

THE AZAD JAMMU AND KASHMIR PRESIDENTIAL
ELECTION ACT, 1960

(ACT XIV OF 1960)

(Passed under Government order No. 699/60 dated 16-12-1960)

Whereas it is necessary to provide for election to the office of the President of the Azad Government of the State of Jammu and Kashmir and for setting up of a Council, it is hereby enacted as follows :-

CHAPTER I

1. (i) This Act may be called the Azad Jammu and Kashmir Presidential Election Act, 1960.

(ii) It shall come into force at once.

2. In this Act, the expression:-

(i) "President" means the President of the Azad Government of the State of Jammu and Kashmir ;

(ii) "Election Commissioner" means the Chief Adviser to the Azad Government of the State of Jammu and Kashmir or a person nominated by him as such ;

(iii) "Secretary General" means the Secretary General of the Azad Government of the State of Jammu and Kashmir ;

(iv) "Chief Adviser" means the Chief Adviser to the Azad Government of the State of Jammu and Kashmir ;

(v) "Council" means the Council constituted under this Act.

3. As soon as may be after the coming into force of this Act, there shall be established an electoral college for election to the office of the President in the manner hereinafter prescribed :

Provided that the present arrangement for discharging the functions of the President shall continue until a President is elected.

4. The electoral college for election to the office of the President shall consist of elected members of Basic Democracies wherever

established in the State under the Azad Jammu and Kashmir Basic Democracies Act, 1960 and of Representatives of the remaining areas of the Jammu and Kashmir State elected in accordance with the provisions of the Azad Jammu and Kashmir Refugees Registration and Representation Act, 1960.

A person shall not be qualified for election as President :-

(i) if he is not a National of the Jammu and Kashmir State;

Explanation:- The expression "National of the Jammu and Kashmir State" means a person who falls within the definition of a State-subject as defined under the State Law.

(ii) if he is less than thirty years of age ;

(iii) if he is not free from disqualifications of an elector under the Azad Jammu and Kashmir Basic Democracies Act, 1960:

Provided that if he possesses all the qualifications of an elector under the Basic Democracies Act, 1960, or the Azad Jammu and Kashmir Refugees Registration and Representation Act, 1960, but is not recorded as a voter in the Azad Jammu and Kashmir territory he shall not thereby be debarred from being elected ;

(iv) if he is debarred or disqualified under any law for the time being in force for being elected to the office of the President or to a Basic Democracy or other elective body ;

(v) if he is reputed to be of bad character.

The validity of the election of the President shall not be questioned in any Court.

The President shall hold office for a period of five years from the date on which he enters upon his office :

Provided that at the end of 4 years and 10 months from the date on which a President enters upon his office, the Election Commissioner shall take steps to hold an election for the office of the President :

Provided further that, notwithstanding the expiration of his

term, the President shall continue to hold office until his

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successor enters upon his office.

If the office of the President falls vacant during the term of his office on account of death, resignation or any other cause, the Chief Adviser shall, within eight weeks of such a vacancy, arrange for holding an election to the office of the President, and shall, in consultation with the Council, forthwith nominate a person, otherwise qualified to be elected as President to exercise the functions of the President, until a newly elected President enters upon his office.

CHAPTER II PROCEDURE FOR ELECTION

The Election Commissioner shall hold and conduct an election to the office of the President in accordance with the provisions contained in the First Schedule to this Act.

Notwithstanding anything contained to the contrary in the First Schedule to this Act, where any difficulty arises in obtaining, through ballot boxes, the votes of the Representatives under the Azad Jammu and Kashmir Refugees Registration and Representation Act, 1960, the Election Commissioner may adopt such procedure as may be considered appropriate by him for obtaining their votes.

No proceedings taken under this Act shall be called in question in any Court.

CHAPTER III COUNCIL

(i) As soon as may be after the first election of the President, there shall be constituted a Council which will consist of 12 members to be elected as follows :-

(a) Six members to be elected out of the elected members of Basic Democracies ;

(b) Three members to be elected out of Representatives of refugees from the Province of Kashmir ;

(c) Three members to be elected out of the Representatives of refugees from Province of Jammu.

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Explanation:- (1) The expression 'Members of Basic Democracies' occurring in (a) means 'the members elected under the Azad Jammu and Kashmir Basic Democracies Act, 1960 within the Azad Jammu and Kashmir territory';

(2) The expressions 'Representatives of refugees', 'Province of Kashmir' and 'Province of Jammu' occurring in (b) and (c) have the same meanings as are assigned to them under the Azad Jammu and Kashmir Refugees Registration and Representation Act, 1960.

(ii) The members of the Council shall be elected in accordance with the provisions contained in the Second Schedule to this Act.

(iii) The meetings of the Council will be held under, the Chairmanship of the President.

Notwithstanding anything contained to the contrary in the Azad Jammu and Kashmir Basic Democracies Act, 1960, or the Basic Democracies Election Rules, 1960, or any other law for the time being in force, the election of a member of the Council shall not be called in question in any Court or before any Tribunal or authority by way of suit or any petition including an election petition.

(i) The term of the Council shall ordinarily be 5 years unless it stands dissolved earlier under Section 20 of this Act.

(ii) A person shall cease to be a member of the Council before expiry of this term:

(a) if he has ceased to be a National of Jammu and Kashmir State ;

(b) if he is an un-discharged insolvent ;

(c) if he has been ordered to execute a bond under Section 110 of the Criminal Procedure Code or has been, on conviction for an offence involving moral turpitude,

sentenced to imprisonment ;

(d) if he has Joined salaried Government service or service

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under a public statutory body or under any local authority or local body in Pakistan or under the Azad Government of the State of Jammu and Kashmir or in any other country

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(e) if he is debarred or disqualified for membership of a Basic Democracy or any other elective body under any law for the time being in force ;

(f) if he, without reasonable excuse, absents himself from three consecutive meetings of the Council and is removed by the President for the same.

(iii) Any vacancy occurring in the Council due to death, resignation or removal of a member shall be filled out of the elected members of Basic Democracies or out of the Representatives of Refugees referred to hereinbefore, as the case may be, through by-election in accordance with the provisions of the Azad Jammu and Kashmir Basic Democracies Election Rules, 1960.

(i) The functions of the Council shall be to tender advice to the President on such matters of general policy relating to legislation, administration, development, Local Councils and other local bodies, and finance, as the President may refer to it for advice.

(ii) The advice tendered by the Council shall not be binding on the President.

The Secretary General will be the ex-officio Secretary of the Council and he will be assisted by such other officers as may be appointed in this behalf.

The members shall be entitled to receive such allowances as may be determined by the President.

The Council shall ordinarily meet at the Headquarters of the Government at least once in six months.

(i) The Secretary of the Council shall submit agenda for a session of the Council to the President for his approval not less than 30 days before the commencement of each session of the Council. The President may pass orders and give such directions concerning the agenda as he may think fit.

(ii) Copies of the proceedings of each meeting shall be

submitted to the President and to such other authority as may be directed by the President.

CHAPTER IV

RELINQUISHMENT OF OFFICE BY THE PRESIDENT

(i) If not less than 4 members of the Council give fifteen days,

notice to the Secretary of the Council of a resolution for a vote of non-confidence in the President, such a meeting shall not be presided over by the President, but any other member specially elected by the members present, may act as Chairman of the meeting. If in such a meeting nine members of the Council do not support the resolution for a vote of non-confidence in the President the members of the Council who had given notice of the said resolution, shall cease to be members of the Council and shall stand disqualified for membership of the Council for the remaining term.

(ii) If in a meeting referred to in sub-section (i), nine members

of the Council subscribe to a resolution of no-confidence in the President, the President may :-

(1) resign from his office ; or

(2) seek a vote of confidence within thirty days of the

passing of such a resolution from the electoral college referred to in Section 4 of this Act.

(iii) On the passing of such a resolution, the Council shall stand

dissolved and fresh elections to the Council shall take place within sixty days of the passing of such a resolution.

(iv) If the President resigns or fails to obtain a vote of confidence

within thirty days of the passing of the resolution from the electoral college by a majority of votes, he shall vacate his office and steps shall be taken for the holding of fresh election to the office of the President. Until a newly elected President enters upon his office, subject to the provisions of this Act regarding filling of a vacancy occurring in the office of the President, the functions of the President shall be exercised by a person who is otherwise qualified to be elected as President and is nominated by the Chief Adviser.

(v) If the President succeeds in obtaining the vote of confidence

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from the electoral college by a majority of votes, a new Council shall be constituted under this Act.

(vi) As soon as may be after the vote of confidence or the election of the new President, there shall be constituted a Council in accordance with the provisions of Section 12.

CHAPTER V SUPPLEMENTAL

Notwithstanding anything contained to the contrary in any law, rule or order for the time being in force, all references in any law, rule, order or the Rules of Business to a 'Minister', 'Cabinet' or 'Council of Ministers' shall, as far as practicable, be construed as references to the President.

In all laws, rules, orders and correspondence wherever the expression 'Azad Kashmir Government' or the 'Azad Jammu and Kashmir Government' occurs the same shall be read as the 'Azad Government of the State of Jammu and Kashmir.'

FIRST SCHEDULE (Section 9)

The Election Commissioner shall hold and conduct any election to the office of the President and shall be the Returning Officer for such election. He shall appoint Presiding Officers for the holding of election of the President.

The Election Commissioner shall, by public notification, fix the time and place for depositing nomination papers, holding a scrutiny, making withdrawals, if any, and holding the poll, if necessary.

At any time before noon on the day fixed for nomination any member of a Basic Democracy or any Representative elected under the Azad Jammu and Kashmir Refugees Registration and Representation Act, 1960, may nominate for election as President a person qualified for election as President by delivering to the Election Commissioner a nomination paper signed by himself as proposer and by another person qualified to vote as seconder, together with a statement signed by the person nominated that he consents to the nomination :

Provided that no person shall subscribe, whether as proposer or as seconder, more than one nomination paper at any one election.

The scrutiny shall be held by the Election Commissioner at the time and place fixed by him and if after scrutiny only one person remains validly nominated, the Election Commissioner shall declare that person to be elected or if more than one person remains validity nominated, he shall announce, by public notification, the names of the persons validly nominated, to be hereinafter called the candidates.

A candidate may withdraw his candidature at any time before noon on the day fixed for this purpose by delivering a notice in writing under his hand to the Election Commissioner and a candidate who has given a notice of withdrawal of his candidature under this paragraph, shall not be allowed to cancel that notice.

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all candidates withdraw there shall be held another election for electing the President.

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all but one of the candidates have withdrawn that one shall be declared-by the Election Commissioner to be elected.

If there is no withdrawal or if after withdrawals have taken place, two or more candidates are left, the Election Commissioner shall announce by public notification the names of the candidates, and their proposers and seconders and shall proceed to hold a poll by secret ballot in accordance with provisions of the succeeding paragraphs.

If a candidate whose nomination has been found to be in order dies after the time fixed for nomination and a report of his death is received by the Presiding Officer before the Commencement of the poll, the Presiding Officer shall, upon being satisfied of the death of the candidate, countermand the poll and report the fact to the Election Commissioner and all proceedings with reference to the election shall be commenced a new in all respects as if for a new election :

Provided that no further nomination shall be necessary in the

case of a candidate whose nomination was valid at the time of the countermanding of the poll :

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Provided further that no person who has under paragraph 5 of this Schedule given notice of withdrawal of his candidature before countermanding of the poll shall be ineligible for being nominated as a candidate for the election after such countermanding.

The poll shall be taken at such places as may be fixed by the Election Commissioner and the respective Presiding Officers shall conduct the poll with the assistance of such officers as they may respectively appoint.

A ballot paper shall be issued to every member of a basic democracy and to every Representative under the Azad Jammu and Kashmir Refugees Registration and Representation Act, 1960, who presents himself for voting at the place fixed under paragraph 10 and he shall exercise his vote personally by marking the paper in accordance with the provisions of the succeeding paragraphs.

The poll shall be by secret ballot by means of ballot papers containing the names of all the candidates in the alphabetical order who have not withdrawn and a person voting shall vote by placing a cross against the name of the person for whom he wishes to vote.

Ballot papers shall be issued from a book of ballot papers with counterfoils, the ballot papers. and each counterfoil being numbered, and when a ballot paper is issued to a person voting: his name be shall entered on the counterfoil and the ballot shall be authenticated by the initials of the Presiding Officer.

A ballot paper having been marked by the person voting shall be deposited by that person in a ballot box to be placed in front of the Presiding Officer.

If a ballot paper is spoiled by a person voting he may return it to the Presiding Officer, who shall issue a second ballot paper,

cancelling the first ballot paper and marking the cancellation on the appropriate counterfoil.

A ballot paper shall be invalid if :

(i) there is upon it any name, word or mark other than the official number, by which the person may be indentified ; or

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(ii) it does not contain the initials of the Presiding Officer ; or

(iii) it does not contain a cross ; or

(iv) a cross is placed against the names of two or more candidates ; or

(v) there is any uncertainty as to the identity of the candidate against whose name the cross is placed.

After the close of the poll, each Presiding Officer shall, in the presence of such of the candidates or their authorised representatives as may desire to be present, open and empty the ballot boxes and examine the ballot papers therein, rejecting any which are invalid, count the number of votes recorded for each candidate on the valid ballot papers and communicate the number of votes so recorded to the Election Commissioner.

The candidate obtaining the largest number of votes shall be declared by the Election Commissioner to be duly elected.

Where at any poll any two or more candidates obtain equal number of votes, the selection of the candidate to be elected shall be by drawing of lots.

When after any poll the counting of the votes has been completed and the result of the voting determined, the Election Commissioner shall forthwith announce the result to those present and shall report the result to the Government who shall forthwith cause the result to be declared by a public notification.

SECOND SCHEDULE

(SECTION 12)

For the conduct of elections of members of the Council, there shall be the following three constituencies with the number of seats allotted to them :-

(i) Azad Jammu and Kashmir territory 6 seats.

(ii) Refugees from Kashmir Province 3 seats.

(iii) Refugees from Jammu Province 3 seats.

(i) A Returning Officer shall be appointed by the Election Commissioner for each constituency.

(ii) The Election Commissioner shall take all such steps as may be necessary to give effect to the provisions of paragraph 1 of this Schedule.

The provisions of the Azad Jammu and Kashmir Basic Democracies Election Rules, 1960, shall, as far as practicable, be followed for the conduct of election of members of the Council in each constituency as in the case of election of members of a Basic Democracy in a ward subject to the following conditions :-

(a) The list of elected members of Basic Democracies within the Azad Jammu and Kashmir territory shall be the electoral roll

for the constituency falling under clause (i) of paragraph 1.

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The list of elected Representatives from Kashmir Province shall be the electoral roll for the constituency falling under clause (ii) of paragraph 1.

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The list of elected Representatives from Jammu Province shall be the electoral roll for the constituency falling under clause (iii) of paragraph 1.

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The Presiding Officers and other polling staff required for election shall be appointed by each Returning Officer subject to the general control of the Election Commissioner.

(e) Each Returning Officer will issue a general programme for the holding of elections for his constituency specifying dates for different items on the lines contained in the Azad Jammu and Kashmir Basic Democracies Election Rules, 1960.

(f) The procedure contained in the Azad Jammu and Kashmir Basic Democracies Election Rules, 1960 applicable to by-election shall also apply to by-elections in case of occurrence of vacancies in the membership of the Council.

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The results of the poll shall be declared in accordance with the provisions of Rule 48 of the Azad Jammu and Kashmir Basic Democracies Election Rules, 1960.

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