

Assam Panchayat (Amendment) Act, 1999

25 of 1999

[15 December 1999]

CONTENTS

1. Short title, extent and commencement
2. Amendment of Section 2
3. Amendment of Section 114
4. Insertion of new Section 127A to 127R

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PREAMBLE

An

Act

further to amend the Assam Panchayat Act, 1994.

Whereas it is expedient further to amend the Assam Panchayat Act, 1994 (Assam Act No. XVIII of 1994), here-in-after referred to as the principal Act, in the manner here-in-after appearing;

It is hereby enacted in the Fiftieth Year of the Republic of India as follows:-

1. Short title, extent and commencement :-

(1) This Act may be called the Assam Panchayat (Amendment) Act, 1999.

(2) It shall have the like extent as the principal Act.

(3) It shall come into force at once.

2. Amendment of Section 2 :-

In the principal Act, in section 2, after clause (41), the following new clauses (42), (43) and (44) shall be inserted, namely:-

"(42) "Moral Turpitude" means an act that gravely violet the moral sentiment or accepted moral standard of community or fellowmen;

(43) "Uncertified bankrupt" means bankrupts who are not granted Certificate of discharge from their existing debt;

(44) "Undischarged insolvent" means insolvent who are not discharged from future liability for debt then existing."

3. Amendment of Section 114 :-

In the principal Act, in section 114, the existing sub-section (4) shall be re-numbered as sub-section (5), and after sub-section (3), the following new sub-section (4) shall be inserted, namely:-

"(4) The Returning Officers, Assistant Returning Officers, Presiding Officers, Polling Officers and any other officer appointed under this Act and any Police Officers designated for the time being by the State Government for the conduct of the Panchayat Election shall be deemed to be on deputation to the State Election Commission for the period commencing on and from the date of notification calling for Panchayat Election and ending with the date of declaration of the results of the election and accordingly such officers shall during that period be subject to the control, superintendence and discipline of the State Election Commission".

4. Insertion of new Section 127A to 127R :-

In the principal Act, after section 127, the following new section 127 A to 127 R shall be inserted, namely:-

127A. Promoting enmity between classes in connection with election.

Any person who in connection with Panchayat Election promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred between different classes shall be punishable with imprisonment for a term which may extend to three years, or with fine to the extent of one thousand rupees or with both.

An offence punishable under this section shall be cognizable and bailable.

127B. Prohibition of public meeting on the day preceding the election day and on the election day.

Any person who convenes, holds or attends any public meeting in any polling area during the period of forty eight hours ending with the hour fixed for the conclusion of the poll for Panchayat election in that polling area shall be punishable with fine which may extend to two hundred and fifty rupees.

An offence punishable under this section shall be cognizable and

bailable.

127C. Disturbances at election meeting.

Any person who at a public meeting of political character held lawfully between the date of issue of notification of Panchayat election and date fixed for ending election canvases, 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, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

An offence punishable under this section shall be cognizable and bailable.

127D. Restriction 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 address 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 person to whom he is personally know, is delivered by him to the printer in duplicate, and

(b) unless within reasonable time after the printing of the document, one copy of the declaration is sent by printer together with one copy of the document to the District Returning Officer (District Magistrate) of the district where it is printed.

Any person who contravenes any of the provision of sub-section (1) and (2) shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two hundred rupees or with both.

An offence punishable under this section is cognizable and bailable.

127E. Maintenance of secrecy of voting.

Every officer, Assistant Agent or other person who perform any duty in connection with the recording or counting of votes in Panchayat election shall maintain 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.

Any person who contravenes this provision shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

An offence under this section is cognizable and bailable.

127F. Officers etc. at election to act for candidates or influence voting.

Any person who is a Returning Officer or an Assistant Returning Officer or a President or Polling Officer at a Panchayat Election or an officer or Assistant appointed by the Returning Officer or by the Presiding Officer to perform any duty in connection with a Panchayat election or a member or a Police force on duty shall not endeavour-

- (i) to persuade any person to give his vote at a Panchayat Election,
- (ii) to dissuade any person from giving his vote at a Panchayat Election,
- (iii) to influence the voting of any person at a Panchayat Election in any manner.

Any person who contravenes these provisions shall be punishable with imprisonment which may extend to six months or with fine, which may extend to two hundred rupees or with both.

An offence punishable under this section shall be cognizable and bailable.

127G. Prohibition of canvassing in or near polling stations.

No person shall, on the date or dates on which poll is taken at any polling station commit any of the following offence or at any public or private place within a distance of one hundred metres of the polling station, namely:-

- (i) canvassing for votes, or
- (ii) soliciting the vote of any elector, or
- (iii) persuading any elector not to vote for any particular candidate, or
- (iv) persuading any elector not to vote at the election, or
- (v) exhibiting any notice or sign, other than an official notice relating to the Panchayat election.

Any person who contravenes these provisions shall be punishable with fine which may extend to two hundred and fifty rupees.

Any offence punishable under this section shall be cognizable and bailable.

127H. Penalty for disorderly conduct in or near polling stations.

No person shall, on the day or dates on which a poll is taken at any polling station-

- (i) 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
- (ii) shout, or other act in a disorderly manner, within or at the

entrance of the polling station or in 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.

Any person who contravenes or wilfully aids or abets the contravention of, these provisions shall be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both.

An offence punishable under this section is cognizable and bailable.

(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 this section he may direct any police officer to arrest such person and thereupon the police officer shall arrest him.

(3) Any police officer may take such steps, and use such force, as may be reasonably necessary for preventing any contravention of the provisions of this section and may seize any apparatus used for such contraventions.

127I. Penalty for misconduct at the polling station.

Any person, who, during the hours fixed for the poll at any polling station, shows misconduct 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.

The power conferred by the above provision shall not be exercised so as to prevent any elector who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

Any person, who has been so removed from a polling station, if 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 which may extend to five hundred rupees or with both.

An offence punishable under this section shall be cognizable and bailable.

127J. Penalty for failure to observe procedure for voting.

If any elector to whom a ballot paper has been issued refuse to observe the procedure prescribed for voting, the ballot paper handed over to him shall be liable for cancellation.

127K. Penalty for hiring or procuring of conveyances at election.

If any person is guilty of any such corrupt practice of illegal hiring or procuring of vehicle for voter at or in connection with the

Panchayat election, he shall be punishable with fine which may extend to one thousand rupees.

The offence punishable under this section is cognizable and bailable.

127L. Breaches of official duty in connection with election.

(1) If any person in official duty in connection with a Panchayat election to whom this Act 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.

An offence punishable under this section shall be cognizable and bailable:

Provided that no suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.

(2) The person to whom this section applies are the Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer and any other person appointed to perform any duty in connection with the receipt of nominations or withdrawal of candidature or recording or counting of votes at the Panchayat 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.

127M. Penalty for Government servants for acting as election 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 Panchayat election, he shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

An offence punishable under this section is cognizable and bailable.

127N. Removal of ballot papers from polling station to be an offence.

Any person who at the Panchayat Election fraudulently take 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 with fine which may extend to five hundred rupees or with both.

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, 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.

Any ballot paper found upon the person arrested on search shall be made over for 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.

An offence punishable under this section shall be cognizable and bailable.

127O. Offence of booth capturing.

Whoever commits an offence of booth capturing shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two 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 one year but which may extend to three years and with fine, which may extend to one thousand rupees or with both.

An offence punishable under this section is cognizable and non-bailable.

EXPLANATION:-For the purpose of this section "booth capturing" includes among other things, all or any of the following activities, namely:-

(i) seizure or closure 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 election,

(ii) 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 prevent others from voting,

(iii) threatening any elector or obstructing or preventing him from going to the polling station or a place fixed for the poll to cast his vote.

(iv) seizure or closure or taking possession 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 any thing which affects the orderly counting of votes,

(v) doing by any person in the service of the Government of all or any of the aforesaid activities or aiding or conniving at, any such activities in furtherance of the prospects of the election of a

candidate or against the prospects of a candidate.

127P. Other offence and penalty therefor.

A person shall be guilty of all election offence, if at the Panchayat election be-

- (i) fraudulently defaces or fraudulently destroys any nomination papers, or
- (ii) fraudulently defaces, destroys or removes any list notice or other documents affixed by or under the authority of a Returning Officer, or
- (iii) fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot papers or any declaration of identity or official envelope used in connection with voting ballot, or
- (iv) without the authority supplies any ballot paper to any person or receives any ballot paper from any person or is in possession of any ballot papers, or
- (v) fraudulently put into any ballot box any thing other than the ballot paper which he is authorised by law to put in, or
- (vi) 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
- (vii) fraudulently or without 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.

Any person guilty of an electoral offence under this section shall,

- (a) if he is Returning Officer or Assistant Returning Officer or a Presiding Officer at a polling station or any other officer or Assistant employed on official duty in connection with the Panchayat election, be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both,
- (b) if he is any other person be punishable with imprisonment for a term which may extend to six months or with fine which may extend to six months of which may extend to two hundred rupees or with both.
- (c) for the purpose of this section, a person shall be deemed to be on official duty if his duty is to take part in the conduct of Panchayat Election or part of the election including the counting on votes or to be reasonable after the election for the used ballot paper and the other documents connected with the election, but the expression "Official duty" shall not include duty imposed otherwise by or under this Act.

127Q. Trial by competent Court.

No Court other than that of a Judicial Magistrate of the First Class of the competent Jurisdiction shall try any offence under this Act.

127R. Offence to be tried summarily.

Offence under this Act may be tried summarily in the manner provided for summary trial under the Code of Criminal Procedure, 1973 (Act 2 of 1974).

Explanation:-For the purposes of the foregoing sections of this Act, the words "cognizable" and "bailable" shall have the meaning respectively assigned to them in the Code of Criminal Procedure, 1973, (Act 2 of 1974)."