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PART I

Acts, Ordinances, President's Orders and Regulations

NATIONAL ASSEMBLY SECRETARIAT

Islamabad, the 9th January, 1977

The following Acts of Parliament received the assent of the President on the 9th January, 1977, and are hereby published for general information:—



An Act to make effective provision for the prevention of misconduct amongst holders of representative offices

WHEREAS it is expedient to make effective provision for the prevention of misconduct amongst holders of representative offices;

It is hereby enacted as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Holders of Representative Offices (Prevention of Misconduct) Act, 1976

(2) It extends to the whole of Pakistan and applies to all holders of representative offices wherever they may be.

(3) It shall come into force at once.

2. Interpretation.—For the purposes of this Act, "holder of representative office" means a person who is holding the office of Federal Minister, Minister of State, Provincial Minister, Parliamentary Secretary or member of Parliament or of a Provincial Assembly, but does not include the Prime Minister or a Chief Minister.

3. Misconduct.—(1) Any holder of representative office who commits or attempts to commit misconduct shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

(2) A holder of representative office is said to commit the offence of misconduct—

- (a) if he accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any illegal gratification as a motive or reward for doing or for bearing to do any official act or for showing or for bearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Federal Government or any Provincial Government or Parliament or a Provincial Assembly, or with any public servant, as such, or
- (b) if he accepts or obtains or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate or unlawful from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with his official functions, or from any person whom he knows to be interested in or related to the person so concerned, or
- (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a holder of representative office or wilfully allows any other person so to do, or
- (d) if he, by corrupt, dishonest or illegal means obtains for himself or for any other person any valuable thing or pecuniary advantage, or
- (e) if he, or any other person on his behalf, is in possession, for which the holder of representative office cannot reasonably account, of pecuniary resources or of property disproportionate to his known sources of income.

(3) In any trial of an offence punishable under clause (e) of sub-section (2) the fact that the accused person or any other person on his behalf is in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the court shall presume, unless the contrary is proved, that the accused person is guilty of misconduct and his conviction therefor shall not be invalid by reason only that it is based solely on such presumption.

(4) A person, other than a person referred to in paragraph (a) of clause (1) of Article 271 of the Constitution or paragraph (a) of clause (1) of Article 273 thereof or a person who had made oath as a member of the Senate before the fourteenth day of August, 1973, who is convicted for an offence punishable under sub-section (1) shall be disqualified, until the holding of the next general elections to the National Assembly, from being elected or chosen as, and from being, a member of Parliament or of a Provincial Assembly.

(5) The provisions of this section shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any holder of representative office from any proceeding which might, apart from this section, be instituted against him :

Provided that a holder of representative office who is tried for an offence punishable under this section shall not be liable to be proceeded against under the Parliament and Provincial Assembly (Disqualification for Membership) Act, 1976.

4. No arrest without warrant.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), no officer other than an officer authorised by a general or special order of the Federal Government shall investigate any offence punishable under section 3 or make any arrest therefor without warrant.

5. Offence to be tried by Division Bench of High Court.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), or in any other law for the time being in force, an offence punishable under section 3 shall be tried exclusively by a Bench of the High Court composed of not less than two Judges.

Explanation. In this sub-section, "High Court" means the High Court within the jurisdiction of which the place from which the holder of representative office proceeded against was elected as a member of Parliament or of a Provincial Assembly is situated or, if such place is situated in the Federally Administered Tribal Areas, the Peshawar High Court.

(2) The High Court shall not take cognizance of an offence punishable under section 3 except with the previous sanction of the Prime Minister.

(3) A trial under this Act shall be held as nearly as may be in accordance with the procedure provided in the Code of Criminal Procedure, 1898 (Act V of 1898), for trial before a High Court.

6. No prosecution after certain period.—No prosecution of a holder of representative office for an offence punishable under section 3 shall be instituted:

- (a) in the case of a member of the National Assembly or a Provincial Assembly, on or after the day of the first meeting of the National Assembly or, as the case may be, Provincial Assembly next following the Assembly while being a member of which he is alleged to have committed the offence;
- (b) in the case of a member of the Senate, after the expiration of the term for which he was elected or chosen; and
- (c) in the case of a Federal Minister, Minister of State, Provincial Minister or Parliamentary Secretary, on or after the first meeting of the National Assembly or, as the case may be, Provincial Assembly next following the Assembly while being a member of which he is alleged to have committed the offence or after the expiration of thirty days from the day on which he ceases to hold the office while holding which he is alleged to have committed the offence, whichever first occurs.

7. Accused person to be competent witness.—Any person charged with an offence punishable under section 3 shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that

- (a) he shall not be called as a witness except on his own request,
- (b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against him or any person charged together with him at the same trial,

- (c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless -
- (i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or
 - (ii) he has personally or by his pleader asked questions from any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or
 - (iii) he has given evidence against any other person charged with the same offence.
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