

**THE AZAD KASHMIR EMERGENCY POWERSACT, 1958**

*(Passed under Council Order No. 442/58 dated 15-10-58).*

Whereas an emergency has arisen which makes it necessary to provide for special measures to ensure the security of the State, public safety and maintenance of law and order, it is hereby enacted as follows:-

1. (i) This Act may be called the Azad Kashmir Emergency Powers Act, 1958.
- (ii) It shall extend to the whole of Azad Jammu and Kashmir Territory and it shall come into force with Immediate effect and remain in force till further orders.
2. (1) The Government may, by notification, make such orders as may be deemed necessary or expedient for securing the defence of the State or for preventing persons from acting in a manner prejudicial to public safety or for the maintenance of law and order <sup>1</sup>[or for eradicating inefficiency, corruption and nepotism and curbing other anti-State and antisocial activities or as may be considered necessary by the Government for the good of the general public,]
- (2) Without prejudice to the generality of the powers conferred by sub-section (1) such orders may provide for all or any of the following matters, namely :-
  - (i) protection of private and public buildings, factories, mines and public utility under-takings ;
  - (ii) control and supply of essential commodities, rationing and control of prices ;
  - (iii) control of traffic, lights, sounds and vehicles ;
  - (iv) conferment of enhanced powers on police, Magistrates and other officials ;
  - (v) prohibition of acts likely to prejudice the training, discipline, health and safety of armed forces of the State;
  - (vi) the unauthorised wearing of uniforms and emblems ;
  - (vii) prevention of anything likely to assist the recalcitrants or to prejudice the successful defence of the State ;

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<sup>1</sup> The full stop at the of subsec. (1) of sec.2 of the Azad Kashmir Emergency Powers Act, 1958dlt. and thereafter the words "or for eradicating inefficiency, corruption and nepotism and curbing other anti-State and antisocial activities or as may be considered necessary by the Government for the good of the general public, add.the Azad Kashmir Emergency Powers (Amdt.) Act, 1958dlt. 19-12-1958.

- (viii) control of persons entering into, departing from of travelling in the State ;
  - (ix) prohibiting or regulating the use of postal, telegraphic, wireless or telephonic services ;
  - (x) the control of any road, pathway, water-way, ferry, bridge, river or canal ;
  - (xi) arrest, detention and control of suspected persons, taking their photographs, thumb impressions and hand-writing specimens ;
  - (xii) Control over publications and prohibition of the entry of literature, newspaper or any printed matter prejudicial to the defence of the State ;
  - (xiii) prohibition of meetings or processions and sending of reports thereof ;
  - (xiv) imposition of collective fines ;
  - (xv) any other measure that the Government may consider necessary for the defence of the State.
- <sup>1</sup> [(3) 'Notwithstanding the punishment provided under Section 13 for contravention of any order or direction under this Act, the Government may specially prescribe punishment for the contravention of any particular order or of any direction given in pursuance of any order under this Act.]
3. Except as provided in this Act, no proceeding or order taken or made under this Act shall be called in question by any Court and no civil or criminal proceeding shall be instituted against any person for anything done or intended to be done under this Act against any person for any loss or damage caused to or in respect of any property possession whereof has been taken under this Act.
4. An order made and any other action taken under this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

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<sup>1</sup> Subsec.(3) was add/ omitted two times the original extract of subsec. (3) of section 2 of the Azad Kashmir Emergency Powers Act, 1958 is reproduced as under:- '

"Notwithstanding the punishment provided under Section 13 for contravention of any order or direction under this Act, the Government may specially prescribe punishment for the contravention of any particular order or of any direction given in pursuance of any order under this Act."

A-Add. by the Azad Kashmir Emergency Powers (Amdt.) Act, 1958 dt. 19-12-1958.

B-Omitted by the Azad Kashmir Emergency Powers (Amendment) Act, 1963 (Act III of 1963) dt.30-04-1963. the original extract of subsec. (3) of section 2 of the Azad Kashmir Emergency Powers Act, 1958 is reproduced as under:-

"Notwithstanding the punishment provided under Section 13 for contravention of any order or direction under this Act, the Government may specially prescribe punishment for the contravention of any particular order or of any direction given in pursuance of any order under this Act."

5.
  - (i) The Government may, by order, constitute Special Courts for the trial of cases under this Act.
  - (ii) Such Special Courts shall be competent to pass any sentence authorised by law.
  - (iii) All sentences of death shall be reserved for confirmation by the President of the Azad Jammu and Kashmir Government.
  - (iv) The Special Courts shall follow the procedure as may be laid down by an order by the Government in this behalf.
  - <sup>1</sup>[(v) (a) No appeal shall lie against the orders of the Special Courts constituted under this Act: Provided that a person convicted and sentenced by a Special Court may, within thirty days from the date of the order, submit an application for revision to the High Court.
  - (c) The High Court shall, on such an application being made by a convicted person, exercise the powers of revision conferred on a High Court under the Criminal Procedure Code and pass orders accordingly .]

<sup>2</sup>[“5-A Where a sentence of death is imposed by a Special Court constituted under this Act the proceedings shall be submitted to the High Court within seven days for confirmation of death sentence by the President. Azad Kashmir Government. The High Court may after hearing the parties, recommend the case for confirmation of death sentence to the President, Azad Kashmir Government or pass such other order as may be thought fit.]

<sup>3</sup>[5-B. An application for revision or a reference under Section 5-A for confirmation of death sentence shall be heard and disposed of by a Division Bench consisting of two Judges or a Full Bench consisting of three Judges of the High Court and the decision of the majority shall prevail. When the Judges composing the Division Bench are equally divided the opinion of the Senior Judge shall prevail.”]

6.
  - (i) The ordinary criminal courts, as by law established, shall have the power to try and punish any person for offences under the ordinary law and

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<sup>1</sup> Subs. by the Azad Kashmir Emergency Powers (Amdt.) Act, 1959 (Act IV of 1959). The original extract of subsec.(v) of sec.5 of the Azad Kashmir Emergency Powers Act, 1958 is reproduced as under:-

“(v) The orders of the Special Courts shall be final and no appeal or revision shall lie against the same.”

<sup>2</sup>Add. by the Ibid.

<sup>3</sup>Add. by the Ibid.

for offences under this Act.

**Explanation :-** The term 'ordinary law' shall in each case be held to include the provisions of any special law for the time being in force.

(ii) As long as Special Courts are not constituted, trials of cases falling under this Act shall be held, continued and completed by the ordinary criminal Courts under the provisions of the Criminal Procedure Code subject to the following conditions:-

- (a) The procedure prescribed for the trial of summons-cases by Chapter XX of the Criminal Procedure Code shall be followed by the Courts trying the cases ;
- (b) The provisions of sections 206 to 220 of the Criminal Procedure Code shall not apply and the Sessions Judge shall proceed to hear the cases direct without commitment by Committing Magistrates and without the aid of assessors in cases which are ordinarily exclusively triable by Sessions Judges, only ;
- (c) A court, unless it otherwise decides, shall not be bound to recall or re-hear any witness whose evidence has already been recorded by another Court or to re-open proceedings already held by it may act on the evidence already produced or recorded and continue the trial from the stage which the case has reached.

<sup>1</sup>[6-A. (1) No court shall take cognizance of an offence under this Act except upon report in writing of facts which constitute such offence made by any Police Officer or upon complaint of such facts made by any other public servant. ;

(2) No person shall be prosecuted under this Act in respect of an act committed before the 15th October, 1958, but if he is suspected of being an enemy agent and the investigation of his case started before but is completed after 15th October or if he contravenes an order or direction made or given under this Act he shall be liable for prosecution under this Act.]

7. If, with intent to help the recalcitrants, any person does

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<sup>1</sup>Add. by Add. by the Azad Kashmir Emergency Powers (Amdt.) Act, 1958dt. 19-12-1958.

any act which is designed or is likely to give assistance to the operations of the recalcitrants or to impede the operations of all the Forces including the Civil armed forces in Azad Kashmir or to endanger life, he shall be liable to be sentenced to death or to rigorous imprisonment for a period of fourteen years.

8. (i) No person shall willfully damage public property which is employed for the maintenance of public services or services to Armed Forces including civil armed Forces or to the civil population.;
- (ii) No person shall loot.

**Explanation :-** 'To loot' means to commit theft :-

- (a) when public order is disturbed by actual or apprehended recalcitrant attack or by panic or rioting ; or
- (b) during a black-out or period during which lighting has been reduced or controlled; or
- (c) in respect of any property left exposed or unprotected in consequence of war conditions ; or
- (d) in any premises damaged by war operations or destroyed or vacated for military Reasons.

**Explanation :-** The word 'Recalcitrant' includes any external enemy of Pakistan or of Azad Kashmir and mutineers or rebels or rioters and any enemy agent.

<sup>1</sup>[\*\*\*]

- (iv) No person shall assist or harbour any recalcitrant by giving him any information or by supplying him with shelter, food, drink, money, clothes, weapons, ammunition, stores, forage or means of conveyance or by assisting him in any way to evade apprehension.
- (v) No person shall damage, tamper with or interfere with the working of roads, railways, canals, aerodrome, telegraph, telephone, wireless installations or with any other Government property.
- (vi) No person or syndicate or firm shall hoard foodgrains in violation of existing orders or any orders that may be issued by the Government or

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<sup>1</sup> Omitted by the Azad Kashmir Emergency Powers (Amendment) Act, 1963 (Act III of 1963) dt.30-04-1963. the original extract of subsec. (iii) of section 8 of the Azad Kashmir Emergency Powers Act, 1958 is reproduced as under:-

“(iii) No person shall commit dacoity as denned in the Pakistan Penal Code as applicable to Azad Kashmir. “

other competent authority or indulge in black marketing by selling commodities at rates higher than those, fixed, by the competent authority.

- <sup>1</sup>[(vii) 'No person shall smuggle goods or commodity of any kind or attempt to smuggle or abet the smuggling of any such goods or commodity or keep in possession or in any way concern himself in carrying, removing, depositing, concealing or in any other way dealing with any such goods or commodity, knowing it to have been smuggled, without lawful authority, excuse or permission.'

**Explanation I :-** The expression, 'to smuggle' shall mean 'to import into' or 'export from' Azad Kashmir Territory across the border along the cease-fire-line between the Azad Kashmir Territory and the Indian-occupied part of the State or 'to import' or 'to possess' goods or commodities which were smuggled into Pakistan.

**Explanation II:-** A person found in possession of smuggled goods shall be presumed to be knowing the same to have been smuggled unless he proves otherwise ".]

- <sup>2</sup>[(viii) No person shall commit offences of kidnapping of children, abduction of women and rape as defined in the Pakistan Penal Code as in force in the Azad Kashmir Territory.

9. Any person guilty of offence referred to in Section 8 above shall be sentenced to death or to rigorous imprisonment which may extend to fourteen years.

10. <sup>3</sup>[\*\*\*]

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<sup>1</sup> Subs. by the Azad Kashmir Emergency Powers (Amdt.) Act, 1958dt. 19-12-1958. The original extract of subsec. (vii) of sec. 8 of of the Azad Kashmir Emergency Powers Act, 1958 is reproduced as under:-

"(vii) No person shall smuggle goods or commodity of any kind across the border between the Indian-occupied part of the Jammu and Kashmir State and the Azad Kashmir Territory along the cease-fire line or attempt to smuggle or abet the smuggling of any such goods or commodity or keep in possession or in any way concern himself in carrying, removing, depositing, concealing or in any other way dealing with any such goods or commodity knowing it to have been smuggled into or attempted to be smuggled out of the Azad Kashmir Territory without lawful authority, excuse or permission.

**Explanation :-** The word "smuggle" shall mean import into or export from Azad Kashmir Territory across the border along the cease-fire line between the Azad Kashmir Territory and Indian-occupied part of the State."

<sup>2</sup>Omitted by the Azad Kashmir Emergency Powers (Amendment) Act, 1963 (Act III of 1963) dt.30-04-1963. the original extract of subsec. (viii) of section 8 of the Azad Kashmir Emergency Powers Act, 1958 is reproduced as under:-

"(viii) No person shall commit offences of kidnapping of children, abduction of women and rape as defined in the Pakistan Penal Code as in force in the Azad Kashmir Territory."

<sup>3</sup> Subsec.(i) of sec. 10 was amended/omitted two times. The original extract of subsec.(i) of section 10 of the Azad Kashmir Emergency Powers Act, 1958 is reproduced as under:-

"(i) No person shall be in actual or constructive possession of any fire-arm, ammunition, explosive or sword without a bonafide licence. If the carrying or possession of any weapon (including those with licence) is banned by the Government, or other competent authority, except by special permits, all such articles, not covered by the permits, shall be handed over to the District Magistrate or to such officer as may be directed in this behalf."

- (ii) Every person who sees or comes in contact with the recalcitrants or has knowledge of the movements or whereabouts of the recalcitrants shall, without any delay, give full information thereof to the nearest military or civil authorities. Willful failure to do so shall be punishable.

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- (iv) No one shall hoard or wilfully indulge in unwarranted dilution or mixing or Unauthorised manufacture of medicines of all types.

11. Any person guilty of offences referred to in Section 10 above shall be punished with rigorous imprisonment which may extend to fourteen years.

12. (i) No one by word of mouth, or in writing, or by signals, or otherwise will spread rumours calculated to create alarm or despondency among the public or calculated to create dissatisfaction to the Government, the armed forces, the police or any member thereof or any servant of the Government.

- (ii) No person shall<sup>3</sup>[\*\*\*] make a speech :-

(a) which is to the prejudice of the good order or the public safety ; or

(b) which is calculated to mislead or hamper movements of or imperial the success of or tamper

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A- for the expression "explosive, or sword" the expression "or explosive" subs. by the Azad Kashmir Emergency Powers (Amdt.) Act, 1958dt. 19-12-1958.

B- Omitted by the Azad Kashmir Emergency Powers (Amendment) Act, 1963 (Act III of 1963) dt.30-04-1963. the original extract of subsec. (viii) of section 8 of the Azad Kashmir Emergency Powers Act, 1958 is reproduced as under:-

“(i) No person shall be in actual or constructive possession of any fire-arm, ammunition,<sup>3</sup> or explosive ]without a bonafide licence. If the carrying or possession of any weapon (including those with licence) is banned by the Government, or other competent authority, except by special permits, all such articles, not covered by the permits, shall be handed over to the District Magistrate or to such officer as may be directed in this behalf.”

<sup>1</sup>Omitted by the Azad Kashmir Emergency Powers (Amendment) Act, 1963 (Act III of 1963) dt.30-04-1963. the original extract of subsec. (iii) of section 10 of the Azad Kashmir Emergency Powers Act, 1958 is reproduced as under:-

“(iii) Wilful adulteration of all kinds of food shall be punishable.”

<sup>2</sup>Omitted by the Azad Kashmir Emergency Powers (Amendment) Act, 1963 (Act III of 1963) dt.30-04-1963..the original extract of subsec. (iv) of section 10 of the Azad Kashmir Emergency Powers Act, 1958 is reproduced as under:-

“(iv) No one shall hoard or wilfully indulge in unwarranted dilution or mixing or Unauthorised manufacture of medicines of all types.”

<sup>3</sup>Omitted by the Azad Kashmir Emergency Powers (Amendment) Act, 1963 (Act III of 1963) dt.30-04-1963. the original extract of subsec. (ii) of section 12 of the Azad Kashmir Emergency Powers Act, 1958 is reproduced as under:-

“(ii) No person shall contravene any order or direction issued under this Act or commit any act or be guilty of any omission or make a speech :-“

with the loyalty of the armed forces.

13. Any person found guilty of offences referred to in Section 12 shall be punished with rigorous imprisonment which may extend to fourteen years.

<sup>1</sup>[13-A. Whoever contravenes any provision of this Act or of any order made thereunder or disobeys or neglects to comply with any order made, or direction given in pursuance of the provisions of this Act shall, where no express provision is made by this Act for the punishment of such contravention, disobedience or negligence, be punishable with imprisonment of either description which may extend to five years or with fine, or with both."]

<sup>2</sup>[\*\*\*]

<sup>3</sup>[\*\*\*]

15. Any one who strikes or helps to bring about a strike or propagates a strike or commits any acts prohibited under Section 14 shall be punished with rigorous imprisonment which may extend to ten years.

16. Notwithstanding anything contained to the contrary in the Criminal Procedure Code or any other law for the time being in force all offences under this Act shall be cognizable, non-bailable and non-compoundable.

<sup>4</sup>[16-A :- Notwithstanding anything contained to the contrary in Sections 497 and 498 of the Criminal Procedure Code or in any other law for the time being in force, no person accused or convicted of an offence made punishable by this Act or by an order under this Act, shall be released on bail or on his own bond, by any court except Special Court constituted under 'the Act.]

<sup>1</sup> Ins. by the Azad Kashmir Emergency Powers (Amendment) Act, 1963 (Act III of 1963) dt.30-04-1963.

<sup>2</sup> Sec. 14 was amended/omitted two times.the original extract of sec.14 of the Azad Kashmir Emergency Powers Act, 1958 is reproduced as under:-

“(ii) all political activities including processions and meetings both in public or private.”

A- Subs. by the Azad Kashmir Emergency Powers (Amdt.) Act, 1960 (Act VI of 1960 dt. 12-7-19,60.

B- Omitted by the Azad Kashmir Emergency Powers (Amendment) Act, 1963 (Act III of 1963) dt.30-04-1963. the original extract sec. 14 of the Azad Kashmir Emergency Powers Act, 1958 is reproduced as under:-

“14. The following acts are prohibited :-

(i) Strikes and agitations in educational institutions and public utility works and installations ;

(ii) all political activities including processions and meetings both in public or private :

Provided that the District Magistrate may allow any, such meeting or procession.”

<sup>3</sup>Omitted by the Azad Kashmir Emergency Powers (Amendment) Act, 1963 (Act III of 1963) dt.30-04-1963. the original extract of Sec.15 of the Azad Kashmir Emergency Powers Act, 1958 is reproduced as under:-

“15. Any one who strikes or helps to bring about a strike or propagates a strike or commits any acts prohibited under Section 14 shall be punished with rigorous imprisonment which may extend to ten years.”

<sup>4</sup>Add. by Add. by the Azad Kashmir Emergency Powers (Amdt.) Act, 1958dt. 19-12-1958.]



- <sup>1</sup>[17. (i) All cases under Section 7 and cases of contravention of the provisions of sub-sections (iv) and (vii) of Section 8 and sub-section (ii) of Section 10 of the Emergency Powers Act shall be tried under the provisions of the said Act.
- (ii) No case other than those referred to in sub-section (i) of this Section shall be tried under the Emergency Powers Act unless the District Magistrate directs that the accused be prosecuted under the said Act.”]
- <sup>2</sup>[17-A :- Notwithstanding anything contained to the contrary in any other law for the time being in force, a Court in ay convict any accused person under any law for the time being in force if it appears in evidence that he committed such offence, although he was not prosecuted for it, whether or not such offence is a minor offence.]
- <sup>3</sup>[18. Anyone who attempts to contravene or abets the contravention of the provisions of this Act or of an order or direction made or given thereunder shall be punished as if he had contravened the provisions of this Act.]
- <sup>4</sup>[19 . The Government may, by order, direct that any power or duty which under Section 2 is conferred or imposed upon the Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be executed or' discharged by any officer or authority.]
- <sup>5</sup>[20 . Any authority, officer, or person who is empowered by or directed in pursuance of the provisions of this Act to make any order, or to exercise any other power may in addition to any other action prescribed by or under this Act, take or cause to betaken such steps and use or cause to be used, such force as may be reasonably necessary for securing compliance with or for preventing or rectifying any contravention of such order or for the effective exercise of such power.”]

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<sup>1</sup>Subs. by the Azad Kashmir Emergency Powers (Amdt.) Act, 1959 (Act IV of 1959). The original extract of sec.5 of the Azad Kashmir Emergency Powers Act, 1958 is reproduced as under:-

“17- If any offence falls under the provisions of the Public Safety Act, the Penal Code or the Civil Defence Act and also under the provisions of the Azad Kashmir Emergency Powers Act, 1958, the trial shall be held for offence under the provisions of the Azad Kashmir Emergency Powers Act, 1958, so that enhanced punishment be awarded with a view to curbing the anti-State and anti-social activities in public interest. “

<sup>2</sup>Add. by .by Add. by .the Azad Kashmir Emergency Powers (Amdt.) Act, 1958dt. 19-12-1958.

<sup>3</sup>Add. by Ibid.

<sup>4</sup>Add. by Ibid.

<sup>5</sup>Add. by Ibid.