

Bar Council of Gujarat Election Rules, 1968

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Bar Council of Gujarat Election Rules, 1968

1. Short title and Commencement :-

These Rules shall be called the Bar Council of Gujarat Election Rules, 1968" and they shall come into force from the date of their approval.

2. RULE :-

These Rules shall be subject to the Rules made by the Bar Council of India under the powers vested in it by the Act.

3. Interpretation :-

In these Rules, unless the context otherwise requires :

- (a) "Act" means the Advocates Act, 1961;
- (b) "Advocate-General" means the Advocate-General for the State;
- (c) "Bar Association" means a Bar Association included in the list kept by the Bar Council for the purposes of these rules;
- (d) "Bar Council" means the Bar Council for the State of Gujarat;
- (e) "Casual Vacancy" means a vacancy that has been caused otherwise than by the expiry of the term of office of a member;
- (f) "Chairman" means the Chairman of the Bar Council of the State;
- (g) "Clear days" means that time is to be reckoned exclusive of both the first and the last days. Illustration : The election of members to a State Bar Council of Gujarat is fixed for the 15th January, 1965. Under the Rules of the Bar Council, ballot papers have to be despatched 10 clear days before the date of election. Consequently the last date for the despatch of ballot papers will be 4th January, 1965.
- (h) "Continuing Candidate" means any candidate not elected and not excluded from the poll at any given time;
- (i) "Count" means
 - (a) all the operations involved in the counting of the first preferences recorded for candidates, or
 - (b) all the operations involved in the transfer of the surplus of an elected candidate, or
 - (c) all the operations involved in the transfer of the total of votes of an excluded candidate, or
 - (d) all other operations involved in, incidental to; or necessary for

the entire process of ascertainment of votes.

(i) "Electoral Roll" means and includes the roll containing the name of the Advocate prepared in accordance with the Rules of the Bar Council of India in Part III, Chapter 1;

(k) "Exhausted Paper" means a voting paper on which no further preference is recorded for a continuing candidate and includes a voting paper on which

(a) the names of two or more candidates, whether continuing or not, are marked with the same figure and are next in order of preference, or

(b) the name of the candidate next in order of preference whether continuing or not, is marked by a figure not following consecutively after some other figure on the voting paper or by two or more figures, or

(c) there is such effacement, obliteration, erasure, or mutilation as to make any preferences other than the first preference ambiguous.

(l) "First Preference" means the figure "1" set opposite the name of a candidate; "Second preference" means the figure "2" set opposite the name of a candidate and "third preference" means the figure "3" set opposite the name of the candidate, and so on;

(m) "Form" means a form prescribed under these rules;

(n) "High Court" means the High Court of Gujarat at Ahmedabad;

(o) "Original Vote" in relation to any candidate, means a vote derived from a voting paper on which a first preference is recorded for such candidate;

(p) "Polling Officer" means a person appointed as such by the Returning Officer and includes the person appointed by the Returning Officer to assist the Polling Officer;

(q) "Returning Officer" means the person appointed by the Bar Council as such to conduct an election;

(r) "Secretary" means the Secretary of the Bar Council or any other person appointed by the Bar Council to perform the duties of the Secretary how ever designated;

(s) "Surplus" means the number by which the value of the votes, original and transferred, of any candidate exceeds the quota;

(t) "Transferred vote" in relation to any candidate means a vote the value or part of the value of which is credited to such candidate and which is derived from a voting paper on which a second or a subsequent preference is recorded for such candidate;

(u) "Unexhausted paper" means a voting paper on which a further preference is recorded for a continuing candidate;

(v) "Voter" means a person whose name is included in the Electoral Roll, of the Bar Council as contemplated by Rule 6 in Chapter I, part III of the Rules of the Bar Council of India.

4. Time and place of election :-

Election of members to the Bar Council shall be held at such place or places, on such date or dates and during such hour or hours as the Council may appoint. Different dates and different hours may be appointed for polling at different places.

5. Method of election :-

(i) Election to the Bar Council shall be by the single transferable vote by and amongst the votes in the Electoral Roll in accordance with these Rules.

(ii) The voting shall be by secret personal ballot.

6. Notice of election :-

Notice of the time and place of election shall be given by publication over the signature of the Returning Officer, in one issue of a daily newspaper in the State not less than 45 clear days before the date of election. The notification shall specify inter alia :

(i) the dates, time and place for nominations;

(ii) the dates, place and time for scrutiny;

(iii) the dates and time for withdrawal of the candidature;

(iv) the date or dates and time of polling:

(v) the last date on which the voting papers despatched by post should reach the Returning Officer;

(vi) the date and place and time for counting of votes; and

(vii) the minimum number of seats that should be filled from amongst advocates who on the relevant date will have been on the State Roll for at least 10 years:

PROVIDED that the last date for the filling of the nominations shall not be less than 25 clear days before the date of the election and that there shall be at least 2 clear days after the last date of scrutiny for withdrawal of the candidature. Copies of the notices shall be affixed on the Notice-Board of the Bar Council, and sent to the Advocate General and as far as possible to Bar Association in the State of Gujarat for such publicity amongst members of their Association as they think fit.

7. Candidate :-

No person shall be entitled to seek election unless his name is in the electoral roll.

8. Candidates how to be proposed :-

(i) Every candidate for election as a member of the Bar Council shall be proposed by one voter, and seconded by another voter. Such proposal shall further contain the acceptance of the candidate to serve the Council, if Delected. The nomination paper shall be delivered to the Returning Officer either personally or through an agent or sent by registered post so as to reach the Returning Officer on or before the date specified in the notification under Rule 6.

(ii) Every nomination paper shall be accompanied by a sum of Rs.500/- which shall be deposited with the Bar Council. The said sum shall be refunded to a candidate whose nomination paper is rejected or who withdraws from the contest within the time prescribed for the withdrawal of the nomination papers, who is elected as a member of the Council or who is defeated but secures votes which are more than 1 /8th of the quota fixed for the election. The amount of deposit shall be forfeited if the defeated candidate secures votes which are less than 1/8th of the quota fixed for the election.

9. Doubts as to validity of Proposal :-

(i) The Returning Officer shall scrutinise the nomination papers received at the place and time notified under Rule 6 and shall decide the validity or otherwise of such nomination paper. The candidates or their agents shall be entitled to be present at the time of scrutiny before the Returning Officer and make their submissions. No nomination paper shall be rejected except for a defect of a substantial character and Returning Officer may allow any other defect to be rectified.

(ii) The candidate aggrieved by the order of the Returning Officer may prefer an Appeal to the Election Tribunal within 3 days of such decision. The decision of the Election Tribunal shall be final.

10. Withdrawal from election :-

Any person whose name has been proposed as a candidate may withdraw his candidature by a communication in writing so as to reach the Returning Officer not later than the date specified for the purpose in the notification under Rule 6.

11. Declaration when number of candidates is equal to the number of seats :-

If the number of duly nominated candidates who have been on the State Rolls for more than 10 years is less than or equal to the number required by the proviso to Section 3(2)(b) of the Act, they shall be declared elected. The number thus elected shall be deemed to be the number required by the said proviso. If the number of such candidates is in excess of the required number but the number of all the nominated candidates does not exceed the total number to be elected, all the candidates shall be declared elected. In every other case there shall be a poll as prescribed by these rules.

12. Publication of the list of candidates :-

Not less than 15 days before the date fixed for polling, the Returning Officer shall cause the names of all candidates duly proposed to be posted on the Notice Board of the Bar Council and shall send them to the Advocate General and may also cause them to be published in the Official Gazette and as far as possible to Bar Associations in the State of Gujarat for such publicity amongst the members of their Associations as they think fit.

13. Preparation of list of voters :-

The Electoral Rolls containing the list of voters shall be prepared in accordance with the Rules of the Bar Council of India.

14. Form of voting paper :-

The voting paper shall contain the names of all the candidates. The address of the candidate and the date of his enrolment as Advocate as in the Roll shall be given against the name of each candidate. An asterisk mark shall be put against the name of candidates who on the relevant date have been on the State Roll for at least 10 years for the purposes of proviso to Section 3(2)(b) of the Act. The

voting paper shall also bear on it the facsimile of the Returning Officer's signature. It shall state the total number of the candidates to be elected. The voting paper shall, as nearly as possible, be in the Form 'C'

15. Voting in person :-

Voters shall cast their votes at the respective polling booths on the dates notified in this behalf.

16. Polling booths for voters voting in person :-

There may be one or more polling booths at each place. Different dates may be fixed for polling at the different booths. Polling shall ordinarily be from 10 a.m. to 4 p.m. The Returning Officer shall appoint a sufficient number of Polling Officers for the booths, and may himself act as such at one or more of the booths. The Bar Council may give such general directions as it may consider necessary with regard to places where polling booths ought to be established and the persons to be appointed as Polling Officers.

17. Despatch of voting papers to polling Officers for voting in person :-

The Returning Officer shall send to the Polling Officers of the booths requisite number of voting papers and some additional voting papers bearing his facsimile with a covering letter stating the number of the papers sent and enclosing an extract from the electoral roll relating to the polling booth, and other papers, if any with necessary instructions.

18. Supply of voting papers to voters voting in person :-

The Polling Officers shall, on the date and at the time or hour fixed in this behalf, supply a voting paper to each voter in his polling booth, who applies in person therefor, and take his signature in the list of voters against the voter's name to signify the issue of the voting paper.

19. Second voting paper not to be issued :-

When a voting paper has once been handed over to a voter under Rule 18 a second voting paper shall not be issued to the voter unless the voter satisfies the Returning Officer that the voting paper has been spoiled or mutilated. In such a case, a duplicate voting paper may be issued to such voter against such spoiled or mutilated voting paper.

20. Procedure for persons voting in person :-

(1) A voter who has received a voting paper under Rule 18 shall retire to a place screened from outside view and mark his preference in the manner prescribed. The voter shall then put it in a sealed box kept for the purpose.

(2) As soon as practicable after the closing of the poll the polling Officer shall close the slit of the ballot box and where the box does not contain any mechanical device for closing the slit, he shall seal up the slit and also allow any candidate or his agent present to affix his seal. The ballot box shall thereafter be sealed and secured.

(3) When it is necessary to use a second ballot box the first box shall be closed, sealed and secured as provided in sub-rule 2 before the second ballot box is put into use. The Polling Officer shall, at the close of the poll prepare an account of ballot papers in Form 'D' and enclose it in a separate cover with the words "Voting Paper Account" superscribed thereon.

(4) Sealing of other packets-The Polling Officer shall then make into separate packets :

(a) the marked copy of the Electoral Roll;

(b) the unused ballot papers;

(c) the cancelled ballot papers;

(d) any other paper directed by the Returning Officer to be kept in a sealed packet. Each packet shall be sealed with the seal of the Polling Officer and of the candidate or his agent present who may desire to affix their seals thereon.

(5) Transmission of Ballot Boxes, etc..-The Polling Officer shall then deliver to the Returning Officer at such place as he may direct or send by post or otherwise in any way as directed :

(a) the ballot boxes containing the ballot papers;

(b) the account of the ballot papers;

(c) the sealed packets referred to in sub-rule (4) above, and

(d) all other papers used at the poll.

21. Method of voting :-

(1) A voter in giving his vote

(a) shall place on his voting paper the figure "I" in the space

opposite the name of the candidate whom he chooses for his first preference, and

(b) may in addition place on his voting paper the figure '2', '3' and '4' and so on either in English or Gujarati or Hindi or Roman in the space opposite the names of the other candidates in the order of his preference.

(2) A voting paper shall not be signed by a voter, and in the event of any erasures, obliterations or alterations in the voting paper or of the voting paper purporting to have been signed by the voter, the voting paper shall be deemed to have been defaced and no votes purporting to have been given thereby shall be taken into account for the purposes of the election.

(3) The decision of the Returning Officer whether a voting paper has or has not been defaced shall be final.

22. Voting papers when invalid :-

A voting paper shall be invalid on which

(a) the figure "I" is not marked or

(b) the figure "I" is set opposite the name of more than one candidate or is so placed as to render it doubtful to which candidate it is intended to apply; or

(c) the figure "I" and some other figures are set opposite the name of the same candidate; or

(d) there is any mark in writing by which the voter can be identified; or

(e) the preferences are indicated in words as "ONE", "TWO" etc., or

(f) the marking on the voting paper is not in conformity with Rule 21 (1).

23. Presence of candidate or his agent during counting :-

At the time of counting, the candidate or his agent shall be entitled to be present.

24. Arrangement of valid voting papers in parcels :-

(a) On the day fixed for counting the Returning Officer shall open all the ballot boxes. After rejecting the Voting papers which are invalid or which cannot be taken into account for the purpose of election under these Rules, the Returning Officer shall:

- (b) arrange the remaining voting papers in parcels according to the first preference recorded for each candidate;
- (c) count and record the number of papers in each parcel;
- (d) credit to each candidate the value of papers in his parcel.

25. Ascertainment of quota :-

Every voting paper shall be deemed to be of the value of one hundred, and the quota sufficient to secure the return of a candidate at the election shall be determined as follows :

- (a) add the value credited for a candidate under clause (d) of Rule 24;
- (b) divide the total by a number which exceeds by one of the number of seats to be filled; and
- (c) add one to the quotient, ignoring the remainder, if any, the resulting number is the quota.

26. Candidates with quota to be elected :-

If at the end of any count, or at the end of the transfer of any parcel or sub-parcel of an excluded candidate, the value of voting papers credited to a candidate is equal to or greater than the quota that candidate shall be declared elected:

Provided that

- (i) No candidate whose name has not been on the State Roll for at least 10 years shall be elected under Section 3(2)(b) and the proviso thereto of the Act, if
 - (a) 7 candidates of less than 10 years' standing when 15 members are to be elected, or
 - (b) 10 candidates of less than 10 years' standing when 20 members are to be elected, or
 - (c) 12 candidates of less than 10 years' standing when 25 members are to be elected, have already been declared elected.
- (ii) If at the end of any count, there are two or more candidates, who have not been on the State Rolls for at least 10 years, getting more than the quota as aforesaid but the number of candidates that can yet be elected from such category under the proviso to Section 3(2) (b) is less than that number, the candidate who has obtained the greater value of votes shall be declared elected in

preference to the candidate whose value of votes is less.

(iii) In the case of two or more persons of the category referred to in proviso (ii) above, getting the same value of votes at the end of any count, the Returning officer conducting the election shall decide by lot which of such persons shall be declared elected.

(iv) The other candidate or candidates not declared elected as aforesaid by reason of the proviso to Section 3(2) (b) of the Act and these rules shall be excluded from the Poll.

27. Transfer of surplus :-

(i) If after exclusion of any candidate under Rule 28 at the end of any count, the value of the voting paper credited to a candidate is greater than the quota, the surplus shall be transferred in accordance with the provisions of this rule to the continuing candidates indicated on the voting papers of that candidate as being next in order of the voter's preference.

(ii) If more than one candidate have a surplus, the largest surplus shall be dealt with first and the others in order of magnitude:

Provided that Every surplus arising on the first count shall be dealt with before those arising on the second count and so on.

(iii) Where there are more surpluses than one to distribute and two or more surpluses are equal, regard shall be had to the original voter of each candidate and the candidate for whom more original votes are recorded shall have his surplus first distributed, and if the value of the original votes is equal, the Returning Officer shall decide by lot which candidate shall have his surplus first distributed.

(iv)

(a) If the surplus of any candidate to be transferred arises on the original votes only the Returning Officer shall examine all the papers in the Poll belonging to that candidate, divide the unexhausted papers, into sub-parcels according to the next preference recorded thereon and make a separate sub-parcel of the exhausted papers.

(b) The Returning Officer shall ascertain the value of the papers in each sub-parcel and of all the unexhausted papers.

(c) If the value of the unexhausted papers is equal to or less than

the surplus, the Returning Officer shall transfer all the unexhausted papers at the value at which they were received by the candidate whose surplus is being transferred.

(d) If the value of the unexhausted papers is greater than the surplus, the Returning Officer shall transfer the sub-parcels of the unexhausted papers, and the value at which each paper shall be transferred shall be ascertained by dividing the surplus by the total number of unexhausted papers.

(v) If the surplus of any candidate to be transferred arises from transferred as well as original votes, the Returning Officer shall re-examine all the papers in the sub-parcel last transferred to the candidate, divide the unexhausted papers into sub-parcels, according to the next preferences recorded thereon, and then deal with the sub-parcel in the same manner as is provided in the case of such parcel referred to in sub-rule (iv).

(vi) The papers transferred to each candidate shall be added in the form of sub-parcel to the papers already belonging to such candidate.

(vii) All papers in the parcel or sub-parcel of an elected candidate not transferred under this rule shall be set apart as finally dealt with.

28. Exclusion of Candidates :-

The Returning Officer conducting the elections shall exclude from the poll candidates as specified in Rule 4(b)(1) of the Bar Council of India contained in Chapter II Part III.

29. Filling of Last Vacancies :-

The procedure prescribed in Rule 4(c) of the Rules of the Bar Council of India in Chapter II, Part III shall be followed.

30. Fractions, etc. to be disregarded :-

In carrying out of the provisions of Rules 26 to 29, the Returning Officer shall disregard all fractions and ignore all preferences recorded for candidates already elected or excluded from the poll.

31. Determination of Result and Publication Thereof :-

(1) Upon the completion of the count, a list of the candidates elected to the Bar Council shall be prepared signed by the Returning officer and submitted by him to the Chairman or in case the Chairman is a candidate, to the Advocate-General, who shall

certify the same by his signature.

(2) After such certificate, a copy of the list shall be published in the official Gazette and shall also be sent to the Advocate- General and as far as possible to the Bar Associations in the State of Gujarat for such publicity as they think fit amongst the members of their association. A copy of the same shall also be put up on the Notice Board of the Bar Council.

(3) On the publication of the list in the Official Gazette the persons whose names appear in the list shall be deemed to have been declared as elected. The members of the Bar Council shall be deemed to have been elected on the date of publication of their names in the Official Gazette.

32. Dispute as to the Validity of Election :-

(1) Any voter may contest the validity of the election of a candidate declared to have been elected to the Bar Council by a petition signed by him and supported by an affidavit and delivered to the Secretary personally or sent by registered post so as to reach him within 15 days from the date of publication of the results of the election.

(2) The petition shall be accompanied by a fee of Rs.500/- which shall be paid in cash or sent by Money Order. In case it is sent by M.O. the M.O. receipt shall also be attached to the petition. The fee shall not be refundable.

(3) Such petition shall include as respondents all the contesting candidates, and the petition shall be accompanied by as many copies as there are respondents.

(4) All disputes arising under the above sub-rules shall be decided by a Tribunal to be known as an Election Tribunal comprising 3 Advocates whose names are on the State Roll and who are not less than of 10 years standing.

(5) The Election Tribunal shall be appointed by the Bar Council on or before the date on which the time of the election is fixed under Rule 4:

Provided that where there is or are one or more vacancies in the Tribunal by reason of death, resignation or any cause whatsoever, the same shall be filled up by the Bar Council of Gujarat, from amongst the Advocates on the Roll of the said State Bar Council.

(6) The Election Tribunal shall have all or any of the following powers :

(i) To dismiss the petition;

(ii) To order recount;

(iii) To declare any candidate to have been duly elected on a recount;

(iv) To set aside the election of the candidate who either by himself or through any other person acting with his consent is guilty of Corrupt practices. The following shall be deemed to be corrupt practices for the purposes of this Act:

(1) Bribery' that is to say

(A) Any gift, offer or promise of any gratification to any person whomsoever, with the object, directly or indirectly of including

(a) a person to stand or not to stand as, or 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 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 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 to withdraw or not to withdraw his candidature.

(2) Undue influence, that is to say any direct or indirect interference or attempt to interfere with the free exercise of any electoral right including the issuing or sending of any appeal or manifesto for votes whether direct or indirect :

Provided that a mere intimation of a candidature with a bare request for a vote shall not amount to undue influence : And

provided further that a candidate or his agent may also orally ask for votes from voters; but on the date of election such requests shall not be made within a radius of 200 yards from the Polling Station and a candidate may issue a written intimation to his voters announcing his candidature and seeking their votes or their first preference votes, which intimation shall not contain any other publicity or his eulogy. Such written intimation shall also not amount to undue influence. Attempt to secure from any voter his ballot paper with intent to prevent him from transmitting it directly or with intent to ensure that the vote has been cast or is to be cast for a particular candidate shall be deemed to interfere with the free exercise of the electoral right of the said Voter.

(3) The hiring or procuring, whether on payment or otherwise of any vehicle or vessel or the use of such vehicle or vessel for the free conveyance of any elector to or from any polling station.

Explanation .-The vacancy arising under sub-rule (6)(iv) shall be filled up as a casual vacancy.

(v) In other cases to declare a vacancy to be filled up as a casual vacancy.

(vi) To make an order as to costs.

(7) The trial of an election petition shall as far as possible be governed by the Civil Procedure Code.

(8) No petition shall lie on the ground that any nomination paper was wrongly rejected or the name of any voter was wrongly included in or omitted from the electoral roll or any error or irregularity which is not of a substantial character.

33. Conduct of elections :-

Except as otherwise provided in these Rules the Returning Officer shall be in charge of the conduct of the election.

34. RULE :-

The voting papers and other records relating to the elections shall not be destroyed until the expiry of the time fixed for the filing of any petition under clause (1) of Rule 32.

35. RULE :-

In case where a petition or, petitions have been filed under clause (1) of Rule 32, no such voting papers or records shall be destroyed till all the election petitions are finally disposed off.

