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ISLAMABAD, THURSDAY,. JULY .3, 1975."

PART I fe

Acts, Ordinances, President's Orders and Regulations .

NATIONAL ASSEMBLY SECRETARIAT

Islamabad, the 3rd July, 1975

The following Act of Parliament received the assent 'of the President on the 2nd July, 1975, and is hereby published for general information :—

ACT No. LI or. 1975

An Act to provide for the conduct of election to the Senate

WHEREAS it is expedient to provide for the conduct of election to the Senate and for matters connected therewith or incidental thereto ;

It is hereby enacted as follows :—

CuarTsr L—PRELIMINARY®

1. Short title and commencement—(1) This Act may be called the 'Senate'. (Election) Act, 1975.

(2) It shall come into force at once.

2. Definitions.—(1) In this Act, unless there is anything repugnant in , the subject or context,—

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" bye-election " means an election to fill a casual Vacancy referred to in section 77;

"candidate" means a person proposed as a candidate' for election .

as a member; ' or

"Chairman " means Chairman of the Senate ; : aan
"contesting candidate" means a candidate who has been: 'validly ""'.

nominated for election as a member and has not withdrawn his candi-

"election" means an election to the Senate other than 'a bye-election"
and: includes aa' election to fill the seat of a member - which falls
vacant on the expiration of -his term; :

"election petition " means an election petition made under section 34;

"electoral roll" means an. electoral roll prepared under the law .

relating to the preparation and revision of electoral rolls for' 'the time
being in force ; ~

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- (h) "member" means member of the Senate ;
- (i) "nomination day" means the day appointed under section 10 for the nomination of candidates ;
- (j) "polling day" means the day on which poll is taken for an election ;
- «) "Polling Officer" means a Polling Officer appointed under section 7;
- Q) "prescribed" means prescribed by rules ;
- (m) "returned candidate " means a candidate who has been declared elected as a member under this Act;
- (n) "Returning Officer" means a Returning Officer appointed under section 5 and includes a Polling Officer acting as, or performing the functions of, Returning Officer ;
- (o) "rules" means rules made under this Act;
- (p) "scrutiny day" means the day appointed under section 10 for the scrutiny of nomination papers ;
- (q) "voter", means in relation to a Province, a person who is a member of the Provincial Assembly of that Province; and
- {r) "withdrawal day" means the day appointed under section 10 on or before which candidature may be withdrawn.
- (2) Words and ad expressions used but not defined in this Act and also used in itution , unless the context otherwise requires, have the meanings assigned to them in an the Constitution.
- CuapTer II.—ADMINISTRATIVE MACHINERY FOR THE CONDUCT OF ELECTIONS**
3. Organisation and conduct of election—Subject to the provisions of this Act and the rules, the Commissioner shall regulate the procedure for organizing, and conducting an election in such manner as he may deem fit.
4. Delegation of powers.—The Commissioner may authorise any of the officers subordinate to him to exercise and perform all or any of his powers and functions under this Act.
5. Returning Officers—For the purposes of an election, the Commissioner shall appoint a Returning Officer for each Province.
6. Polling Stations.—The Commissioner shall provide a polling station for the purpose of election members by the members of a Provincial Assembly.
7. Polling Officers.—The Commissioner shall, for the purpose of conducting an election, also appoint such number of Polling Officers to assist the Returning Officer as he may consider necessary.

8. Duties and powers of Returning Officer.—(1) A Returning Officer shall conduct the poll in accordance with the provisions of this Act and the rules and shall exercise all necessary powers for maintaining order at the polling station and shall report to the Commissioner any fact or incident which may, in his opinion, affect the conduct or fairness of the poll.

(2) The Returning Officer may, during the course of the poll, entrust to any Officer such of his functions as may be specified by him ; and it shall be the duty of the Polling Officer to perform the functions so entrusted.

(3) The Returning Officer shall authorise one of the Polling Officers to act in his place if he is, at any time during the poll; by reason of illness or other cause, not present at the polling station or is unable to perform his functions.

(4) The Returning Officer may, at any time during the poll, for reasons to be recorded in writing, suspend any Polling Officer and make such arrangements as he may consider necessary for the performance of the functions of the Officer so suspended.

(5) It shall be the duty of a Returning Officer to do all such acts and things "as may be necessary for effectively conducting an election in accordance with the provisions of this Act and the rules

CuapTer III—CONDUCT OF ELECTION

9. Supply of list of voters—The Commissioner shall provide the Returning Officer with a list of voters of the Province.

10. Notification for election.—(1) For the purpose of an election, the Commissioner shall, by notification in the official Gazette, call upon the members of the Provincial Assembly of a Province to elect such number of members to the Senate from that Province as is specified in such notification.

(2) The Commissioner shall in the same notification fix—

(a) a day for the nomination of candidates ;

(b) a day for the scrutiny of nomination papers ;

(c) a day on or before which candidature may be withdrawn; and

(d) the day for the taking of the poll and the place at which the poll shall be held.

11. Nomination for election.—(1) A voter from a Province may propose or second the name of any person qualified for election to the Senate from that

Province.

(2) Every proposal shall be made by a separate nomination paper in the prescribed form which shall be signed by the proposer and the seconder and contain a declaration signed by the candidate that he consents to the nomination and that he is not subject to any disqualification for being or being elected as a member.

(3) Every nomination paper shall be delivered by the candidate, or his proposer or seconder, to the Returning Officer who shall acknowledge receipt thereof.

(4) A person may be nominated by more than one nomination papers.

(5) Every proposal shall be accompanied by a certified copy of the relevant extract from the electoral roll in which the name of the person nominated is enrolled.

12. Deposit.—(1) Subject to the provisions of sub-section (2), no nomination paper delivered under section 11 shall be accepted unless—

fa) a sum of two thousand rupees is deposited in cash by the candidate or by any person on his behalf at the time of its delivery ; or
(b) it is accompanied by a receipt showing that a sum as aforesaid has ~ > been deposited by the candidate or by any person on his behalf at any ~" branch of the National Bank of Pakistan or at a Government Treasury or sub-Treasury.

(2) Not more than one deposit under sub-section (1) shall be required in the case of @ persun who has been nominated as a candidate by more than one nomination papers.

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. 4B. Scrutiny.—(1) The candidates, their proposers and seconds, and an

agent authorised in writing in this behalf. by each candidate, may attend the scrutiny of the nomination papers, and the Returning Officer shall give them reasonable opportunity for examining all nomination papers delivered to him

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(a) The Returning Officer shall, in the presence of the persons attending the scrutiny under sub-section (1), examine the nomination papers and decide any objection raised by any such person to any nomination.

(3) The Returning Officer may, either of his own motion or upon any objection, conduct such summary inquiry as he may think fit, and reject any nomination paper if he is satisfied that—

(a) the candidate is not qualified to be elected as a member;

(b) the proposer or the seconder is not qualified to subscribe to the nomination paper;

(c) any provision of section 11 or section 12 has not been complied with; or

(d) the signature of the proposer or seconder is not genuine; 'Provided that—

'@ the rejection of a nomination paper shall not invalidate the nomination of a candidate by any other valid nomination paper;

(ii) the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial nature, and may allow any such defect to be remedied forthwith; and

(iii) the Returning Officer shall not inquire into the correctness or validity of any entry in the electoral roll.

(4) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting it and shall, in the case of rejection, record a brief statement of the reasons therefor.

(5) Where the nomination of a candidate has been rejected under this section by a Returning Officer, an appeal shall lie, within two days of the scrutiny day, to the Commissioner; and any order passed by the Commissioner

- on such appeal shall be final.

14. Publication of the list of candidates.—(1) The Returning Officer shall, after the scrutiny of nomination papers, prepare and publish in the prescribed manner a list of candidates who have been validly nominated.

. . . (2) In case an appeal against rejection of a nomination paper is accepted by the Commissioner, the list of validly nominated candidates shall be revised accordingly.

... 15. Withdrawals.—(1) Any validly nominated candidate may, by notice in writing signed by him and delivered on or before the withdrawal day to the Returning Officer either by such candidate in person. or by an agent authorised to be him in writing in this behalf, withdraw his candidature.

(2) A notice of withdrawal under sub-section (1) shall, in no circumstances, be open to recall or cancellation.

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(3) On receiving a notice of withdrawal under sub-section (1), the Returning Officer shall, if he is satisfied that the signature on the notice is that of the candidate, cause a copy of the notice to be affixed at some conspicuous place in his office.

(4) The Returning Officer shall, on the day next following the withdrawal day, prepare and publish in the prescribed manner a list of contesting candidates and forward a copy thereof to each such candidate, giving public notice of the date, hour and place of the poll.

16. Death of a candidate after nomination.—(1) If a validly nominated candidate who has not withdrawn his candidature dies before the completion of the proceedings relating to the election, the Returning Officer shall, by public notice, terminate such proceedings and make a report to the Commissioner.

(2) Where the proceedings relating to an election have been terminated under sub-section (1), fresh proceedings shall be commenced in accordance with the provisions of this Act as if for a new election.

17. Postponement, etc., under certain circumstances.—Where the proceedings relating to nomination, scrutiny or withdrawal cannot, for reasons beyond the control of the Returning Officer, take place on the day appointed therefor, he may postpone or adjourn such proceedings and shall, with the approval of the Commissioner, by public notice fix another day for the proceedings so postponed or adjourned and, if necessary, also the day or days for any subsequent proceedings.

18. Uncontested election.—(1) Where after scrutiny under section 13 or withdrawal under section 15, the number of validly nominated candidates or, as the case may be, the contesting candidates from a Province is less than or equal to the number of seats to be filled for that Province, the Returning Officer shall, by public notice declare such candidates to be elected to the seats: and send a return of election to the Commissioner:

Provided that, if after scrutiny any candidate indicates that he intends to file an appeal under sub-section (5) of section 13 against the rejection of his nomination paper, no person shall be declared elected uncontested until the period for filing such appeal has expired and no such appeal has been filed, or where an appeal is filed, until the disposal of such appeal.... .

(2) The Commissioner shall publish in the official Gazette the 3 names of the returned candidates, :

(3) Where the number of candidates declared elected under sub-section (1) is less than the number of seats to be filled, fresh proceedings shall be commenced in accordance with the provisions of this Act as if for a new election, to fill the seat or, as the case may be, seats remaining vacant.

" 19. Contested election.—If after withdrawals, if any, the number of candidates exceeds the number of seats, the Returning Officer shall, on the appointed day, conduct the poll, after giving a notice thereof to the contesting candidates.

20. Hours of poll.—The Returning Officer shall, subject to any direction of the Commissioner, fix the hours during which the poll shall be taken and give public notice of the hours so fixed.

21. Absence of candidates, etc., not to invalidate acts, etc.—Where any act or thing is required or authorised by this Act to be done in the presence of a candidate or an agent authorised by him in writing in this behalf, the failure of such person to attend at the time and place appointed for the purpose shall not invalidate any act or thing otherwise validly done.

22. Adjourned poll.—(1) If at any time the poll is interrupted or obstructed for reasons beyond the control of the Returning Officer, he may stop the poll and, when he so stops the poll, shall inform the Commissioner of his having done so.

(2) Where a poll is stopped under sub-section (1), the Returning Officer shall immediately report the circumstances to the Commissioner and as soon as may be appointed, with the approval of the Commissioner, a day for a fresh poll and fix the place at which, and the hours during which, such fresh poll shall be taken.

(3) Ali voters shall be allowed to vote at the fresh poll taken under sub-section (2); and no vote cast at the poll stopped under sub-section (1) shall be counted.

23. Voting procedure.—(1) All voters shall be entitled to vote at an election.

(2) No vote shall be given by proxy.

(3) Each voter shall have only one transferable vote irrespective of the number of seats to be filled.

(4) A voter shall cast his vote in the prescribed manner.

(5) The ballot papers shall be in such form as the Commissioner may specify.

(6) The polls shall be by secret ballot.

24. Proceedings at the close of poll.—(1) Immediately after the close of poll, the Returning Officer shall proceed with the counting of votes in the prescribed manner.

(2) On the completion of counting, the Returning Officer shall prepare and certify a return of the election and submit the same to the Commissioner in the prescribed manner.

25. Declaration of result of election.—On the receipt of the returns of the election under sub-section (2) of section 24, the Commissioner shall publish in the official Gazette the names of the returned candidates.

26. Return or forfeiture of deposit.—(i) After the termination of the proceedings relating to an election under section 16 where the proceedings have been so terminated, or after the declaration of result of an election under section 18 or section 25, the deposit made under section 12 in respect of any candidate shall be returned to the person making it or to his legal representative, except the

deposit in respect of a candidate for whom no voter has either voted or indicated any preference.

(2) A deposit which is not required to be returned under sub-section (1), shall be forfeited to the Federal Government. :

Cuapren IV.—ELECTION EXPENSES

27. Election expenses.—In. this Chapter, “election expenses” means any expenditure incurred or payment made, whether by way of gift, loan, advance, deposit or otherwise, for the arrangement, conduct or benefit of, or in connection with, or incidental to, the election of a candidate, including expenditure on

~ account of issuing circulars or publications or otherwise presenting to the voters the candidate or his views, aims or objects, but does not include the deposit made under section 12.

28. Restriction on election expenses.—(1) No person shall, ‘except to the extent provided in sub-section (2), make any payment whatsoever towards the election expenses of a candidate except to such candidate.

(2) No person other than a candidate shall incur any election expenses of the candidate :

; Provided that any person may, if so authorised by a contesting candidate in writing specifying a maximum amount, to the extent of such amount, make payment for staticnery, postage, telegram and other petty expenses.

(3) The election expenses of a contesting candidate shall not exceed five thousand rupees.

29. Return of election expenses.—(1) Every contesting candidate shall, within thirty days after the publication of the name of the returned candidates under section 18 or section 25, submit to the Returning Officer a return of election expenses in the prescribed form containing—

(a) a statement of all payments made by the contesting candidate together with all the bills and receipts ;

(b) a statement of all disputed claims, if any, of which the contesting candidate is aware ;

(c) a statement of all unpaid claims, if any, of which the contesting candidate is aware ; and

(d) a statement of all moneys, securities or equivalent of money received from any person for the purpose of election expenses specifying the name of every such person.

(2) The return submitted under sub-section (1) shall be accompanied by an affidavit sworn by the contesting candidate.

30. Inspection of returns, etc.—(1) The return and documents submitted under section 29 shall be kept by the Returning Officer in his office or at such other convenient place as he may think fit and shall, during one year from the date of their receipt by him, be open to inspection by any person on payment of the prescribed fee.

(2) The Returning Officer shall, on an application made in this behalf and on payment of the prescribed fee, give any person copies of any return or document kept under sub-section (1) or of any part thereof. -

CyapreR V.—ELECTION DISPUTES:

31. Election not to be questioned except by election petition or appeal.—

(1) Save as provided in section 32, no election shall be called in question except by an election petition under section 34.

(2) No question that can be settled in an appeal under section 32 shall be raised by an election petition or before any court or authority whatsoever, nor shall any question that can be raised by an election petition be raised . before any court or authority other than an Election Tribunal.

32. Appeal against count.—(1) A contesting candidate who is aggrieved by any proceedings under section 24 relating to the count may prefer an appeal challenging the count to the Commissioner.

(2) An appeal under sub-section (1) may be made by the candidate in person, or through a person authorised in writing by the candidate in this behalf, within three days next following the date of the completion of the count 'under section 24.

(3) The appeal shall be addressed to the Commissioner and shall be filed with the Commissioner or with the Secretary, Election Commission.

(4) The appeal shall be in the form of a memorandum which shall state the grounds for such appeal and shall be accompanied by as many copies thereof as the number of contesting candidates at an election.

(5) The Commissioner may, after giving the parties concerned an opportunity of being bheard,—

(a) dismiss the appeal; or

(b) if he does not dismiss the appeal, determine the result of the election on the count of valid votes as corrected, after adjudicating upon the invalid votes, if any, and make such consequential order as may be necessary.

(6) The decision of the Commissioner on appeal under sub-section (5) shall be final.

33. Commissioner to have certain powers of a court.—For the purpose of the disposal of an appeal under section 32, the Commissioner shall ~ have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters, that is to say—

(a) enforcing the attendance of any person and examining him on oath ;
(b) compelling the discovery and production of documents, articles or things ; ;

- (c) issuing commissions for the examination of witnesses ;
 - (d) requiring the deposit of diet and travelling expenses of witnesses ;
 - (e) receiving evidence on affidavits ;
 - () granting adjournments ; and
- (g) summoning and examining suo motu any person whose evidence appears to be material. ; Te

34. Election petition.—An election petition shall be presented to the Commissioner within forty-five days of the publication of the result of the election in the official Gazette and shall be accompanied by a receipt showing that the petitioner has deposited a sum of two thousand rupees at any branch of the National Bank of Pakistan or at a Government Treasury or sub-Treasury in favour of the Commissioner as security for the costs of the petition. °

35. Parties to the petition—The petitioner shall join as respondents to his election petition— Lo

(a) all contesting candidates; and

(b) any other candidate against whom any allegation, if any, of any corrupt or illegal practice is made, and shall serve personally or by registered post on each such respondent a copy of his Petition.

Explanation.—In this section and in the following provisions of this Chapter, “corrupt or illegal practice” means a “corrupt practice” or an “illegal practice” within the meaning of Chapter VI. a.

36. Contents of petition.—(1) Every election petition shall contain— .

(a) a precise statement of the material facts on which -the petitioner Telies ; arr

(b) full particulars of any corrupt or illegal practice or other illegal act alleged to have been committed, including as full a statement as possible of the names of the parties alleged to have committed such

corrupt or illegal practice or illegal act and the. date and place of the commission of such practice or act; and —

(c) the relief claimed by the petitioner.

(2) A petitioner may claim as relief any of the following declarations, namely— 7

(a) that the election of the returned candidate is void ; or

(b) that the election of the returned candidate is void' and that the petitioner or some other person has been duly elected; or

(c) that the election as a whole is void.

(3) Every election petition and every schedule or annex to that petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908), for the verification of pleadings.

37. Procedure on receipt of petition by the Commissioner.—(1) The Commissioner shall return an election petition to the petitioner if he finds that it has not been presented within the time specified in section 34 or is not accompanied by a receipt of the deposit required to be made under that section.

(2) If an election petition is not returned under sub-section (1), the Commissioner shall refer it for trial to a Tribunal.

38. Appointment of Tribunal.—(i) For the trial of election petitions under this Act the Commissioner shall appoint as many Election Tribunals as may be necessary.

(2) A Tribunal shall consist of a person who is a Judge of a High Court.

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39. Power to transfer petition—(1) The Commissioner, either of his motion or on an application made in this behalf by any of the parties, may, at any stage, transfer an election petition from one Tribunal to another Tribunal, and the Tribunal to which the election petition is so transferred shall Proceed with the trial of the petition from the stage at which it is transferred :

Provided that the Tribunal to which an election petition is so transferred -- may, if it thinks fit, recall and examine any of the witnesses already examined.

40. Place of trial.—The trial of an election petition shall be hel place or places as the Tribunal may think fit. Pe © held at such

41. Advocate-General to assist the Tribunal.—The Advocate-General for a Province shall, if a Tribunal so requires, assist the Tribunal at the hearing of an election petition in such manner as it may require.

42. Appearance before Tribunal.—Any appearance, application or act before a Tribunal may be made or done by a party in person or by an advocate or any other person entitled or allowed to plead in any civil court and duly appointed to act on his behalf:

Provided that the Tribunal may, where it considers it necessary, direct any party to appear in person.

43. Procedure before Tribunal.—(1) Subject to the provisions of this Act and the rules, every election petition shall be tried, as nearly as may be, in accordance with the procedure for the trial of suits under the Code of Civil Procedure, 1908 (Act V of 1908):

Provided that the Tribunal may—

(a) make a memcrandum of the substance of the evidence of each witness as his examination proceeds unless it considers that there is special reason for taking down the evidence of any witness in full ;

(b) refuse to examine a witness if it considers that his evidence is not material or that he has been cailed on a frivolous ground for the purpose of delaying the proceedings.

(2) Subject te the provisions of this Act, the Evidence /.ct, 1872 (7 of 1872) shall apply for the trial of an election petition.

(3) The Tribunal may, at any time, upon such terms and on payment cl such fee as it may direct, allow a petition to be amended in such manner as may, in its opinion, be necessary for ensuring a fair and effective trial and for determining the real questions at issue, so however that no new ground of challenge to the election is permitted to be raised.

(4) At any time during the trial of an election petition, the Tribunal may call upon the petitioner to deposit such further sum by way of security, in addition to the sum deposited under section 34. as it may think fit.

44, Dismissal of petition during trial——The Tribunal shall dismiss an election petition, if— -

(a) the provisions of section 35 or section 36 have not been complied with ; or

(b) the petitioner fails to make the further deposit required under sub-section (4) of section 43.

45. Powers of the Tribunal.—(1) The Tribunal shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), and shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(2) For the purpose of enforcing attendance of witnesses, the local limits of the jurisdiction of the Tribunal shall be the territories to which this Act extends,

46. Farther provision relating to evidence and witnesses.—(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no document shall be inadmissible in evidence at the trial of an election petition only on the ground that it is not duly stamped or registered.

(2) No witness shall be excused from answering any question as to any matter in issue, or relevant to a matter in issue, in the trial of an election petition upon the ground that the answer to such question may incriminate or tend to incriminate him or that it may expose or tend to expose him to any penalty or forfeiture, but no witness shall be required or permitted to state for whom he has voted at an election.

(3) A witness who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the Tribunal and an answer given by him to a question put by or before the Tribunal shall not, except in the case of any criminal proceeding for perjury in respect of his evidence, be admissible in evidence against him in any civil or criminal proceedings.

(4) A certificate of indemnity granted to any witness under sub-section (3) may be pleaded by him in any court and shall be a full and complete defence to or upon any charge under Chapter IX A of the Pakistan Penal Code (Act XLV of 1860), or under this Act arising out of the matter to which such certificate relates but it shall not be deemed to relieve him from any disqualification in connection with an election imposed by any law for the time being in force.

(5) The reasonable expenses incurred by any person in attending to give evidence may be allowed to him by the Tribunal and shall, unless the Tribunal otherwise directs, be deemed to be part of the costs.

47. Recrimination where seat is claimed.—(1) Where in an election petition a declaration is claimed that a candidate other than the returned candidate has been duly elected, the returned candidate or any other party may produce evidence to prove that the election of such other candidate would have been declared void had he been the returned candidate and had a petition been presented calling his election in question :

Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he or it has, within the fourteen days next following the commencement of the trial, given notice to the Tribunal of his or its intention so to do and has also deposited the security referred to in section 34.

(2) Every notice referred to in sub-section (1) shall be accompanied by a statement of the case, and all the provisions relating to the contents, verification, trial and procedure of an election petition, or to the security deposit in respect of an election petition, shall apply to such a statement as if it were an election petition.

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48. Decision of the Tribunal.—(1) The Tribunal may, upon the conclusion of the trial of an election petition, make an order—

- (a) dismissing the petition ;
- (b) declaring the election of the returned candidate to be void;
- (c) declaring the election of the returned candidate to be void and the .. petitioner or any other contesting candidate to have been duly elected ; or
- (d) declaring the election as a whole to be void.

(2) Save as provided in sub-section (3), the decision of a Tribunal on an election petition shall be final.

(3) Any person aggrieved by a decision of the Tribunal, may, within thirty days of the announcement of the decision, appeal to the Supreme Court on any question, whether of law or fact, arising from the decision.

49. Ground for declaring election of returned candidate void.—(1) The Tribunal shall declare the election of the returned candidate to be void if it is satisfied that—

- (a) the nomination of the returned candidate was invalid; or
- (b) the returned candidate was not, on the nomination day, qualified for, or was disqualified from, being elected as a member; or
- (c) the election of the returned candidate has been procured or induced by any corrupt or illegal practice ; or
- (d) a corrupt or illegal practice has been committed by the returned candidate or by any other person with the consent or connivance of the candidate.

(2) The election of a returned candidate shall not be declared void on the ground—

- (a) that any corrupt or illegal practice has been committed if the Tribunal is satisfied that it was not committed by, or with the consent or connivance of, that candidate and that the candidate took all reasonable precaution to prevent its commission; or
- (b) that any of the other contesting candidates was, on the nomination day, not qualified for, or was disqualified from, being elected as a member.

50. Ground for declaring a person other than a returned candidate elected.—The Tribunal shall declare the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been duly elected, if it is so claimed by the petitioner or any of the respondents and the

Tribunal is satisfied that the petitioner or such other contesting candidate was entitled to be declared elected.

51. Ground for declaring election as a whole void.—The Tribunal shall declare the election as a whole to be void if it is satisfied that the result of the election has been materially affected by reason of—

- (a) the failure of any person to comply with the provisions of this Act or the rules; or
- (b) the prevalence of extensive corrupt or illegal practice at the election.

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52. Other provisions relating to Tribunal.—(1) An order of a Tribunal under section 48 shall take effect on the date on which it is made and shall be communicated to the Commissioner who shall publish it in the official Gazette.

(2) The Tribunal shall, after an election petition has been disposed of, forward the record thereof to the Commissioner who shall retain it for a period of five years from the date of its receipt and shall thereafter cause it to be destroyed.

53. Withdrawal of petition.—(1) An election petition may be withdrawn—

(a) before a Tribunal has been appointed, by leave of the Commissioner ; and

(b) after a Tribunal has been appointed, by leave of the Tribunal.

(2) Where leave is granted by the Tribunal, the petitioner shall be ordered to pay the costs incurred by the respondents to the election petition or such portion thereof as the Tribunal may direct.

54. Abatement on death of petitioner—(1) An election petition shall abate on the death of the petitioner or the sole survivor of several petitioners.

(2) Where a petition abates under sub-section (1) after a Tribunal has been appointed, notice of the abatement shall be given by the Tribunal to the Commissioner.

55. Death or withdrawal of respondent.—If, before the conclusion of the trial of an election petition, a respondent dies or gives notice in the prescribed form that he does not intend to contest the petition, and no respondent remains to contest the petition, the Tribunal shall, without any further hearing, or after giving such person as it may think fit an opportunity of being heard, decide the case ex parte.

56. Failure of petitioner to appear.—Where, at any stage of the trial of an election petition, no petitioner makes an appearance, the Tribunal may dismiss the petition for default, and make such order as to costs as it may think fit.

57. Order as to costs—(1) The Tribunal shall, when making an order under section 48, also make an order determining in its discretion the costs and specifying the persons by and to whom such costs are to be paid.

(2) If, in any order as to costs under sub-section (1), there is a direction for the payment of costs by any party to any person, such costs shall, if they have not already been paid, be payable in full, and shall upon application in writing in that behalf made to the Commissioner within six months of the order by the person to whom costs have been awarded, be paid as far as possible, out of the security for costs deposited by such party.

(3) Where no costs have been awarded against a party who has deposited security for costs, or where no application for payment of costs has been made

within the aforesaid six months, or where a residue remains after costs have been paid out of the security, such security or the residue thereof, as the case may be, shall, upon application in writing therefor by the person who made the deposit or by his legal representative, be returned by the Commissioner to the person making the application.

(4) Any order for costs may be enforced upon application in writing made to the principal civil court of original jurisdiction of the district in which the person from whom the costs are to be recovered resides or owns property, as if such order were a decree passed by that court :

Provided that no proceeding shall be brought under this sub-section except in respect of costs which have not been recovered by an application under sub-section (2).

CHAPTER VI.—OFFENCES, PENALTY AND PROCEDURE

58. Corrupt practice.—A person is guilty of corrupt practice if he—

- (a) contravenes the provisions of section 28 ;
- {b) is guilty of bribery, personation or undue influence ;
- (c) makes or publishes a false statement—

(i) concerning the personal character of a candidate or any of his relations calculated to adversely affect the election of such candidate or for the purpose of promoting or procuring the election of another candidate, unless he proves that he had reasonable grounds for believing, and did believe, the statement to be true; or

(ii) regarding the withdrawal of candidate ;

(d) calls upon or persuades any person to vote, or to refrain from voting, for any candidate on the ground that he belongs to a particular religion, community, race, caste, sect or tribe ;

(e) knowingly, in order to support or oppose a candidate, lets, lends, employs, hires, borrows or uses any vehicle or vessel for the purpose of conveying to or from the polling station any voter except himself and members of his immediate family ; or

(f) causes or attempts to cause any person present and waiting to vote at the polling station to depart without voting.

59. Bribery—A person is guilty of bribery if he, directly or indirectly by himself, or by any other person on his behalf,—

(1) receives or agrees to receive or contracts for any gratification for voting or refraining from voting, or for being or refraining from being a candidate at, or for withdrawing from, an election ;

(2) gives, offers or promises any gratification to any person—
(a) for the purpose of inducing—

(i) a person to be, or to refrain from being, a candidate at an election ;

(ii) a voter to vote, or refrain from voting, at an election; or
(iii) a candidate to withdraw from an election ; or
(6) for the purpose of rewarding—

(i) a person for having been, or for having refrained from being, a candidate at an election ;

(ii) a voter for having voted or refrained from voting at an election ; or ~

Gii) a candidate for having withdrawn from an election.

Explanation—In this section “ gratification” includes a gratification in money or estimable in money and all forms of entertainment or employment.

60. Personation.—A person is guilty of personation if he votes, or applies for a ballot paper for voting, as some other person whether that other person is living or dead or fictitious.

61. Undue influence.—A person is guilty of undue influence if he,—

(1) in order to induce or compel any person to vote or refrain from voting, or to offer himself as a candidate, or to withdraw his candidature, at an election, directly or indirectly, by himself or by another person on his behalf,—

(a) makes or threatens to make use of any force, violence or restraint ;

(b) inflicts or threatens to inflict any injury, damage, harm or loss ;

(c) calls down or threatens to call down divine displeasure or the displeasure of any saint or pir;

(d) gives or threatens to give any religious sentence; or

(e) uses or threatens to use any official influence or governmental patronage ; or

(2) on account of any person having voted or refrained from voting, or having offered himself as a candidate, or having withdrawn his candidature, does any of the acts specified in clause (1); or

(3) by abduction, duress or any fraudulent device or contrivance,—

(a) impedes or prevents the free exercise of the franchise by a voter ; or

(b) compels, induces or prevails upon any voter to vote or refrain from voting.

Explanation.—In this section, “harm” includes social ostracism or ex-communication or expulsion from any caste or community.

62. Penalty for corrupt practice—Any person guilty of corrupt practice shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

63. illegal practice.—(1) A person is guilty of illegal practice if he—

(a) fails to comply with the provisions of section 29;

(b) obtain or procures, or attempts to obtain or procure, the assistance of any person in the service of Pakistan to further or hinder the election of a candidate ;

(c) votes or applies for a ballot paper for voting at an election knowing that he is not qualified for, is disqualified from, voting ;

(d) votes or applies for a ballot paper for voting for more than once in the same polling station ;

(e) removes a ballot paper from a polling station during the poll; or

(f) -knowingly induces or procures any person to do any of the afore- said acts,

(2) A person guilty of illegal practice shall be punishable with fine which may extend to two thousand rupees.

64. Prohibition of public meetings, etc., during certain period.—(1) No person shall convene, hold or attend any public meeting, and no person shall promote or join in any procession within a Province, during a period of forty-eight hours ending at midnight following the conclusion of the poll for any election in that Province.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

65. Prohibition of canvassing in or near polling station—A person is guilty of an offence punishable with fine which may extend to one thousand rupees if he, within a radius of four hundred yards of the polling station, on the polling day,— .

(a) canvasses for votes ;

(c) persuades any voter not to vote at the election or for a particular candidate ; or ;

(ad) exhibits, except with the permission of the Returning Officer and at a place reserved for the candidate beyond the radius of one hundred yards of the polling station, any notice, sign, banner or flag designed to encourage the voters to vote, or discourage the voters from voting, for any contesting candidate.

66. Disorderly conduct near polling station—A person is guilty of an offence punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both, if he, on the polling day,—

(a) uses, in such manner as to be audible within the polling station, any gramophone, megaphone, loudspeaker or other apparatus for re-producing or amplifying sounds ;

~(b) persistently shouts in such manner as to be audible within the polling station ;

(c) does any act which—

(i) disiurbs or causes annoyance to any voter visiting a polling sta- tion for the purpose of voting, or

(ii) interferes with the performance of the duty of a Returning Officer or a Polling Officer or any other person performing any duty at a polling station; or

(d) abets the doing of any of the aforesaid acts.

67. Tampering with papers.—(1) Except as provided in sub-section (2), a person is guilty of an offence punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both, if he—

(a) intentionally defaces or destroys any nomination paper, ballot paper or official mark on a ballot paper ;

(b) intentionally takes out of the polling station any ballot paper or puts into any ballot box any ballot paper other than the ballot paper he is authorised by law to put in;

(c) without due authority—

Gi) supplies any ballot paper to any person ;

Gi) destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers in use for the purpose of election ; or

Gii) breaks any seal affixed in accordance with the provisions of this Act or the rules;

(d) forges any ballot paper or official mark; or

(e) causes any delay or interruption in the beginning, conduct or completion of the procedure required to be immediately carried out on the close of the poll.

(2) A Returning Officer, Polling Officer or any other Officer or clerk on duty in connection with the election who is guilty of an offence under sub-section (1) shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

68. Interference with the secrecy of voting.—A person is guilty of an offence punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both, if he—

(a) interferes or attempts to interfere with a voter when he records his vote ;

(b) in any manner obtains or attempts to obtain in a polling station information as to the candidate or candidates for whom a voter is about to vote or mark his preferences or has voted and marked his preferences ; or

(c) communicates at any time any information obtained in a polling station as to the candidate or candidates for whom a voter is about to vote or mark his preferences or has voted and marked his preferences.

69. Failure to maintain secrecy—A Returning Officer or Polling Officer, or

any candidate or agent of a candidate attending a polling station or any person attending at the counting of votes, is guilty of an offence punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both, if he—

- (1) fails to maintain or aid in maintaining the secrecy of voting;
- (2) communicates to any person before the poll is closed, except for any purpose authorised by any law, any information as to the official

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(3) communicates any information obtained at the counting of votes as to the candidates for whom any vote is given or a preference is recorded on any particular ballot paper.

70: Officials not to influence voters.—A Returning Officer, Polling Officer or any other officer or clerk on duty in connection with an election, or any member of a police force, is guilty of an offence punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both, if he, in the conduct or management of an election or maintenance of order at a polling station,—

(a) persuades any person to give his vote ;

{b) dissuades any person from giving his vote;

(c) influences in any manner the voting of any person; or

(d) does any other act calculated to influence the result of the election.

71. Breaches of official duty in connection with election—A Returning Officer, Polling Officer or any other person employed by any such officer in connection with his official duties imposed by or under this Act or the rules is guilty of an offence punishable with fine which may extend to one thousand rupees if he, wilfully and without reasonable cause, commits breach of any such official duty, by act or omission.

72. Assistance by Government servant.—A person in the service of Pakistan is guilty of an offence punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both, if he misuses his official position in a manner calculated to influence the result of the election.

73. Certain powers of a police officer.—A police officer may—

{a} arrest without warrant, notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), any person—

(i) who commits personation or an offence under section 66 if the Returning Officer directs him to so arrest such person ;

(ii) who, being removed from the polling station by the Returning Officer, commits any offence at the polling station;

(b) remove any notice, sign, banner flag used in contravention of section 65; and

(c) seize any instrument or apparatus used in contravention of section

and take such steps, including use of force, as may be reasonably necessary for preventing such contravention.

74. Certain offences cognizable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), an offence under section 58 or section 65 or sub-section (1) of section 67 shall be a cognizable offence.

7S. Prosecution for offences by public officers—(1) No court shall take cognizance of an offence under sub-section (2) of section 67, section 69, section 70, section 71 or section 72, except upon a complaint in writing made by order of, or under authority from, the Commissioner. . .

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(2) The Commissioner shall, if he has reasons to believe that any offence specified in sub-section (1) has been committed, cause such inquiries to be made or prosecution to be instituted as he may think fit.

76. Limitation for prosecution for corrupt or illegal practices—No prosecution for an offence under section 58 or section 65 shall be commenced except—

- (a) within six months of the commission of the offence ; or
- (b) if the election at which the offence was committed is subject to an election petition and the Tribunal has made an order in respect of such offence, within three months of the date of such order.

CuHaPteR VII—BYE-ELECTION

77. Casual vacancies.—When, before the expiration of the term of office of a member elected to the Senate, his seat becomes vacant or is declared vacant or his election to the Senate is declared void, the Commissioner shall, by notification in the official Gazette, call upon the elected members of the Provincial Assembly by the members of which the member was elected to elect a person for the purpose of filling the vacancy so caused before such date as may be specified in the notification ; and the provisions of this Act and of the rules shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

Cuaprer VIII—DISQUALIFICATIONS

78. Disqualification—A person shall be disqualified from being elected as and from being, a member of the Senate, if—

- (a) he has been, on conviction for any offence, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release ; or
- (b) he has been dismissed or removed or compulsorily retired from the service of Pakistan, unless a period of five years has elapsed since his dismissal or removal or compulsory retirement; or
- (c) he, whether by himself or by any person in trust for him or for his benefit or on his account or as a member of a Hindu undivided family, has any share or interest in a contract, not being a contract between a co-operative society and Government, for the supply of goods to, or for the execution of any work or the performance of any service undertaken by, ~~Government~~ :

Provided that the disqualification under this clause shall not apply to a person :—

- (i) where the share or interest in the contract devolves on him by inheritance or succession or as a legatee, executor or administrator, until the expiration of six months after it has so devolved on him; or

{ii} where the contract has been entered into by or on behalf of a public company as defined in the Companies Act, 1913 (VII of 1913), 6f which he is a shareholder but is neither a director nor a person holding an office of profit under the company nor a managing agent ; or

(iii) where the contract entered into by him in the course of his trade or business with the Government for the supply of goods to, or for the execution of any work or the performance of any service undertaken by, Government does not subsist ;

Explanation.—A contract shall not be deemed to subsist by reason only of the fact that the person was enrolled as a contractor with the Government or that the Government has not performed its part of the contract, either wholly or in part.

(iv) where he is a member of a Hindu undivided family and the contract has been entered into by any other member of that family in the course of carrying on a separate business in which he has no share or interest ;

(d) he is a managing agent, manager or secretary of, or holds any other office carrying the right to remuneration in, any company or corporation (other than a cooperative society) in the capital of which the Government has not less than twenty-five per cent share or which is managed by Government; or -

(e) he is found guilty of a corrupt or illegal practice under any other Jaw for the time being in force, unless a period of five years has elapsed from the date on which that order takes effect; or

(f) he holds any office of profit in the service of Pakistan other than the following offices, namely :—

(i) an office which is not a whole time office remunerated either by salary or by fee ;

ii) the office of Lambardar, whether called by this or any other title ;

Gii) the Qaumi Razakars; and

(iv) any office the holder whereof, by virtue of holding such office, is liable to be called up for military training or military service under any law providing for the constitution or raising of a force ;

Explanation—For the avoidance of doubt, it is hereby declared that a Judge of the Supreme Court or a High Court, the Auditor-General and an Advocate-General are persons holding office of profit in the service of Pakistan.

79. Disqualification en account of certain offences Where a person has . been convicted for having exceeded the limit of election expenses laid down by section 28 or having failed to file the return of election expenses in accordance with section 29 or for any other offence under this Act, not being an offence for which he has been sentenced to imprisonment for a term of not less than two years, or has been found guilty of any corrupt or illegal practice by a Tribunal, he shall, if the Commissioner makes an order to that effect, be disqualified, for such period not exceeding five years as may be specified in the order, from being,

or being elected as, a member of the Senate.

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(2) 80. Removal and remission of disqualification—The Commissioner may, upon an application made in this behalf, remit any disqualification for failure to submit the return of election expenses or for any error or incorrect statement in such return, if he is satisfied that such failure or error occurred or incorrect statement was made due to circumstances beyond the control of the applicant.

Cuaprer [X.—MISCELLANEOUS

81. Extension of time for completion of election—It shall be competent for the Commissioner, for reasons which he considers sufficient, to extend the time for the completion of any election by making necessary amendments in the notification issued under section 10.

"82. Term of office—(1) The term of office of a member of the Senate shall commence on the date of the first meeting of the Senate held after the names of the persons elected to the Senate are notified by the Election Commission:

Provided that the term of office of a member elected in the year 1973 and having a term of four years shall expire after completion of four years from the date of making the oath uader Article 65.

(2) If the election of a member is declared void and another candidate is declared to have been duly elected in his place, the term of such candidate shall be the unexpired term of such member.

(3) If the election of all the members declared elected under section 18 or section 25 is declared void, the term of the members elected in their places shall be the unexpired term of the members whose election is declared void.

\$3. Vacancy in membership of Provincial Assemblies not to invalidate

- elecfion.—No election by the members of a Provincial Assembly shall bz calied

in question on the ground merely of the existence of any vacancy in the membership of that Provincial Assembly.

84. Commissioner to ensure fair election, etc.—Save as otherwise provided, the Commissioner may issue such instructions and exercise such powers including the power to review an order passed by any officer under this Act or the rules, and make such consequential orders, as may, in his opinion, be necessary for ensuring that an election :s conducted honestly, justly and fairly and in accordance with the provisions of this Act and the rules.

85. Directions of Commissioner in certain miatters—Anything required to be done to carry out the purposes of this Act for which no provision or no sufficient provision exists shall be done by such authority and in such manner as the Commissioner may direct.

86. Jurisdiction of courts barred.—No court shail question the legality of any action taken in good faith by, or under the authority of, the Commissioner, a Returning Officer or a Polling Officer or any decision given by any of them or by any other officer or authority appointed under this Act or the rules.

. 87. Protection of action taken in good faith—No suit, prosecution or "other legal proceeding sha! lie against the Commissioner or any officer or other person in respect of anything which is in good faith done or intended to be done under or in pursuance of this Act or any rule or order made, or direc-
tion given, thereunder.

88. Power to make rules.—(1) The Federal Government may, in consultation with the Commissioner, make rules for carrying out the purposes of this Act.

- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—
- (a) the duties of Returning Officers and Polling Officers at polling stations ;
 - (b) the identification of voters ;
 - (c) the manner in which votes are to be given both, generally and in the "ease of illiterate voters or voters under physical or other disability ;
 - (d) the procedure as to voting to be followed at elections held in accordance with the system of proportional representation by means of the single transferable vote ;
 - '(e) the scrutiny and counting of votes, including cases in which a re-counting of votes should be made before the declaration of the result of election ;
 - '(f) the safe custody of ballot boxes, ballot papers and other election papers, the period for which such papers shall be preserved and the inspection and production of such papers;
 - . (g) the appointment of agents of candidates; and
 - (h) any other matter which is to be or may be prescribed under this Act.

M. A. HAQ,
Secretary.

PRINTED BY THE MANAGER, PRINTING CORPORATION OF PAKISTAN PRESS, ISLAMABAD
PUBLISHED BY THE MANAGER OF PUBLICATIONS, KARACHI