

## **GOA, DAMAN AND DIU (OPINION POLL) ACT, 1966**

**38 of 1966**

**[11th December, 1966]**

### CONTENTS

1. Short title and commencement
2. Definitions
3. Opinion poll to ascertain the future status of Goa, Daman and Diu
4. Persons entitled to vote at opinion poll
5. Fees not to be paid on applications for inclusion of names in electoral roll, etc
6. Conduct of opinion poll under the superintendence, direction and control of Chief Election Commissioner
7. Opinion poll commissioner
8. Assistant opinion poll commissioners
9. Opinion poll commissioner to include assistant opinion poll commissioners performing the functions of opinion poll commissioner
10. General duty of opinion poll commissioner
11. Provision of polling stations
12. Appointment of presiding officers for polling stations
13. General duty of presiding officer
14. Duty of a polling officer
15. Staff of every local authority to be made available for work in connection with opinion poll
16. Notification for opinion poll
17. Fixing time for opinion poll
18. Adjournment of opinion poll in emergencies
19. Fresh opinion poll in case of destruction, etc. of ballot boxes
20. Manner of voting at opinion poll
21. Special procedure for voting by certain classes of persons
22. Special procedure for preventing personation of electors
23. Voting at an opinion poll
24. Counting of votes
25. Destruction, loss, etc., of ballot papers at the time of counting
26. Declaration of results
27. Report of the result
28. Offences at opinion poll
29. Fresh opinion poll in case of extensive prevalence of offences referred to in section 28
30. Other electoral offences

31. Application of certain provisions of Act 43 of 1951
32. Delegation of functions of Chief Election Commissioner
33. Power to make rules
34. Jurisdiction of civil courts barred
35. Removal of difficulties

## **GOA, DAMAN AND DIU (OPINION POLL) ACT, 1966**

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STATEMENT OF OBJECTS AND REASONS Goa, Daman and Diu were constituted into a Union territory with effect from the 20th December, 1961. A Legislative Assembly and a Council of Ministers were constituted in the Union territory in December 1963. There has been a demand from certain sections of the people of this territory for merger of Goa with the adjoining State of Maharashtra. There are other sections of people demanding its continuance as a separate entity. With a view to taking a decision on this issue, it is considered expedient to ascertain the wishes of the electors of this Union territory through an opinion poll on the question whether the Goa area should merge in the adjoining State of Maharashtra or not and whether the Daman and Diu areas should merge in the adjoining State of Gujarat or not. This Bill seeks to make necessary provision for taking the opinion poll generally on the lines of the corresponding provisions of the election law. Clause 15 of the Bill empowers the President to fix the date or dates on which the opinion poll shall be taken. Clause 4 provides that electors of Assembly constituencies in Goa shall be entitled to vote at the opinion poll in Goa and the electors in Daman and Diu shall be entitled to vote at the opinion poll in those areas. Clause 5 provides that the opinion poll shall be conducted under the superintendence, direction and control of the Chief Election Commissioner. Clause 27 provides that Sections 171B, S.171C of the Indian Penal Code, 1860, S.171D of the Indian Penal Code, 1860, S.171E of the Indian Penal Code, 1860 and S.171F of the Indian Penal Code, 1860 relating to the offences of bribery, undue influence and personation, shall apply in relation to the opinion poll as they apply in relation to an election. Similarly, clause 29 provides that certain provisions of Representation of People Act, 1951. relating to other electoral offences shall apply to the opinion poll as they apply to an election under that Act. The Bill also makes provision for the appointment of opinion poll commissioners, assistant opinion poll

commissioners, presiding officers, polling officers and for other matters connected with the taking of the poll, the result of the poll being declared after the counting of votes and for the publication of the result in the Official Gazette." Gazette of India, 21-11-1966, Pt. II, Sec. 2, Extra., p. 1250.

### **1. Short title and commencement :-**

(1) This Act may be called the Goa, Daman and Diu (Opinion Poll) Act, 1966.

(2) It shall come into force on such date <sup>1</sup> as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

1. The date appointed is 12-12-1966-See Gazette of India, 12-12-1966, Pt. II. Section 3(i). Extra, page 915.

### **2. Definitions :-**

In this Act, unless the context otherwise requires,-

(a) "Administrator" means the Administrator of the Union Territory of Goa, Daman and Diu, appointed by the President under Article 239 of the Constitution;

(b) "Chief Election Commissioner" means the Chief Election Commissioner appointed by the President under Article 324 of the Constitution;

(c) "Daman" means the area comprised in the Daman assembly constituency;

(d) "Diu" means the area comprised in the Diu assembly constituency;

(e) "elector" means-

(i) in relation to Goa, a person whose name is entered in the electoral roll of an assembly constituency for the time being in force in Goa; and

(ii) in relation to Daman and Diu, a person whose name is entered in the electoral roll of an assembly constituency for the time being in force either in Daman or in Diu;

(f) "Goa" means the area comprised in the assembly constituencies of the Union territory other than the areas comprised in the Daman assembly constituency and the Diu assembly constituency;

(g) "opinion poll" means a poll taken to ascertain the wishes of the electors in pursuance of the provisions of this Act;

- (h) "prescribed" means prescribed by rules made under this Act;
- (i) "Union territory" means the Union territory of Goa, Daman and Diu;
- (j) all other words and expressions used but not defined in this Act and defined in Representation of the People Act, 1950, or, as the case may be, in Representation of People Act, 1951, shall have the meanings respectively assigned to them in those Acts.

### **3. Opinion poll to ascertain the future status of Goa, Daman and Diu :-**

An opinion poll shall be taken for the purpose of ascertaining -

- (a) the wishes of the electors of Goa as to whether Goa should merge in the State of Maharashtra or should continue to be Union territory;
- (b) the wishes of the electors of Daman and Diu as to whether Daman and Diu should merge in the State of Gujarat or should continue to be Union territory.

### **4. Persons entitled to vote at opinion poll :-**

Subject to the provisions of section 23 -

- (a) every elector of an assembly constituency in Goa, and no other person shall be entitled to vote at the opinion poll taken in relation to Goa,
- (b) every elector of the Daman assembly constituency, and the Diu assembly constituency and no other person, shall be entitled to vote at the opinion poll taken in relation to Daman and Diu.

### **5. Fees not to be paid on applications for inclusion of names in electoral roll, etc :-**

Notwithstanding anything contained in Representation of People Act, 1950, or in any rule made thereunder, no fee shall be payable in respect of -

- (a) any application for inclusion of any name in the electoral roll of any assembly constituency in Goa, Daman and Diu under section 23 of that Act; or
- (b) any appeal preferred against any order made on such application, if such application or appeal is made or preferred within a period of thirty days immediately following the commencement of this Act.

### **6. Conduct of opinion poll under the superintendence,**

## **direction and control of Chief Election Commissioner :-**

The opinion poll shall be conducted under the superintendence, direction and control of the Chief Election Commissioner.

### **7. Opinion poll commissioner :-**

The Chief Election Commissioner shall designate or nominate one opinion poll commissioner in relation to the opinion poll in Goa and one opinion poll commissioner in relation to the opinion poll in Daman and Diu and each such opinion poll commissioner shall be an officer of Government.

### **8. Assistant opinion poll commissioners :-**

(1) The Chief Election Commissioner may appoint one or more persons to assist the opinion poll commissioner in the performance of his functions, and every such person shall be an officer of Government and shall be called an assistant poll commissioner.

(2) Every assistant opinion poll commissioner shall, subject to the control of the opinion poll commissioner, be competent to perform all or any of the functions of the opinion poll commissioner.

### **9. Opinion poll commissioner to include assistant opinion poll commissioners performing the functions of opinion poll commissioner :-**

Reference in this Act to the opinion poll commissioner shall, unless the context otherwise requires, be deemed to include an assistant opinion poll commissioner performing any function which he is competent to perform under sub-section (2) of section 8 .

### **10. General duty of opinion poll commissioner :-**

It shall be the general duty of the opinion poll commissioner to do all such acts and things as may be necessary for effectually conducting the opinion poll in the manner provided in this Act and the rules or orders made thereunder.

### **11. Provision of polling stations :-**

The opinion poll commissioner of Goa and the opinion commissioner of Daman and Diu shall, with the previous approval of the Chief

Election Commissioner, provide a sufficient number of polling stations respectively for Goa and for Daman and Diu, and shall publish, in such manner as the Chief Election Commissioner may direct, a list showing the polling stations so provided and the polling areas or group of voters for which they have respectively been provided.

**12. Appointment of presiding officers for polling stations :-**

(1) The opinion poll commissioner of Goa and the opinion poll commissioner of Daman and Diu shall appoint a presiding officer for each polling station respectively in Goa and in Daman and Diu and such polling officer or officers as the opinion poll commissioner concerned thinks necessary, but he shall not appoint any person who has been employed by, or on behalf of, or has been otherwise working for, any political party : 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, any political party, to be a polling officer during the absence of the former officer, and inform the opinion poll commissioner concerned accordingly: Provided farther that nothing in this. -sub-section shall prevent the opinion poll commissioner 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 the presiding officer under this Act and any rules or orders made thereunder.

(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 authorised by the opinion poll commissioner 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 functions which he is directed or authorised to perform under sub-section (2) or sub-section (3), as the case may be.

**13. General duty of presiding officer :-**

It shall be the general duty of the presiding officer at a polling

station to keep order threat and to see that the opinion poll is fairly taken.

**14. Duty 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.

**15. Staff of every local authority to be made available for work in connection with opinion poll :-**

Every local authority in the Union territory shall, when so requested by the Chief Election Commissioner or the opinion poll commissioner concerned, make available to such opinion poll commissioner such staff as may be necessary in the performance of any duties in connection with the opinion poll.

**16. Notification for opinion poll :-**

The President shall, in consultation with the Chief Election Commissioner, by notification published in the Gazette of India, fix the date or dates on which an opinion poll shall be taken in accordance with the provisions of this Act and the rules or orders made thereunder in relation to Goa or, as the case may be. Daman and Diu.

**17. Fixing time for opinion poll :-**

The Chief Election Commissioner shall Fix the hours during which the opinion 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 opinion poll shall not be less than eight hours.

**18. Adjournment of opinion poll in emergencies :-**

(1) If, at an opinion poll, the proceedings at any polling station provided under Section 11 are interrupted or obstructed by any riot or open violence, or if it is not possible to conduct the poll at any polling station on account of any natural calamity or any other sufficient cause, the presiding officer for such polling station shall announce an adjournment of the opinion poll to a date to be

notified later, and where the opinion poll is so adjourned by a presiding officer, he shall forthwith inform the opinion poll commissioner concerned.

(2) Whenever an opinion poll is adjourned under sub-section (1), the opinion poll commissioner shall immediately report the circumstances to the Chief Election Commissioner and shall, as soon as may be, with the previous approval of the Chief Election Commissioner, appoint the day on which the opinion poll shall recommence and fix the polling station at which, and the hours during which, the opinion poll will be taken, and shall not count the votes cast at such opinion poll until such adjourned opinion poll shall have been completed.

(3) In every such case as aforesaid, the opinion poll commissioner shall notify, in such manner as the Chief Election Commissioner may direct, the date, place and hours of polling fixed under sub-section (2).

**19. Fresh opinion poll in case of destruction, etc. of ballot boxes :-**

(1) If at any opinion poll,-

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

(b) any such error or irregularity in procedure as is likely to vitiate the poll is committed at a polling station, the opinion poll commissioner shall forthwith report the matter to the Chief Election Commissioner.

(2) Thereupon, the Chief Election Commissioner shall, after taking all material circumstances into account, either -

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

(b) if satisfied that the result of a fresh opinion poll at that polling station will not, in any way, affect the result of the opinion poll or that the error or irregularity in procedure is not material, issue such directions to the opinion poll commissioner as he may deem proper for the further conduct and completion of the opinion poll.



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

**20. Manner of voting at opinion poll :-**

At that opinion poll votes shall be given by ballot in such manner as may be prescribed, and no votes shall be received by proxy.

**21. Special procedure for voting by certain classes of persons :-**

Without prejudice to the generality of the provisions contained in section 20 , provision may be made by rules made under this Act for enabling -

- (a) any of the following persons to give his vote by postal ballot, and not in any other manner, at an opinion poll, namely :-
  - (i) a member of the Armed Forces of the Union or, as the case may be, of an armed police force of the Union territory, to whom the provisions of sub-section (3) of S.20 of the Representation of the People Act, 1950, apply;
  - (ii) a person who is employed under the Government of India in a post outside India;
  - (iii) the wife of any such person as is referred to in sub-clauses (i) and (ii) to whom the provisions of sub-section (6) of the said section 20 apply;
- (b) 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 opinion poll, subject to the fulfilment of such requirements as may be specified in those rules.

**22. 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 on the thumb or any other finger, of every elector who applies for a ballot paper for the purpose of voting at a polling station before delivery of such paper to him;
- (b) 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 ballot paper he has already such a mark on his thumb or any

other finger.

### **23. Voting at an opinion poll :-**

(1) No person shall vote at an opinion poll in the Union territory, if he is subject to any of the disqualifications referred to in S.16 of the Representation of the People Act, 1950.

(2) No person shall, at an opinion poll, vote more than once, notwithstanding that his name may have been registered in the electoral roll more than once, and if he does so vote, all his votes shall be void.

(3) No person shall vote at an opinion poll if he is confined to any 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.

### **24. Counting of votes :-**

At the opinion poll, votes shall be counted by, or under the supervision and direction of the opinion poll commissioner and a representatives of each of the political parties for which a symbol has been exclusively reserved in Goa or, as the case may be in Daman and Diu by the Election Commission shall have a right to be present at the time of counting.

### **25. 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 are unlawfully taken out of the custody of the opinion poll commissioner or are accidentally or intentionally destroyed or lost or are damaged or tampered with, to such an extent that the result of the opinion poll at that polling station cannot be ascertained, the opinion poll commissioner shall forthwith report the matter to the Chief Election Commissioner.

(2) Thereupon the Chief Election Commissioner shall, after taking all material cir- cumstances into account, either-

(a) direct that the counting of votes be stopped, declare the opinion poll at that polling station to be void, appoint a day, and fix the hours, for taking a fresh opinion poll at that polling station and

notify the day so appointed and hours so fixed in such manner as he may deem fit, or

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

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

## **26. Declaration of results :-**

When the counting of votes has been completed, the opinion poll commissioner shall, unless otherwise directed by the Chief Election Commissioner, forthwith declare the result of the opinion poll in the manner provided by this Act or the rules made thereunder.

## **27. Report of the result :-**

As soon as may be after the result of the opinion poll has been declared, the opinion poll commissioner shall report the result to the Administrator and to the Chief Election Commissioner and the Administrator shall cause the same to be published in the Official Gazette.

## **28. Offences at opinion poll :-**

Section 171-B (dealing with the offence of bribery), section 171-C (dealing with the offence of undue influence at elections), section 171-D (dealing with the offence of personation at elections), section 171-E (dealing with punishment for bribery) and Section 171F Of the Indian Penal Code, 1860 (dealing with punishment for undue influence or personation at an election) of Indian Penal Code, 1860 shall apply in relation to an opinion poll taken under this Act subject to the following modifications, namely:-

(a) any reference to a candidate shall be omitted;

(b) any reference to election shall be construed as a reference to opinion poll;

(c) any reference to electoral right shall be construed as a reference to the right of a person to vote or refrain from voting at an opinion poll.

## **29. Fresh opinion poll in case of extensive prevalence of offences referred to in section 28 :-**

(1) If the Chief Election Commissioner, on receipt of a report from the opinion poll commissioner or otherwise, is satisfied that the opinion poll taken at any polling station or stations has not been a free one by reason that any of the offences referred to in section 28 has been extensively committed in connection with such poll, he may make a report to the President recommending that a fresh opinion poll be taken at such polling station or stations.

(2) The President may, after considering the report of the Chief Election Commissioner, direct that a fresh opinion poll shall be taken at such polling station or stations in accordance with the provisions of this Act and the rules or orders made thereunder and give such further directions for the completion of the opinion poll as he considers necessary.

## **30. Other electoral offences :-**

The provisions of section 125 to Rule 132 and Rule 134 to Rule 136 of Representation of People Act, 1951, shall, so far as may be, apply to an opinion poll as they apply to an election under that Act and any reference in those provisions to-

(a) the chief electoral officer shall be omitted;

(b) a returning officer and an assistant returning officer shall be construed as a reference to an opinion poll commissioner and an assistant opinion poll commissioner, respectively.

## **31. Application of certain provisions of Act 43 of 1951 :-**

The provisions of sections 160 to S.167 of the Representation of the People Act, 1951, shall apply, so far as may be, to and in relation to an opinion poll as they apply to and in relation to an election and any reference to the State Government in those sections shall be construed as a reference to the Administrator.

## **32. Delegation of functions of Chief Election Commissioner :-**

The functions of the Chief Election Commissioner under this Act or under the rules made thereunder may, subject to such general or special directions, if any, as may be given by the Chief Election

Commissioner in this behalf, be performed also by a Deputy Election Commissioner or by the Secretary to the Election Commission.

### **33. Power to make rules :-**

(1) The Central Government may, after consultation with the Chief Election Commissioner, by notification in the Official Gazette, make rules 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:-

(a) the duties of the opinion poll commissioner;

(b) the duties of presiding officers and polling officers at polling stations;

(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 and of the persons specified under section 21 ;

(d) the manner of publication of the hours during which the opinion poll will be taken;

(e) the procedure as to voting to be followed at an opinion poll to prevent personation of electors;

(f) the manner of declaration of the result of the opinion poll;

(g) any other matter required to be prescribed by, or provided for by rules under, this Act.

### **34. 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 Chief Election Commissioner or by the opinion poll commissioner or by any other person appointed under this Act in connection with an opinion poll.

### **35. Removal of difficulties :-**

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, do anything not inconsistent with such provisions which appears to it to be necessary or expedient for the purpose of removing the difficulty.