinion that the adjournment is necessary in the interests of justice, and, in particular, no trial shall be adjourned by reason of the absence of the accused person due to illness, or if the absence of the accused or his Counsel has been brought about by the accused person himself, or if the behaviour of the accused person prior to such absence has been, in the opinion of the Special Court, such as it impede the course of justice but, in any such case, the Special Court shall proceed with the trial as it may deem appropriate.

(4) A Special Court shall not, merely by reason of a change in its composition, be bound to recall and rehear any witness who has given evidence and may act on the evidence already recorded by or produced before it.

(5) A Special Court shall have the powers of a High Court to punish its own contempt.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), when a person is accused of more offences than one, he may be charged with, and tried at one trial, for any number of them, irrespective of the kind of such offences or of the time at which, or the person in respect of whom, any of them may have been committed.

(7) No formal complaint or investigation by a Public Servant sanction for prosecution except under Section 6(2) required by any law relating to the offences mentioned in the Schedule shall be necessary for taking cognizance of an offence when the trial is to be held under the provisions of this Ordinance nor any period of limitation prescribed by any law shall bar a trial under this Ordinance.

(8) A Special Court may convict a person of any scheduled offence proved on the basis of evidence produced before it, notwithstanding the fact that the accused was not charged for the same.

8. **Accused person to be competent witness.**- Any person charged with a scheduled offence shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person together with him at the same trial;

Provided that:-

- (a) he shall not be called as a witness except on his own request;
- (b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against him or any person charged with him at the same trial;
- (c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which is charged, or is of bad character, unless:-
 - (i) the proof that he has committed or been convicted of such offence is admissible in evidence to show that he is guilty of the offence with which he is charged; or
 - (ii) he has personally or by his pleader asked questions from any witness or the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature of conduct of the defense is such as to involve imputations on the character of the prosecutor or of any witness for prosecution; or
 - (iii) he has given evidence against any other person charged with the same offence.

9. **Public Prosecutor.-** The Government may appoint one or more Special Public Prosecutors to conduct the prosecution in a case triable by a Special Court and every such Special Public Prosecutor shall be deemed to be a Public Prosecutor for the purposes of the Code of Criminal Procedure, 1898 (Act V of 1898).
10. **Appeal.-** Any person sentenced by a Special Court under the Ordinance may, within thirty days of the decision of the Special Court, prefer an appeal to the Supreme Court.
11. **Appeal in case of acquittal.-** The Government may, in a case, direct the Special Public Prosecutor to present an appeal to the Supreme Court within six months from an order or order of acquittal passed by a Special Court under this Ordinance.
12. **Bar of jurisdiction.-** Save as provided in Section 10, no Court shall have any jurisdiction of any kind in respect of any order sentence or proceedings of a Special Court.
13. **Power to amend the Schedule.-** The Government may, by notification in the official Gazette, omit any entry from, or added an entry to, the Schedule.
14. **Savings.-** Notwithstanding any judgment, decree or order of any Court including High Court, everything done, all action taken, notifications issued, orders or appointments made, proceedings initiated, jurisdiction or powers exercised under the provisions of Holders of Representative Offices (Trial of Offences) Ordinance, 1978 (Ordinance VIII of 1978) or its succeeding Ordinance issued from time to time shall be deemed to have been validly done, taken, issued, made, initiated or exercise under this Ordinance.

THE SCHEDULE
(See Section 2 and 13)

1. Offences punishable under Sections 403 to 406, 409, 417 to 420, 465 to 468, 471 and 477-A of Penal Code (Act XLV of 1860) and as attempts, abetments and conspiracies in relation thereto or connected therewith.
2. Offences punishable under the Arms Act, 1878 (II of 1878).
3. Offences punishable under the Income Tax Act, 1922 (XI of 1922).
4. Offences punishable under the Official Secret Act, 1923 (XIX of 1923)
5. Offences punishable under the Forest Regulation, 1930 (II of 1930)

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6. Offences punishable under the Foreign Exchange Regulations – Act,(VII of 1947).
7. Offences punishable under the Official Misdemeanour Act, 1948
8. Offences punishable under the Prevention of Corruption Act, 1950 and as attempts, abetments and conspiracies in relation there to or connected therewith.
9. Offences punishable under the Waqf Properties Act, 1860 (IX 1860)
10. Offences punishable under the Evacuee Property (Multiple Allotment) Act, 1961 (I of 1961).
11. Offences punishable under the Public Office (Misconduct) Ordinance, 1965 (X of 1965).
12. Offences punishable under the Legislative Assembly (Elections) Ordinance, 1970 (X of 1970).
13. Offences punishable under the Cooperative Banks (Repayment and Recovery of Loans) Ordinance, 1979.
14. Offences punishable under the Ministers, Members of Assembly and Council (Declaration of Assets) Ordinance, 1979.
15. “Offences punishable under the Azad Jammu and Kashmir transfer of properties (Prohibition) Ordinance, 1980.”
16. The new Mirpur Town Allotment of Land, Act 1964 (Act II of 1964).
17. The Mirpur Development Authority Ordinance, 1974 (Ordinance IV of 1974).

(Mohammad Hayat Khan)
President
Azad Jammu and Kashmir

Sd/- (Khalil Ahmed Qureshi)
Secretary Law