

THE AZAD KASHMIR CRIMINAL LAW
AMENDMENT, ACT, 1956.

(Passed under Council Order No. 170/56; dated 17-5-56)

Whereas it is expedient to provide for the more speedy trial and

more effective punishment of certain offences punishable under the Azad Kashmir Penal Code and certain other laws :-

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Short title, extent and commencement:- (i) This Act may be called the Azad Kashmir Criminal Law Amendment Act, 1956.

(ii) It extends to the whole of Azad Kashmir Territory and shall come into force at once.

In this Act, unless there is anything repugnant in the subject or context :-

(a) 'Government' shall mean the Azad Kashmir Government;

(b) 'Public Servant' includes a public servant as defined in Section 21 of the Azad Kashmir Penal Code and also every employee of such organization or body corporate as may be notified in the official Gazette by the Government ;

(c) 'Schedule' means a schedule appended to this Act.

Appointment of Special Judges:- (1) Offences specified in the first schedule and offences notified by the Government in the Official Gazette may be offences specified in the second schedule shall be tried by Special Judges under this Act.

(2) The Government shall, by notification in the Official Gazette appoint as many special Judges as may be necessary to try and punish offences specified in the First and Second Schedules and such other offences as may be notified by it from time to time in the Official Gazette.

Jurisdiction of Special Judges and cognizance of cases by them:- (1) A Special Judge shall have jurisdiction within such territorial limits as may be fixed by the Government by notification in the Official Gazette and may take cognizance of any offence committed within such limits and triable under this

Act upon receiving a complaint of facts which constitute such offence or upon a report in writing of such facts made by any police officer.

(2) An offence shall be tried by the Special Judge for the area within which it was committed, or where there are more Special Judges than one for such area, by such one of them as may be specified in this behalf by the Government.

Provided that the Government, may by order in writing, transfer at any stage of the trial, any case from the Court of one Special Judge to the Court of any other Special Judge.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), or in any other Law, the offences specified in the Second Schedule shall be triable exclusively by Special Judges, provided that all cases relating to offences mentioned in the Second Schedule and pending in Courts other than the Court of a Special Judge immediately before the commencement of this Act, shall continue to be tried by such Courts.

(4) In respect of cases transferred to a Special Judge under the proviso to sub-section (2) such Judge shall not, by reason of the said transfer, be bound to recall and rehear any witness who has given evidence in the case before the transfer and may act on the evidence already recorded by or produced before the Court which tried the case before the transfer.

(5) For the purpose of trial before a Special Judge, the provision of Chapter XVIII of the Code of Criminal Procedure, 1898 (Act V of 1898), shall not be applicable, but a Special Judge may, in

any case where he deems it necessary, order an investigation by any Police Officer.

(6) When trying an offence under this Act a Special Judge may also charge with and try other offences not so specified with which the accused may, under the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), relating to the joinder of charge be charged at the same trial.

Procedure in trial of cases and powers of Special Judges:- (1) The provisions of the Code of Criminal Procedure, 1898, except those of Chapter XX XVIII of the Code, shall, so far as they are not inconsistent with this Act, apply to the proceedings of the

Court of the Special Judge; and for the purposes of the said provisions, the Court of the Special Judge shall be deemed to be Court of Sessions trying cases without the aid of assessors or jury, and a person conducting prosecution before the Court of Special Judge shall be deemed to be a public prosecutor.

(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898) in the case of any offence punishable under section 161, section 162, section 163, section 164, section 165, of the Azad Kashmir Penal Code or under section 5 of the Prevention of Corruption Act, 1950 at any stage of the investigation or inquiry, a District Magistrate or Sub-Divisional Magistrate or a Magistrate of the First Class, and at the trial of any offence, the Special Judge with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence, may, for reasons to be recorded in writing tender pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned whether as principal or abettor, in the commission thereof, and any pardon so tendered shall, for the purpose of section 339-A of the Code of Criminal Procedure, 1898 (Act V of 1898), be deemed to have been tendered under section 337 or as the case may be, under section 338 of that Code:

Provided that in every case where a person has accepted a pardon deemed to have been tendered under section 337, the Magistrate shall, without making any further inquiry, send the case for trial to the Court of the Special Judge having jurisdiction over such case.

(2) The provisions of Chapter XX of the Code of Criminal Procedure Act V of 1898, shall apply to trial of cases under this Act in so far as they are not inconsistent with the provisions of this Act.

(3) Notwithstanding anything contained in this Act the Special Judge may convict the accused of any offence which from the fact admitted or proved he appears to have committed.

(4) After the accused has been called upon to appear under section 242 of the Code of Criminal Procedure, (Act V of 1898), copies of statements of all such witnesses, recorded under section 161 thereof whose evidence is to be laid at the trial, shall

be supplied to the accused if he so desires.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), or in any other law, the previous sanction of the Government shall be required for any prosecution under this Act and such sanction shall be sufficient for the prosecution of a public servant for an offence triable under this Act :

Provided that no such sanction shall be required in respect of a case transferred under the proviso to sub-section (2) of Section 4.

(6) The Government, or the person authorised to grant sanction for prosecution on behalf of the Government, shall appoint a person for conducting prosecution before the Special Judge.

(7) The previous statements of the witnesses to be examined for the prosecution at the trial shall be supplied to the accused at least one week before the commencement of the trial.

(1) When any person is charged before a Special Judge with the offence triable under this Act, the fact that such person, or any other person through him or on his behalf, is in possession, for which he cannot satisfactorily account, of pecuniary resources, or property disproportionate to his known sources of income, or that such person, has, on or about the time of offence with which he is charged, obtained an accretion to his pecuniary resources of property for which he cannot satisfactorily account, may be proved, and may be taken into consideration by the Special Judge as a relevant fact in deciding whether he is guilty of the particular offence with which he is charged.

(2) Where in any trial before a Special Judge of an offence punishable under sections 161 to 165 of the Azad Kashmir Penal Code; it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing, or any pecuniary advantage from a person or the agent of a person, for any favour shown or promised to be shown by the accused person, it shall be presumed unless the contrary is proved, that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification, or that valuable thing pecuniary advantage to himself: or some other person, as the case may be, as a motive or

reward such as is mentioned, in sections 161, 162 and 163 of the Azad Kashmir Penal Code, or as the case may be without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-section (2), the Court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification of thing aforesaid is, in its opinion so trivial that no inference of corruption may fairly be drawn.

Bar on trial denovo:- A Special Judge, unless he otherwise decides shall not be bound to recall or rehear any witness, whose evidence has already been recorded, or to reopen proceedings already recorded, or to reopen proceedings already held, but may act on the evidence already produced or recorded and continue the trial from the stage which the case has reached.

Punishment of offences:- When any person charged before a Special Judge with an offence triable under this Act is found guilty of the offence, the Special Judge shall, notwithstanding anything contained in any other law, whether or not he imposes a sentence of imprisonment, impose a sentence of fine which shall not be less than the gain found to have been derived by the accused by the commission of the offence.

Appeal, revision and transfer of cases:- (1) An appeal from the Judgment of a Special Judge shall lie to the High Court, and the same Court shall also have powers of revisions.

(2) The aforesaid Court shall have authority to transfer any case from the Court of a Special Judge, to the Court of another Special Judge :

Provided that notwithstanding anything contained in section 526 of the Code of Criminal Procedure (Act V of 1898) the Special Judge from whose Court a transfer is desired, shall not be bound to adjourn the case, but if he rejects a request for adjournment, he shall record his reasons for doing so.

(3) No prosecution under this Act against any person either generally or in respect of any one or more of the offences for which he is being tried shall be withdrawn except under the orders in writing of the Government.

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Bail and imprisonment:- Notwithstanding anything contained in the Second Schedule of the Code of Criminal Procedure, Act V of 1898 or any other law for the time being in force, offences to be tried by the Special Judge under the provisions of this Act shall be deemed to be non bailable.

(2) Any offence mentioned in the First Schedule which is punishable with simple imprisonment shall be deemed to be punishable with imprisonment of either description.

Powers to make rules:- (1) The Government may frame rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the forgoing powers, such rules may provide for any of the following matters, namely :-

(a) Authorisation of persons to exercise the power to sanction prosecution on behalf of the Government in respect of

various grades of public servants ;

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territorial limits of jurisdiction of Special Judges and the place and time of sitting of the Courts presided over by the Special Judge ;

(c) the summoning of witnesses and compelling the production of documents and the penalty for disobeying, or evading the same, in addition to or substitution of the provisions of the Code of Criminal Procedure, 1898 ;

(d) other matters incidental to the above ;

Nothing in this Act shall affect the jurisdiction exercised by or the procedure applicable to any Court or other authority under any military, navel, or air force law.

FIRST SCHEDULE

(See section 3 and 4)

(a) Offence punishable under section 161 to 166 and 168 of the Azad Kashmir Penal Code and as attempts, abetments and conspiracies in relation thereto or connected therewith.

(b) Offences punishable under sections 403 to 409 , 417 to 420, 465 to 468, 471 and 477-A of the Azad Kashmir Penal Code

and as attempts, abetments and conspiracies in relation thereto or

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connected therewith, when committed by any public servant as such or by any person acting jointly with or abetting or attempting to abet or acting in conspiracy with any public servant as such, and,

Offences punishable under the Prevention of Corruption Act, 1950 and as attempts, abetments and conspiracies in relation thereto or connected therewith.