



THE SENATE (ELECTION) ACT, 1975



CONTENTS

CHAPTER I

PRELIMINARY

1. Short title and commencement.
2. Definitions.

CHAPTER II

ADMINISTRATIVE MACHINERY FOR THE CONDUCT OF ELECTIONS.

3. Organisation and conduct of election.
4. Delegation of powers.
5. Returning officers.
6. Polling stations.
7. Polling officers.
8. Duties and powers of returning officer.

CHAPTER III

CONDUCT OF ELECTION

9. Supply of list of voters.
10. Notification for election.
11. Nomination for election.
12. Deposit.
13. Scrutiny.
14. Publication of the list of candidates.
15. Withdrawal.
16. Death of a candidate after nomination.
17. Postponement etc, under certain circumstances.
18. Uncontested election.
19. Contested election.
20. Hours of poll.
21. Absence of candidates, etc, not to invalidate acts, etc.
22. Adjourned poll.
23. Voting procedure.

24. Proceedings at the close of poll.
25. Declaration of result of election.
- 25A. Yearly submission of statement of assets and liabilities.
26. Return or forfeiture of deposit.

CHAPTER IV ELECTION EXPENSES

27. Election expenses.
28. Restriction on election expenses.
29. Return of election expenses.
30. Inspection of returns, etc.

CHAPTER V ELECTION DISPUTES

31. Election not to be questioned except by election petition or appeal.
32. Appeal against count.
33. Commissioner to have certain powers of a court.
34. Election petition.
35. Parties to the petition.
36. Contents of petition.
37. Procedure on receipt of petition by the Commissioner.
38. Appointment of Tribunal
39. Power to transfer petition.
40. Place of trial.
41. Advocate-General to assist the Tribunal.
42. Appearance before Tribunal.
43. Procedure before Tribunal.
44. Dismissal of petition during trial.
45. Powers of the Tribunal.
46. Further provision relating to evidence and witnesses.
47. Recrimination where seat is claimed.
48. Decision of the Tribunal.
49. Ground for declaring election of returned candidate void.
50. Ground for declaring a person other than a returned candidate elected.
51. Ground for declaring election as a whole void.
52. Other provisions relating to tribunal.
53. Withdrawal of petition.
54. Abatement on death of petitioner.
55. Death or withdrawal of respondent.
56. Failure of petitioner to appear.
- 56A. Additional Powers of the Tribunal.
57. Order as to costs.

CHAPTER VI OFFENCES, PENALTY AND PROCEDURE

58. Corrupt practice.

59. Bribery.
60. Personation.
61. Undue influence.
62. Penalty for corrupt practice.
63. Illegal practice.
64. Prohibition of public meetings, etc., during certain period.
65. Prohibition of canvassing in or near polling station.
66. Disorderly conduct near polling station.
67. Tampering with papers.
68. Interference with the secrecy of voting.
69. Failure to maintain secrecy.
70. Officials not to influence voters.
71. Breaches of official duty in connection with election.
72. Assistance by Government servant.
73. Certain powers of a police officer.
74. Certain Offences cognizable.
75. Prosecution for offences by public officers.
76. Limitation for prosecution for corrupt or illegal practices.

CHAPTER VII BYE-ELECTION

77. Casual vacancies.
78. Disqualification.
79. Disqualification on account of certain offences.
80. Removal and remission of disqualification.

CHAPTER IX MISCELLANEOUS

81. Extension of time for completion of election.
82. Term of office.
- 82A. Drawing of lots for determining term of Office of individual members.
83. Vacancy in membership of Provincial Assemblies not to invalidate election
84. Commissioner to ensure fair election, etc.
85. Directions of commissioner in certain matters.
86. Jurisdiction of courts barred.
87. Protection of action taken in good faith.
88. Power to make rules.

SENATE (ELECTION) ACT, 1975

¹ACT No. LI OF 1975

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

[2nd July 1975]

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 :-

CHAPTER I.—PRELIMINARY

1. Short title and commencements.— (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, —

(a) "bye-election" means an election to fill a casual vacancy referred to pan section 77 ;

(b) "candidate" means a person proposed as a candidate for election as a member ;

(c) "Chairman" means Chairman of the Senate ;

²[(cc) "Commission" means the Election Commission;

(ccc) "Commissioner" means the Chief Election Commissioner;]

(d) "contesting candidate" means a candidate who has been validly nominated for election as a member and has not withdrawn his candidature ;

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

(f) "election petition" means an election petition made under section 34;

(g) "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 ;

¹For Statement of Objects and Reasons, see Gaz. of P., 1975, Ext., Pt.III, p.619.

The Act has been applied to the Federally Administered Tribal Areas with certain modifications by S.R.O. 746(I)/75, dated the 7th July, 1975, see Gaz. of P, 1975, Ext., Pt.II, p. 1365.

²Ins. by Ord.50 of 02,s.2.

- (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 ;
- (k) "Polling Officer" means a Polling Officer appointed under section 7 ;
- (l) "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 expressions used but not defined in this Act and also used in the Constitution shall, unless the context otherwise requires, have the meanings assigned to them in the Constitution.

CHAPTER 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 Polling 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.

CHAPTER III.—CONDUCT OF ELECTIONS

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) a day for the taking of the poll and the place at which the poll shall be taken.

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.

¹[(2) Every nomination shall be made by a separate nomination paper in the prescribed form signed both by the proposer and the seconder and shall, on solemn affirmation made and signed by the candidate, accompany—

- (a) a declaration that he has consented to the nomination and that he fulfils the qualifications specified in Article 62 of the Constitution and is not subject to any of the disqualifications specified in Article 63 thereof or any other law for the time being in force for being elected as member;
- (b) a declaration about his party affiliation, if any;
- (c) a declaration that no loan for an amount of two million rupees or more, obtained from any bank, financial institution, cooperative society or corporate body in his own name or in the name of his spouse or any of his dependents, or any business concern mainly owned by him or the aforesaid; stands unpaid for more than one year from the due date, or has got such loan written off;
- (d) a declaration that he, his spouse or any of his dependents or a business concern mainly owned by him or the aforesaid, is not in default in payment of government dues or utility charges, including telephone, electricity, gas and water charges of an amount in excess of ten thousand rupees, for over six month, at the time of filing of nomination paper;
- (e) a statement specifying his educational qualifications, occupation, National Identity Card number and National Tax Number, if any, alongwith attested copies thereof; and
- (f) a statement of his assets and liabilities and those of his spouse and dependents on the prescribed form as on the preceding thirtieth day of June;

Explanation.—For the purpose of this section, the expression—

- (i) loan shall mean any loan, advance, credit of finance obtained or written off on or after the 31st day of December, 1985, but shall not include the loan the recovery of which has been stayed or suspended by any order of a court or tribunal, including the High Court and the Supreme Court;

¹Subs. and added by Ord. 50 of 02, s.3.

- (ii) “mainly owned” shall mean holding or controlling a majority interest in a business concern;
- (iii) “taxes” include all taxes levied by Federal Government, Provincial Government or a local government, but shall not include taxes that recovery of which has been stayed or suspended by any order of a court or tribunal;
- (iv) “government dues and utility charges” shall, *inter alia*, include rent, charges of rest houses or lodges owned by the Federal Governments, Provincial Government, local governments or corporations established or controlled by such governments, but shall not include the government dues and utilities charges the recovery of which has been stayed or suspended by any order of a court or tribunal.]

¹[(3) Every nomination paper shall be delivered by the candidate in person to the Returning Officer who shall acknowledge receipt of the nomination paper specifying the date and time of receipt.]

(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.

¹[(6) The nomination form and accompanying declarations and statements shall be open to inspection by the public, and copies thereof may be made available by the Commission in such manner and on payment of such fee as may be prescribed.]

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

- (a) 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 a person who has been nominated as a candidate by more than one nomination papers.

13. Scrutiny.— (1) The candidates, their proposers and seconders, 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 under section 11.

¹Subs. by Ord. 82 of 02,s.2.

(2) 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 ¹[or submits any false or incorrect declaration or statement in any material particular]; or
- (d) the signature of the proposer or seconder is not genuine :

Provided that—

- (i) 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.

¹[(3A) The Returning Officer may, for the purpose of scrutiny, require any agency or authority to produce any document or record.

(3B) Notwithstanding anything contained in sub-section (3), where a candidate deposits any amount of loan, tax or utility charges payable by him before rejection of his nomination paper on the ground of default in payment of such loan, taxes or utility charges, such nomination paper shall not be rejected for default thereof.]

(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.

¹Added and Ins. by Ord.50 of 02, s.4.

¹[(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 ²[or a member of the Commission authorized by the Commissioner]; and any order passed by the Commissioner ²[or such member as the case may be, [on such appeal ³[,after affording to the person referred to in sub-section (1) an opportunity of being heard,] shall be final ²[:]]]

²[Provided that where a nomination paper is rejected by the Returning Officer on the ground that the candidate is defaulter of loan or taxes or government dues or utility charges or has had the loan written off and the candidate pays such loan or , as the case may be, taxes, government dues or utility charges or the written off loan on or before the last date fixed for disposal of appeals and satisfies the Member of the Election Commission that such payment has been made, his nomination shall be treated as having been accepted on that ground.

(6) If the member of the Commission referred to in sub-section (5), is on the basis of information or material coming to his knowledge from any source, satisfied that a candidate whose nomination paper has been accepted is—

(a) a defaulter of loans, taxes, government dues or utility charges or has had any loan written off or is subject to any other disqualification from being elected as member of Senate, he may, on his own motion, call upon such candidate to show cause why his nomination should not be rejected, and if he is satisfied that the candidate is defaulter as aforesaid or has had a loan written off or is subject to any disqualification, he may reject his nomination paper.]

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 by 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..

(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.

¹Sub-section (5) which was Previously amended by Ord. 17 of 1985, s.2 has been subs. by Senate (Election) (Amdt.) Act, 1986 (5 of 1986),s.2.

²Added by Ord.50 of 02,s.2.

³Ins. by Senate (Election) (Amdt.) Act, 1992 (24 of 1992),s.2.

(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 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 appoint, 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) All 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.

¹[(3) Every returned candidate shall, within five days from the date of election, submit return of election expenses in accordance with the provision of section 29.]

¹**[25. Declaration of result of election.** On the receipt of the returns of the election under sub-section (3) of section 24, the Commissioner shall publish in the official Gazette the names of returned candidates.

¹Added by Ord. 50 of 02, s.5.

²Subs., Ins and added by Ord. 50 of 02, ss.6-9.

Provided that the name of a candidate shall not be published who fails to submit the return of election expenses as required by sub-section (3) of section 24.]

25A. Yearly submission of statement of assets and liabilities.— (1) Every member shall in the prescribed form submit a statement of assets and liabilities of his own, his spouse and dependents annually to the Commissioner by the thirtieth day of September each year.

(2) The statements of assets and liabilities submitted under sub-section (1) shall be published in the Official Gazette and copies thereof can be obtained on payment of prescribed fee.

(3) The Commission shall, by the fifteenth day of October each year, notify the names of the members who fail to file statements of assets and liabilities within the period specified in sub-section (1) and by an order, direct that such member shall cease to function till such statement is submitted.

(4) Where a member submits the statement of assets and liabilities under sub-section (1) which is found to be false in material particulars, he may be proceeded under section 62 for committing the offences of corrupt practice.

26. Return or forfeiture of deposit.— (1) 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.

CHAPTER 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 stationery, postage, telegram and other petty expenses.

(3) The election expenses of a contesting candidate shall not exceed ¹[one million and five hundred] rupees.

¹[(4) a Candidate by a statement, explain the particulars of any election expense supported by receipts and voucher of payments made thereof, except where the amount is less than five hundred rupees.]

29. Return of election expenses.—(1) Every contesting candidate ¹[other than a returned candidates] 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.

CHAPTER 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

¹Subs. Ins. and added by Ord. 50 of 02, ss.6-9.

(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 heard,—

(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 traveling expenses of witnesses ;

(e) receiving evidence on affidavits ;

(f) granting adjournments ; and

(g) summoning and examining *suo motu* any person whose evidence appears to be material.

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—

(a) all contesting candidates; and

39. Power to transfer petition.— (1) The Commissioner, either of his own 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:

- (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.

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

- (a) a precise statement of the material facts on which the petitioner relies;
- (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—

- (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.— (1) 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.

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 held at such place or places as the Tribunal may think fit.

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[(1) Subject to the provisions of this Act and the rules, every election petition shall be tried, as nearly as may be tried, in accordance with the procedure laid down by the ²[Commissioner].]

* * * * *

(2) Subject to the provisions of this Act, the ³[Qanun-e-Shahdat Order, 1984 (P.O.No.X of 1984) (I of 1872)] shall apply for the trial of an election petition.

(3) The Tribunal may, at any time, upon such terms and on payment of 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 ⁴[476] 480 and 482 of the Code of Criminal Procedure, 1898 ([Act V of 1898](#)).

¹Subs. by the Senate (Election) (Amdt.) Act, 1985 (10 of 1985),s.2.

²Subs. by the Senate (Election) (Amdt.) Act, 1986 (5 of 1986), s.3.

³Subs. by Ord. 52 of 02,s.10.

⁴Ins.by Act 10 of 1985, s.3.

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

46. Further 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 all election petition.

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 offer contesting candidate to have been duly elected; or
- (d) declaring the election as a whole to be void.

¹[(1A) The trial of the election petition shall proceed day to day and the decision thereof shall be taken by the Tribunal within four months form the date of its receipt from the Commissioner

Provided that where the delay in the proceeding is occasioned by any act or omission of a returned candidate or any other person acting on his behalf the Tribunal may refer to the Commission that such candidate may be declared to have ceased to perform the functions of his office either till the conclusion of the proceedings or for such period as the Commission may direct.]

(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,

¹Ins. by Ord. 50 of 02, s.11.

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.

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 it may think fit.

¹**[56A. Additional powers of the Tribunal.—**(1) If a Tribunal is, on the basis of any material coming to its knowledge from any source or an information laid before it, of the opinion that a returned candidate was a defaulter of loan, taxes, Government dues or utility charges, or has submitted a false or incorrect declaration regarding the payment of loan, taxes, Government dues or utility charges, or has submitted a false or incorrect statement of assets and liabilities of his own, spouse and dependents, under section 11, it may, its own motion or otherwise, call upon any such candidate to show cause why his election should not be declared void and, if it is satisfied that such candidate is defaulter or has submitted false or incorrect declaration as aforesaid, it may without prejudice to any order that may be, or has been, made on an election petition, or any other punishment, penalty or liability which such candidate may have incurred under this Act or under any other law for the time being in force, make an order—

(i) declaring the election of the returned candidate to be void; or

(ii) declaring the election or the returned candidate to be void and any other contesting candidate to have been duly elected.

(2) If on examining the material or information referred to in sub-section (1), a Tribunal finds that there appear reasonable grounds for believing that a returned candidate is a defaulter or has submitted false or incorrect declaration referred to in sub-section (1), it may, pending decision of the motion under sub-section (1), direct that the result of the returned candidate shall not be published in the official Gazette.

(3) No order under sub-section (1) or sub-section (2) shall made unless the returned candidate has been provided an opportunity or being heard.]

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 therefore by the person who made the deposit or by his legal representative, be returned by the Commissioner to the person making the application.

¹Ins. by Ord.50 of 02,s.12.

(4) Any order for costs may be enforced upon application in writing made to the principle 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 the 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;

¹[(aa) files a false or incorrect declaration or statement under sub-section (2) of section 11.]

(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 ,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.

¹Ins. by Ord. 50 of 02,s.13.

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 with drawing 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

(b) 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

(iii) 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 in to the 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 is 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 ¹[five] years, or with fine which may extend to ¹[one million] 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 aforesaid acts.

(2) A person guilty of illegal practice shall be punishable with ²[imprisonment for a term which may extend to six months and fine which may extend to five 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.

¹Subs. by Ord. 50 of 2002, s.14.

²Subs. by Ord. 50 of 02, s.15.

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 ;
- (b) persuades any voter not to vote at the election or for a particular candidate ; or
- (c) 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 reproducing or amplifying sounds;
- (b) persistently shouts in such manner as to be audible within the polling station ;
- (c) does any act which—
 - (i) disturbs or causes annoyance to any voter visiting a polling station 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—
 - (i) supplies any ballot paper to any person;
-

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

(iii) 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 mark; or

(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 66;

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

74. Certain offences cognizable.— ¹[(1)]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.

¹[(2) Notwithstanding anything contained in this Act or any other law for the time being in force, the offences of corrupt practice shall be tried by the Sessions Judge a appeal against his order shall lie before a Division Bench of the High Court.

(3) Where a proceeding against a person for being involved in corrupt practice is initiated on a complaint made by a private individual, and such person is convicted by the court and his conviction is maintained in final appeal, the complainant may be entitled to such reward payable out of the amount of fine as may be imposed by the court:

Provide that where such complaint proves to be false, mala fide, or is made for any ulterior motive to provide benefit to another person, the complainant shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.]

¹Renumbered and amended by Ord. 50 of 02,s.16.

75. 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

(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.

1[75A. Court proceeding relating to election expenses.—The Commissioner shall direct the Returning Office to initiate proceeding in the appropriate court against the person who contravenes the provisions of section 28 or fails to comply with the provisions of section 29.]

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 in 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.

CHAPTER VII-BYE-ELECTION

77. Casual vacancies.—²[(1)] 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.

²[(2) When the seats of two or more members who were elected to the Senate by the same Provincial Assembly and whose term of office was due to expire on the same day become vacant simultaneously, elections to fill such seats may be held together.]

¹Ins by Ord. 50 of 02, s.17.

²Re-numbered and added by the Senate (Election) (Amdt.) Ordinance, 1977 (17 of 1977), s.2.

CHAPTER VIII-DISQUALIFICATIONS

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

- ¹**(a)** he is of unsound mind and has been so declared by a competent court, or
- (b)** he is an undischarged insolvent; or
- (c)** he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State; or
- (d)** he holds an office of profit in the service of Pakistan other than an office declared by law not to disqualify its holder; or
- (e)** he is in the service of any statutory body or anybody which is owned or controlled by the Government or in which the Government has a controlling share or interests; or
- (f)** he being a citizen of Pakistan by virtue of section 14B of the Pakistan Citizenship Act, 1951 (II of 1951), he is for the time being disqualified under any law in force in Azad Jammu and Kashmir from being elected as a member of the Legislative Assembly of Azad Jammu and Kashmir; or
- (g)** he is propagating any opinion, or acting in any manner, prejudicial to the Ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or morality, or the maintenance of public order, or the integrity or independence of the Judiciary or Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan; or
- (h)** he has been convicted by a court of competent jurisdiction on a charge of corrupt practice, moral turpitude or misuse of power or authority under any law for the time being in force; or
- (i)** he has been dismissed from the service of Pakistan or service of a corporation or office set up or controlled by the Federal Government, Provincial Government or a local government on the grounds of misconduct involving moral turpitude; or
- (j)** he has been removed or compulsorily retired from the service of Pakistan or service of a corporation or office set up or controlled by the Federal Government, Provincial Government or a local Government on the grounds of misconduct involving moral turpitude: or
- (k)** he has been in the service of Pakistan or of any statutory body or any body which is owned or controlled by the Government or in which the Government has a controlling share of interest, unless a period of two years has elapsed since he ceased to be in such service; or

¹Subs. by Ord. 50 of 2002, s.18.

- (l) he, whether by himself, or by any person or body of persons 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 cooperative society and Government, for the supply of goods to, or for the execution of any contract or for the performance of any service undertaken by, Government:

Provided that the disqualification under this paragraph 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;
- (ii) where the contract has been entered into by or on behalf of a public company as defined in the Companies Ordinance, 1984 (XLVII of 1984), of which he is a shareholder but is not a director holding an office of profit under the company; or
- (iii) 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 interests; or

Explanation.—In this Article "goods" does not include agricultural produce or commodity grown or produced by him or such goods as he is, under any directive of Government or any law for the time being in force, under a duty or obligation to supply.

- (m) he holds any office of profit in the service of Pakistan other than the following offices namely:—
- (i) an office which is not whole time office remunerated either by salary or by fee;
 - (ii) the office of Lumbardar, whether called by this or any other title;
 - (iii) the Qaumi Razakars;
- (iv) any office the holder whereof, by virtue of 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: or
- (n) he has been convicted and sentenced to imprisonment for having absconded by a competent court under any law for the time being in force; or
- (o) he has obtained a loan for an amount of two million rupees or more, from any bank, financial institution, cooperative society or cooperative body in his own name or in the name of his spouse or any of his dependents, which stands unpaid for more than one year from the due date or has had such loan written off; or

- (p) he or his spouse or any of his dependents has defaulted in payment of government dues and utility charges, including telephone electricity, gas and water charges of an amount in excess of ten thousand rupees, for over six months; or
- (q) he is for the time being disqualified from being elected or chosen as a member of the Majlis-e-Shoora (Parliament) or of a Provincial Assembly under the Constitution or any law for the time being in 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 on account of certain offences.— ¹[(1)] 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.

¹[(2) Where a person has been convicted for an offence punishable under section 171J of the Pakistan Penal Code Act 1860 (XLV of 1860) he shall be disqualified for a period of seven years from being elected as, a member of the Senate.]

80. Removal and remission of disqualification. The Commissioner may, on 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.

CHAPTER IX.— 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 under Article 65.

¹Re-numbered and added by the Senate (Election) (Amdt.) Ordinance, 1984 (56 of 1984),s.2.

(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 is 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.

¹**[82A Drawing of lots for determining term of office of individual members.—** (1) For the purpose of dividing the members ²[into two groups], the Commissioner shall draw lots in the prescribed manner and in the presence of such members or persons authorised by them in writing as may be present, after notifying in the official Gazette the time and place of drawing of lots.

(2) The term of office of each member determined under sub-section (1) shall be notified by the Commissioner in the official Gazette.

(3) If the election of a member whose term of office is determined under sub-section (1) 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.

(4) If the election of all the members ³** * is declared void, the members elected in their place shall be divided into two groups and the term of their office determined and notified in the manner specified in sub-sections (1) and (2):

Provided that the term of office of the members so elected shall be the unexpired term of the members of the respective groups].

83. Vacancy in membership of Provincial Assemblies not to invalidate election. No election by the members of a Provincial Assembly shall be called 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 is conducted honestly, justly and fairly and in accordance with the provisions of this Act and the rules.

85. Directions of Commissioner in certain matters. 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.

¹Ins. by the Senate (Election) (Amdt.) Ordinance, 1977 (17 of 1977),s.3.

²Subs. by the Senate (Election) (Amdt.) Act, 1986 (5 of 1986) s.4.

³Omitted by the Senate (Election) (Amdt.) Act, 1986 (5 of 1986) s.4.

86. Jurisdiction of courts barred. No court shall 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 or action taken in good faith. No suit, prosecution or other legal proceeding shall 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 direction given, thereunder.

88. Power to make rules.— (1) The Federal Government may, in consultation with the Commissioner, make rules¹ for carrying out the purpose 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 case 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 recounting 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.

¹For the Senate (Election) Rules, 1975, see S.R.O. 725(I)/75, dated 28-6-75, Gaz. of, 1975, Ext., (Islamabad) Pt. II, pp.1305-1308.

