

THE REPRESENTATION OF THE PEOPLE ACT, 1951

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## THE REPRESENTATION OF THE PEOPLE ACT, 1951

## ACT NO. 43 OF 1951

[17th July, 1951.]

An Act to provide for the conduct of elections of the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt <sup>1</sup>\* \* \* practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

BE it enacted by Parliament as follows:—

PART I  
PRELIMINARY

**1. Short title.**—This Act may be called the Representation of the People Act, 1951.

**2. Interpretation.**—(1) In this Act, unless the context otherwise requires,—

(a) each of the expressions defined in section 2 or sub-section (1) of section 27 of the Representation of the People Act 1950 (43 of 1950), but not defined in this Act, shall have the same meaning as in that Act;

(b) "appropriate authority" means, in relation to an election to the House of the People or the Council of States <sup>2</sup>\* \* \*, the Central Government, and in relation to an election to the Legislative Assembly or the Legislative Council of a State, the State Government;

<sup>3</sup>[(bb) "chief electoral officer" means the officer appointed under section 13A of the Representation of the People Act, 1950 (43 of 1950);]

(c) "corrupt practice" means any of the practices specified in section 123 <sup>4</sup>\* \* \*;

<sup>5</sup>[(cc) "district election officer" means the officer designated or nominated under section 13AA of the Representation of the People Act, 1950 (43 of 1950);]

(d) "election" means an election to fill a seat or seats in either House of Parliament or in the House or either House of the Legislature of a State other than the State of Jammu and Kashmir <sup>6</sup>\* \* \*;

<sup>7</sup>[(e) "elector" in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950);]

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1. The words "and illegal" omitted by Act 27 of 1956, s. 2.

2. Certain words omitted by Act 103 of 1956, s. 66.

3. Ins. by Act 27 of 1956, s. 3.

4. The words and figures "or section 124" omitted by s. 3, *ibid.*

5. Ins. by Act 47 of 1966, s. 15 (w.e.f. 14-12-1966).

6. Certain words omitted by Act 58 of 1958, s. 14.

7. Subs. by Act 27 of 1956, s. 3, for cl. (e).



<sup>1</sup>[(f) "political party" means an association or a body of individual citizens of India registered with the Election Commission as a political party under section 29A;]

(g) "prescribed" means prescribed by rules made under this Act;

<sup>2</sup>[(h) "public holiday" means any day which is a public holiday for the purposes of section 25 of the Negotiable Instruments Act, 1881 (26 of 1881);]

3\* \* \* \* \*

4\* \* \* \* \*

<sup>5</sup>[(i) "sign", in relation to a person who is unable to write his name, means authenticate in such manner as may be prescribed.

6\* \* \* \* \*

7\* \* \* \* \*

(2) For the purposes of this Act, \* \* \* a Parliamentary constituency, an Assembly constituency, a Council constituency, a local authorities' constituency, a graduates' constituency and a teachers' constituency shall each be treated as a constituency of a different class.

(3) Any requirement under this Act that a notification, order, rule, declaration, notice or list issued or made by any authority shall be published in the Official Gazette, shall, unless otherwise expressly provided in this Act, be construed as a requirement that the notification, order, rule, declaration, notice or list shall—

(a) where it is issued or made by the Central Government, be published in the Gazette of India;

(b) where it is issued or made by a State Government, be published in the Official Gazette of the State; and

(c) where it is issued or made by any other authority, be published in the Gazette of India if it relates to an election to, or membership of, either House of Parliament \* \* \* and in the Official Gazette of the State if it relates to an election to, or membership of, the House or either House of the Legislature of a State.

(4) Where, under any of the provisions of this Act, anything is to be prescribed, different provisions may be made for different cases or classes of cases.

1. Cl.(f) which was omitted by Act 27 of 1956, s. 3, and ins. by Act 1 of 1989, s. 3 (w.e.f. 15-6-1989).

2. Ins. by Act 47 of 1966, s. 15 (w.e.f. 14-12-1966).

3. Cls. (h) and (i) omitted by Act 27 of 1956, s. 3.

4. Cl. (i) re-lettered as cl. (h) by s. 3, *ibid.*, omitted by the Adaptation of Laws (No. 2) Order, 1956.

5. Cls. (k) and (i) re-lettered as cls. (i) and (k) by Act 27 of 1956, s. 3.

6. Cl. (j) ins. by s. 3, *ibid.*, and omitted by the Adaptation of Laws (No. 2) Order, 1956.

7. Cl. (k) omitted by Act 47 of 1966, s. 15 (w.e.f. 14-12-1966).

8. Certain words omitted by Act 103 of 1956, s. 66.

1\* \* \* \* \*

<sup>2</sup>[(5)] Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.]

1\* \* \* \* \*

## PART II

### <sup>3</sup>[QUALIFICATIONS AND DISQUALIFICATIONS]

#### CHAPTER I.—*Qualifications for Membership of Parliament.*

<sup>4</sup>[**3. Qualification for membership of the Council of States.**—A person shall not be qualified to be chosen as a representative of any State <sup>5</sup>\* \* \* or Union territory in the Council of States unless he is an elector for a Parliamentary constituency <sup>6</sup>[in India].]

**4. Qualifications for membership of the House of the People.**—A person shall not be qualified to be chosen to fill a seat in the House of the People <sup>7</sup>\* \* \*, unless—

(a) in the case of a seat reserved for the Scheduled Castes in any State, he is a member of any of the Scheduled Castes, whether of that State or of any other State, and is an elector for any Parliamentary constituency;

(b) in the case of a seat reserved for the Scheduled Tribes in any State (other than those in the autonomous districts of Assam), he is a member of any of the Scheduled Tribes, whether of that State or of any other State (excluding the tribal areas of Assam), and is an elector for any Parliamentary constituency;

(c) in the case of a seat reserved for the Scheduled Tribes in the autonomous districts of Assam, he is a member of any of those Scheduled Tribes and is an elector for the Parliamentary constituency in which such seat is reserved or for any other Parliamentary constituency comprising any such autonomous district;  
<sup>8</sup>\* \* \*

<sup>9</sup>[(cc) in the case of the seat reserved for the Scheduled Tribes in the Union territory of <sup>10</sup>[Lakshadweep], he is a member of any of those Scheduled Tribes and is an elector for the Parliamentary constituency of that Union territory; <sup>11</sup>\* \* \*]

<sup>12</sup>[(ccc) in the case of the seat allotted to the State of Sikkim, he is an elector for the Parliamentary constituency for Sikkim;]

(d) in the case of any other seat, he is an elector for any Parliamentary constituency.

1. Sub-sections (5) and (7) omitted and sub-section (6) renumbered as sub-section (5) by Act 27 of 1956, s. 3.

2. Subs. by Act 47 of 1966, s. 15, for sub-section (5).

3. Subs. by s. 16, *ibid.*, for the previous heading (w.e.f. 14-12-1966).

4. Subs. by the Adaptation of Laws (No. 2) Order, 1956, for s. 3.

5. Certain words omitted by Act 47 of 1966, s. 17 (w.e.f. 14-12-1966).

6. Subs. by Act 40 of 2003, s. 2.

7. Certain words omitted by Act 29 of 1975, s. 12 (w.e.f. 15-8-1975).

8. The word "and" omitted by Act 47 of 1966, s. 18 (w.e.f. 14-12-1966).

9. Ins. by s. 18, *ibid.* (w.e.f. 14-12-1966).

10. Subs. by the Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Adaptation of Laws Order, 1974 (w.e.f. 1-11-1973).

11. The word "and" omitted by Act 10 of 1976, s. 2 and Sch. (w.e.f. 9-9-1975).

12. Ins. by s. 2 and Sch., *ibid.* (w.e.f. 9-9-1975).

**5. Qualifications for membership of a Legislative Assembly.**—A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless—

(a) in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly constituency in that State;

(b) in the case of a seat reserved for an autonomous district of Assam, <sup>1</sup>\* \* \* he is a member of a <sup>2</sup>[Scheduled Tribe of any autonomous district] and is an elector for the Assembly constituency in which such seat or any other seat is reserved for that district; and

(c) in the case of any other seat, he is an elector for any Assembly constituency in that State:

<sup>3</sup>[Provided that for the period referred to in clause (2) of article 371A, a person shall not be qualified to be chosen to fill any seat allocated to the Tuensang district in the Legislative Assembly of Nagaland unless he is a member of the regional council referred to in that article.]

<sup>4</sup>[**5A. Qualifications for membership of Legislative Assembly of Sikkim.**—<sup>5</sup>[(1)] Notwithstanding anything contained in section 5, a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of Sikkim (deemed to be the Legislative Assembly of that State duly constituted under the Constitution) unless—

(a) in the case of a seat reserved for Sikkimese of Bhutia-Lepcha origin, he is a person either of Bhutia or Lepcha origin and is an elector for any Assembly constituency in the State other than the constituency reserved for the Sanghas;

(b) in the case of a seat reserved for Sikkimese of Nepal origin, he is a person of Nepali origin and is an elector for any Assembly constituency in the State;

(c) in the case of a seat reserved for Scheduled Castes, he is a member of any of the castes specified in the Representation of Sikkim Subjects Act, 1974 and is an elector for any Assembly constituency in the State; and

(d) in the case of a seat reserved for Sanghas, he is an elector of the Sangha constituency.]

<sup>6</sup>[(2) Notwithstanding anything contained in section 5, a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of the State of Sikkim, to be constituted at any time after the commencement of the Representation of the People (Amendment) Act, 1980 (8 of 1980), unless—

(a) in the case of a seat reserved for Sikkimese of Bhutia-Lepcha origin, he is a person either of Bhutia or Lepcha origin and is an elector for any assembly constituency in the State other than the constituency reserved for the Sanghas;

(b) in the case of a seat reserved for the Scheduled Castes, he is a member of any of those castes in the State of Sikkim and is an elector for any assembly constituency in the State;

(c) in the case of a seat reserved for Sanghas, he is an elector of the Sangha constituency; and

(d) in the case of any other seat, he is an elector for any assembly constituency in the State.

1. Certain words omitted by the North-Eastern Areas (Reorganisation) (Adaptation of Laws on Union Subjects) Order, 1974 (w.e.f. 21-1-1972).  
 2. Subs. by Act 47 of 1966, s. 19, for "Scheduled Tribe of that district" (w.e.f. 14-12-1966).  
 3. Ins. by Act 27 of 1962, s. 11.  
 4. Ins. by Act 10 of 1976, s. 2 and Sch. (w.e.f. 9-9-1975).  
 5. S. 5A renumbered as sub-section (1) of that section by Act 8 of 1980, s. 3 (w.e.f. 1-9-1979).  
 6. Ins. by s.3, *ibid.* (w.e.f. 1-9-1979).

*Explanation.*—In this sub-section "Bhutia" includes Chumbipa, Dophapa, Dukpa, Kagatey, Sherpa, Tibetan, Tromopa and Yolmo.]

**6. Qualification for membership of a Legislative Council.**—(1) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by election unless he is an elector for any Assembly constituency in that State.

(2) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by nomination by the Governor \* \* \* unless he is ordinarily resident in the State.

<sup>2</sup>[CHAPTER III.—*Disqualifications for membership of Parliament and State Legislatures*

**7. Definition.**—In this Chapter,—

(a) "appropriate Government" means in relation to any disqualification for being chosen as or for being a member of either House of Parliament, the Central Government, and in relation to any disqualification for being chosen as or for being a member of the Legislative Assembly or Legislative Council of a State, the State Government;

(b) "disqualified" means disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State.

**8. Disqualification on conviction for certain offences.**—<sup>3</sup>(1) A person convicted of an offence punishable under—

(a) section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or section 171E (offence of bribery) or section 171F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of section 376 or section 376A or section 376B or section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860); or

(b) the Protection of Civil Rights Act, 1955 (22 of 1955) which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or

(c) section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or

(d) sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

(e) the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or

(f) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(g) section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

1. The words "or the Rajpramukh, as the case may be" omitted by the Adaptation of Laws (No. 2) Order, 1956.

2. Subs. by Act 47 of 1966, s. 20, for Chapter III (w.e.f. 14-12-1966). Previous Chapter IV (ss. 10 and 11) was rep. by Act 103 of 1956, s. 66.

3. Subs. by Act 1 of 1989, s. 4, for sub-sections (1) and (2) (w.e.f. 15-3-1989).

(h) section 7 (offence of contravention of the provisions of sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or

(i) section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) of clause (a) of sub-section (2) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act; <sup>1</sup>[or]

<sup>1</sup>[(j) section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991;]  
<sup>2</sup>[or]

<sup>3</sup>[(k) section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971),]<sup>4</sup> [; or]

<sup>4</sup>[(l) the Commission of Sati (Prevention) Act, 1987 (3 of 1988); or

(m) the Prevention of Corruption Act, 1988 (49 of 1988); or

(n) the Prevention of Terrorism Act, 2002 (15 of 2002),]

<sup>5</sup>[shall be disqualified, where the convicted person is sentenced to—

(i) only fine, for a period of six years from the date of such conviction;

(ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.]

(2) A person convicted for the contravention of—

(a) any law providing for the prevention of hoarding or profiteering; or

(b) any law relating to the adulteration of food or drugs; or

(c) any provisions of the Dowry Prohibition Act, 1961 (28 of 1961);<sup>6\*\*\*</sup>

<sup>6\*</sup> \* \* \* \* \*

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.]

<sup>7</sup>[(4)] Notwithstanding anything <sup>8</sup>[in sub-section (1), sub-section (2) or sub-section (3)] a disqualification under either sub-section shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

1. Ins. by Act 42 of 1991, s. 8 (w.e.f. 18-9-1991).

2. Added by Act 21 of 1996, s. 3 (w.e.f. 1-8-1996).

3. Ins. by s. 3, *ibid.* (w.e.f. 1-8-1996).

4. Ins. by Act 9 of 2003, s. 2 (w.e.f. 7-1-2003).

5. Subs. by s. 2, *ibid.* (w.e.f. 7-1-2003).

6. Cl. (d) omitted by s. 2, *ibid.* (w.e.f. 7-1-2003).

7. Sub-section (3) renumbered as sub-section (4) by Act 1 of 1989, s. 4 (w.e.f. 15-3-1989).

8. Subs. by s. 4, *ibid.*, for certain words (w.e.f. 15-3-1989).

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*Explanation.*—In this section,—

(a) "law providing for the prevention of hoarding or profiteering" means any law, or any order, rule or notification having the force of law, providing for—

- (i) the regulation of production or manufacture of any essential commodity;
- (ii) the control of price at which any essential commodity may be bought or sold;
- (iii) the regulation of acquisition, possession, storage, transport, distribution, disposal, use or consumption of any essential commodity;
- (iv) the prohibition of the withholding from sale of any essential commodity ordinarily kept for sale;

(b) "drug" has the meaning assigned to it in the Drugs and Cosmetics Act, 1940 (23 of 1940);

(c) "essential commodity" has the meaning assigned to it in the Essential Commodity Act, 1955 (10 of 1955);

(d) "food" has the meaning assigned to it in the Prevention of Food Adulteration Act, 1954 (37 of 1954).

**1[8A. Disqualification on ground of corrupt practices.**—(1) The case of every person found guilty of a corrupt practice by an order under section 99 shall be submitted, as soon as may be, after such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period:

Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him under section 99 takes effect.

(2) Any person who stands disqualified under section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period.

(3) Before giving his decision on any question mentioned in sub-section (1) or on any petition submitted under sub-section (2), the President shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion.]

**9. Disqualification for dismissal for corruption or disloyalty.**—(1) A person who having held an office under the Government of India or under the Government of any State has been dismissed for corruption or for disloyalty to the State shall be disqualified for a period of five years from the date of such dismissal.

(2) For the purposes of sub-section (1), a certificate issued by the Election Commission to the effect that a person having held office under the Government of India or under the Government of a State, has or has not been dismissed for corruption or for disloyalty to the State shall be conclusive proof of the fact:

Provided that no certificate to the effect that a person has been dismissed for corruption or for disloyalty to the State shall be issued unless an opportunity of being heard has been given to the said person.

**9A. Disqualification for Government contracts, etc.**—A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.

*Explanation.*—For the purposes of this section, where a contract has been fully performed by the person by whom it has been entered into with the appropriate Government, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part.

**10. Disqualification for office under Government company.**—A person shall be disqualified if, and for so long as, he is a managing agent, manager or secretary of any company or corporation (other than a cooperative society) in the capital of which the appropriate Government has not less than twenty-five per cent. share.

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1. Subs. by Act 40 of 1975, s. 2, for s. 8A.

**10A. Disqualification for failure to lodge account of election expenses.**—If the Election Commission is satisfied that a person—

- (a) has failed to lodge an account of election expenses within the time and in the manner required by or under this Act; and  
 (b) has no good reason or justification for the failure,

the Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order.

**11. Removal or reduction of period of disqualification.**—The Election Commission may, for reasons to be recorded, remove any disqualification under this Chapter <sup>1</sup>[(except under section 8A)] or reduce the period of any such disqualification.

CHAPTER IV.—*Disqualifications for Voting*

**11A. Disqualification arising out of conviction and corrupt practices.**—<sup>2</sup>[(1)] If any person, after the commencement of this Act,—

<sup>3</sup>\* \* \* is convicted of an offence punishable under section 171E or section 171F of the Indian Penal Code (45 of 1860), or under section 125 or section 135 or clause (a) of sub-section (2) of section 136 of this Act, <sup>4</sup>\* \* \*

<sup>5</sup>\* \* \* \* \*

he shall, for a period of six years from the date of the conviction or from the date on which the order takes effect, be disqualified for voting at any election.

<sup>6</sup>[(2) Any person disqualified by a decision of the President under sub-section (1) of section 8A for any period shall be disqualified for the same period for voting at any election.

(3) The decision of the President on a petition submitted by any person under sub-section (2) of section 8A in respect of any disqualification for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State shall, so far as may be, apply in respect of the disqualification for voting at any election incurred by him under clause (b) of sub-section (1) of section 11A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), as if such decision were a decision in respect of the said disqualification for voting also.]

**11B. Removal of Disqualifications.**—The Election Commission may, for reasons to be recorded, remove <sup>7</sup>[any disqualification under sub-section (1) of section 11A].]

<sup>8</sup>[PART III

NOTIFICATION OF GENERAL ELECTIONS

**12. Notification for biennial election to the Council of States.**—For the purpose of filling the seats of members of the Council of States retiring on the expiration of their term of office the President shall, by one or more notifications published in the Gazette of India on such date or dates as may be recommended by the Election Commission, call upon the elected members of the Legislative Assembly or, as the case may be, the members of the electoral college, of each State concerned to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder :

Provided that no notification under this section shall be issued more than three months prior to the date on which the term of office of the retiring members is due to expire.

<sup>1</sup> Ins. by Act 40 of 1975, s. 3.

<sup>2</sup> S. 11A re-numbered as sub-section (1) thereof by s. 4, *ibid.*

<sup>3</sup> The brackets and letter "(a)" omitted by Act 38 of 1978, s. 3 and the Second Sch.

<sup>4</sup> The word "or" omitted by s. 3 and the Second Sch. *ibid.*

<sup>5</sup> Cl.(b) omitted by Act 40 of 1975, s. 4.

<sup>6</sup> Ins. by s. 4, *ibid.*

<sup>7</sup> Subs. by s. 5, *ibid.*, for certain words.

<sup>8</sup> Subs. by Act 27 of 1956, s. 7, for Part III (ss. 12 to 18).

<sup>1</sup>**[12A. Notification for election to fill the seat allotted to the State of Sikkim in the Council of States.]**—For the purpose of filling for the first time the seat allotted to the State of Sikkim by the Constitution (Thirty-sixth Amendment) Act, 1975 in the Council of States, the President shall, by a notification published in the Gazette of India, on such date as may be recommended by Election Commission, call upon the elected members of the Legislative Assembly of the State of Sikkim to elect a member in accordance with the provisions of this Act and of the rules and orders made thereunder and the election so held shall for all purposes and intent be deemed to have been held under section 12.]

**13.** [*Notification for reconstitution of electoral colleges for certain Union territories.*] *Rep. by the Territorial Councils Act, 1956 (103 of 1956), s. 66.*

**14. Notification for general election to the House of the People.**—(1) A general election shall be held for the purpose of constituting a new House of the People on the expiration of the duration of the existing House or on its dissolution.

(2) For the said purpose the President shall, by one or more notifications published in the Gazette of India on such date or dates as may be recommended by the Election Commission, call upon all parliamentary constituencies to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder:

Provided that where a general election is held otherwise than on the dissolution of the existing House of the People, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of that House would expire under the provisions of clause (2) of article 83.

<sup>1</sup>**[14A. Notification for electing the representative of the State of Sikkim to the existing House of the People.]**—For the purpose of electing a representative of the State of Sikkim to the House of the People, specified in clause (e) of article 371F of the Constitution, the Election Commission shall call upon the members of the Legislative Assembly of the State of Sikkim to elect the representative in accordance with such of the provisions of this Act, and the rules and orders made thereunder, as are applicable to the election of the members of the Council of States.]

**15. Notification for general election to a State Legislative Assembly.**—(1) A general election shall be held for the purpose of constituting a new Legislative Assembly on the expiration of the duration of the existing Assembly or on its dissolution.

(2) For the said purpose, <sup>2</sup>[the Governor or Administrator, as the case may be], <sup>3</sup>\* \* \* shall by one or more notifications published in the Official Gazette of the State on such date or dates as may be recommended by the Election Commission, call upon all Assembly constituencies in the State to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder:

Provided that where a general election is held otherwise than on the dissolution of the existing Legislative Assembly, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of that Assembly would expire under the provisions of clause (1), of article 172 <sup>3</sup>\* \* \* <sup>4</sup>[or under the provisions of section 5 of the Government of Union Territories Act, 1963 (20 of 1963), as the case may be.]

<sup>5</sup>**[15A. Notification for certain elections to Legislative Councils.]**—For the purpose of constituting the Legislative Council of the State of Madhya Pradesh under the States Reorganisation Act, 1956 (37 of 1956), and constituting the Legislative Council of the State of Andhra Pradesh under the Legislative Councils Act, 1957 (37 of 1957), the Governor of each of the aforesaid States shall, by one or more notifications published in the Official Gazette of the State on such date or dates as may be recommended by the Election Commission, call upon the members of the Legislative Assembly of the State and all the Council constituencies to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder.]

1. Ins. by Act 10 of 1976, s. 2 and Sch. (w.e.f. 9-9-1975).

2. Subs. by Act 20 of 1963, s. 57 and the Second Sch., for "the Governor".

3. The words "Rajpramukh, Lieutenant-Governor or Chief Commissioner, as the case may be, omitted by the Adaptation of Laws (No. 2) Order, 1956.

4. Ins. by Act 20 of 1963, s. 57 and the Second Sch.

5. Ins. by Act 37 of 1957. s. 13.



**16. Notification for biennial election to a State Legislative Council.**—For the purpose of filling the seats of members of the Legislative Council of a State retiring on the expiration of their term of office, the Governor<sup>1</sup> shall, by one or more notifications published in the Official Gazette of the State on such date or dates as may be recommended by the Election Commission call upon the members of the Legislative Assembly of the State and all the Council constituencies concerned to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder:

Provided that no notification under this section shall be issued more than three months prior to the date on which the term of office of the retiring members is due to expire.]

#### PART IV

#### ADMINISTRATIVE MACHINERY FOR THE CONDUCT OF ELECTIONS

**19. Definition.**—In this Part and in Part V, unless the context otherwise requires, "constituency" means<sup>2</sup> a Parliamentary constituency or an Assembly constituency or a Council constituency.

<sup>3</sup>[**19A. Delegation of functions of Election Commission.**—The functions of the Election Commission under the Constitution, the Representation of the People Act, 1950 (43 of 1950), and this Act or under the rules made thereunder may, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, be performed also by a Deputy Election Commissioner or by the Secretary to the Election Commission.]

<sup>4</sup>[**20. General duties of chief electoral officers.**—Subject to the superintendence, direction and control of the Election Commission, the chief electoral officer of each State shall supervise the conduct of all elections in the State under this Act.

<sup>5</sup>[**20A. General duties of district election officer.**—(1) Subject to the superintendence, direction and control of the chief electoral officer, the district election officer shall coordinate and supervise all work in the district or in the area within his jurisdiction in connection with the conduct of all elections to Parliament and the Legislature of the State.

(2) The district election officer shall also perform such other functions as may be entrusted to him by the Election Commission and the chief electoral officer.]

<sup>6</sup>[**20B. Observers.**—(1) The Election Commission may nominate an Observer who shall be an officer of Government to watch the conduct of election or elections in a constituency or a group of constituencies and to perform such other functions as may be entrusted to him by the Election Commission.

(2) The Observer nominated under sub-section (1) shall have the power to direct the returning officer for the constituency or for any of the constituencies for which he has been nominated, to stop the counting of votes at any time before the declaration of the result or not to declare the result if in the opinion of the Observer booth capturing has taken place at a large number of polling stations or at places fixed for the poll or counting of votes or any ballot papers used at a polling station or at a place fixed for the poll are unlawfully taken out of the custody of the returning officer or are accidentally or intentionally destroyed or lost or are damaged or tampered with to such an extent that the result of the poll at that polling station or place cannot be ascertained.

(3) Where an Observer has directed the returning officer under this section to stop counting of votes or not to declare the result, the Observer shall forthwith report the matter to the Election Commission and thereupon the Election Commission shall, after taking all material circumstances into account, issue appropriate directions under section 58A or section 64A or section 66.

1. The words "or Rajpramukh, as the case may be," omitted by the Adaptation of Laws (No. 2) Order, 1956.

2. Certain words omitted by Act 103 of 1956, s. 66.

3. Ins. by Act 47 of 1966, s. 21 (w.e.f. 14-12-1966).

4. Subs. by Act 27 of 1956, s. 9, for ss. 20 and 21.

5. Ins. by Act 47 of 1966, s. 22 (w.e.f. 14-12-1966).

6. Ins. by Act 21 of 1996, s. 4 (w.e.f. 1-8-1996).

*Explanation.*—For the purposes of sub-section (2) and sub-section (3), "Observer" shall include a Regional Commissioner or any such officer of the Election Commission as has been assigned under this section the duty of watching the conduct of election or elections in a constituency or group of constituencies by the Commission.]

**21. Returning officers.**—For every constituency, for every election to fill a seat or seats in the Council of States and for every election by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of the State, the Election Commission shall, in consultation with the Government of the State, designate or nominate a returning officer who shall be <sup>1</sup>[an officer of Government or of a local authority]:

Provided that nothing in this section shall prevent the Election Commission from designating or nominating the same person to be the returning officer for more than one constituency.]

**22. Assistant returning officers.**—(1) The Election Commission may appoint one or more persons to assist any returning officer in the performance of his functions:

Provided that every such person shall be <sup>1</sup>[an officer of Government or of a local authority].

(2) Every assistant returning officer shall, subject to the control of the returning officer, be competent to perform all or any of the functions of the returning officer:

Provided that no assistant returning officer shall perform any of the functions of the returning officer which relate <sup>2</sup>\* \* \* to the scrutiny of nominations <sup>3</sup>\* \* \* unless the returning officer is unavoidably prevented from performing the said function.

**23. Returning officer to include assistant returning officers performing the functions of the returning officer.**—References in this Act to the returning officer shall, unless the context otherwise requires, be deemed to include an assistant returning officer performing any function which he is authorised to perform under sub-section (2) of section 22.

**24. General duty of the returning officer.**—It shall be the general duty of the returning officer at any election to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by this Act and rules or orders made thereunder.

<sup>4</sup>[**25. Provision of polling stations for constituencies.**—The district election officer shall, with the previous approval of the Election Commission, provide a sufficient number of polling stations for every constituency the whole or greater part of which lies within his jurisdiction, and shall publish, in such manner as the Election Commission may direct, a list showing the polling stations so provided and the polling areas or groups of voters for which they have respectively been provided.]

**26. Appointment of presiding officers for polling stations.**—(1) The <sup>5</sup>[district election officer] shall appoint a presiding officer for each polling station and such polling officer or officers as he thinks necessary, but he shall not appoint any person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election:

Provided that if a polling officer is absent from the polling station, the presiding officer may appoint any person who is present at the polling station other than a person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election, to be the polling officer during the absence of the former officer, and inform the <sup>5</sup>[district election officer] accordingly:

<sup>6</sup>[Provided further that nothing in this sub-section shall prevent the <sup>5</sup>[district election officer] from appointing the same person to be the presiding officer for more than one polling station in the same premises.]

(2) A polling officer shall, if so directed by the presiding officer, perform all or any of the functions of a presiding officer under this Act or any rules or orders made thereunder.

1. Subs. by Act 47 of 1966, s. 23, for "an officer of Government".

2. Certain words omitted by Act 27 of 1956, s.10.

3. The words "or to the counting of votes" omitted by s. 10, *ibid.*

4. Subs. by Act 47 of 1966, s. 25, for s. 25 (w.e.f. 14-12-1966).

5. Subs. by s. 26, *ibid.*, for "returning officer" (w.e.f. 14-12-1966).

6. Ins. by Act 27 of 1956, s.12.

(3) If the presiding officer, owing to illness or other unavoidable cause, is obliged to absent himself from the polling station, his functions shall be performed by such polling officer as has been previously authorized by the<sup>1</sup>[district election officer] to perform such functions during any such absence.

(4) References in this Act to the presiding officer shall, unless the context otherwise requires, be deemed to include any person performing any function which he is authorized to perform under sub-section (2) or sub-section (3), as the case may be.

<sup>2</sup>\* \* \* \* \*

**27. General duty of the presiding officer.**—It shall be the general duty of the presiding officer at a polling station to keep order thereat and to see that the poll is fairly taken.

**28. Duties of a polling officer.**—It shall be the duty of the polling officers at a polling station to assist the presiding officer for such station in the performance of his functions.

<sup>3</sup>**28A. Returning officer, presiding officer, etc., deemed to be on deputation to Election Commission**—The returning officer, assistant returning officer, presiding officer, polling officer, and any other officer appointed under this Part, and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.

**29. Special provisions in the case of certain elections.**—(1) The returning officer for an election<sup>4</sup>\* \* \* to fill a seat or seats in the Council of States or for an election by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of the State shall, with the previous approval of the Election Commission, fix the place at which the poll will be taken for such election and shall notify the place so fixed in such manner as the Election Commission may direct.

(2) The returning officer shall preside over such election at the place so fixed and shall appoint such polling officer or officers to assist him as he thinks necessary but he shall not appoint any person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election.

#### <sup>5</sup>[PART IVA

##### REGISTRATION OF POLITICAL PARTIES

**29A. Registration with the Election Commission of associations and bodies as political parties.**—(1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

(2) Every such application shall be made,—

(a) if the association or body is in existence at the commencement of the Representation of the People (Amendment) Act, 1988 (1 of 1989), within sixty days next following such commencement;

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1. Subs. by Act 47 of 1966, s. 26, for "returning officer" (w.e.f. 14-12-1966.)  
 2. Sub-section (5), ins. by s. 12, *ibid.* (w.e.f. 14-12-1966) and omitted by Act 2 of 2004, s.3.  
 3. Ins. by Act 1 of 1989, s. 5 (w.e.f. 15-3-1989.)  
 4. The words and brackets "(other than a primary election)" omitted by Act 27 of 1956, s. 13.  
 5. Ins. by Act 1 of 1989, s. 6 (w.e.f. 15-6-1989).

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(b) if the association or body is formed after such commencement, within thirty days next following the date of its formation.

(3) Every application under sub-section (1) shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as Secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

(4) Every such application shall contain the following particulars, namely:—

(a) the name of the association or body;

(b) the State in which its head office is situate;

(c) the address to which letters and other communications meant for it should be sent;

(d) the names of its president, secretary, treasurer and other office-bearers;

(e) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;

(f) whether it has any local units; if so, at what levels;

(g) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

(6) The Commission may call for such other particulars as it may deem fit from the association or body.

(7) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body:

Provided that no association or body shall be registered as a political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub-section (5).

(8) The decision of the Commission shall be final.

(9) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material matters shall be communicated to the Commission without delay.]

**[29B. Political parties entitled to accept contribution.**—Subject to the provisions of the Companies Act, 1956 (1 of 1956), every political party may accept any amount of contribution voluntarily offered to it by any person or company other than a Government company:

Provided that no political party shall be eligible to accept any contribution from any foreign source defined under clause (e) of section 2 of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976).

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1. Ins. by Act 46 of 2003, s. 2.

*Explanation.*—For the purposes of this section and section 29C,—

(a) “company” means a company as defined in section 3;

(b) "Government company" means a company within the meaning of section 617; and

(c) "contribution" has the meaning assigned to it under section 293A,

of the Companies Act, 1956 (1 of 1956) and includes any donation or subscription offered by any person to a political party; and

(d) "person" has the meaning assigned to it under clause (31) of section 2 of the Income-tax Act, 1961 (43 of 1961), but does not include Government company, local authority and every artificial juridical person wholly or partially funded by the Government.

**29C. Declaration of donation received by the political parties.**—(1) The treasurer of a political party or any other person authorised by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:—

(a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;

(b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.

(2) The report under sub-section (1) shall be in such form as may be prescribed.

(3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorised by the political party in this behalf before the due date for furnishing a return of its income of that financial year under section 139 of the Income-tax Act, 1961 (43 of 1961), to the Election Commission.

(4) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report under sub-section (3) then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such political party shall not be entitled to any tax relief under that Act.]

## PART V CONDUCT OF ELECTIONS

### CHAPTER I.—*Nomination of Candidates*

**[30. Appointment of dates for nominations, etc.**—As soon as the notification calling upon a constituency to elect a member or members is issued, the Election Commission shall, by notification in the Official Gazette, appoint —

(a) the last date for making nominations, which shall be the <sup>2</sup>[seventh day] after the date of publication of the first-mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday;

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1. Subs. by Act 27 of 1956, s. 14, for s. 30.

2. Subs. by Act 40 of 1961, s. 7, for "tenth day" (w.e.f. 20-9-1961).

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(b) the date for the scrutiny of nominations, which shall be <sup>1</sup>[the day immediately following] the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday ;

(c) the last date for the withdrawal of candidatures, which shall be <sup>2</sup>[the second day] after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(d) the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the <sup>3</sup>[fourteenth day] after the last date for the withdrawal of candidatures; and

(e) the date before which the election shall be completed.

<sup>4</sup>\* \* \* \*

\*]

**31. Public notice of election.**—On the issue of a notification under section 30, the returning officer <sup>5</sup>\*\*\*\* shall give public notice of the intended election in such form and manner as may be prescribed, inviting nominations of candidates for such election and specifying the place at which the nomination papers are to be delivered.

**32. Nomination of candidates for election.**—Any person may be nominated as a candidate for election to fill a seat <sup>6</sup>\*\*\*\* if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act <sup>7</sup>\*\*\*\* <sup>8</sup>[or under the provisions of the Government of Union Territories Act, 1963 (20 of 1963), as the case may be.]

<sup>9</sup>**33. Presentation of nomination paper and requirements for a valid nomination.**—(I) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer :

<sup>10</sup>[Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency:

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday:

Provided also that in the case of a local authorities' constituency, graduates' constituency or teachers' constituency, the reference to "an elector of the constituency as proposer" shall be construed as a reference to ten per cent. of the electors of the constituency or ten such electors, whichever is less, as proposers.]

1. Subs. by Act 47 of 1966, s. 27, for "the second day after" (w.e.f. 14-12-1966).

2. Subs. by s. 27, *ibid.*, for "the third day" (w.e.f. 14-12-1966).

3. Subs. by Act 21 of 1996, s. 5, for "twentieth day" (w.e.f. 1-8-1996).

4. *Explanation* omitted by Act 47 of 1966, s. 27 (w.e.f. 14-12-1966).

5. The words "for the constituency" omitted by s. 28, *ibid.* (w.e.f. 14-12-1966).

6. The words "in any constituency" omitted by Act 27 of 1956, s. 15.

7. Certain words ins. by s. 15, *ibid.*, and omitted by the Adaptation of Laws (No. 2) Order, 1956.

8. Ins. by Act 20 of 1963, s. 57 and the Second Sch.

9. Subs. by Act 27 of 1956, s. 16, for s. 33.

10. Subs. by Act 21 of 1996, s. 6, for the provisos (w.e.f. 1-8-1996).

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<sup>1</sup>[(IA) Notwithstanding anything contained in sub-section (I) for election to the Legislative Assembly of Sikkim (deemed to be the Legislative Assembly of that State duly constituted under the Constitution), the nomination paper to be delivered to the returning officer shall be in such form and manner as may be prescribed :

Provided that the said nomination paper shall be subscribed by the candidate as assenting to the nomination, and—

(a) in the case of a seat reserved for Sikkimese of Bhutia-Lepcha origin, also by at least twenty electors of the constituency as proposers and twenty electors of the constituency as seconders;

(b) in the case of a seat reserved for Sanghas, also by at least twenty electors of the constituency as proposers and at least twenty electors of the constituency as seconders;

(c) in the case of a seat reserved for Sikkimese of Nepali origin, by an elector of the constituency as proposer:

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday.]

(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State.

(3) Where the candidate is a person who, having held any office referred to in <sup>2</sup>[section 9] has been dismissed and a period of five years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.

(4) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls :

<sup>3</sup>[Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.]

(5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.

<sup>4</sup>[(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper:

Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same constituency.]

<sup>5</sup>[(7) Notwithstanding anything contained in sub-section (6) or in any other provisions of this Act, a person shall not be nominated as a candidate for election,—

(a) in the case of a general election to the House of the People (whether or not held simultaneously from all Parliamentary constituencies), from more than two Parliamentary constituencies;

1. Ins. by Act 10 of 1976, s. 2 and Sch. (w.e.f. 9-9-1975).

2. Subs. by Act 38 of 1978, s. 3 and the Second Sch., for "clause (f) of section 7".

3. Subs. by Act 47 of 1966, s. 29, for the proviso (w.e.f. 14-12-1966).

4. Subs. by Act 40 of 1961, s. 8, for sub-section (6) (w.e.f. 20-9-1961).

5. Ins. by Act 21 of 1996, s. 6 (w.e.f. 1-8-1996).

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(b) in the case of a general election to the Legislative Assembly of a State (whether or not held simultaneously from all Assembly constituencies), from more than two Assembly constituencies in that State;

(c) in the case of a biennial election to the Legislative Council of a State having such Council, from more than two Council constituencies in the State;

(d) in the case of a biennial election to the Council of States for filling two or more seats allotted to a State, for filling more than two such seats;

(e) in the case of bye-elections to the House of the People from two or more Parliamentary constituencies which are held simultaneously, from more than two such Parliamentary constituencies;

(f) in the case of bye-elections to the Legislative Assembly of a State from two or more Assembly constituencies which are held simultaneously, from more than two such Assembly constituencies;

(g) in the case of bye-elections to the Council of States for filling two or more seats allotted to a State, which are held simultaneously, for filling more than two such seats;

(h) in the case of bye-elections to the Legislative Council of a State having such Council from two or more Council constituencies which are held simultaneously, from more than two such Council constituencies.

*Explanation.*— For the purposes of this sub-section, two or more bye-elections shall be deemed to be held simultaneously where the notification calling such bye-elections are issued by the Election Commission under section 147, section 149, section 150 or, as the case may be, section 151 on the same date.]

<sup>1</sup>**33A. Right to information.**—(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) or section 33, also furnish the information as to whether –

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.

(2) The candidate of his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form very fine the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.]

<sup>2</sup>**33B. Candidate to furnish information only under the Act and the rules.**—Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election which is not required to be disclosed or furnished under this Act or the rules made thereunder.]

**34. Deposits.**—<sup>3</sup>[(1) A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited,—

(a) in the case of an election from a Parliamentary constituency, a sum of ten thousand rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of five thousand rupees; and

<sup>1</sup> Ins. by Act 72 of 2002, s. 2 (w.e.f. 24-8-2002).

<sup>2</sup> Subs. by s. 3, *ibid.* (w.e.f. 2-5-2002).

<sup>3</sup> Subs. by Act 21 of 1996, s. 7, for sub-section (1) (w.e.f. 1-8-1996).

(b) in the case of an election from an Assembly or Council constituency, a sum of five thousand rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of two thousand and five hundred rupees :



Provided that where a candidate has been nominated by more than one nomination paper for election in the same constituency, not more than one deposit shall be required of him under this sub-section.]

(2) Any sum required to be deposited under sub-section (1) shall not be deemed to have been deposited under that sub-section unless at the time of delivery of the nomination paper <sup>1</sup>[under sub-section (1) or, as the case may be, sub-section (1A) of section 33] the candidate has either deposited or caused to be deposited that sum with the returning officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government Treasury.

**35. Notice of nominations and the time and place for their scrutiny.**—The returning officer shall, on receiving the nomination paper <sup>1</sup>[under sub-section (1) or, as the case may be, sub-section (1A) of section 33], inform the person or persons delivering the same of the date, time and place fixed for the scrutiny of nominations and shall enter on the nomination paper its serial number, and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him; and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of <sup>2</sup>[the proposer].

**36. Scrutiny of nominations.**—(1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer <sup>3</sup>\* \* \* of each candidate, and one other person duly authorized in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, <sup>4</sup>[reject] any nomination on any of the following grounds:—

<sup>5</sup>(a) <sup>6</sup>[that on the date fixed for the scrutiny of nominations the candidate] either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:

— Articles 84, 102, 173 and 191, <sup>7</sup>\* \* \*

<sup>8</sup>[Part II of this Act, and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963)] <sup>9</sup>\* \* \*; or

(b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

(3) Nothing contained in <sup>10</sup>[clause (b) or clause (c)] of sub-section (2) shall be deemed to authorize the <sup>11</sup>[rejection] of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

1. Subs. by Act 10 of 1976, s. 2 and Sch., for certain words (w.e.f. 9-9-1975).

2. Subs. by Act 27 of 1956, s. 18, for certain words.

3. The words "and one seconder" omitted by s. 19, *ibid.*

4. Subs. by Act 27 of 1956, s. 19, for "refuse".

5. Subs. by s. 19, *ibid.*, for cls. (a) to (e).

6. Subs. by Act 40 of 1961, s. 9, for "that the candidate" (w.e.f. 20-9-1961).

7. The word "and" ins. by the Adaptation of Laws (No. 2) Order, 1956 and omitted by Act 20 of 1963, s. 57 and the Second Sch.

8. Subs. by Act 20 of 1963, s. 57 and the Second Sch. for certain words.

9. Certain words omitted by the Adaptation of Laws (No. 2) Order, 1956.

10. Subs. by Act 27 of 1956, s. 19, for "clause (c), clause (d) or clause (e)".

11. Subs. by s. 19, *ibid.*, for "refusal".

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(4) The returning officer shall not reject any nomination paper on the ground of any <sup>1</sup>\* \* \* defect which is not of a substantial character.

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that in case <sup>2</sup>[an objection is raised by the returning officer or is made by any other person] the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

<sup>3</sup>[(7) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).

(8) Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.]

**37. Withdrawal of candidature.**—(1) Any candidate may withdraw his candidature by a notice in writing which shall contain such particulars as may be prescribed and shall be subscribed by him and delivered before three o'clock in the afternoon on the day fixed under clause (c) of section 30 to the returning officer either by such candidate in person or by his proposer, <sup>4</sup>\* \* \* or election agent who has been authorized in this behalf in writing by such candidate.

4\* \* \* \* \*

(2) No person who has given a notice of withdrawal of his candidature under sub-section (1) shall be allowed to cancel the notice.

<sup>5</sup>[(3) The returning officer shall, on being satisfied as to the genuineness of a notice of withdrawal and the identity of the person delivering it under sub-section (1), cause the notice to be affixed in some conspicuous place in his office.]

**38. Publication of list of contesting candidates.**—(1) Immediately after the expiry of the period within which candidatures may be withdrawn under sub-section (1) of section 37, the returning officer shall prepare and publish in such form and manner as may be prescribed a list of contesting candidates, that is to say, candidates who were included in the list of validly nominated candidates and who have not withdrawn their candidature within the said period.

<sup>7</sup>[(2) For the purpose of listing the names under sub-section (1), the candidates shall be classified as follows, namely:

- (i) candidates of recognised political parties;
- (ii) candidates of registered political parties other than those mentioned in clause (i);
- (iii) other candidates.

1. The word "technical" omitted by Act 27 of 1956, s. 19.

2. Subs. by Act 40 of 1961, s. 9, for "an objection is made" (w.e.f. 20-9-1961).

3. Subs. by Act 27 of 1956, s. 19, for sub-section (7).

4. The word "seconded" and the proviso omitted by s. 20, *ibid.*

5. Subs. by Act 40 of 1961, s. 10, for sub-section (3) (w.e.f. 20-9-1961).

6. Subs. by Act 27 of 1956, s. 21, for s. 38.

7. Subs. by Act 21 of 1996, s. 8, for sub-section (2) (w.e.f. 1-8-1996).

(3) The categories mentioned in sub-section (2) shall be arranged in the order specified therein and the names of candidates in each category shall be arranged in alphabetical order and the addresses of the contesting candidates as given in the nomination papers together with such other particulars as may be prescribed.]

<sup>1</sup>[39. **Nomination of candidates at other elections.**—(1) As soon as the notification calling upon the elected members or the members of the Legislative Assembly of a State or the members of the electoral college of a <sup>2</sup>[Union territory] to elect a member or members is issued, the Election Commission shall, by notification in the Official Gazette, appoint—

(a) the last date of making nominations, which shall be the <sup>3</sup>[seventh day] after the date of publication of the first mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(b) the date for the scrutiny of nominations, which shall be <sup>4</sup>[the day immediately following] the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(c) the last date for the withdrawal of candidatures, which shall be <sup>5</sup>[the second day] after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(d) the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the seventh day after the last date for the withdrawal of candidatures; and

(e) the date before which the election shall be completed.

\* \* \* \* \*

(2) The provisions of sections 31 to 38, excluding sub-sections (2) and (5) of section 33 and <sup>7</sup>[clause (a) of sub-section (1) of section 34], shall apply in relation to any such election as they apply in relation to an election in any constituency :

Provided that—

(a) any references in the said provisions to the electoral roll of the constituency shall, unless the context otherwise requires, be construed, in the case of an election by the members or the elected members of the Legislative Assembly of the State, as references to the list of members or elected members, as the case may be, of that Assembly maintained under sub-section (1) of section 152, and in the case of an election by the members of the electoral college of a <sup>8</sup>[Union territory], as references to the list of members of such electoral college maintained under sub-section (2) of that section;

<sup>9</sup>[(aa) the reference in the opening paragraph of sub-section (1) of section 33 to "an elector of the constituency as proposer" shall be construed as a reference to "ten per cent. of the elected members or of the members of the Legislative Assembly of a State or of the members of the electoral college of a Union territory, as the case may be, or ten members concerned, whichever is less, as proposers":

Provided that where as a result of the calculation of the percentage referred to in this clause, the number of members arrived at is a fraction and if the fraction so arrived at is more than one-half it shall be counted as one, and if the fraction so arrived at is less than one-half it shall be ignored;]

1. Subs. by Act 27 of 1956, s. 22, for s. 39.

2. Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "Part C State".

3. Subs. by Act 40 of 1961, s. 11, for "tenth day" (w.e.f. 20-9-1961).

4. Subs. by Act 47 of 1966, s. 30, for "the second day after" (w.e.f. 14-12-1966).

5. Subs. by s. 30, *ibid.*, for "the third day" (w.e.f. 14-12-1966).

6. *Explanation* omitted by s. 30, *ibid.* (w.e.f. 14-12-1966).

7. Subs. by Act 58 of 1958, s. 19, for "section 34".

8. Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "Part C State".

9. Ins. by Act 1 of 1989, s. 8 (w.e.f. 1-4-1989).

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<sup>1</sup>[(ab)] in the case of an election to the Legislative Council of a State by the members of the Legislative Assembly of that State, clause (a) of sub-section (2) of section 36 shall be construed as including a reference to sub-clause (d) of clause (3) of article 171;]

(b) any reference in the said provisions to section 30 shall be construed as references to sub-section (1) of this section; and

(c) at the time of presenting the nomination paper, the returning officer may require the person presenting the same to produce either a copy of the electoral roll, or part of the electoral roll, in which the name of the candidate is included or a certified copy of the relevant entries in such roll.]

<sup>3</sup>[**39A. Allocation of equitable sharing of time.**—(1) Notwithstanding anything contained in any other law for the time being in force, the Election Commission shall, on the basis of the past performance of a recognised political party, during elections, allocate equitable sharing of time on the cable television network and other electronic media in such manner as may be prescribed to display or propagate any election matter or to address public in connection with an election.

(2) The allocation of equitable sharing of time under sub-section (1), in respect of an election, shall be made after the publication of list of contesting candidates under section 38 for the election and shall be valid till forty-eight hours before the hour fixed for poll for such election.

(3) The allocation of equitable sharing of time under sub-section (1) shall be binding on all political parties concerned.

(4) The Election Commission may, for the purpose of this section, make code of conduct for cable operators and electronic media and the cable operators and every person managing or responsible for the management of the electronic media shall abide by such code of conduct.

*Explanation.*—For the purposes of this section,—

(a) “electronic media” includes radio and any other broadcasting media notified by the Central Government in the Official Gazette;

(b) “cable television network” and “cable operator” have the meanings respectively assigned to them under the Cable Television Networks (Regulation) Act, 1995 (7 of 1995).

#### CHAPTER II.—*Candidates and their agents*

<sup>4</sup>[**40. Election agents.**—A candidate at an election may appoint in the prescribed manner any one person other than himself to be his election agent and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the returning officer.]

<sup>5</sup>[**41. Disqualification for being an election agent.**—Any person who is for the time being disqualified under the Constitution or under this Act for being a member of either House of Parliament or the House or either House of the Legislature of a State or for voting at elections, shall, so long as the disqualification subsists, also be disqualified for being an election agent at any election.]

<sup>1</sup> Ins. by Act 47 of 1966, s. 30 (w.e.f. 14-12-1966).

<sup>2</sup> Cl.(aa) relettered as cl. (ab) by Act 1 of 1989, s. 8 (w.e.f. 1-4-1989).

<sup>3</sup> Ins. by Act 46 of 2003, s. 3 (w.e.f. 24-9-2003).

<sup>4</sup> Subs. by Act 27 of 1956, s. 23, for s. 40.

<sup>5</sup> Subs. by Act 47 of 1966, s. 31, for s. 41 (w.e.f. 14-12-1966).

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**42. Revocation of the appointment, or death, of an election agent.**—(1) Any revocation of the appointment of an election agent, <sup>1\*\*\*</sup> shall be signed by the candidate, and shall operate from the date on which it is lodged with the returning officer.

<sup>2</sup>(2) In the event of such a revocation or of the death of an election agent whether that event occurs before or during the election, or after the election but before the account of the candidate's election expenses has been lodged in accordance with the provisions of section 78, the candidate may appoint in the prescribed manner another person to be his election agent

and when such appointment is made notice of the appointment shall be given in the prescribed manner to the returning officer.]

43. [Effect of default in appointment of election agent under section 42.] Rep. by the Representation of the People (Second Amendment) Act, 1956 (27 of 1956), s. 25.

44. [Duty of the election agent to keep accounts.] Rep. by s. 25, *ibid.*

<sup>3</sup>[45. **Functions of election agents.**—An election agent may perform such functions in connection with the election as are authorised by or under this Act to be performed by an election agent.]

<sup>4</sup>[46. **Appointment of polling agents.**—A contesting candidate or his election agent may appoint in the prescribed manner such number of agents and relief agents as may be prescribed to act as polling agents of such candidate at each polling station provided under section 25 or at the place fixed under sub-section (1) of section 29 for the poll.]

<sup>5</sup>[47. **Appointment of counting agents.**—A contesting candidate or his election agent may appoint in the prescribed manner one or more persons, but not exceeding such number as may be prescribed, to be present as his counting agent or agents at the counting of votes, and when any such appointment is made notice of the appointment shall be given in the prescribed manner to the returning officer.]

**48. Revocation of the appointment or death of a polling agent or counting agent.**—(1) Any revocation of the appointment of a polling agent shall be signed by the candidate or his election agent and shall operate from the date on which it is lodged with such officer as may be prescribed, and in the event of such a revocation or of the death of a polling agent before the close of the poll, the candidate or his election agent may appoint in the prescribed manner another polling agent at any time before the poll is closed and shall forthwith give notice of such appointment in the prescribed manner to such officer as may be prescribed.

(2) Any revocation of the appointment of a counting agent shall be signed by the candidate or his election agent and shall operate from the date on which it is lodged with the returning officer, and in the event of such a revocation or of the death of a counting agent before the commencement of the counting of votes, the candidate or his election agent may appoint in the prescribed manner another counting agent at any time before the counting of votes is commenced and shall forthwith give notice of such appointment in the prescribed manner to the returning officer.

**49. Functions of polling agents and counting agents.**—(1) A polling agent may perform such functions in connection with the poll as are authorised by or under this Act to be performed by a polling agent.

(2) A counting agent may perform such functions in connection with the counting of votes as are authorised by or under this Act to be performed by a counting agent.

**50. Attendance of contesting candidate or his election agent at polling stations, and performance by him of the functions of a polling agent or counting agent.**—(1) At every election where a poll is taken, each <sup>6</sup>[contesting candidate] at such election and his election agent shall have a right to be present at any polling station provided under section 25 for the taking of the poll or at the place fixed under sub-section (1) of section 29 for the poll.

1. The words "whether he be the candidate himself or not" omitted by Act 27 of 1956, s. 24.

2. Subs. by s. 24, *ibid.*, for sub-section (2).

3. Subs. by s. 26, *ibid.*, for s. 45.

4. Subs. by s. 27, for s. 46, *ibid.*

5. Subs. by Act 27 of 1956, s. 28, *ibid.*, for s. 47.

6. Subs. by Act 58 of 1958, s. 20, for "candidate".

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(2) A <sup>1</sup>[contesting candidate] or his election agent may himself do any act or thing which any polling agent or the counting agent of such <sup>6</sup>[contesting candidate] if appointed, would have been authorised by or under this Act to do, or may assist any polling agent or the counting agent of such <sup>2</sup>[contesting candidate] in doing any such act or thing.

**51. Non-attendance of polling or counting agents.**— Where any act or thing is required or authorised by or under this Act to be done in the presence of the polling or counting agents, the non-attendance of any such agent or agents at the time and place appointed for the purpose shall not, if the act or thing is otherwise duly done, invalidate the act or thing done.

CHAPTER III.—*General Procedure at Elections*

<sup>2</sup>[**52. Death of candidate of reorganised political party before poll**— (1) If a candidate, set up by a recognised political party,—

(a) dies at any time after 11 A.M. on the last date for making nomination and his nomination is found valid on scrutiny under section 36; or

(b) whose nomination has been found valid on scrutiny under section 36 and who has not withdrawn his candidature under section 37 dies;

and in either case, a report of his death is received at any time before the publication of the list of contesting candidate under section 38; or

(c) dies as a contesting candidate and a report of his death is received before the commencement of the poll,

the returning officer shall, upon being satisfied about the fact of the death of the candidate, by order announce an adjournment of the poll to a date to be notified later and report the fact to the Election Commission and also to the appropriate authority:

Provided that no order for adjourning a poll should be made in a case referred to in clause (a) except after the scrutiny of all the nominations including the nomination of the deceased candidate:

(2) The Election Commission shall, on receipt of a report from the returning officer under sub-section (1), call upon the recognised political party, whose candidate has died, to nominate another candidate for the said poll within seven days of issue of such notice to such recognised political party and the provisions of sections 30 to 37 shall, so far as may be, apply in relation to such nomination as they would apply to other nominations:

Provided that no person who has given a notice of withdrawal of his candidature under sub-section (1) of section 37 before the adjournment of the poll shall be ineligible for being nominated as a candidate for election after such adjournment.

(3) Where a list of contesting candidates had been published under section 38 before the adjournment of the poll under sub-section (1), the returning officer shall again prepare and publish a fresh list of contesting candidates under that section so as to include the name of the candidate who has been validly nominated under sub-section (2).

*Explanation.*—For the purposes of this section, sections 33 and 38, "recognised political party" means a political party reorganised by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968.]

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1. Subs. by Act 58 of 1958, s. 20, for "candidate".

2. Subs. by Act 2 of 1992, s. 2, for s. 52 and again subs. by Act 21 of 1996, s. 9 (w.e.f.1-8-1996).

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**53. Procedure in contested and uncontested elections.**—<sup>1</sup>[(1) If the number of contesting candidates is more than the number of seats to be filled, a poll shall be taken.]

(2) If the number of such candidates is equal to the number of seats to be filled, the returning officer shall forthwith declare all such candidates to be duly elected to fill those seats.

(3) If the number of such candidates is less than the number of seats to be filled, the returning officer shall forthwith declare all such candidates to be elected and the<sup>2</sup>[Election Commission] shall, by notification in the Official Gazette, call upon the constituency or the elected members or the members of the State Legislative Assembly or the members of the electoral college concerned<sup>3\*\*\*</sup>, as the case may be, to elect a person or persons to fill the remaining seat or seats<sup>4\*\*\*</sup> :

Provided that where the constituency or the elected members or the members of the State Legislative Assembly or the members of the electoral college<sup>3\*\*\*</sup> having already been called upon under this sub-section, has or have failed to elect a person or the requisite number of persons, as the case may be, to fill the vacancy or vacancies, the<sup>2</sup>[Election Commission] shall not be bound to call again upon the constituency, or such members to elect a person or persons<sup>5</sup>[until it is satisfied that if called upon again, there will be no such failure on the part of the constituency or such members].

**54.** [*Special procedure at elections in constituencies where seats are reserved for Scheduled Castes or Scheduled Tribes.*] Rep. by the Representation of the People (Amendment) Act, 1961 (40 of 1961), s. 12 (w.e.f. 20-9-1961).

**55. Eligibility of members of Scheduled Castes or Scheduled Tribes to hold seats not reserved for those castes or tribes.**—For the avoidance of doubt it is hereby declared that a member of the Scheduled Castes or of the Scheduled Tribes shall not be disqualified to hold a seat not reserved for members of those castes or tribes, if he is otherwise qualified to hold such seats under the Constitution and this Act<sup>6</sup>[or under the Government of Union Territories Act, 1963 (20 of 1963), as the case may be.]

<sup>7</sup>[**55A.** [*Retirement from contest at elections in Parliamentary and Assembly constituencies.*] Rep. by the Representation of the People (Amendment) Act, 1958 (58 of 1958), s. 22.

#### CHAPTER IV.— *The Poll*

**56. Fixing time for poll.**—The<sup>8</sup>[Election Commission] shall fix the hours during which the poll will be taken; and the hours so fixed shall be published in such manner as may be prescribed:

Provided that the total period allotted on any one day for polling at an election in<sup>9</sup>[a Parliamentary or Assembly constituency] shall not be less than eight hours.

**57. Adjournment of poll in emergencies.**—(1) If at an election the proceedings at any polling station provided under section 25 or at the place fixed under sub-section (1) of section 29 for the poll are interrupted or obstructed by any riot or open violence, or if at an election it is not possible to take the poll at any polling station or such place on account of any natural calamity, or any other sufficient cause, the presiding officer for such polling station or the returning officer presiding over such place, as the case may be, shall announce an adjournment of the poll to a date to be notified later, and where the poll is so adjourned by a presiding officer, he shall forthwith inform the returning officer concerned.

1. Subs. by Act 27 of 1956, s. 30, for sub-section (1).

2. Subs. by s. 30, *ibid.*, for "appropriate authority".

3. The words "or the elected members of the Coorg Legislative Council" omitted by Act 49 of 1951, s. 44 and the Fifth Sch.

4. The words "before such date as may be appointed in this behalf by the Election Commission and specified in the notification" omitted by Act 27 of 1956, s. 30.

5. Subs. by s. 30, *ibid.*, for "until such date as the Election Commission may specify in this behalf".

6. Ins. by Act 20 of 1963, s. 57 and the Second Schedule. The words "or under the Government of Part C States Act, 1951 (49 of 1951), as the case may be" ins. by Act 27 of 1956, s. 32, and omitted by the Adaptation of Laws (No. 2) Order, 1956.

7. Ins. by Act 27 of 1956, s. 33.

8. Subs. by s. 34, *ibid.*, for "appropriate authority".

9. Subs. by Act 58 of 1958, s. 23, for "a constituency".

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(2) Whenever a poll is adjourned under sub-section (1), the returning officer shall immediately report the circumstances to the appropriate authority and the Election Commission, and shall, as soon as may be, with the previous approval of the Election Commission, appoint the day on which the poll shall recommence, and fix the polling station or place at which and the hours during which the poll will be taken and shall not count the votes cast at such election until such adjourned poll shall have been completed.

(3) In every such case as aforesaid; the returning officer shall notify in such manner as the Election Commission may direct the date, place and hours of polling fixed under sub-section (2).

<sup>1</sup>[58. **Fresh poll in the case of destruction, etc., of ballot boxes.**—(1) If at any election,—

(a) any ballot box used at a polling station or at a place fixed for the poll is unlawfully taken out of the custody of the presiding officer or the returning officer, or is accidentally or intentionally destroyed or lost, or is damaged or tampered with, to such an extent, that the result of the poll at that polling station or place cannot be ascertained; or

<sup>2</sup>[(aa) any voting machine develops a mechanical failure during the course of the recording of votes; or]

(b) any such error or irregularity in procedure as is likely to vitiate the poll is committed at a polling station or at a place fixed for the poll,

the returning officer shall forthwith report the matter to the Election Commission.

(2) Thereupon the Election Commission shall, after taking all material circumstances into account; either—

(a) declare the poll at that polling station or place to be void, appoint a day, and fix the hours, for taking a fresh poll at that polling station or place and notify the day so appointed and the hours so fixed in such manner as it may deem fit, or

(b) if satisfied that the result of a fresh poll at that polling station or place will not, in any way, affect the result of the election or that <sup>5</sup>[the mechanical failure of the voting machine or] the error or irregularity in procedure is not material, issue such directions to the returning officer as it may deem proper for the further conduct and completion of the election.

(3) The provisions of this Act and of any rules or orders made thereunder shall apply to every such fresh poll as they apply to the original poll.]

<sup>3</sup>[58A. **Adjournment of poll or countermanding of election on the ground of booth capturing.**—(1) If at any election,—

(a) booth capturing has taken place at a polling station or at a place fixed for the poll (hereafter in this section referred to as a place) in such a manner that the result of the poll at that polling station or place cannot be ascertained; or

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1. Subs. by Act 40 of 1961, s. 13, for s. 58 (w.e.f. 20-9-1961).

2. Ins. by Act 1 of 1989, s. 9 (w.e.f. 15-3-1989).

3. Ins. by Act 1 of 1989, s. 10, *ibid.* (w.e.f. 15-3-1989).

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(b) booth capturing takes place in any place for counting of votes in such a manner that the result of the counting at that place cannot be ascertained,

the returning officer shall forthwith report the matter to the Election Commission.



(2) The Election Commission shall, on the receipt of a report from the returning officer under sub-section (1) and after taking all material circumstances into account, either—

(a) declare that the poll at that polling station or place be void, appoint a day, and fix the hours, for taking fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner as it may deem fit; or

(b) if satisfied that in view of the large number of polling stations or places involved in booth capturing the result of the election is likely to be affected, or that booth capturing had affected counting of votes in such a manner as to affect the result of the election, countermand the election in that constituency.

*Explanation.*—In this section, "booth capturing" shall have the same meaning as in section 135A.]

**59. Manner of voting at elections.**—At every election where a poll is taken votes shall be given by ballot in such manner as may be prescribed, <sup>1</sup>[and, save as expressly provided by this Act, no votes shall be received by proxy:]

<sup>2</sup>[ Provided that the votes at every election to fill a seat or seats in the Council of States shall be given by open ballot.]

<sup>3</sup>[**60. Special procedure for voting by certain classes of persons.**—Without prejudice to the generality of the provisions contained in section 59, provision may be made, by rules made under this Act, for enabling,—

(a) any of the persons as is referred to in clause (a) or clause (b) of sub-section (8) of section 20 of the Representation of the People Act, 1950 (43 of 1950), (hereinafter in this section referred to as the 1950-Act) to give his vote either in person or by postal ballot or by proxy, and not in any other manner, at an election in a constituency where poll is taken;

(b) any of the following persons to give his vote either in person or by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken, namely:—

(i) any person as is referred to in clause (c) or clause (d) of sub-section (8) of section 20 of the 1950-Act;

(ii) the wife of any such person to whom the provisions of sub-section (3) of section 20 of the 1950-Act apply and such wife being ordinarily residing with that person in terms of sub-section (6) of that section;

(c) any person belonging to a class of persons notified by the Election Commission in consultation with the Government to give his vote by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken subject to the fulfilment of such requirement as may be specified in those rules.

(d) any person subjected to preventive detention under any law for the time being in force to give his vote by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken, subject to the fulfilment of such requirements as may be specified in those rules.]

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1. Subs. by Act 24 of 2003, s. 2 (w.e.f. 22-9-2003).

2. Ins. by Act 40 of 2003, s. 3.

3. Subs. by Act 24 of 2003, s. 3, (w.e.f. 22-9-2003).

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<sup>1</sup>[**61. Special procedure for preventing personation of electors.**—With a view to preventing personation of electors provision may be made by rules made under this Act:—

(a) for the marking with indelible ink of the thumb or any other finger of every elector who applies for a ballot paper or ballot papers for the purpose of voting at a polling station before delivery of such paper or papers to him;

(b) for the production before the presiding officer or a polling officer of a polling station by every such elector as aforesaid of his identity card before the delivery of a ballot paper or ballot papers to him if under rules made in that behalf under the Representation of the People Act, 1950 (43 of 1950), electors of the constituency in which the polling station is situated have been supplied with identity cards with or without their respective photographs attached thereto; and

(c) for prohibiting the delivery of any ballot paper to any person for voting at a polling station if at the time such person applies for such paper he has already such a mark on his thumb or any other finger or does not produce on demand his identity card before the presiding officer or a polling officer of the polling station.]

<sup>2</sup>[**61A. Voting machines at elections.**—Notwithstanding anything contained in this Act or the rules made thereunder, the giving and recording of votes by voting machines in such manner as may be prescribed, may be adopted in such constituency or constituencies as the Election Commission may, having regard to the circumstances of each case, specify.

*Explanation.*—For the purpose of this section, "voting machine" means any machine or apparatus whether operated electronically or otherwise used for giving or recording of votes and any reference to a ballot box or ballot paper in this Act or the rules made thereunder shall, save as otherwise provided, be construed as including a reference to such voting machine wherever such voting machine is used at any election.]

**62. Right to vote.**—(1) No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of by any constituency shall be entitled to vote in that constituency.

(2) No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in section 16 of the Representation of the People Act, 1950 (43 of 1950).

(3) No person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.

(4) No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once, and if he does so vote, all his votes in that constituency shall be void.

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1. Subs. by Act 58 of 1958, s. 25, for s. 61.

2. Ins. by Act 1 of 1989, s. 11 (w.e.f. 15-3-1989).

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(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police:

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.

<sup>1</sup>[(6) Nothing contained in sub-sections (3) and (4) shall apply to a person who has been authorised to vote as proxy for an elector under this Act in so far as he votes as a proxy for such elector.]

**63.** [*Method of voting.*] *Rep. by the Representation of the People (Amendment) Act, 1961 (40 of 1961), s. 14 (w.e.f.20-9-1961).*

CHAPTER V.—*Counting of Votes*

**64. Counting of votes.**—At every election where a poll is taken, votes shall be counted by, or under the <sup>2</sup>[supervision and direction] of, the returning officer, and each <sup>3</sup>[contesting candidate], his election agent and his <sup>4</sup>[counting agents], shall have a right to be present at the time of counting.

<sup>5</sup>[**64A. Destruction, loss, etc., of ballot papers at the time of counting**—(1) If at any time before the counting of votes is completed any ballot papers used at a polling station or at a place fixed for the poll are unlawfully taken out of the custody of the returning officer or are accidentally or intentionally destroyed or lost or are damaged or tampered with, to such an extent that the result of the poll at that polling station or place cannot be ascertained, the returning officer shall forthwith report the matter to the Election Commission.

(2) Thereupon, the Election Commission shall, after taking all material circumstances into account, either—

(a) direct that the counting of votes shall be stopped, declare the poll at that polling station or place to be void, appoint a day, and fix the hours, for taking a fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner as it may deem fit, or

(b) if satisfied that the result of a fresh poll at that polling station or place will not, in any way, affect the result of the election, issue such directions to the returning officer as it may deem proper for the resumption and completion of the counting and for the further conduct and completion of the election in relation to which the votes have been counted.

(3) The provisions of this Act and of any rules or orders made thereunder shall apply to every such fresh poll as they apply to the original poll.]

**65. Equality of votes.**—If, after the counting of the votes is completed, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of those candidates to be declared elected, the returning officer shall forthwith decide between those candidates by lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

**66. Declaration of results.**—When the counting of the votes has been completed, the returning officer <sup>6</sup>[shall, in the absence of any direction by the Election Commission to the contrary, forthwith declare] the result of the election in the manner provided by this Act or the rules made thereunder.

**67. Report of the result.**—As soon as may be after the result of an election has been declared, the returning officer shall report the result to the appropriate authority and the Election Commission, and in the case of an election to a

1. Ins. by Act 24 of 2003, s. 4 (w.e.f. 22-9-2003).

2. Subs. by Act 27 of 1956, s. 36, for "supervision".

3. Subs. by Act 58 of 1958, s. 26, for "candidate".

4. Subs. by Act 27 of 1956, s. 36, for "counting agent".

5. Ins. by Act 47 of 1966, s. 34 (w.e.f. 14-12-1966).

6. Subs. by s. 35, *ibid.*, for "shall forthwith declare" (w.e.f. 14-12-1966).

House of Parliament or of the Legislature of a State also to the Secretary of that House, and the appropriate authority shall cause to be published in the Official Gazette the declarations containing the names of the elected candidates.

<sup>1</sup>[**67A. Date of election of candidate.**—For the purposes of this Act, the date on which a candidate is declared by the returning officer under the provisions of section 53, <sup>2\*\*\*</sup>, <sup>3\*\*\*</sup> or section 66, to be elected to a House of Parliament or of the Legislature of a State <sup>4\*\*\*</sup> shall be the date of election of that candidate.]

CHAPTER VI.—*Multiple Elections*

**68. Vacation of seats when elected to both Houses of Parliament.**—(1) Any person who is chosen a member of both the Houses of the People and the Council of States and who has not taken his seat in either House may, by notice in writing signed by him and delivered to the Secretary to the Election Commission <sup>5</sup>[within ten days from the date, or the later of the dates, on which he is so chosen, intimate] in which of the Houses he wishes to serve, and thereupon, his seat in the House in which he does not wish to serve shall become vacant.

(2) In default of such intimation within the aforesaid period, his seat in the Council of States shall, at the expiration of that period, become vacant.

(3) Any intimation given under sub-section (1) shall be final and irrevocable.

<sup>6</sup>[(4) For the purposes of this section and of section 69, the date on which a person is chosen to be a member of either House of Parliament shall be in the case of an elected member, the date of his election and in the case of a nominated member, the date of first publication in the Gazette of India of his nomination.]

**69. Vacation of seats by persons already members of one House on election to other House of Parliament.**—(1) If a person who is already a member of the House of the People and has taken his seat in such House is chosen a member of the Council of States, his seat in the House of the People shall, <sup>7</sup>[on the date on which he is so chosen], become vacant.

(2) If a person who is already a member of the Council of States and has taken his seat in such Council is chosen a member of the House of the People, his seat in the Council of States shall, <sup>7</sup>[on the date on which he is so chosen], become vacant.

**\*70. Election to more than one seat in either House of Parliament or in the House or either House of the legislature of a State.**—If a person is elected to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State, then, unless within the prescribed time he resigns all but one of the seats <sup>8</sup>[by writing under his hand addressed to the Speaker or Chairman, as the case may be, or to such other authority or officer as may be prescribed], all the seats shall become vacant.

CHAPTER VII.—*Publication of election Results and Nominations*

<sup>9</sup>[**71. Publication of results of elections to the Council of States and of names of persons nominated by the President.**—After the elections held in any year in pursuance of the notifications issued under section 12, there shall be notified by the appropriate authority in the Official Gazette the names of members elected by the elected members of the

1. Ins. by Act 27 of 1956, s. 37.

2. The word and figures "section 54" omitted by Act 40 of 1961, s. 15 (w.e.f. 20-9-1961).

3. The word, figures and letter " section 55A " omitted by Act 58 of 1958, s. 27.

4. Certain words omitted by Act 103 of 1956, s. 66.

5. Subs. by Act 27 of 1956, s. 38, for certain words.

6. Ins. by s. 38, *ibid.*

7. Subs. by s. 39, *ibid.*, for "on the publication in the Gazette of India of the declaration that he has been so chosen".

8. Ins. by s. 40, *ibid.*

9. Subs. by s. 41, *ibid.*, for ss. 71 to 75.

\* See rule 91 of the Conduct of Election Rules, 1961 (page 76 of Vol. II). In relation to Prohibition relating to membership both of Parliament and of a House of the Legislature of a State, see also the Prohibition of Simultaneous Membership Rules, 1950 published under articles 101(2) and 190(2) of the Constitution vide Notification No.F.46/50—C, dated 26th January, 1950, in the Gazette of India, Extraordinary, page 678 (Pages 140 of Vol. I).

Legislative Assemblies of the States and by the members of the electoral colleges for the various<sup>1</sup>[Union territories] at the said elections together with the names of any persons nominated by the President of the Council of States under sub-clause (a) of clause (1) of article 80 or under any other provisions.

72. [Publication of results of elections for the reconstitution of electoral colleges for certain Union territories.]  
*Rep. by the Territorial Councils Act, 1956 (103 of 1956), s. 66.*

**73. Publication of results of general elections to the House of the People and the State Legislative Assemblies.—**Where a general election is held for the purpose of constituting a new House of the People or a new State Legislative Assembly, there shall be notified by<sup>2</sup>[the Election Commission] in the Official Gazette, as soon as may be after<sup>3</sup>[the results of the elections in all the constituencies] [other than those in which the poll could not be taken for any reason on the date originally fixed under clause (d) of section 30 or for which the time for completion of the election has been extended under the provisions of section 153] have been declared by the returning officer under the provisions of section 53 or, as the case may be, section 66, the names of the members elected for those constituencies]<sup>4</sup>\* \* \* and upon the issue of such notification that House or Assembly shall be deemed to be duly constituted:

Provided that the issue of such notification shall not be deemed—

<sup>5</sup>[(a) to preclude—

(i) the taking of the poll and the completion of the election in any Parliamentary or Assembly constituency or constituencies in which the poll could not be taken for any reason on the date originally fixed under clause (d) of section 30; or

(ii) the completion of the election in any Parliamentary or Assembly constituency or constituencies for which time has been extended under the provisions of section 153; or]

(b) to affect the duration of the House of the People or the State Legislative Assembly, if any, functioning immediately before the issue of the said notification.

<sup>6</sup>[73A. **Special provisions as to certain elections.**—Notwithstanding anything contained in section 73 or in any other provision of this Act, with respect to the general election for the purpose of constituting a new House of the People upon dissolution of the Ninth House of the People,—

(a) the notification under section 73 may be issued without taking into account the Parliamentary constituencies in the State of Jammu and Kashmir; and

(b) the Election Commission may take the steps in relation to elections from the Parliamentary constituencies in the State of Jammu and Kashmir separately and in such manner and no such date or dates as it may deem appropriate.]

**74. Publication of results of elections to the State Legislative Councils and of names of persons nominated to such Councils.**—After the elections held<sup>7</sup>[in pursuance of the notifications issued under section 15A or] in any year in pursuance of the notifications issued under section 16, there shall be notified by the appropriate authority in the Official Gazette the names of the members elected for the various Council constituencies and by the members of the Legislative Assembly of the State at the said elections together with the names of any persons nominated by the Governor<sup>8</sup>\*\*\*\* under sub-clause (e) of clause (3) of article 171.]

1. Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "Part C States".

2. Subs. by Act 40 of 1961, s. 16, for "the appropriate authority" (w.e.f. 20-9-1961).

3. Subs. by Act 10 of 1967, s. 2, for certain words.

4. Certain words omitted by Act 40 of 1961, s. 16 (w.e.f. 20-9-1961).

5. Subs. by Act 10 of 1967, s. 2, for cl. (a).

6. Subs. by Act 31 of 1991, s. 2, for ss 73A and 73AA (w.e.f. 18-4-1991).

7. Ins. by Act 37 of 1957, s. 13.

8. The words " or Rajpramukh, as the case may be" omitted by the Adapatation of Laws (No. 2) Order, 1956.

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(PART II.—Acts of Parliament)

[CHAPTER VIIA.—DECLARATION OF ASSETS AND LIABILITIES

**75A. Declaration of assets and liabilities.**—(1) Every elected candidate for a House of Parliament shall, within ninety days from the date on which he makes and subscribes an oath or affirmation, according to the form set out for the purpose in the Third Schedule to the Constitution, for taking his seat in either House of Parliament, furnish the information, relating to—

- (i) the movable and immovable property of which he, his spouse and his dependant children are jointly or severally owners or beneficiaries;
- (ii) his liabilities to any public financial institution; and
- (iii) his liabilities to the Central Government or the State Government,

to the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

(2) The information under sub-section (1) shall be furnished in such form and in such manner as may be prescribed in the rules made under sub-section (3).

(3) The Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may make rules for the purposes of sub-section (2).

(4) The rules made by the Chairman of the Council of States or the Speaker of the House of the People, under sub-section (3) shall be laid, as soon as may be after they are made, before the Council of States or the House of the People, as the case may be, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the Council of States or the House of the People and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect.

(5) The Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may direct that any wilful contravention of the rules made under sub-section (3) by an elected candidate for a House of Parliament referred to in sub-section (1) may be dealt with in the same manner as a breach of privilege of the Council of States or the House of the People, as the case may be.

*Explanation.*—For the purposes of this section,—

(i) “immovable property” means the land and includes any building or other structure attached to the land or permanently fastened to anything which is attached to the land;

(ii) “movable property” means any other property which is not the immovable property and includes corporeal and incorporeal property of every description;

(iii) “public financial institution” means a public financial institution within the meaning of section 4A of the Companies Act, 1956 (1 of 1956), and includes bank;

(iv) “bank” referred to in clause (iii) means—

(a) State Bank of India constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955);

(b) subsidiary bank having the meaning assigned to it in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

(c) Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976);

(d) corresponding new bank having the meaning assigned to it in clause (da) of section 5 of the Banking Regulation Act, 1949 (10 of 1949); and

(e) co-operative bank having the meaning assigned to it in clause (cci) of section 5 of the Banking Regulation Act, 1949 (10 of 1949) as modified by sub-clause (i) of clause (c) of section 56 of that Act; and

(v) “dependant children” means sons and daughters who have no separate means of earning and are wholly dependant on the elected candidate referred to in sub-section (1) for their livelihood.]

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<sup>1</sup> Ins. by Act 72 of 2002, s. 4 (w.e.f. 24-8-2002).

## (PART II.—Acts of Parliament)

CHAPTER VIII.—*Election Expenses*

<sup>1</sup>**76. Application of Chapter.**—This Chapter shall apply only to the elections to the House of the People and to the Legislative Assembly of a State.

**77. Account of election expenses and maximum thereof.**—(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between <sup>2</sup>[the date on which he has been nominated] and the date of declaration of the result thereof, both dates inclusive.

<sup>3</sup>[*Explanation 1.*—For the removal of doubts, it is hereby declared that—

(a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a candidate of that political party or his election agent for the purposes of this sub-section.

(b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.

*Explanation 2.*—For the purposes of clause (a) of *Explanation 1*, the expression “leaders of a political party”, in respect of any election, means,—

(i) where such political party is a recognised political party, such persons not exceeding forty in number, and

(ii) where such political party is other than a recognised political party, such persons not exceeding twenty in number,

whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act:

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.]

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.

**78. Lodging of account with the district election officer.**—<sup>4</sup>[(1)] Every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates, lodge with the <sup>5</sup>[district election officer] an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 77.]

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<sup>1</sup> Subs. by Act 27 of 1956, s. 42, for ss. 76 to 78.

<sup>2</sup> Subs. by Act 40 of 1975, s. 6, for certain words (retrospectively).

<sup>3</sup> Subs. by Act 46 of 2003, s. 4, for the *Explanation*.

<sup>4</sup> S. 78 re-numbered as sub-section (1) of that section by Act 47 of 1966, s. 36.

<sup>5</sup> Subs. by Act 47 of 1966, s. 36, for "returning officer".

<sup>6</sup> Ins. by s. 36, *ibid.* (w.e.f. 14-12-1966) and omitted by Act 2 of 2004, s. 3(b).

## (PART II.—Acts of Parliament)

<sup>1</sup>[PART VA

## FREE SUPPLY OF CERTAIN MATERIAL TO CANDIDATES OF RECOGNISED POLITICAL PARTIES

**78A. Free supply of copies of electoral rolls.**—(1) The Government shall, at any election to be held for the purposes of constituting the House of the People or the Legislative Assembly of a State, supply, free of cost, to the candidates of recognised political parties such number of copies of the electoral roll, as finally published under the Representation of the People Act, 1950 (43 of 1950) and such other material as may be prescribed.

(2) The material referred to in sub-section (1) shall be supplied,—

(i) subject to such conditions as may be imposed by the Central Government in consultation with the Election Commission with respect to the reduction of the maximum expenditure which may be incurred by the candidate under section 77; and

(ii) through such officers as may be specified by the Election Commission who shall act in accordance with such general or special directions as may be given by the Election Commission.

**78B. Supply of certain items to candidates, etc.**—(1) The Election Commission shall, at any time between the date of publication of the notification calling the election for the purposes of constituting the House of the People or the Legislative Assembly of a State and the date on which the poll is to be taken, supply or cause to be supplied, such items as the Central Government may, by order, determine in consultation with the Election Commission, to the electors in the constituencies concerned or to the candidates set up by the recognised political parties.

(2) Where the Election Commission supplies the items to the candidates under sub-section (1), the Central Government may, in consultation with the Election Commission, impose conditions with respect to the reduction of the maximum expenditure which may be incurred by the candidate under section 77.

*Explanation.*—For the purposes of section 39A, this Chapter and clause (hh) of sub-section (2) of section 169, the expression “recognised political party”, has the meaning assigned to it in the Election Symbols (Reservation and Allotment) Order, 1968.]

## PART VI

## DISPUTES REGARDING ELECTIONS

CHAPTER I.—*Interpretation*

**79. Definitions.**—In this Part and in <sup>2</sup>[Part VII] unless the context otherwise requires,—

<sup>3</sup>[(a) any reference to a High Court or to the Chief Justice or Judge of a High Court shall, in relation to a Union territory having a Court of the Judicial Commissioner, be construed as a reference to the said Court of the Judicial Commissioner or to the Judicial Commissioner or any Additional Judicial Commissioner, as the case may be;]

<sup>4</sup>[(b) "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election;]

(c) "costs" means all costs, charges and expenses of, or incidental to, a trial of an election petition;

(d) "electoral right" means the right of a person to stand or not to stand as, or <sup>5</sup>[to withdraw or not to withdraw] from being, a candidate, or to vote or refrain from voting at an election;

<sup>6</sup>[(e) "High Court" means the High Court within the local limits of whose jurisdiction the election to which the election petition relates has been held;]

(f) "returned candidate" means a candidate whose name has been published under section 67 as duly elected.

1. Ins. by Act 46 of 2003, s. 5.

2. Subs. by Act 47 of 1966, s. 37, for Parts VII and VIII.

3. Ins. by s. 37, *ibid.*, Original cl. (a) was omitted by Act 27 of 1956, s. 43.

4. Subs. by Act 40 of 1975, s. 7, for cl. (b) (retrospectively).

5. Subs. by Act 47 of 1966, s. 37, for "to withdraw" (w.e.f. 14-12-1966).

6. Subs. by s. 37, *ibid.*, for cl. (e) (w.e.f. 14-12-1966).



CHAPTER II.—*Presentation of Election Petitions to* <sup>1</sup>[*High Court*]

**80. Election petitions.**—No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

<sup>2</sup>[**80A. High Court to try election petitions.**—(1) The Court having jurisdiction to try an election petition shall be the High Court.

(2) Such jurisdiction shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice shall, from time to time, assign one or more Judges for that purpose:

Provided that where the High Court consists only of one Judge, he shall try all election petitions presented to that Court.

(3) The High Court in its discretion may, in the interests of justice or convenience, try an election petition, wholly or partly, at a place other than the place of seat of the High Court.]

**81. Presentation of petitions.**—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in <sup>3</sup>[sub-section (1)] of section 100 and section 101 to the <sup>4</sup>[High Court] by any candidate at such election or any elector <sup>5</sup>[within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates].

*Explanation.*—In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

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<sup>7</sup>[(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition <sup>8</sup>\*\*\*, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.]

<sup>9</sup>[**82. Parties to the petition.**—A petitioner shall join as respondents to his petition—

(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.]

<sup>10</sup>[**83. Contents of petition.**—(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

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1. Subs. by Act 47 of 1966, s. 39, for "Election Commission" (w.e.f. 14-12-1966).

2. Ins. by s. 38, *ibid.* (w.e.f. 14-12-1966).

3. Subs. by Act 27 of 1956, s. 44, for "sub-sections (1) and (2)".

4. Subs. by Act 47 of 1966, s. 39, for "Election Commission" (w.e.f. 14-12-1966).

5. Subs. by Act 27 of 1956, s. 44, for certain words.

6. Sub-section (2) omitted by Act 47 of 1966, s. 39 (w.e.f. 14-12-1966).

7. Ins. by Act 40 of 1961, s. 17 (w.e.f. 20-9-1961).

8. Certain words omitted by Act 47 of 1966, s. 39 (w.e.f. 14-12-1966).

9. Subs. by Act 27 of 1956, s. 45, for s. 82.

10. Subs. by s. 46, *ibid.*, for s. 83.

## (PART II.—Acts of Parliament)

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

<sup>1</sup>[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.]

<sup>2</sup>[**84. Relief that may be claimed by the petitioner.**—A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.]

**85.** [*Procedure on receiving petition.*] *Rep. by the Representation of the People (Amendment) Act, 1966 (47 of 1966), s. 40.*

CHAPTER III.—*Trial of Election Petitions*

<sup>3</sup>[**86. Trial of election petitions.**—(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

*Explanation.*—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

*Explanation.*—For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.

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1. Ins. by Act 40 of 1961, s. 18 (w.e.f. 20-9-1961).

2. Subs. by Act 27 of 1956, s. 47, for s. 84.

3. Subs. by Act 47 of 1966, s. 41, for ss. 86 to 92 (w.e.f. 14-12-1966).

**87. Procedure before the High Court.**—(1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1972), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.]

**93. Documentary evidence.**—Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence at the trial of an election petition on the ground that it is not duly stamped or registered.

**94. Secrecy of voting not to be infringed.**—No witness or other person shall be required to state for whom he has voted at an election:

<sup>1</sup>[Provided that this section shall not apply to such witness or other person where he has voted by open ballot.].

**95. Answering of criminating questions and certificate of indemnity.**—(1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in the trial of an election petition upon the ground that the answer to such question may criminate or may tend to criminate him, or that it may expose or may tend to expose him to any penalty or forfeiture:

Provided that—

(a) a witness, who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from <sup>2</sup>[the High Court]; and

(b) an answer given by a witness to a question put by or before <sup>1</sup>[the High Court] shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against him in any civil or criminal proceeding.

(2) When a certificate of indemnity has been granted to any witness, it may be pleaded by him in any court and shall be a full and complete defence to or upon any charge under Chapter IXA of the Indian Penal Code, 1860 (45 of 1860), or Part VII of 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 this Act or any other law.

**96. Expenses of witnesses.**—The reasonable expenses incurred by any person in attending to give evidence may be allowed by <sup>2</sup>[the High Court] to such person and shall, unless <sup>2</sup>[the High Court] otherwise directs, be deemed to be part of the costs.

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

Provided that the returned candidate or such other party, as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of <sup>3</sup>[commencement of the trial], given notice to <sup>2</sup>[the High Court] of his intention to do so and has also given the security and the further security referred to in sections 117 and 118 respectively.

(2) Every notice referred to in sub-section (1) shall be accompanied by the statement and <sup>4</sup>\* \* \* particulars required by section 83 in the case of an election petition and shall be signed and verified in like manner.

**98. Decision of the High Court.**—At the conclusion of the trial of an election petition <sup>2</sup>[the High Court] shall make an order—

(a) dismissing the election petition; or

1. Ins. by Act 40 of 2003, s. 4.

2. Subs. by Act 47 of 1966, s. 42, for "the Tribunal" (w.e.f. 14-12-1966).

3. Subs. by Act 27 of 1956, s. 52, for "the publication of the election petition under section 90".

4. The words "list of" omitted by s. 52, *ibid.*

(b) declaring the election of <sup>1</sup>[all or any of the returned candidates] to be void; or

(c) declaring the election, of <sup>1</sup>[all or any of the returned candidates] to be void and the petitioner or any other candidate to have been duly elected. <sup>2</sup>\* \* \*

2\* \* \* \* \*

**99. Other orders to be made by the High Court.**—(1) At the time of making an order under section 98 <sup>3</sup>[the High Court] shall also make an order—

<sup>4</sup>[(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording—

(i) a finding whether any corrupt practice has or has not been proved to have been committed <sup>5</sup>\*\*\* at the election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and]

(b) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid:

Provided that <sup>6</sup>[a person who is not a party to the petition shall not be named] in the order under sub-clause (ii) of clause (a) unless—

(a) he has been given notice to appear before <sup>3</sup>[the High Court] and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by <sup>3</sup>[the High Court] and has given evidence against him, of calling evidence in his defence and of being heard.

<sup>7</sup>[(2) In this section and in section 100, the expression "agent" has the same meaning as in section 123.]

**100. Grounds for declaring election to be void.**—<sup>8</sup>[(1) Subject to the provisions of sub-section (2) if <sup>3</sup>[the High Court] is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act <sup>9</sup>[or the Government of Union Territories Act, 1963 (20 of 1963)]; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

1. Subs. by Act 27 of 1956, s. 53, for "the returned candidate".

2. The word "or" and clause (d) omitted by s. 53, *ibid.*

3. Subs. by Act 47 of 1966, s. 42, for "the Tribunal" (w.e.f. 14-12-1966).

4. Subs. by Act 27 of 1956, s. 54, for cl. (a).

5. Certain words omitted by Act 58 of 1958, s. 29.

6. Subs. by Act 27 of 1956, s. 54, for "no person shall be named".

7. Subs. by s. 54, *ibid.*, for sub-section (2).

8. Subs. by s. 55, *ibid.*, for sub-sections (1) and (2).

9. Ins. by Act 20 of 1963, s. 57 and the Second Sch. the words "or the Government of Part C States Act, 1951 (49 of 1951)" were omitted by the Adaptation of Laws (No. 2) Order, 1956.

- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
- (i) by the improper acceptance or any nomination, or
- (ii) by any corrupt practice committed in the interests of the returned candidate <sup>1</sup>[by an agent other than his election agent], or
- (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
- (iv) by any non—compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

<sup>2</sup>[the High Court] shall declare the election of the returned candidate to be void.]

<sup>3</sup>[(2)] If in the opinion of <sup>2</sup>[the High Court], a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice <sup>4</sup>\*\*\* but <sup>2</sup>[the High Court] is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and <sup>5</sup>[without the consent], of the candidate or his election agent;

<sup>6</sup>\* \* \* \* \*

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt <sup>7</sup>\*\*\* practices at the election; and

(d) that in all other respects the election was free from any corrupt <sup>7</sup>\*\*\* practice on the part of the candidate or any of his agents,

then <sup>2</sup>[the High Court] may decide that the election of the returned candidate is not void.

**101. Grounds for which a candidate other than the returned candidate may be declared to have been elected**—If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and <sup>2</sup>[the High Court] is of opinion—

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt <sup>8</sup>\*\*\* practices the petitioner or such other candidate would have obtained a majority of the valid votes,

<sup>2</sup>[the High Court] shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

**102. Procedure in case of an equality of votes**—If during the trial of an election petition it appears that there is an equality of votes between any candidates at the election and that the addition of a vote would entitle any of those candidates,—

1. Subs. by Act 58 of 1958, s. 30, for certain words.

2. Subs. by Act 47 of 1966, s. 42, for "the Tribunal" (w.e.f. 14-12-1966).

3. Sub-section (3) re-numbered as sub-section (2) by Act 27 of 1956, s. 55.

4. The words and figures "specified in section 123" omitted by s. 55, *ibid.*

5. Subs. by s. 55, *ibid.*, for "without the sanction or connivance".

6. Cl. (b) omitted by Act 58 of 1958, s. 30.

7. The words "or illegal" omitted by Act 27 of 1956, s. 55.

8. The words "or illegal" omitted by s. 56, *ibid.*

(a) any decision made by the returning officer under the provisions of this Act shall, in so far as it determines the question between those candidates, be effective also for the purposes of the petition; and

(b) in so far as that question is not determined by such a decision <sup>1</sup>[the High Court] shall decide between them by lot and proceed as if the one on whom the lot then falls had received an additional vote,

<sup>2</sup>**103. Communication of orders of the High Court.**—The High Court shall, as soon as may be after the conclusion of the trial of an election petition, intimate the substance of the decision to the Election Commission and the Speaker or Chairman, as the case may be, of the House of Parliament or of the State Legislature concerned and, as soon as may be thereafter, shall send to the Election Commission an authenticated copy of the decision.]

**104.** [*Difference of opinion among the members of the Tribunal.*] *Rep. by the Representation of the People (Second Amendment) Act, 1956 (27 of 1956), s. 57.*

**105.** [*Orders of the Tribunal to be final and conclusive.*] *Rep. by s. 58, ibid.*

**106. Transmission of order to the appropriate authority, etc., and its publication.**—As soon as may be after the receipt of any order made by <sup>3</sup>[the High Court] under section 98 or section 99, the Election Commission shall forward copies of the order to the appropriate authority and, in the case where such order relates to an election <sup>4</sup>\*\*\*\* to a House of Parliament or to an election to the House or a House of the Legislature of a State, also to the Speaker or Chairman, as the case may be, of the House concerned and <sup>5</sup>[shall cause the order to be published—

(a) where the order relates to an election to a House of Parliament, in the Gazette of India as well as in the Official Gazette of the State concerned; and

(b) where the order relates to an election to the House or a House of the Legislature of the State, in the Official Gazette of the State.]

<sup>6</sup>**107. Effect of orders of the High Court.**—<sup>7</sup>[(1) Subject to the provisions contained in Chapter IVA relating to the stay of operation of an order of the High Court under section 98 or section 99, every such order shall take effect as soon as it is pronounced by the High Court.]

(2) Where by an order under section 98 the election of a returned candidate is declared to be void, acts and proceedings in which that returned candidate has, before the date thereof, participated as a member of Parliament or as a member of the Legislature of a State shall not be invalidated by reason of that order, nor shall such candidate be subjected to any liability or penalty on the ground of such participation.]

#### CHAPTER IV.—*Withdrawal and Abatement of Election Petitions*

**108.** [*Withdrawal of petitions before appointment of Tribunal.*] *Rep. by the Representation of the People (Amendment) Act, 1966 (47 of 1966), s. 45.*

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1. Subs. by Act 47 of 1966, s. 42, for "the Tribunal" (w.e.f. 14-12-1966).  
 2. Subs. by s. 43, *ibid.*, for s. 103 (w.e.f. 14-12-1966).  
 3. Subs. by s. 44, *ibid.*, for "the Tribunal" (w.e.f. 14-12-1966).  
 4. The words and brackets "(other than a primary election)" omitted by Act 27 of 1956, s. 59.  
 5. Subs. by s. 59, *ibid.*, for certain words.  
 6. Subs. by s. 60, *ibid.*, for s. 107.  
 7. Subs. by Act 47 of 1966, s. 44, for sub-section (1) (w.e.f. 14-12-1966).

**1109. Withdrawal of election petitions.**—(1) An election petition may be withdrawn only by leave of the High Court.

(2) Where an application for withdrawal is made under sub-section (1), notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Official Gazette.

**110. Procedure for withdrawal of election petitions.**—(1) If there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent of all the petitioners.

(2) No application for withdrawal shall be granted if, in the opinion of the High Court, such application has been induced by any bargain or consideration which ought not to be allowed.

(3) If the application is granted—

(a) the petitioner shall be ordered to pay the costs of the respondents theretofore incurred or such portion thereof as the High Court may think fit;

(b) the High Court shall direct that the notice of withdrawal shall be published in the Official Gazette and in such other manner as it may specify and thereupon the notice shall be published accordingly;

(c) a person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit.]

**111. Report of withdrawal by the High Court to the Election Commission.**—When an application for withdrawal is granted by <sup>2</sup>[the High Court] and no person has been substituted as petitioner under clause (c) of sub-section (3) of section 110, in place of the party withdrawing, <sup>2</sup>[the High Court] shall report the fact to the Election Commission <sup>3</sup>[and thereupon the Election Commission shall publish the report in the Official Gazette].

**112. Abatement of election petitions.**—(1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.

(2) Where an election petition abates under sub-section (1), the High Court shall cause the fact to be published in such manner as it may deem fit.

(3) Any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit.]

**116. Abatement or substitution on death of respondent.**—If before the conclusion of the trial of an election petition, the sole respondent dies or gives notice that he does not intend to oppose the petition or any of the respondents dies or gives such notice and there is no other respondent who is opposing the petition, <sup>5</sup>[the High Court] shall cause notice of such event to be published in the Official Gazette, and thereupon any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted in place of such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as <sup>5</sup>[the High Court] may think fit.

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1. Subs. by Act 47 of 1966, s. 46, for ss. 109 and 110 (w.e.f. 14-12-1966).

2. Subs. by s. 47, *ibid.*, for "the Tribunal" (w.e.f. 14-12-1966).

3. Ins. by Act 27 of 1956, s. 61.

4. Subs. by Act 47 of 1966, s. 48, for ss. 112 to 115 (w.e.f. 14-12-1966).

5. Subs. by s. 49, *ibid.*, for "the Tribunal" (w.e.f. 14-12-1966).

<sup>2</sup>[**116A. Appeals to Supreme Court.**—(1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie to the Supreme Court on any question (whether of law or fact) from every order made by a High Court under section 98 or section 99.

(2) Every appeal under this Chapter shall be preferred within a period of thirty days from the date of the order of the High Court under section 98 or section 99:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period.

**116B. Stay of operation of order of High Court.**—(1) An application may be made to the High Court for stay of operation of an order made by the High Court under section 98 or section 99 before the expiration of the time allowed for appealing therefrom and the High Court may, on sufficient cause being shown and on such terms and conditions as it may think fit, stay the operation of the order; but no application for stay shall be made to the High Court after an appeal has been preferred to the Supreme Court.

(2) Where an appeal has been preferred against an order made under section 98 or section 99, the Supreme Court may, on sufficient cause being shown and on such terms and conditions as it may think fit, stay the operation of the order appealed from.

(3) When the operation of an order is stayed by the High Court or, as the case may be, the Supreme Court, the order shall be deemed never to have taken effect under sub-section (1) of section 107; and a copy of the stay order shall immediately be sent by the High Court or, as the case may be, the Supreme Court, to the Election Commission and the Speaker or Chairman, as the case may be, of the House of Parliament or of the State Legislature concerned.

**116C. Procedure in appeal.**—(1) Subject to the provisions of this Act and of the rules, if any, made thereunder, every appeal shall be heard and determined by the Supreme Court as nearly as may be in accordance with the procedure applicable to the hearing and determination of an appeal from any final order passed by a High Court in the exercise of its original civil jurisdiction; and all the provisions of the Code of Civil Procedure, 1908 (5 of 1908), and the Rules of the Court (including provisions as to the furnishing of security and the execution of any order of the Court) shall, so far as may be, apply in relation to such appeal.

(2) As soon as an appeal is decided, the Supreme Court shall intimate the substance of the decision to the Election Commission and the Speaker or Chairman, as the case may be, of the House of Parliament or of the State Legislature concerned and as soon as may be thereafter shall send to the Election Commission an authenticated copy of the decision; and upon its receipt, the Election Commission shall—

(a) forward copies thereof to the authorities to which copies of the order of the High Court were forwarded under section 160; and

(b) cause the decision to be published in the Gazette or Gazettes in which that order was published under the said section.]]

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1. Ins. by Act 27 of 1956, s. 62.

2. Subs. by Act 47 of 1966, s. 50, for ss. 116A and 116B (w.e.f. 14-12-1966).



<sup>1</sup>[117. **Security for costs.**—(1) At the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the rules of the High Court a sum of two thousand rupees as security for the costs of the petition.

(2) During the course of the trial of an election petition, the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct.

**118. Security for costs from a respondent.**—No person shall be entitled to be joined as a respondent under sub-section (4) of section 86 unless he has given such security for costs as the High Court may direct.

**119. Costs.**—Costs shall be in the discretion of the High Court:

Provided that where a petition is dismissed under clause (a) of section 98, the returned candidate shall be entitled to the costs incurred by him in contesting the petition and accordingly the High Court shall make an order for costs in favour of the returned candidate.]

**121. Payment of costs out of security deposits and return of such deposits.**—(1) If in any order as to costs under the provisions of this Part there is a direction for payment of costs by any party to any person, such costs shall, if they have not been already paid, be paid in full, or so far as possible, out of the security deposit and the further security deposit, if any, made by such party under this Part on an application made in writing in that behalf<sup>2</sup>[within a period of one year, from the date of such order] to<sup>3</sup>[the High Court] by the person in whose favour the costs have been awarded.

(2) If there is any balance left of any of the said security deposits after payment under sub-section (1) of the costs referred to in that sub-section, such balance, or where no costs have been awarded or no application as aforesaid has been made within the said period of<sup>4</sup>[one year] the whole of the said security deposits may, on an application made in that behalf in writing to<sup>3</sup>[the High Court] by the person by whom the deposits have been made, or if such person dies after making such deposits, by the legal representative of such person, be returned to the said person or to his legal representative, as the case may be.

**122. Execution of orders as to costs.**—Any order as to costs under the provisions of this Part may be produced before the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or where such place is within a presidency-town, before the court of small causes having jurisdiction there, and such court shall execute the order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit:

Provided that where any such costs or any portion thereof may be recovered by an application made under sub-section (1) of section 121, no application shall lie under this section<sup>5</sup>[within a period of one year from the date of such order] unless it is for the recovery of the balance of any costs which has been left unrealised after an application has been made under that sub-section owing to the insufficiency of the amount of the security deposits referred to in that sub-section.

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1. Subs. by Act 47 of 1966, s. 51, for ss. 117, 118, 119, 119A and 120 (w.e.f. 14-12-1966).

2. Subs. by Act 58 of 1958, s. 34, for certain words.

3. Subs. by Act 47 of 1966, s. 52, for "the Election Commission" (w.e.f. 14-12-1966).

4. Subs. by Act 58 of 1958, s. 34, for "six months".

5. Subs. by s. 35, *ibid.*, for certain words.

<sup>1</sup>[CORRUPT PRACTICES AND ELECTORAL OFFENCES]<sup>2</sup>[CHAPTER I.—*Corrupt Practice*]

**123. Corrupt practices.**—The following shall be deemed to be corrupt practices for the purposes of this Act:—

<sup>3</sup>[(1) "Bribery", that is to say—

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

(a) a person to stand or not to stand as, or <sup>4</sup>[to withdraw or not to withdraw] from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) a person for having so stood or not stood, or for <sup>5</sup>[having withdrawn or not having withdrawn] his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person for standing or not standing as, or for <sup>6</sup>[withdrawing or not withdrawing] from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate <sup>4</sup>[to withdraw or not to withdraw] his candidature.

*Explanation.*—For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses *bona fide* incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.]

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person <sup>7</sup>[with the consent of the candidate or his election agent], with the free exercise of any electoral right:

1. Subs. by Act 27 of 1956, s. 65, for the heading "CORRUPT AND ILLEGAL PRACTICES AND ELECTORAL OFFENCES".

2. Subs. by s. 66, *ibid.*, for Chapters I and II (ss. 123 to 125).

3. Subs. by Act 58 of 1958, s. 36, for cl. (1).

4. Subs. by Act 47 of 1966, s. 53, for "to withdraw" (w.e.f. 14-12-1966).

5. Subs. by s. 53, *ibid.*, for "having withdrawn" (w.e.f. 14-12-1966).

6. Subs. by s. 53, *ibid.*, for "withdrawing" (w.e.f. 14-12-1966).

7. Ins. by Act 58 of 1958, s. 36.

Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

<sup>1</sup>[(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

<sup>2</sup>[Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.]

(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.]

<sup>3</sup>[(3B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

*Explanation.*—For the purposes of this clause, "sati" and "glorification" in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987 (3 of 1988).]

(4) The publication by a candidate or his agent or by any other person <sup>4</sup>[with the consent of a candidate or his election agent], of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, <sup>5</sup>\* \* \* of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person <sup>4</sup>[with the consent of a candidate or his election agent], <sup>6</sup>[for the use of such vehicle or vessel for the free conveyance] of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll:

1. Subs. by Act 40 of 1961, s. 23, for cl. (3) (w.e.f. 20-9-1961).

2. Ins. by Act 40 of 1975, s. 8 (retrospectively).

3. Ins. by Act 3 of 1988, s. 19 (retrospectively).

4. Ins. by Act 58 of 1958, s. 36.

5. The words "or retirement from contest" omitted by s. 36, *ibid.*

6. Subs. by Act 47 of 1966, s. 53, for "for the conveyance" (w.e.f. 14-12-1966).

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

*Explanation.*—In this clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(6) The incurring or authorizing of expenditure in contravention of section 77.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person <sup>1</sup>[with the consent of a candidate or his election agent], any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:—

(a) gazetted officers;

(b) stipendiary judges and magistrates;

(c) members of the armed forces of the Union;

(d) members of the police forces;

(e) excise officers;

<sup>2</sup>[(f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, desh mukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and]

(g) such other class of persons in the service of the Government as may be prescribed:

<sup>3</sup>[Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of /the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.]

<sup>4</sup>[(8) booth capturing by a candidate or his agent or other person.]

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1 Ins. by Act 58 of 1958, s. 36.

2 Subs. by s. 36, *ibid.*, for clause (f).

3 Ins. by Act 40 of 1975, s. 8 (retrospectively).

4 Ins. by Act 1 of 1989, s. 13 (w.e.f. 15-3-1989).

*Representation of the People Act, 1951*  
(PART II.—Acts of Parliament)

*Explanation.*—(1) In this section, the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent<sup>1</sup> \* \* \* of that candidate.]

<sup>2</sup>[(3) For the purposes of clause (7), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union territory) or of a State Government shall be conclusive proof—

(i) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and

(ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service, such person ceased to be in such service with effect from the said date.]

<sup>3</sup>[(4) For the purposes of clause (8), "booth capturing" shall have the same meaning as in section 135A.]

#### CHAPTER III.—*Electoral offences*

<sup>4</sup>[125. **Promoting enmity between classes in connection with election.**—Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable, with imprisonment for a term which may extend to three years, or with fine, or with both.]

<sup>5</sup>[125A. **Penalty for filing false affidavit, etc.**—A candidate who himself or through his proposer, with intent to be elected in an election,—

(i) fails to furnish information relating to sub-section (1) of section 33A; or

(ii) give false information which he knows or has reason to believe to be false; or

(iii) conceals any information,

in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.].

<sup>6</sup>[126. **Prohibition of public meetings during period of forty—eight hours ending with hour fixed for conclusion of poll.**—

(1) No person shall—

(a) convene, hold or attend, join or address any public meeting or procession in connection with an election; or

(b) display to the public any election matter by means of cinematograph, television or other similar apparatus; or

(c) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto,

in any polling area during the period of forty-eight hours ending with the fixed for the conclusion of the poll for any election in the polling area.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(3) In this section, the expression "election matter" means any matter intended or calculated to influence or affect the result of an election.].

**127. Disturbances at election meetings.**—(1) Any person who at a public meeting to which this section applies acts, or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together,<sup>7</sup>[shall be punishable with imprisonment for a term which may extend to<sup>8</sup>[six months or with fine which may extend to two thousand rupees] or with both.]

<sup>9</sup>[(1A) An offence punishable under sub-section (1) shall be cognizable.]

1. The words "or a polling agent or a counting agent" omitted by Act 47 of 1966, s. 53 (w.e.f. 14-12-1966).

2. Added by Act 40 of 1975, s. 8 (retrospectively).

3. Ins. by Act 1 of 1989, s.13 (w.e.f. 15-3-1989).

4. Ins. by Act 40 of 1961, s. 24 (w.e.f. 20-9-1961).

5. Ins. by Act 72 of 2002, s.5 (w.e.f. 24-8-2002).

6. Subs. by Act 21 of 1996, s. 10, for s. 126 (w.e.f. 1-8-1969).

7. Subs. by Act 1 of 1989, s. 14, for certain words ( w.e.f. 15-3-1989).

8. Subs. by Act 21 of 1996, s. 11, for certain words (w.e.f. 1-8-1996).

9. Ins. by s. 11, *ibid.* (w.e.f. 1-8-1996).

(2) This section applies to any public meeting of a political character held in any constituency between the date of the issue of a notification under this Act calling upon the constituency to elect a member or members and the date on which such election is held.

(3) If any police officer reasonably suspects any person of committing an offence under sub-section (1), he may, if requested so to do by the chairman of the meeting, require that person to declare to him immediately his name and address and, if that person refuses or fails so to declare his name and address, or if the police officer reasonably suspects him of giving a false name or address, the police officer may arrest him without warrant.

<sup>1</sup>[**127A. Restrictions on the printing of pamphlets, posters, etc.**—(1) No person shall print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof.

(2) No person shall print or cause to be printed any election pamphlet or poster—

(a) unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally known, is delivered by him to the printer in duplicate; and

(b) unless, within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer, together with one copy of the document,—

(i) where it is printed in the capital of the State, to the Chief Electoral Officer; and

(ii) in any other case, to the district magistrate of the district in which it is printed.

(3) For the purposes of this section,—

(a) any process for multiplying copies of a document, other than copying it by hand, shall be deemed to be printing and the expression "printer" shall be construed accordingly; and

(b) "election pamphlet or poster" means any printed pamphlet, hand-bill or other document distributed for the purpose of promoting or prejudicing the election of a candidate or group of candidates or any placard or poster having reference to an election, but does not include any hand-bill, placard or poster merely announcing the date, time, place and other particulars of an election meeting or routine instructions to election agents or workers.

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

**128. Maintenance of Secrecy of voting.**—(1) Every officer, clerk, agent or other person who performs any duty in connection with the recording or counting of votes at an election shall maintain, and aid in maintaining, the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy:

<sup>2</sup>[Provided that the provisions of this sub-section shall not apply to such officer, clerk, agent or other person who performs any such duty at an election to fill a seat or seats in the Council of States.].

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

1. Ins. by Act 40 of 1961, s. 26 (w.e.f. 20-9-1961).

2. Ins. by Act 40 of 2003, s. 5.

**129. Officers, etc., at elections not to act for candidates or to influence voting.**—(1) No person who is <sup>1</sup>[a district election officer or a returning officer], or an assistant returning officer, or a presiding or polling officer at an election, or an officer or clerk appointed by the returning officer or the presiding officer to perform any duty in connection with an election shall in the conduct or the management of the election do any act (other than the giving of vote) for the furtherance of the prospects of the election of a candidate.

(2) No such person as aforesaid, and no member of a police force, shall endeavour—

- (a) to persuade any person to give his vote at an election, or
- (b) to dissuade any person from giving his vote at an election, or
- (c) to influence the voting of any person at an election in any manner.

(3) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment which may extend to six months or with fine or with both.

<sup>2</sup>[(4) An offence punishable under sub-section (3) shall be cognizable.]

**130. Prohibition of canvassing in or near polling station.**—(1) No person shall, on the date or dates on which a poll is taken at any polling station, commit any of the following acts within the polling station or in any public or private place within a distance of <sup>3</sup>[one hundred metres] of the polling station, namely:—

- (a) canvassing for votes ; or
- (b) soliciting the vote of any elector; or
- (c) persuading any elector not to vote for any particular candidate; or
- (d) persuading any elector not to vote at the election ; or
- (e) exhibiting any notice or sign (other than an official notice) relating to the election.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to two hundred and fifty rupees.

(3) An offence punishable under this section shall be cognizable.

**131. Penalty for disorderly conduct in or near polling stations.**—(1) No person shall, on the date or dates on which a poll is taken at any polling station,—

- (a) use or operate within or at the entrance of the polling station, or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice, such as a megaphone or a loudspeaker, or
- (b) shout, or otherwise act in a disorderly manner, within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof,

so as to cause annoyance to any person visiting the polling station for the poll, or so as to interfere with the work of the officers and other persons on duty at the polling station.

(2) Any person who contravenes, or wilfully aids or abets the contravention of, the provisions of sub-section (1) shall be punishable with imprisonment which may extend to three months or with fine or with both.

<sup>1</sup> Subs. by Act 47 of 1966, s. 55, for "a returning officer" (w.e.f. 14-12-1966).

<sup>2</sup> Ins. by s. 55, *ibid.* (w.e.f. 14-12-1966).

<sup>3</sup> Subs. by s. 56, *ibid.*, for "one hundred yards" (w.e.f. 14-12-1966).

(3) If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under this section, he may direct any police officer to arrest such person, and thereupon the police officer shall arrest him.

(4) Any police officer may take such steps, and use such force, as may be reasonably necessary for preventing any contravention of the provisions of sub-section (1), and may seize any apparatus used for such contravention.

**132. Penalty for misconduct at the polling station.**—(1) Any person who during the hours fixed for the poll at any polling station misconducts himself or fails to obey the lawful directions of the presiding officer may be removed from the polling station by the presiding officer or by any police officer on duty or by any person authorised in this behalf by such presiding officer.

(2) The powers conferred by sub-section (1) shall not be exercised so as to prevent any elector who is otherwise entitled voting at that station.

(3) If any person who has been so removed from a polling station re-enters the polling station without the permission of the presiding officer, he shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.

(4) An offence punishable under sub-section (3) shall be cognizable.

<sup>1</sup>[**132A. Penalty for failure to observe procedure for voting.**—If any elector to whom a ballot paper has been issued, refused to observe the procedure prescribed for voting the ballot paper issued to him shall be liable for cancellation.

<sup>2</sup>[**133. Penalty for illegal hiring or procuring of conveyance at elections.**—If any person is guilty of any such corrupt practice as is specified in clause (5) of section 123 at or in connection with an election, he shall be punishable with imprisonment which may extend to three months and with fine.

**134. Breaches of official duty in connection with election.**—(1) If any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punishable with fine which may extend to five hundred rupees.

<sup>3</sup>[(1A) An offence punishable under sub-section (1) shall be cognizable.]

(2) No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.

(3) The persons to whom this section applies are the <sup>4\*\*\*</sup> <sup>5</sup>[district election officers, returning officers], assistant returning officers, presiding officers, polling officers and any other person appointed to perform any duty in connection with <sup>6\* \* \*</sup> the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election; and the expression "official duty" shall for the purposes of this section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act <sup>4\*\*\*</sup>.

1. Ins. by Act 4 of 1986, s. 2 and Sch. (w.e.f.15-5-1986).

2. Subs. by Act 21 of 1996, s. 12, for s. 133 (w.e.f. 1-8-1996).

3. Ins. by Act 47 of 1966, s. 58 (w.e.f. 14-12-1966).

4. Certain words omitted by Act 58 of 1958, s. 37.

5. Subs. by Act 47 of 1966, s. 58, for "returning officers" (w.e.f. 14-12-1966).

6. The words "the preparation of an electoral roll" omitted by Act 58 of 1958, s. 37.



<sup>1</sup>[**134A. Penalty for Government servants for acting as election agent, polling agent or counting agent.**—If any person in the service of the Government acts as an election agent or a polling agent or a counting agent of a candidate at an election, he shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.]

<sup>2</sup>[**134B. Prohibition of going armed to or near a polling station.**—(1) No person, other than the returning officer, the presiding officer, any police officer and any other person appointed to maintain peace and order, at a polling station who is on duty at the polling station, shall, on a polling day, go armed with arms, as defined in the Arms Act, 1959 (54 of 1959), of any kind within the neighbourhood of a polling station.

(2) If any person contravenes the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(3) Notwithstanding anything contained in the Arms Act, 1959 (54 of 1959), where a person is convicted of an offence under this section, the arms as defined in the said Act found in his possession shall be liable to confiscation and the licence granted in relation to such arms shall be deemed to have been revoked under section 17 of that Act.

(4) An offence punishable under sub-section (2) shall be cognizable.]

**135. Removal of ballot papers from polling station to be an offence.**—(1) Any person who at any election <sup>3</sup> [unauthorisedly] takes, or attempts to take, a ballot paper out of a polling station, or wilfully aids or abets the doing of any such act, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.

(2) If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under sub-section (1), such officer may, before such person leaves the polling station, arrest or direct a police officer to arrest such person and may search such person or cause him to be searched by a police officer:

Provided that when it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

(3) Any ballot paper found upon the person arrested on search shall be made over the safe custody to a police officer by the presiding officer, or when the search is made by a police officer, shall be kept by such officer in safe custody.

(4) An offence punishable under sub-section (1) shall be cognizable.

<sup>4</sup>[**135A. Offence of booth capturing.**—<sup>5</sup>[(1)] Whoever commits an offence of booth capturing shall be punishable with imprisonment for a term which <sup>6</sup>[shall not be less than one year but which may extend to three years and with fine, and where such offence is committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine].

*Explanation.*— For the purposes of <sup>7</sup>[this sub-section and section 20B], "booth capturing" includes, among other things, all or any of the following activities, namely:—

(a) seizure of a polling station or a place fixed for the poll by any person or persons, making polling authorities surrender the ballot papers or voting machines and doing of any other act which affects the orderly conduct of elections;

(b) taking possession of a polling station or a place fixed for the poll by any person or persons and allowing only his or their own supporters to exercise their right to vote and <sup>8</sup>[prevent others from free exercise of their right to vote];

(c) <sup>8</sup>[coercing or intimidating or threatening directly or indirectly] any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote;

(d) seizure of a place for counting of votes by any person or persons, making the counting authorities surrender the ballot papers or voting machines and the doing of anything which affects the orderly counting of votes;

(e) doing by any person in the service of Government, of all or any of the aforesaid activities or aiding or conniving at, any such activity in the furtherance of the prospects of the election of a candidate.]

<sup>9</sup>[(2) An offence punishable under sub-section (1) shall be cognizable.]

1. Ins. by Act 47 of 1966, s. 59 (w.e.f. 14-12-1966).

2. Ins. by Act 21 of 1996, s. 13 (w.e.f. 1-8-1996).

3. Subs. by s. 14, *ibid.*, for "fraudulently" (w.e.f. 1-8-1996).

4. Ins. by Act 1 of 1989, s. 15 (w.e.f. 15-3-1989).

5. S. 135A renumbered as sub-section (1) thereof by Act 21 of 1996, s. 15 (w.e.f. 1-8-1996).

6. Subs. by s. 15, *ibid.*, for certain words (w.e.f. 1-8-1996).

7. Subs. by s. 15, *ibid.*, for "this section" (w.e.f. 1-8-1996).

8. Subs. by s. 15, *ibid.*, for "threatening" (w.e.f. 1-8-1996).

9. Ins. by s. 15, *ibid.* (w.e.f. 1-8-1996).

*Representation of the People Act, 1951*  
(PART II.—Acts of Parliament)

<sup>1</sup>[**135B. Grant of paid holiday to employees on the day of poll.**—(1) Every person employed in any business, trade, industrial undertaking or any other establishment and entitled to vote at an election to the House of the People or the Legislative Assembly of a State shall, on the day of poll, be granted a holiday.

(2) No deduction or abatement of the wages of any such person shall be made on account of a holiday having been granted in accordance with sub-section (1) and if such person is employed on the basis that he would not ordinarily receive wages for such a day, he shall nonetheless be paid for such day the wages he would have drawn had not a holiday been granted to him on that day.

(3) If an employer contravenes the provisions of sub-section (1) or sub-section (2), then such employer shall be punishable with fine which may extend to five hundred rupees.

(4) This section shall not apply to any elector whose absence may cause danger or substantial loss in respect of the employment in which he is engaged.

**135C. Liquor not to be sold, given or distributed on polling day.**—(1) No spirituous, fermented or intoxicating liquors or other substances of a like nature shall be sold, given or distributed at a hotel, eating house, tavern, shop or any other place, public or private, within a polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

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

(3) Where a person is convicted of an offence under this section, the spirituous, fermented or intoxicating liquors or other substances of a like nature found in his possession shall be liable to confiscation and the same shall be disposed of in such manner as may be prescribed.]

**136. Other offences and penalties therefor.**—(1) A person shall be guilty of an electoral offence if at any election he—

(a) fraudulently defaces or fraudulently destroys any nomination paper; or

(b) fraudulently defaces, destroys or removes any list, notice or other document affixed by or under the authority of a returning officer; or

(c) fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper or any declaration of identity or official envelop used in connection with voting by postal ballot; or

(d) without due authority supplies any ballot paper to any person<sup>2</sup>[or receives any ballot paper from any person or is in possession of any ballot paper] ; or

(e) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or

(f) without due authority destroys, takes, opens or otherwise interferes with any ballot box or ballot papers then in use for the purposes of the election; or

(g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such acts.

(2) Any person guilty of an electoral offence under this section shall,—

(a) if he is a returning officer or an assistant returning officer or a presiding officer at a polling station or any other officer or clerk employed on official duty in connection with the election, be punishable with imprisonment for a term which may extend to two years or with fine or with both;

(b) if he is any other person, be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(3) For the purposes of this section, a person shall be deemed to be on official duty if his duty is to take part in the conduct of an election or part of an election including the counting of votes or to be responsible after an election for the used ballot papers and other documents in connection with such election, but the expression "official duty" shall not include any duty imposed otherwise than by or under this Act<sup>3\*\* \*</sup>.

<sup>4</sup>[(4) An offence punishable under sub-section (2) shall be cognizable.]

**137.** [*Prosecution regarding certain offences.*] *Rep. by the Representation of the People (Amendment) Act, 1966 (47 of 1966), s. 61.*

**138.** [*Amendment of Act 5 of 1898.*] *Rep. by the Repealing and Amending Act, 1957 (36 of 1957), s. 2 and the First Schedule.*

## PART VIII DISQUALIFICATIONS

**139—145.** [*Chapters I to III.*] *Rep. by the Representation of the People (Amendment) Act, 1966 (47 of 1966), s. 62.*

<sup>1</sup> Ins. by Act 21 of 1996, s. 16 (w.e.f. 1-8-1996).

<sup>2</sup> Ins. by Act 27 of 1956, s. 70.

<sup>3</sup> The words and figures "or by or under the Representation of the People Act, 1950" omitted by Act 58 of 1958, s. 38.

<sup>4</sup> Subs. by Act 47 of 1966, s. 60, for sub-section (4) (w.e.f. 14-12-1966).

**146. Powers of Election Commission.**—(1) Where in connection with the tendering of any opinion to the President under article 103 or, as the case may be, under sub-section (4) of section 14 of the Government of Union Territories Act, 1963 (20 of 1963), or to the Governor under article 192, the Election Commission considers it necessary or proper to make an inquiry, and the Commission is satisfied that on the basis of the affidavits filed and the documents produced in such inquiry by the parties concerned of their own accord, it cannot come to a decisive opinion on the matter which is being inquired into, the Commission shall have, for the purposes of such inquiry, the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath ;
- (b) requiring the discovery and production of any document or other material object producible as evidence;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or a copy thereof from any court or office ;
- (e) issuing commissions for the examination of witnesses or documents.

(2) The Commission shall also have the power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as in the opinion of the Commission may be useful for, or relevant to, the subject-matter of the inquiry.

(3) The Commission shall be deemed to be a civil court and when any such offence, as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860), is committed in the view or presence of the Commission, the Commission may after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1898<sup>2</sup> (5 of 1898), forward the case to a magistrate having jurisdiction to try the same and the magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under section 482 of the Code of Criminal Procedure, 1898<sup>2</sup> (5 of 1898).

(4) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

**146A. Statements made by persons to the Election Commission.**—No statement made by a person in the course of giving evidence before the Election Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement—

- (a) is made in reply to a question which he is required by the Commission to answer, or
- (b) is relevant to the subject-matter of the inquiry.

**146B. Procedure to be followed by the Election Commission.**—The Election Commission shall have the power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private).]

1. Ins. by Act 17 of 1965, s. 2.

2. See now the corresponding provision of the Code of Criminal Procedure, 1973 (2 of 1974).

**146C. Protection of action taken in good faith.**—No suit, prosecution or other legal proceeding shall lie against the Commission or any person acting under the direction of the Commission in respect of anything which is in good faith done or intended to be done in pursuance of the foregoing provisions of this Chapter or of any order made thereunder or in respect of the tendering of any opinion by the Commission to the President or, as the case may be, to the Governor or in respect of the publication, by or under the authority of the Commission of any such opinion, paper or proceedings.]

## PART IX

## BYE-ELECTIONS

**147. Casual vacancies in the Council of States.**—<sup>1</sup>[(1)] When before the expiration of the term of office of a member elected to the Council of States, his seat becomes vacant or is declared vacant or his election to the Council of States is declared void, the Election Commission shall by a notification in the Gazette of India call upon the elected members of the Legislative Assembly or the members of the electoral college concerned<sup>2</sup> \* \* \*, as the case may be, 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 and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

<sup>3</sup>[(2) As soon as may be after the date of commencement of the Constitution (Seventh Amendment) Act, 1956, bye-elections shall be held to fill the vacancies existing on that date in the seats allotted to the States of Assam, Orissa and Uttar Pradesh and the Union territories of Delhi, Himachal Pradesh\* and Manipur\*.]

**148.** [*Casual vacancies in the electoral colleges for certain Union territories.*] *Rep. by the Territorial Councils Act, 1956 (103 of 1956), s. 66.*

**149. Casual vacancies in the House of the People.**—(1) When the seat of a member elected to the House of the People becomes vacant or is declared vacant or his election to the House of the People is declared void, the Election Commission shall, subject to the provisions of sub-section (2), by a notification in the Gazette of India, call upon the Parliamentary constituency concerned 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 and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

(2) If the vacancy so caused be a vacancy in a seat reserved in any such constituency for the Scheduled Castes or for any Scheduled Tribes, the notification issued under sub-section (1) shall specify that the person to fill that seat shall belong to the Scheduled Castes or to such Scheduled Tribes, as the case may be.

**150. Casual vacancies in the State Legislative Assemblies.**—(1) When the seat of a member elected to the Legislative Assembly of a State becomes vacant or is declared vacant or his election to the Legislative Assembly is declared void, the Election Commission shall, subject to the provisions of sub-section (2), by a notification in the Official Gazette, call upon the Assembly constituency concerned 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 and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

1. S. 147 re-numbered as sub-section (1) of that section by the Adaptation of Laws (No. 2) Order, 1956.

2. The words "or the elected members of the Coorg Legislative Council" omitted by Act 49 of 1951, s. 44 and the Fifth Schedule.

3. Ins. by the Adaptation of Laws (No. 2) Order, 1956.

\* Now it has become State.

(2) If the vacancy so caused be a vacancy in a seat reserved in any such constituency for the Scheduled Castes or for any Scheduled Tribes, the notification issued under sub-section (1) shall specify that the person to fill that seat shall belong to the Scheduled Castes or to such Scheduled Tribes, as the case may be.

**151. Casual vacancies in the State Legislative Councils.**—When before the expiration of the term of office of a member elected to the Legislative Council of a State, his seat becomes vacant or is declared vacant or his election to the Legislative Council is declared void, the Election Commission shall, by a notification in the Official Gazette, call upon the Council constituency concerned or the members of the Legislative Assembly of the State, as the case may be, 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 and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

<sup>1</sup>[**151A. Time limit for filling vacancies referred to in sections 147, 149, 150 and 151.**—Notwithstanding anything contained in section 147, section 149, section 150 and section 151, a bye-election for filling any vacancy referred to in any of the said sections shall be held within a period of six months from the date of the occurrence of the vacancy:

Provided that nothing contained in this section shall apply if—

- (a) the remainder of the term of a member in relation to a vacancy is less than one year; or
- (b) the Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye-election within the said period.

#### PART X MISCELLANEOUS

**152. List of members of the State Legislative Assemblies and electoral colleges to be maintained by the returning officers concerned.**—(1) The returning officer for an election by the elected members of the Legislative Assembly of a State to fill a seat or seats in the Council of States or for an election, by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of the State shall, for the purposes of such election maintain in his office in the prescribed manner and form a list of elected members or a list of members, as the case may be, of that Legislative Assembly.

(2) The returning officer for an election by the members of the electoral college for a<sup>2</sup>[Union territory]<sup>3\*\*\*\*</sup> to fill a seat or seats in the Council of States shall, for the purposes of such election, maintain in his office in the prescribed manner and form a list of members of the electoral college<sup>4\*\*\*</sup>.

(3) Copies of the lists referred to in sub-sections (1) and (2) shall be made available for sale.

<sup>5</sup>[**153. Extension of time for completion of election.**—It shall be competent for the Election Commission for reasons which it considers sufficient, to extend the time for the completion of any election by making necessary amendments in the notification issued by it under section 30 or sub-section (1) of section 39.]

**154. Term of office of members of the Council of States.**—<sup>6</sup>[(1) Subject to the provisions of sub-sections (2) and (2A), the term of office of a member of the Council of States, other than a member chosen to fill a casual vacancy, shall be six years.]

(2) <sup>7\*\*\*\*</sup> Upon the first constitution of the Council of States the President shall, after consultation with the Election Commission, make by order such provision as he thinks fit for curtailing the term of office of some of the members then chosen in order that, as nearly as may be, one-third of the members holding seats of each class shall retire in every second year thereafter.

<sup>8</sup>[(2A) In order that, as nearly as may be, one-third of the members may retire on the second day of April, 1958, and on the expiration of every second year thereafter, the President shall, as soon as may be after the commencement of the Constitution (Seventh Amendment) Act, 1956, after consultation with the Election Commission, make by order such provisions as he thinks fit in regard to the terms of office of the members elected under sub-section (2) of section 147.]

<sup>1</sup> Ins. by Act 21 of 1996, s. 17 (w.e.f. 1-8-1996).

<sup>2</sup> Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "Part C State".

<sup>3</sup> The words "or group of such States" omitted by Act 27 of 1956, s. 77.

<sup>4</sup> Certain words omitted by Act 49 of 1951, s. 44 and the Fifth Schedule.

<sup>5</sup> Subs. by Act 27 of 1956, s. 78, for s. 153.

<sup>6</sup> Subs. by the Adaptation of Laws (No. 2) Order, 1956, for sub-section (1).

<sup>7</sup> Certain words omitted, *ibid.*

<sup>8</sup> Ins., *ibid.*

(3) A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office.

**155. Commencement of the term of office of members of the Council of States.**— (1) The term of office of a member of the Council of States whose name is required to be notified in the Official Gazette under section 71 shall begin on the date of such notification.

(2) The term of office of a member of the Council of States whose name is not required to be notified under section 71 shall begin on the date of publication in the Official Gazette of the declaration containing the name of such person as elected under section 67 or of the notification issued under sub-clause (a) of clause (1) of article 80 or under any other provision announcing the nomination of such person to the Council of States, as the case may be.

**156. Term of office of members of State Legislative Councils.**—(1) The term of office of a member of the Legislative Council of a State, other than a member chosen to fill a casual vacancy, shall be six years, but upon the first constitution of the Council the Governor \* \* \* shall, after consultation with the Election Commission, make by order such provision as he thinks fit for curtailing the term of office of some of the members then chosen in order that, as nearly as may be, one-third of the members holding seats of each class shall retire in every second year thereafter.

(2) A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office.

**157. Commencement of the term of office of members of the Legislative Councils.**—(1) The term of office of a member of the Legislative Council of a State whose name is required to be notified in the Official Gazette under<sup>2</sup> [section 74] shall begin on the date of such notification.

(2) The term of office of a member of the Legislative Council of a State whose name is not required to be notified under<sup>2</sup> [section 74] shall begin on the date of publication in the Official Gazette of the declaration containing the name of such person as elected under section 67 or of the notification issued under sub-clause (e) of clause (3) of article 171, announcing the nomination of such person to the Council, as the case may be.

<sup>3</sup>[**158. Return of forfeiture of candidate's deposit.**— (1) The deposit made under section 34 or under that section read with sub-section (2) of section 39 shall either be returned to the person making it or his legal representative or be forfeited to the appropriate authority in accordance with the provisions of this section.

(2) Except in cases hereafter mentioned in this section, the deposit shall be returned as soon as practicable after the result of the election is declared.

(3) If the candidate is not shown in the list of contesting candidates, or if he dies before the commencement of the poll, the deposit shall be returned as soon as practicable after the publication of the list or after his death, as the case may be.

(4) Subject to the provisions of sub-section (3), the deposit shall be forfeited if at an election where a poll has been taken, the candidate is not elected and the number of valid votes polled by him does not exceed one-sixth of the total number of valid votes polled by all the candidates or in the case of election of more than one member at the election, one-sixth of the total number of valid votes so polled divided by the number of members to be elected:

1. The words "or the Rajpramukh, as the case may be" omitted by the Adaptation of Laws (No. 2) Order, 1956.

2. Subs. by Act 27 of 1956, s. 79, for "section 75".

3. Subs. by Act 58 of 1958, s. 39, for s. 158.

Provided that where at an election held in, accordance with the system of proportional representation by means of the single transferable vote, a candidate is not elected, the deposit made by him shall be forfeited if he does not get more than one-sixth of the number of votes prescribed in this behalf as sufficient to secure the return of a candidate.

(5) Notwithstanding anything in sub-sections (2), (3) and (4),—

(a) if at a general election, the candidate is a contesting candidate in more than one parliamentary constituency or in more than one assembly constituency, not more than one of the deposits shall be returned, and the others shall be forfeited.

(b) if the candidate is a contesting candidate at an election in more than one council constituency or at an election in a council constituency and at an election by the members of the State Legislative Assembly to fill seats in the Legislative Council, not more than one of the deposits shall be returned, and the others shall be forfeited.]

**<sup>1</sup>[159. Staff of certain authorities to be made available for election work.—**(1) The authorities specified in sub-section (2) shall, when so requested by a Regional Commissioner appointed under clause (4) of article 324 or the Chief Electoral Officer of the State, make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election.

(2) The following shall be the authorities for the purpose of sub-section (1), namely:—

- (i) every local authority;
- (ii) every university established or incorporated by or under a Central, Provincial or State Act;
- (iii) a Government company as defined in section 617 of the Companies Act, 1956 ( 1 of 1956);
- (iv) any other institution, concern or undertaking which is established by or under a Central, Provincial or State Act or which is controlled, or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or a State Government.]

**160. Requisitioning of premises, vehicles, etc., for election purposes—**(1) If it appears to the State Government that in connection with an election held within the State—

(a) any premises are needed or are likely to be needed for the purpose of being used as a polling station or for the storage of ballot boxes after a poll has been taken, or

(b) any vehicle, vessel or animal is needed or is likely to be needed for the purpose of transport of ballot boxes to or from any polling station, or transport of members of the police force for maintaining order during the conduct of such election, or transport of any officer or other person for performance of any duties in connection with such election,

that Government may by order in writing requisition such premises, or such vehicle, vessel or animal, as the case may be, and may make such further orders as may appear to it to be necessary or expedient in connection with the requisitioning:

Provided that no vehicle, vessel or animal which is being lawfully used by a candidate or his agent for any purpose connected with the election of such candidate shall be requisitioned under this sub-section until the completion of the poll at such election.

(2) The requisition shall be effected by an order in writing addressed to the person deemed by the State Government to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.

(3) Whenever any property is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in that sub-section.

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<sup>1</sup> Subs. by Act 12 of 1998, s. 2 (w.e.f. 23-12-1997).

(4) In this section,—

(a) "premises" means any land, building or part of a building and includes a hut, shed or other structure or any part thereof;

(b) "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise.

**161. Payment of compensation.**—(1) Whenever in pursuance of section 160 the State Government requisitions any premises, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely:—

(i) the rent payable in respect of the premises or if no rent is so payable, the rent payable for similar premises in the locality;

(ii) if any consequence of the requisition of the premises the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change:

Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the State Government for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the State Government may determine:

Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred by the State Government to an arbitrator appointed in this behalf by that Government for determination, and shall be determined in accordance with the decision of such arbitrator.

*Explanation.*—In this sub-section, the expression "person interested" means the person who was in actual possession of the premises requisitioned under section 160 immediately before the requisition, or where no person was in such actual possession, the owner of such premises.

(2) Whenever in pursuance of section 160 the State Government requisitions any vehicle, vessel or animal, there shall be paid to the owner thereof compensation the amount of which shall be determined by the State Government on the basis of the fares or rates prevailing in the locality for the hire of such vehicle, vessel or animal:

Provided that where the owner of such vehicle, vessel or animal being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the State Government for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the State Government may determine:

Provided further that where immediately before the requisitioning the vehicle or vessel was by virtue of a hire-purchase agreement in the possession of a person other than the owner, the amount determined under this sub-section as the total compensation payable in respect of the requisition shall be apportioned between that person and the owner in such manner as they may agree upon, and in default of agreement, in such manner as an arbitrator appointed by the State Government in this behalf may decide.

**162. Power to obtain information.**—The State Government may with a view to requisitioning any property under section 160 or determining the compensation payable under section 161, by order, require any person to furnish to such authority as may be specified in the order such information in his possession relating to such property as may be so specified.

**163. Powers of entry into and inspection of premises, etc.**—(1) Any person authorized in this behalf by the State Government may enter into any premises and inspect such premises and any vehicle, vessel or animal therein for the purpose of determining whether, and if so in what manner, an order under section 160 should be made in relation to such premises, vehicle, vessel or animal, or with a view to securing compliance with any order made under that section.



(2) In this section, the expressions "premises" and "vehicle" have the same meanings as in section 160.

**164. Eviction from requisitioned premises.**—(1) Any person remaining in possession of any requisitioned premises in contravention of any order made under section 160 may be summarily evicted from the premises by any officer empowered by the State Government in this behalf.

(2) Any officer so empowered may, after giving to any woman not appearing in public reasonable warning and facility to withdraw, remove or open any lock or bolt or break open any door of any building or do any other act necessary for effecting such eviction.

**165. Release of premises from requisition.**—(1) When any premises requisitioned under section 160 are to be released from requisition, the possession thereof shall be delivered to the person from whom possession was taken at the time when the premises were requisitioned, or if there were no such person, to the person deemed by the State Government to be the owner of such premises, and such delivery of possession shall be a full discharge of the State Government from all liabilities in respect of such delivery, but shall not prejudice any rights in respect of the premises which any other person may be entitled by due process of law to enforce against the person to whom possession of the premises is so delivered.

(2) Where the person to whom possession of any premises requisitioned under section 160 is to be given under sub-section (1) cannot be found or is not readily ascertainable or has no agent or any other person empowered to accept delivery on his behalf, the State Government shall cause a notice declaring that such premises are released from requisition to be affixed on some conspicuous part of such premises and publish the notice in the Official Gazette.

(3) When a notice referred to in sub-section (2) is published in the Official Gazette, the premises specified in such notice shall cease to be subject to requisition on and from the date of such publication and be deemed to have been delivered to the person entitled to possession thereof; and the State Government shall not be liable for any compensation or other claim in respect of such premises for any period after the said date.

**166. Delegation of functions of the State Government with regard to requisitioning.**—The State Government may, by notification in the Official Gazette, direct that any powers conferred or any duty imposed on that Government by any of the provisions of sections 160 to 165 shall, under such conditions, if any, as may be specified in the direction, be exercised or discharged by such officer or class of officers as may be so specified.

**167. Penalty for contravention of any order regarding requisitioning.**—If any person contravenes any order made under section 160 or section 162, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

**168.** [*Special provisions with respect to Rulers of former Indian States.*] *Rep. by the Rulers of Indian States (Abolition of Privileges) Act, 1972 (54 of 1972), s. 4 (w.e.f. 9-9-1972).*

#### PART XI GENERAL

**169. Power to make rules.**—(1) The Central Government may, after consulting the Election Commission, by notification in the Official Gazette, make rules<sup>1</sup> 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:—

<sup>2</sup>[(a) the form of affidavit under sub-section (2) of section 33A;]

<sup>3</sup>[(aa) the duties of presiding officers and polling officers at polling stations;

<sup>4</sup>[(aaa) the form of contribution report;]

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<sup>1</sup> See the Conduct of Election Rules, 1961, in Vol. II.

<sup>2</sup> Ins. by Act 72 of 2002, s. 6 (w.e.f. 24-8-2002).

<sup>3</sup> Renumbered by s. 6, *ibid.* (w.e.f. 24-8-2002).

<sup>4</sup> Ins. by Act 46 of 2003, s. 6.

(b) the checking of voters by reference to the electoral roll;

<sup>1</sup>[(bb) the manner of allocation of equitable sharing of time on the cable television network and other electronic media;];

(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 manner in which votes are to be given by a presiding officer, polling officer, polling agent or any other person, who being an elector for a constituency is authorised or appointed for duty at a polling station at which he is not entitled to vote;

(e) the procedure to be followed in respect of the tender of vote by a person representing himself to be an elector after another person has voted as such elector;

<sup>2</sup>[(ee) the manner of giving and recording of votes by means of voting machines and the procedure as to voting to be followed at polling stations where such machines are used;]

(f) 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;

(g) the scrutiny and counting of votes including cases in which a recount of the votes may be made before the declaration of the result of the election;

<sup>2</sup>[(gg) the procedure as to counting of votes recorded by means of voting machines;]

(h) the safe custody of <sup>3</sup>[ballot boxes, voting machines], ballot papers and other election papers, the period for which such papers shall be preserved and the inspection and production of such papers;

<sup>1</sup>[(hh) the material to be supplied by the Government to the candidates of recognised political parties at any election to be held for the purposes of constituting the House of the People or the Legislative Assembly of a State;]

(i) any other matter required to be prescribed by this Act.

<sup>4</sup>[(3) Every rule made under this Act shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or <sup>5</sup>[in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made,] the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

**170. Jurisdiction of civil courts barred.**— No civil court shall have jurisdiction to question the legality of any action taken or of any decision given by the returning officer or by any other person appointed under this Act in connection with an election.

**171.** [Repeal of Act 39 of 1920.] *Rep. by the Repealing and Amending Act, 1957 (36 of 1957), s. 2 and Sch. I.*

<sup>1</sup> Ins. by Act 46 of 2003, s. 6.

<sup>2</sup> Ins. by Act 1 of 1989, s. 16 (w.e.f. 15-3-1989).

<sup>3</sup> Subs. by s. 16, *ibid.*, for "ballot boxes" (w.e.f. 15-3-1989).

<sup>4</sup> Subs. by Act 40 of 1961, s. 29, for sub-section (3) (w.e.f. 20-9-1961), which was ins. by Act 27 of 1956, s. 82.

<sup>5</sup> Subs. by Act 4 of 1986, s. 2 and Sch. (w.e.f. 15-5-1986).