

AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW, JUSTICE, PARLIAMENTARY AFFAIRS AND HUMAN RIGHTS
DEPARTMENT MUZAFFARABAD

Dated: 19th February, 2020

No. LD/Legis-Act/136-50/2020. The following Act, passed by the Azad Jammu and Kashmir Legislative Assembly on 31st January, 2020, deemed to have been assented by the President under Article 36 (2) of the Azad Jammu and Kashmir Interim Constitution, 1974, is hereby published for general information.

(ACT XI OF 2020)

An

Act

further to amend the Azad Jammu and Kashmir Ehtesab Bureau Act, 2001

WHEREAS, it is expedient further to amend the Azad Jammu and Kashmir Ehtesab Bureau Act, 2001 (Act I of 2001), in the manner hereinafter appearing:

It is hereby enacted as follows:-

1. Short title and Commencement.- (1) This Act may be called the Azad Jammu and Kashmir Ehtesab Bureau (Sixth Amendment) Act, 2020.

(2) It shall come into force at once.

2. Amendment of Section 4, (Act I of 2001).- In the Azad Jammu and Kashmir Ehtesab Bureau Act, 2001 (Act I of 2001), hereinafter referred to as the said Act, in Section 4, following amendments shall be made:-

(i) clauses (g),(j), (m) and (u) shall be omitted,-

(ii) clause (0) shall be substituted as under,-

"(o) 'Offence' means offence of corruption and corrupt practices punishable under this Act;"

3. Substitution of Section 6, (Act I of 2001).- In the said Act, Section 6 shall be substituted as under.-
"6, Chairman of the Ehtesab Bureau.- (1) There shall be a Chairman of the Ehtesab Bureau to be appointed by the President on the advice of the Prime Minister and on such terms and conditions as may be prescribed.

(2) No person shall be appointed as Chairman Ehtesab Bureau unless he,-

(i) has been or is qualified to be appointed as Judge of the Supreme Court or the High Court; or

(ii) is or has been civil servant of Azad Jammu and Kashmir in BPS-21 and above.”

Substitution of Section 8, (Act I of 2001).- In the said Act,

Section 8 shall be substituted as under,-

“8. Acting Chairman of the Ehtesab Bureau.- As and when the Chairman is absent or is unable to perform the functions of his office due to any reason, whatsoever, or office of the Chairman is vacant, the President, on advice of the Prime Minister, may appoint any other person duly qualified, to act as a Chairman for a period not exceeding six months.”

Amendment of Section 9, (Act I of 2001).- In the said Act, in

Section 9, for sub-section (1), the following shall be substituted:-

“(1) The President, on the advice of the Prime Minister, may appoint a person being a person qualified to be appointed a Judge of the High Court, as Chief Prosecutor Ehtesab Bureau.

(I-a) The terms and conditions of the Chief Prosecutor Ehtesab Bureau shall be determined by the Government in consultation with the Chairman:

Provided that the Chief Prosecutor appointed before the commencement of this Act shall be deemed to have been appointed under this Section for remaining period of his term.”

Amendment of Section 9-A, (Act I of 2001).- In the said Act,

in Section 9-A, sub-section (1) shall be substituted as under:

“(1) The Chairman shall, with prior approval of the Government, appoint a suitable officer from the Law Department, as Director Legal, on deputation basis.”

Amendment of Section 10, (Act I of 2001).- In the said Act, in

Section 10,-

(i) clause (h) of sub-section (1) shall be omitted.

(ii) for sub-section (2), the following shall be substituted,-

“(2) All Offences under this Act shall be non-bailable and only the Court shall have jurisdiction to grant bail under Section 497 and 498 of the Code to any person accused of any offence.

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(2-a) The High Court shall also have powers to grant pre-arrest bail under Section 498 of the Code to an accused of an offence under this Act."

Amendment of Section 11, (Act I of 2001).- In the said Act, in sub-section (1) of Section 11, for the words "who commits", the words "who has committed", shall be substituted.

Amendment of Section 13, (Act I of 2001).- In the said Act, in Section 13,-

(i) in sub-section (1) the words "Chairman or the", at the beginning, shall be omitted.

(ii) in sub-section (3),-

(a) in clause (d), the words, "Chairman or", shall be omitted;

(b) first proviso shall be omitted.

(c) in second proviso the words, "the Ehtesab Bureau or", shall be omitted.

(iii) sub-section (4) shall be substituted as under:-

"(4) If the property ordered to be frozen consists of livestock or is of a perishable nature, the Court may, if it deems proper and expedient, order the immediate sale thereof and the proceeds of the sale may be deposited either with the Court, or as the Court may direct."

Amendment of Section 14, (Act I of 2001).- In the said Act, in Section 14, sub-section (2) shall be omitted.

Amendment of Section 15, (Act I of 2001).- In the said Act, in Section 15,-

(i) in sub-section (1), the words "a schedule offence or any other" shall be omitted; and

(ii) in sub-section (4) the words, "except cases covered by anti-corruption laws", shall be omitted.

Substitution of Section 16, (Act I of 2001).- In the said Act,

Section 16 shall be substituted as under:-

"16. Disqualification to contest Election or to hold Public

Office.- Where an accused person is convicted for the offence of corruption or corrupt practices under this Act, he shall stand disqualified for a period of five years for seeking, or from being elected, chosen, appointed or nominated as a member or representative of any public

office, or any statutory or local authority of the Government."

13. Substitution of Section 17, (Act I of 2001).- In the said Act,

Section 17 shall be substituted as under:-

"17. Trial of Offence.- (1) Notwithstanding anything contained in any other law for the time being in force, any person accused of an offence punishable under this Act, shall be prosecuted for such offence by the Court and the case shall be disposed of within 60 days, out of which twenty days may be reserved for defence.

(2) The Court shall sit at Muzaffarabad.

(3) The Court shall have jurisdiction to try such cases as referred to it by the Chairman or an officer authorized in this behalf by him, under sub-section (7) of Section 21 of this Act.

14. Substitution of Section 19, (Act I of 2001).- In the said Act, in Section 19, the word "scheduled" shall be omitted.

15. Substitution of Section 20, (Act I of 2001).- In the said Act, in Section 20, subsection (2) shall be omitted.

16. Substitution of Section 21, (Act I of 2001).- In the said Act,

Section 21 shall be substituted as under:-

"21. Cognizance of Offences.- (1) The Court shall not take cognizance of any offence under this Act, except on a reference made by the Chairman or an officer of the Ehtesab Bureau duly authorized by him.

(2) A reference shall be processed by the Ehtesab Bureau under this Act on,-

(a) a reference received from the Government; or

(b) receipt of a complaint duly supported by an affidavit along with a copy of CNIC of the complainant:

Provided that the accused shall be provided an opportunity of hearing prior to any further action:

Provided further that a preliminary fact finding inquiry in respect of an application or complaint, as the case may be, shall be conducted under the order of the Chairman and

in case it is found that such application is frivolous, the Chairman shall initiate proceedings against such complainant under subsection (9).

(3) Where the Chairman is satisfied that it is necessary and appropriate to initiate proceedings on the basis of a fact finding inquiry in pursuant to a complaint, or on a reference received from the Government which *prima facie* establishing the commission of an offence, he shall refer the matter for investigation, which shall be completed expediently and reference to this extent shall be submitted in the Court within the period as stipulated in sub-section (6).

(4) The responsibility for inquiry or an investigation of an offence alleged to have been committed under this Act shall rest on the Ehtesab Bureau to the exclusion of any other agency or authority, unless any such agency or authority is required to do so by the Chairman.

(5) The Chairman shall, in case the accused person does not voluntarily or on summoning by Ehtesab Bureau avoids or refuses to appear or co-operate or furnish the requisite record or information required to complete the inquiry or investigation, as the case may be, make a request to the Court for issuance of a warrant to cause arrest of the accused person in order to fulfill the purpose of expeditious completion of inquiry or investigation.

(6) Any inquiry or investigation under this Act shall be completed expeditiously within a period of one year:

Provided that the delay, if any, occurred due to an act of the accused, that period shall be excluded in computing the period of one year.

(7) The Chairman or an officer duly authorized by him, shall appraise the material and the evidence furnished through reference or in pursuant to a complaint, placed before him during the inquiry and the investigation, and if he decides that it is proper and just to proceed further, he shall file reference before the Court.

(8) If a complaint inquired into and investigated by the Ehtesab Bureau has been found frivolous or

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malicious or malafide, such complaint shall be rejected and the complainant shall be proceeded against under sub-section (9).

(9) If the complaint is found to be of frivolous nature or is filed with malafide intention just to defame the reputation of other person, the complainant shall be liable to punishment with imprisonment for a term up to one year, or with fine not exceeding five hundred thousand rupees, but shall not be less than two hundred thousand rupees, or with both.

(10) |The concerned department shall prepare the reference after proper scrutiny, containing relevant record/documents, which prima-facie associates the accused for the commission of an Offence and shall submit to the Government for approval.

(11) +The Ehtesab Bureau during the course of inquiry, investigation, trial, or at any stage, shall not make or issue a press release or statement against an accused causing disrespect to him or his family.

Amendment of Section 22, (Act I of 2001).- In the said Act, in Section 22,-

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(ii)

the existing Section shall be re-numbered as sub-section (1), and thereafter following proviso shall be added:-

“Provided that in case of official documents or information, the Chairman may ask the concerned Administrative Secretary for provision of such documents or information, as the case may be.”

after sub-section (1), as renumbered above, the following new sub-section (2) shall be added:-

“(2) Notwithstanding anything contained in this Act, the Ehtesab Bureau shall not have any jurisdiction in respect of terms and conditions of civil servants, including appointments, transfers and promotions thereof.”

Omission of Section 23, (Act I of 2001).- In the said Act,
Section 23 shall be omitted.

Amendment of Section 25, (Act I of 2001).-In the said Act, in
Section 25, in sub-section (1) the comma and words “, or of his
own accord” shall be omitted.

Substitution of Section 27, (Act I of 2001).-In the said Act,

Section 27 shall be substituted as under:-

“27.

Power to Arrest, etc.- (1) The Chairman or any officer authorized in this behalf, may at any stage of the investigation under this Act, request the Court for issuance of a warrant of arrest of an accused and the Court may issue such warrant of arrest.

(2) If the Chairman or an officer duly authorized by him decides to refer the case to a Court, such reference shall contain the substance of the offence alleged to have been committed by the accused and a copy of such reference shall be forwarded to the Court to which the case has been sent to try the accused, and another copy shall be delivered to the accused.

(3) The provisions of sub-section (1) shall also apply to cases, which have already been referred to the Court.

(4) Notwithstanding anything contained in the Code, where the holder of a public office or any other person accused of an offence is arrested by the Ehtesab Bureau under sub-section (1) or under this Act, the Ehtesab Bureau shall forthwith inform him of the grounds in writing and substance on the basis of which he has been arrested and produce him before the Court established under this Act within a period of twenty four hours of arrest excluding the time necessary for the journey from the place of arrest to the Court and such person shall, having regard to the facts and circumstances of the case, be liable to be detained in the custody of the Ehtesab Bureau for the purpose of inquiry and investigation for a period not exceeding fourteen days:

Provided that, if further remand of an accused is required on the basis of sufficient reasons and grounds, the Ehtesab Bureau may request the Court for a further period of custody not exceeding seven days:

Provided further that the accused arrested under this Act shall not be released without a written order of the Court.

(5) The Chairman Ehtesab Bureau may declare and notify any place as a Police Station or a Sub-Jail at his discretion.

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(6) An accused person, if arrested under this Act,
shall not be handcuffed."

Omission of Section 28, (Act I of 2001).- In the said Act,
Section 28 shall be omitted.

Omission of Section 29, (Act I of 2001).- In the said Act,
Section 29 shall be omitted.

Amendment of Section 30, (Act I of 2001).- In the said Act, in

the heading of section 30, the expression and words “/Plea-
Bargaining” shall be omitted.

Amendment of Section 31, (Act I of 2001).- In the said Act, in
Section 31, after first proviso, the following new proviso shall be
added:-

“Provided that where assistance is required from a
department or statutory body, the Chairman may ask the
concerned Administrative Secretary for such assistance.”

Amendment of Section 32, (Act I of 2001).- In the said Act, in
Section 32,-

(i) for sub-section (3), following shall be substituted,-

“() The provisions of Azad Jammu and Kashmir
Civil Servant Act, 1976 (Act VI of 1976) and Rules
made thereunder shall apply mutatis and mutandis to the
employees of the Ehtesab Bureau.”

(ii) Sub-section (4) shall be omitted;

(iii) in sub-section (5), for the words “President” the words
“Government” shall be substituted.

Amendment of Section 35, (Act I of 2001).- In the said Act, in
Section 35, sub-section (1) shall be substituted as under:-

“(1) ~~ Notwithstanding anything contained in any other law for

the time being in force, if any person, when required to do so, does not consciously render assistance or information to the Ehtesab Bureau or if any person concerned with the inquiry and investigation and prosecution of a case consciously and deliberately and with malice aforethought compromises, hampers, misleads, jeopardizes or defeats an investigation of a case under process before the Ehtesab Bureau or any concerned agency or authority or Court, he shall be punished with an imprisonment which may extend to three years.”

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Substitution of Section 37, (Act I of 2001).- In the said Act,

Section 37, shall be substituted as under:-

“37,

Withdrawal from Prosecution.- Where at any stage of the proceedings, the Chairman is of the opinion that the ends of justice so require, he may direct the Chief Prosecutor to withdraw from prosecution of any person, completely or in respect of any one or more of the offences for which he is tried, with the consent of the Court, and upon such withdrawal,-

(i) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences; and

(ii) if it is made after a charge has been framed, he shall be acquitted in respect of such offence or offences.”

Omission of Section 39, (Act I of 2001).- In the said Act, Section 39 shall be omitted.

Amendment of Section 40, (Act I of 2001).- In the said Act, in

Section 40, sub-section (3) and (4) shall be omitted.

Substitution of Section 42, (Act I of 2001).- In the said Act,

Section 42 shall be substituted as under:-

“42.

Power to make Rules and Regulations.- (1) The Government may make rules for carrying out the purposes of this Act, except for the matters enumerated in sub-section (2):

Provided that the departmental service rules, in force at the time of commencement of this Act, shall continue to be in force, as far as they are not inconsistent with the Civil Servant Act or Rules made thereunder, and be deemed to have been made under this Act, unless altered, amended, modified or repealed.

(2) The Ehtesab Bureau, with the prior permission

of the Government, may make regulations for the following purposes:-

(i) Procedure to conduct inquiry, investigation and filing of reference before the Court under this Act; and

(ii) Standard Operating Procedures (SOPs)."

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Substitution of Section 45, (Act I of 2001).-In the said Act,

Section 45 shall be substituted as under,-

“45. | Indemnity.-No suit, prosecution or any other proceeding shall lie against the Government or Chairman Ehtesab Bureau on exercising of any powers or performing any function or any act or thing which has been done or intended to be done in good faith under this Act or Rules made thereunder.”

Omission of Section 46, (Act I of 2001).- In the said Act, Section 46 shall be omitted.

Omission of Schedule I and II, (Act I of 2001).- In the said Act, Schedule-I and II shall be omitted.

Sd/-

(Gulfraz Ahmed Khan)

Section Officer (Legislation)

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