

Punjab State Election Commission Act, 1994

19 of 1994

[07 September 1994]

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Punjab State Election Commission Act, 1994

19 of 1994

[07 September 1994]

An Act to provide for the constitution of the State Election Commission and for vesting the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all elections to the Panchayats and Municipalities in the State of Punjab, in the State Election Commission, and to provide for all matters relating to, or ancillary or in connection with the elections to the Panchayats and Municipalities, in terms of the provisions of Parts IX and IX-A of the Constitution of India. BEit enacted by the Legislature of the Punjab in the Forty-fifth year of the republic of India as follows:-

CHAPTER 1 PRELIMINARY

1. Short Title And Commencement :-

(1) This Act may be called the Punjab State Election Commission Act, 1994.

(2) It shall come into force at once.

2. Definitions :-

In this Act unless the context otherwise requires -

(a) "candidate" means a person who has been nominated as a candidate for any election;

(b) "constituency" means an area of a Panchayat or a Municipality delimited as a constituency for the purpose of elections to these bodies;

(c) "costs" means all costs, charges and expenses of, or incidental to the proceedings in an election petition;

(d) "disqualified" means disqualified for being chosen as a member of a Panchayat or a Municipality;

(e) "District Planning Committee" means the committee constituted under Article 243 ZD of the Constitution of India;

(f) "Election Commission" means the Election Commission constituted under section 3;

(g) "Election Commissioner" means the Election Commissioner appointed under section 4;

(h) "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 specified in section 11;

(i) "electoral right" means the right of a person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate or to vote or refrain from voting at an election;

(j) "Financial Commissioner" shall mean the Financial Commissioner appointed as such under the Punjab Land Revenue Act, 1887;

(k) "Governor" means the Governor of the State of Punjab;

(l) "High Court" means the High Court of the State of Punjab and Haryana;

(m) "Metropolitan Planning Committee" means the Committee constituted under Article 243 ZE of the Constitution of India;

(n) "Municipality" means an institution of self-government constituted under Article 243 Q of the Constitution of India;

(o) "Panchayat" means an institution of self-government constituted under Article 243 B of the Constitution of India;

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

- (q) "prescribed authority" means the authority prescribed as such under the rules made under this Act;
- (r) "qualifying date" in relation to the preparation or revision of every electoral roll means the First day of January of the year in which it is so prepared or revised;
- (s) "returned candidate" means a candidate whose name has been published under Section 70 as duly elected;
- (t) "section" means a section of this Act;
- (u) "State" means the State of Punjab;
- (v) "State Government" means the Government of the State of Punjab;
- (w) "sign" in relation to a person who is unable to write his name means an authentic sign in such manner, as may be prescribed;
- (x) "Ward Committee" means a Committee constituted under Article 243 S of the Constitution of India.

CHAPTER 2

STATE ELECTION COMMISSION

3. Election To Panchayats And Municipalities :-

(1) The State Government shall by notification in the Official Gazette establish a State Election Commission (hereinafter referred to as the Election Commission) for the superintendence, direction and control of the preparation of the electoral roll for, and the conduct of all elections to Panchayats and Municipalities.

(2) The Election Commission established under sub-section (1), shall consist of a State Election Commissioner (hereinafter called the Election Commissioner) to be appointed by the Governor.

(3) The State Government may by notification in the Official Gazette, also entrust to the Election Commission for the conduct of elections to any other body or bodies to be constituted under the Constitution of India or under any other law for the time being in force.

4. Qualification For Appointment As Election Commissioner :-

(1) The Governor shall, by notification in the Official Gazette, appoint -

(i) an officer of the State Government not below the age of fifty-five years and of the rank of Financial Commissioner, or the Principal Secretary to the State Government having service as such for a minimum period of two years; or

(ii) a serving or retired Judge of the High Court; as Election Commissioner:

Provided that no officer, who has attained such age of superannuation, as may from time to time be fixed by the State Government, shall be appointed as Election Commissioner.

(2) On ceasing to hold office of Election Commissioner, he shall be ineligible for any further appointment under the State Government.

CHAPTER 3

CONDITIONS OF SERVICE OF THE ELECTION COMMISSIONER

5. Salary :-

There shall be paid to the Election Commissioner a salary which is equal to the salary of a Judge of a High Court:

Provided that if a person who, immediately before the date of assuming office as the Election Commissioner, was in receipt of, or, being eligible so to do, had opted to draw, a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of service as the Election Commissioner shall be reduced -

(a) by the amount of that pension;

(b) by the amount of the commuted value in respect of previous service if any, that he had, before assuming office received, in lieu of a portion of the pension due to him.

6. Term Of Office :-

(1) The Election Commissioner shall hold office for a term of five years from the date he assumes his office:

Provided that where the Election Commissioner attains the age of 1[sixty-five years] before the expiry of the said term of five years, he shall vacate his office on the date on which he attains the said age:

Provided further that the Election Commissioner may, at anytime, by writing under his hand, addressed to the Governor, resign his office.

(2) The Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court.

1. Substituted for the words "Sixty-four years" vide Punjab Act No. 14 of 2003.

7. Leave :-

(1) A person, who immediately before the date of assuming office as the Election Commissioner, was in the service of the State Government, may be granted during his tenure of office as the Election Commissioner, leave in accordance with the rules for the time being applicable to the services to which he belonged before such date and he shall be entitled to carry forward the amount of leave standing at his credit on such date, notwithstanding anything contained in Section 8.

(2) The power to grant or refuse leave to the Election Commissioner and to revoke or curtail leave granted to him shall vest with the Governor.

8. Pension Payable To The Election Commissioner :-

(1) A person who, immediately before the date of assuming office as the Election Commissioner was in the service of the State Government, shall be deemed to have retired from that service on the date on which he assumes office as the Election Commissioner and his service as Election Commissioner shall be reckoned as continuing service counting for pension in the service to which he belonged.

(2) Where the Election Commissioner demits office, whether in the manner specified in sub-section (3) or by resignation, he shall on such demission be entitled to,-

(a) a pension which is equal to the pension payable to a Judge of a High Court in accordance with the provisions of Part III of the First Schedule to the High Court Judges (Conditions of Service) Act, 1954; (Central Act XXVIII of 1954);

(b) such pension (including commutation of pension), family pension and gratuity, as are admissible to a Judge of the High Court under the said Act, and the rules made thereunder.

(3) Except where the Election Commissioner demits office by resignation, he shall be deemed for the purposes of this Act, to have demitted his office, if, -

(a) he has completed the term of office specified in section 6; or

(b) he has attained the age of sixty-two years ; or

(c) his demission from office is medically certified to be necessitated by ill-health.

9. Right To Subscribe To General Provident Fund :-

The Election Commissioner shall be entitled to subscribe to the General Provident Fund of the State of Punjab.

10. Other Conditions Of Service :-

Save as otherwise provided in this Act, the conditions of service relating to travelling allowances, rent-free accommodation and exemption from payment of income tax on the value of such rent free accommodation, conveyance facility, sumptuary allowances, medical facility and such other conditions of service, as are, for the time being, applicable to a Judge of High Court under Chapter IV of the High Court Judges (Conditions of Service) Act 1954, (Central Act XXVIII of 1954) and the rules made thereunder, shall so far as may be, apply to the Election Commissioner.

CHAPTER 4

DISUALIFICATIONS

11. Disqualifications For Membership Of A Panchayat Or A Municipality :-

A person shall be disqualified for being chosen as, and for being a member of a Panchayat or a Municipality, -

- (a) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State; or
- (b) if he is of unsound mind and stands so declared by a competent court; or
- (c) if he is an undischarged insolvent; or
- (d) if he has in proceedings for questioning the validity or regularity of an election, been found guilty of any corrupt practice; or
- (e) if he has been found guilty of any offence punishable under Section 153A or section 171E or section 171F or section 376 or section 376A Or section 376B or section 376C or section 376D or section 498A or section 505 of the Indian Penal Code, 1960 or any offence punishable under Chapter XIII of this Act unless a period of six years has elapsed since the date of such conviction; or
- (f) if he holds an office of profit under a Panchayat or a Municipality; or
- (g) if he holds an office of profit under the Government of India or any State Government; or
- (h) if he is interested in any subsisting contract made with, or any work being done for, that Panchayat or Municipality except as a share-holder (other than a Director) in an incorporated company or

as a member of a co-operative society; or

(i) if he is retained or employed in any professional capacity either personally or in the name of a firm in which he is a partner, or with which he is engaged in a professional capacity, in connection with any cause or proceeding in which the Panchayat or the Municipality is interested or concerned; or

(j) if he, having held any office under the State Government or any Panchayat or any Municipality or any other State level authority or any Government company or any corporate body owned or controlled by the State Government or Government of India, has been dismissed from service, unless a period of four years has elapsed since his dismissal.

12. State Government To Decide Disputes Regarding Disqualification :-

(1) If any question arises as to whether a member or any Panchayat or Municipality has become subject to any of the disqualifications specified in Article 243 For 243V of the Constitution of India or in section 11, the question shall be referred for decision of the State Government and his decision shall be final.

(2) Before giving any decision on such question, the State Government shall obtain the opinion of the Election Commission and shall act according to such opinion.

CHAPTER 5

ADMINISTRATIVE MACHINERY FOR THE CODUCT OF ELECTIONS

13. Appointment Of Deputy Election Commissioner And Secretary To Election Commission :-

(1) The State Government may appoint one or more than one Deputy Election Commissioners to assist the Election Commissioner in the discharge of his duties under this Act and the rules made thereunder and may also appoint Secretary to the Election Commission.

(2) The term of appointment and other conditions of service of the Deputy Election Commissioner and the Secretary to the Election Commission appointed under sub-section (1), shall be such, as may be prescribed.

(3) The functions of the Election Commissioner under the Constitution and this Act and 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 the Deputy Election Commissioner, or by the Secretary to the Election Commission.

14. District Electoral Officer :-

(1) There shall be for each district, a District Electoral Officer who shall be such officer of the State Government as the Election Commissioner may, in consultation with the State Government, designate or nominate in this behalf.

(2) Subject to the superintendence, direction and control of the Election Commission, the District Electoral Officers shall supervise the preparation, revision and correction of all electoral rolls in the district.

(3) The District Electoral Officer shall also perform such other functions, as may be entrusted to him by the Election Commission.

15. Electoral Registration Officer :-

(1) The electoral rolls for each Panchayat or Municipality shall be prepared and revised by an Electoral Registration Officer who shall be such Officer of the State Government or of a local authority, as the Election Commission may, in consultation with the Government, designate or nominate in this behalf.

(2) An Electoral Registration Officer may, subject to any restriction, as may be prescribed, employ such persons as he thinks fit for the preparation and revision of the electoral rolls for the Panchayats or the Municipalities.

16. Returning Officer :-

(1) For every constituency, for every election to fill a seat or seats in a Panchayat or a Municipality, the Election Commission shall, in consultation with the State Government, designate or nominate an officer of the State Government or of a local authority as a Returning Officer or one or more Assistant Returning Officers:

Provided that the Election Commission may designate or nominate the same person to be the Returning Officer or Assistant Returning Officer for more than one constituency.

(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 to the scrutiny of

nominations, unless the Returning Officer is unavoidably prevented from performing such functions and it is necessary in the public interest to perform such functions.

17. Returning Officer To Include Assistant Returning Officers :-

Reference 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 section 16.

18. General Duty Of The Returning Officers :-

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 under this Act and the rules or orders made thereunder.

19. Provision For Polling Stations For Constituencies :-

The District Electoral 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.

20. Appointment Of Presiding Officer For Polling Stations :-

(1) The District Electoral Officer shall appoint a Presiding Officer for each polling station and such polling officer or polling 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 District Electoral Officer accordingly:

Provided further that nothing in this sub-section shall prevent the

District Electoral 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 the rules or orders made thereunder.

(3) If the Presiding Officer, owing to illness or other unavoidable cause, absents himself from the polling station, his functions shall be performed by such Polling Officer, as has been authorised by the District Electoral Officer to perform such functions during such absence.

(4) Reference 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 authorised to perform under sub-section (2) or sub-section (3), as the case may be.

21. Duties Of Presiding Officer :-

It shall be the general duty of the Presiding Officer at a polling station to keep order there at and to see that the poll is fairly taken.

22. Duties Of A Polling Officer :-

It shall be the duty of the Polling Officer at the polling station to assist the Presiding Officer for such station in the performance of his functions.

23. District Electoral Officer, Electoral Registration Officer, Returning Officer, Assistant Returning Officer, Presiding Officer And Polling Officer Deemed To Be On Deputation To The Election Commission :-

District Electoral Officer, Electoral Registration Officer, Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer and any other officer, appointed under this Chapter, and any Police Officer designated as such 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 officer shall, during that period, be subject to the control, superintendence and discipline of

the Election Commission.

CHAPTER 6

ELECTORAL ROLLS FOR CONSTITUENCIES

24. Electoral Rolls For Every Constituency :-

For every Panchayat and Municipality there shall be an electoral roll which shall be prepared in accordance with the provisions of this Act, under the superintendence, direction and control of the Election Commission.

25. Disqualification For Registration In An Electoral Roll :-

A person shall be disqualified for registration in an electoral roll, if he,-

- (a) is not a citizen of India; or
- (b) is of unsound mind, and stand so declared by a competent court; or
- (c) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections; or
- (d) has been convicted of an offence punishable under, -
 - (i) the Protection of Civil Rights Act, 1955; or
 - (ii) the Unlawful Offences (Prevention) Act, 1967; or
 - (iii) the Dowry Prohibition Act, 1962; or
 - (iv) the Terrorist and Disruptive Activities (Prevention) Act, 1987; or
 - (v) the Religious Institutions (Prevention of Misuse) Act, 1988; or
 - (vi) any law providing for the prevention of profiteering and hoarding; or
 - (vii) any law relating to the adulteration of food or drugs.

26. No Person To Be Registered In More Than One Constituency :-

No person shall be entitled to be registered in the electoral roll for more than one constituency.

27. No Person To Be Registered More Than Once In Any Constituency :-

No person shall be entitled to be registered in the electoral roll for any constituency more than once.

28. Conditions Of Registration :-

Subject to the foregoing provisions of this Chapter, every person who, -

(a) is not less than eighteen years of age on the qualifying date; and

(b) is ordinarily resident in a constituency;

shall be entitled to be registered in the electoral roll for that constituency.

29. Meaning Of Ordinarily Resident :-

(1) For the purposes of this section a person shall not be deemed to be ordinarily resident in a constituency on the ground only that he owns or is in possession of, a dwelling house in that constituency.

(2) A person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therefrom.

(3) A member of Parliament or of the State Legislature shall not during the term of his office cease to be ordinarily resident in his constituency by reason of his absence from that constituency in connection with duties as such member.

(4) A person kept in any place meant for the sole purpose of treatment of persons suffering from any mental illness or defectiveness or any other serious disease or who is detained in prison or other lawful custody at any place, shall not by reason thereof be deemed to be an ordinarily resident of that place.

(5) Any person having a service qualification shall be deemed to be ordinarily resident on any date in the constituency in which, but for his having such service qualification, he would have been ordinarily resident on that date.

(6) Any person holding an office in India which has been declared by the State Government in consultation with Election Commission to be an office to which the provisions of this section shall apply, shall be deemed to be ordinarily resident on any date in the constituency in which, but for the holding of any such office, he would have been ordinarily resident on that date.

(7) The statement of any such person as is referred to in sub-section (4) or sub-section(5) made in the prescribed form and verified in the prescribed manner, that but for his having the service qualification or but for his holding any such office as is

referred to in sub-section (6), he would have been ordinarily resident in a specified place on any date, shall, in the absence of evidence to the contrary, be accepted as correct.

(8) The spouse of any such person as is referred to in sub-section (3) or sub-section (4), shall if he or she be ordinarily residing with such person, be deemed to be ordinarily resident in the constituency specified by such person under sub-section (5).

(9) If in any case, a question arises as to of which place a person is ordinarily resident at any relevant time, the question shall be determined with reference to all the relevant facts of the case and with reference to such rules, as may be made in this behalf.

(10) In sub-section (5) and sub-section (7) "service qualification" means--

(a) being a member of the Armed Force of the Union; or

(b) being a member of a force to which the provisions of the Army Act, 1950 (Central Act 46 of 1950) have been made applicable whether with or without modifications; or

(c) being a member of an Armed Police of the State, who is serving outside the State; or

(d) being a person who is employed under the State Government, on a post outside India.

30. Preparation And Revision Of Electoral Rolls :-

(1) The electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act.

(2) The electoral roll for each constituency,--

(a) shall unless otherwise directed by the Election Commission for reasons to be recorded in writing, be revised in the prescribed manner by reference to the qualifying date-

(i) before each general election to a Panchayat or a Municipality; and

(ii) before each bye-election to fill a casual vacancy in a Panchayat or a Municipality; and

(b) may be revised in any year in the prescribed manner by reference to the qualifying date if such revision has been directed by the Election Commission:

Provided that if the electoral roll is not revised as aforesaid, the validity or continued operation of the electoral roll shall not be affected.

(3) Notwithstanding anything contained in sub-section (2), the Election Commission may at any time, for reasons to be recorded in writing, direct for special revision of the electoral roll for any constituency or part of a constituency in such manner, as it may think fit:

Provided that subject to the provisions of this Act, the electoral roll for the constituency as in force at the time of the issue of any such direction, shall continue to be in force until the completion of the special revision so directed.

31. Correction Of Entries In Electoral Rolls :-

If the Electoral Registration Officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency --

(a) is erroneous or defective in any respect; or

(b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency; or

(c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll;

the Electoral Registration Officer, shall, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry:

Provided that before taking any action on a ground specified under clause (a) or clause (b) or under clause (c), except in the case of death of a person, the Electoral Registration Officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him.

32. Inclusion Of Names In Electoral Rolls :-

(1) Any person whose name is not included in the electoral roll of a constituency, may apply to the Electoral Registration Officer for the inclusion of his name in that roll.

(2) The Electoral Registration Officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein:

Provided that if the applicant is registered in the electoral roll of any other constituency, the Electoral Registration Officer of that constituency shall inform the Electoral Registration Officer of the

constituency in which the applicant should have actually been registered and that officer shall, on receipt of the information, strike off the applicants name from that roll.

(3) No amendment, transposition or deletion of any entry shall be made under section 30 and no direction for the inclusion of a name in the electoral roll of a constituency shall be given under this section, after the last date for making nominations for an election in that constituency and before the completion of that election.

33. Appeals :-

An appeal against the order of the Electoral Registration Officer made under section 31 or section 32 shall lie to the Election Commission in such manner and within such time, as may be prescribed in this behalf.

34. Fee For Applications And Appeals :-

Every application under section 31 or section 32 and every appeal under section 33 shall be accompanied by the prescribed fee which shall, in no case, be refunded.

CHAPTER 7

CONDUCT OF ELECTIONS

35. 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 1[Third 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 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 the 1[First 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

2[Seventh day but not later than the Tenth day] after the last date for the withdrawal of the candidatures; and

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

1. Substituted vide Punjab Act No. 2 of 1998 for the words "Seventh day".

2. Substituted for "Tenth day" vide Punjab Act No. 23 of 1998.

36. Public Notice Of Election :-

On the issue of a notification under section 57, the Returning Officer 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.

37. Nomination Of Candidates For Election :-

Any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of this Act.

38. Presentation Of Nomination Paper And Requirements For A Valid Nomination :-

(1) On or before the date appointed under clause (a) of section 35, 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 36, a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer:

Provided 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 of which he is a member and the area in relation to which that caste is a Schedule Caste of the State.

(3) Where the candidate is a person who, having, held any office referred to in clause (j) of section 11 has been dismissed and a period of four 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 nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidates and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that no misnomer or inaccurate description or clerical or 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 or technical or printing error in regard to the electoral rolls 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 or technical or printing error to be corrected and where necessary direct that any such misnomer, inaccurate description, clerical or technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

(5) 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.

39. Deposits :-

(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 prescribed amount for an election to a Panchayat or a Municipality:

Provided that where a candidate has been nominated by more than one nomination papers for election in the same constituency, not more than one deposit shall be required by 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 under sub-section (1) of section 38, 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 a Government Treasury.

40. Notice Of Nominations And The Time And Place For Their Scrutiny :-

The Returning Officer shall on receiving the nomination paper under sub-section (1) of section 38, 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 the proposer.

41. Scrutiny Of Nominations :-

(1) On the date fixed for the scrutiny of nominations under section 35, the candidates, their election agents, one proposer of each candidate and one other person duly authorised 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 38.

(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, reject the nomination on any of the following grounds, namely:--

(a) 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 this Act; or

(b) that there has been a failure to comply with any of the provisions of section 38 or section 39.

(3) Nothing contained in clause (b) of sub-section (2) shall be deemed to authorise the 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.

(4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) 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.

(6) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of the 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 specified under this Act.

(7) 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 the notice board of his office.

42. 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 35 to the Returning Officer either by such candidate in person or by his proposer, or election agent who has been authorised in this behalf in writing by such candidate.

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

(3) The Returning Officer shall, on being satisfied as to the genuineness of a notice of withdrawal and identity of the person delivering it under sub-section (1), cause the notice to be affixed in some conspicuous place in his office.

43. 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 42, 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 candidatures within the said period.

(2) The list referred to in sub-section (1) shall contain the names 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.

CHAPTER 8

AGENTS OF THE CONTESTING CANDIDATES

44. 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.

45. Disqualification For Being An Election Agent :-

Any person who is for the time being disqualified under the Constitution of India or under this Act for being a member of a Panchayat or a Municipality or for voting at elections, shall, so long as the disqualification subsists, also be disqualified for being an election agent at any election.

46. Revocation Of The Appointment, Or Death Of An Election Agent :-

(1) Any revocation of the appointment of an election agent, shall be signed by the candidate, and shall operate from the date on which it is lodged with the Returning Officer.

(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, 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.

47. 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 19.

48. 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.

49. 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.

50. 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.

51. Attendance Of A 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 contesting candidate at such election and his election agent shall have a right to be present at any polling station provided under section 19 for the taking of the poll.

(2) A contesting candidate or his election agent may himself do any act or thing which any polling agent or the counting agent of such 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 contesting candidate in doing any such act or thing.

52. 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 9

GENERAL PROCEDURE AT ELECTIONS

53. Death Of Candidates Before Poll :-

If a candidate whose nomination has been found valid on scrutiny under section 41 and who has not withdrawn his candidature under section 42 dies and a report of his death is received before the publication of the list of contesting candidates under section 43, or if a contesting candidate dies and a report of his death is received before the commencement of the poll, the Returning Officer shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the Election Commission and also to the prescribed authority and all proceedings with reference to the election, shall be commenced afresh in all respect as if for a new election:

Provided that no further nomination shall be necessary in the case of a person who was a contesting candidate at the time of the countermanding of the poll:

Provided further that no person who has given a notice of withdrawal of his candidature under sub-section (1) of section 42 before the countermanding of the poll, shall be in-eligible for being nominated as a candidate for the election after such

countermanding.

54. Procedure In Contested And Uncontested Elections :-

(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 Election Commission shall, by notification in the Official Gazette, call upon the constituency or the elected members, to elect a person or persons to fill the remaining seat or seats, as the case may be:

Provided that where the constituency or the elected members 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 Election Commission shall not be bound to call again upon the constituency, or such members to elect a person or persons until it is satisfied that if called upon again, there will be no such failure on the part of the constituency of such members.

55. Eligibility Of Members Of Scheduled Castes To Hold Seats Not Reserved For Those Castes :-

For the avoidance of doubt, it is hereby declared that a member of the Scheduled Castes shall not be disqualified to hold a seat not reserved for members of those castes, if he is otherwise qualified to hold such seat under the Constitution of India and this Act.

56. Casual Vacancies In The Panchayats And Municipalities :-

(1) When the seat of a member elected to the Panchayat or Municipality becomes vacant or is declared vacant or his election to the Panchayat or Municipality as the case may be, 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 concerned Panchayat or Municipality 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, Backward Classes or the Women, as the case may be, the notification issued under sub-section (1), shall specify that the person to fill that vacancy shall belong to the category of persons to which the vacancy relates.

CHAPTER 10 THE POLL

57. Fixing Time For Poll :-

The 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, shall not be less than eight hours.

58. Adjournment Of Poll In Emergencies :-

(1) If at any election, the proceedings at any polling station provided under section 19 are interrupted or obstructed by any riot or violence, or if at an election it is not possible to take the poll at any polling station on account of any natural calamity or any other sufficient cause, the concerned Presiding Officer or the Returning Officer, as the case may be, shall announce an adjournment of the poll to a date to be notified later by the Election Commission and where the poll is so adjourned by a Presiding Officer, he shall forthwith inform the concerned Returning officer.

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

59. Fresh Poll In The Case Of Destructions 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

(b) any voting machine develops a mechanical failure during the recording of votes; or

(c) 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) 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 and shall 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 the mechanical failure of the voting machine or the error or irregularity in procedure is not material;

issue such direction to the Returning Officer, as it may deem proper for the further conduct and completion of the election.

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

60. 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 (hereinafter in this section referred to as a place) in such a manner that the result of the poll at that place cannot be ascertained; or (b) booth capturing has taken 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 place shall be void and appoint a day, and fix the hours for taking fresh poll at that 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 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, the expression "booth capturing" shall have the same meaning as is assigned to it in section 123.

61. 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, and no vote shall be received by proxy.

62. Special Procedure For Voting By Certain Persons :-

Without prejudice to the generality of the provisions contained in section 61, provision may be made in the rules made under this Act for enabling,-

(a) any person to whom the provisions of sub-section (5) or sub-section (7) of section 29 of this Act 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 election in a constituency where a poll is taken, subject to the fulfillment of such requirements as may be specified in the rules.

63. Special Procedure For Preventing Personation Of Electors :-

With a view to preventing personation of electors, provision shall be made in the 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 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 by every such elector his identity card, if issued, before the delivery of a ballot paper or papers is made to him; and

(c) for prohibiting the delivery of any ballot paper to any person for voting at a polling station, if such person at the time of applying for ballot paper has such a mark on his thumb or any other finger or does not produce on demand his identity card, if issued before the Presiding Officer or Polling Officer.

64. Voting Machines At Elections :-

Notwithstanding anything contained in this Act or the rules made thereunder, the giving and recording of votes by voting machines shall be in such a manner, as may be prescribed or as the Election Commission may, having regard to the circumstances of each case, specify.

Explanation.-- For the purposes of this section, "voting machines" 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.

65. Right To Vote :-

(1) Except as otherwise provided in this Act and the rules made thereunder, every person who is, for the time being entered in the electoral roll of any constituency, shall be entitled to vote in that constituency.

(2) No person shall vote at an election, if he is subject to any of the disqualifications referred to in section 25.

(3) No person shall vote in more than one constituency.

(4) No person shall at any election in the same constituency vote more than once notwithstanding that his name may have been registered in the electoral roll for that constituency more than once.

(5) No person shall vote at any election if he is confined in a prison 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.

66. Counting Of Votes :-

At every election where a poll is taken, votes shall be counted by or under the supervision and direction of, the Returning Officer, and each contesting candidate, his election agent and his counting agents, shall have a right to be present at the time of counting.

67. Destruction, Loss Etc. Of Ballot Paper 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) The Election Commission shall, after taking all material circumstances into account, either--

(a) direct that the counting of votes shall be stopped or declare the poll at the polling station or place to be void and 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 fresh poll ordered to be taken under clause (a) of sub-section (2) as they apply to the original poll.

68. Equality Of Votes :-

If, after the counting of the votes is completed, 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.

69. Declaration Of Results :-

When the counting of the votes has been completed, the Returning Officer 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.

70. Report Of The Results :-

As soon as may be, after the result of an election has been declared under section 69, the Returning Officer shall report the result to the Election Commission.

71. Publication Of Results :-

Where a general election is held for the purpose of constituting a new Panchayat or Municipality, there shall be notified by the Election Commission in the Official Gazette, as soon as may be, after the result of the elections in all the Panchayats or the Municipalities, other than those in which the poll could not be taken for any reason on the date originally fixed under clause (d) of section 35 or for which the time for completion of the election has been extended under the provisions of section 138, have been declared by the Returning Officer under the provisions of section 54 or, as the case may be, section 69, the names of members elected for those Panchayats or Municipalities and upon the issue of such notification, that Panchayat or Municipality, as the case may be, shall be deemed to be duly constituted:

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

(a) to preclude--

(i) the taking of the poll and the completion of the election in Panchayat or Municipality in which the poll could not be taken for any reason on the date originally fixed under clause (d) of section 35; or

(ii) the completion of the election in a Panchayat or a Municipality for which time has been extended under the provisions of section 138.

72. Date Of Election Of Candidate :-

For the purposes of this Act, the date on which a candidate is

declared by the Returning Officer to be elected, shall be the date of election of that candidate.

CHAPTER 12

ELECTION PETITIONS

73. Setting Up Of Election Tribunals :-

(1) There shall be constituted by the State Government, in consultation with the Election Commission, for each district or part thereof, an Election Tribunal at the district or sub-divisional headquarters.

(2) The State Government shall, by notification in the official gazette, appoint an IAS or PCS or a Class I Officer of the State Government having adequate administrative, legal or magisterial experience, as the Presiding Officer of an Election Tribunal.

74. Election Petitions :-

No election shall be called in question except by an election petition presented in accordance with the provisions of this Chapter.

75. Election Tribunal To Try Election Petitions :-

(1) Only the Election Tribunal having jurisdiction shall have the power to adjudicate upon the election petitions.

(2) The Election Tribunal in its discretion may, in the interests of justice or convenience, try an election petition wholly or partly, at a place other than its specified headquarters.

76. Presentation Of Petition :-

(1) An election petition may be presented on one or more of the grounds specified in sub-section (1) of section 89 to the Election Tribunal by any candidate to such election or by any elector within a period of forty five days from the date of election of the returned candidate or if there are more than one returned candidates at the election and there are different dates of their election, then the later of these dates shall be taken into account for this purpose.

(2) Every election petition shall be accompanied by as many copies thereof, as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signatures to be a true copy of the petition.

77. Parties To The Petition :-

A petitioner shall join as respondent to his petition--

(a) where he, in addition to claiming 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 and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegation of any corrupt practice is made in the petition.

78. Contents Of Petition :-

(1) As election petition shall,--

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

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

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

Provided that where the petitioner alleges any corrupt practice, the petition shall be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the relevant 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.

79. 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 further declaration that he himself or any other candidate may be declared as duly elected.

80. Trial Of Election Petitions :-

(1) The Election Tribunal shall dismiss an election petition which does not comply with the provisions of section 76 or section 77 or section 103.

Explanation.-- An order of the Election Tribunal dismissing an

election petition under this sub-section, shall be deemed to be an order made under clause (a) of section 87.

(2) Where more than one election petitions are presented to the Election Tribunal in respect of the same matter, the Presiding Officer of the Election Tribunal may, in his discretion, try them separately or in one or more groups.

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

Explanation.-- For the purposes of this sub-section and of section 86, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the Election Tribunal and to answer the claim or claims, as the case may be, made in the petition.

(4) The Election Tribunal 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 which has not been previously alleged in the petition.

(5) The trial of an election petition shall, so far as is practicable consistently with the interest of justice in respect of the trial be continued from day-to-day until the conclusion, unless the Election Tribunal finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(6) Every election petition shall be tried as expeditiously as possible and every endeavor shall be made to conclude the trial within a period of six months from the date on which the election petition is presented to the Election Tribunal for trial.

81. Procedure Before The Election Tribunal :-

(1) Subject to the provisions of this Act and of the rules made thereunder, every election petition shall be tried by the Election Tribunal, as nearly as may be, in accordance with the procedure contained in the Code of Civil Procedure, 1908, (Central Act 5 of 1908) to the trial of suits:

Provided that the Election Tribunal 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 election petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings of the election petition.

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

82. Documentary Evidence :-

Notwithstanding anything contained in any other law 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.

83. 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.

84. Answering Of Criminating Question 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 the Election Tribunal; and

(b) an answer given by a witness to a question put by or before the Election Tribunal, shall not, except in the case of any criminal proceedings for per-jury in respect of the evidence, be admissible in evidence against him in any civil or criminal proceedings.

(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 IX- A of the Indian Penal Code, 1860 (Central Act 45 of 1860) or Chapter XIV 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 for the time being in force.

85. Expenses Of Witness :-

The reasonable expenses incurred by any person in attending the trial of an election petition to give evidence, may be allowed by the Election Tribunal to such person and shall unless the Election Tribunal otherwise directs, be deemed to be part of the costs.

86. 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 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 commencement of the trial, given a notice to the Election Tribunal of his intention to do so and has also given the security and the further security referred to in sections 103 and 104 respectively.

(2) Every notice referred to in sub-section (1), shall be accompanied by the statement and the relevant particulars required under section 78 in the case of an election petition and shall be signed and verified in the like manner.

87. Decision Of The Election Tribunal :-

At the conclusion of the trial of an election petition, the Election Tribunal may make an order for,--

- (a) dismissing the election petition; or
- (b) declaring the election of all or any of the returned candidates to be void; or
- (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

88. Other Orders To Be Made By The Election Tribunal :-

Where any charge is made in the petition of any corrupt practice

having been committed at the election, the Election Tribunal shall also make an order at the time of making an order under section 87 indicating,--

(i) whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice;

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

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

Provided that a person who is not a party to the petition, shall not be named in the order under sub-clause (ii) unless,--

(a) he has been given notice to appear before the Election Tribunal 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 the Election Tribunal and has given evidence against him, of calling evidence in his defence and of being heard.

89. Grounds For Declaring Election To Be Void :-

(1) Subject to the provisions of sub-section (2), if the Election Tribunal is of the 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 of India or under this Act; or

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

(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 of any nomination; or

(ii) by any corrupt practice committed in the interest of the returned candidate 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 of India or of this Act or of any rules or orders made under this Act; the Election Tribunal shall declare the election of the returned candidate to be void.

(2) If in the opinion of the Election Tribunal, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the Election Tribunal 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 as committed contrary to the orders, and without the consent, of the candidate or his election agent;

(b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(c) that in all other respects, the election was free from any corrupt practice on the part of the candidate or any of his agent;

then the Election Tribunal may decide that the election of the returned candidate is not void.

(3) In this section, the expression agent has the same meaning as assigned to it in Explanation (1) given under clause (9) of section 108, but does not include election agent.

90. Grounds For Which A Candidate Other Than The Returned Candidate May Be Declared To Have Been Elected

:-

If any person who has filed an election 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 the Election Tribunal is of the 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 practices, the petitioner or such other candidate would have obtained a majority of the valid votes;

the Election Tribunal 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.

91. 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 candidate at the election and that the addition of a vote would entitle any of those candidates to be declared elected, then,--

(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 final decision of the election petition; and

(b) if that question is not determined by such a decision, the Election Tribunal shall decide between them by lot and proceed as if the one on whom the lot then falls, has received an additional vote.

92. Communication Of Orders Of The Tribunal :-

The Election Tribunal 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 as soon as may be thereafter, shall forward to the Election Commission, an authenticated copy of the decision.

93. Transmission Of Order To The Prescribed Authority Etc. And Its Publication :-

As soon as may be, after the receipt of any order made by the Election Tribunal under section 87 or section 88, the Election Commission shall forward copies of the order to the prescribed authority and shall cause the order to be published in the Official Gazette.

94. Effect Of Orders Of The Tribunal :-

(1) Subject to the provisions contained in section 101 relating to the stay of operation of an order of the Election Tribunal, every such order shall take effect as soon as it is pronounced by the Election Tribunal.

(2) Where by an order under section 87, the election of a returned candidate is declared to be void, acts and proceedings in which that candidate has, participated as a member of a Panchayat or a Municipality before the date of such declaration 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.

95. Withdrawal Of Election Petitions :-

(1) An election petition may be withdrawn only with the permission of the Election Tribunal.

(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 the concerned parties to the election petition and shall be published in the Official Gazette.

96. 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 allowed if, in the opinion of the Election Tribunal, such application has been induced by any bargain or consideration which ought not to have been allowed.

(3) If the application is allowed,--

(a) the petitioner shall be ordered to pay the costs to the respondents incurred or such portion thereof, as the Election Tribunal may think fit;

(b) the Election Tribunal 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 and conditions, as the Election Tribunal may deem fit.

97. Report Of Withdrawal By The Tribunal To The Election Commission :-

When an application for withdrawal is allowed by the Election Tribunal and no person has been substituted as petitioner under clause (c) of sub-section (3) of section 96 in place of the party withdrawing, the Election Tribunal shall report the fact to the Election Commission and thereupon the Election Commission shall publish the report in the Official Gazette.

98. Abatement Of Election Petitions :-

(1) An election petition shall abate only on the death of the sole petitioner or of the survivor of several petitioners.

(2) Where an election petition abates under sub-section (1), the Election Tribunal 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 and conditions, as the Election Tribunal may deem fit.

99. Abatement Or Substitution On Death Of Respondent :-

If before the conclusion of the trial of an election petition, the sole respondent dies or he gives notice that he does not intend to oppose the petition or any of the respondents dies or he gives notice that there is no other respondent who is opposing the petition, the Election Tribunal 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 and conditions, as the Election Tribunal may think fit.

100. Appeal To High Court :-

(1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie to the High Court on any question whether it pertains to law or fact from every order made by an Election Tribunal under section 87 or section 88.

(2) An appeal under this Chapter shall be preferred, within a period of thirty days from the date of the order of the Election Tribunal passed under section 87 or section 88;

Provided that the High 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.

101. Application For Stay Of Operation Of Order :-

(1) An application may be made to the Election Tribunal for stay of operation of an order made by it under section 87 or section 88 before the expiry of the period allowed for appealing therefrom and the Election Tribunal 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 Election

Tribunal after an appeal has been preferred to the High Court.

(2) Where an appeal has been preferred against an order made under section 87 or section 88, 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 appealed from.

(3) When the operation of an order is stayed by the Election Tribunal or, as the case may be, by the High Court, the order shall be deemed never to have taken effect under sub-section (1) of section 94 and a copy of the stay order shall immediately be sent by the Election Tribunal or, as the case may be, by the High Court to the Election Commission.

102. Procedure In Appeal :-

(1) Subject to the provisions of this Act and the rules made thereunder, every appeal against any order of the Election Tribunal, shall be heard and decided by the High Court as nearly as may be in accordance with the procedure applicable to the hearing and decision of an appeal from any final order passed by a Court subordinate to the High Court in the exercise of its original civil jurisdiction and all the provisions of the Code of Civil Procedure, 1908 (Central Act 5 of 1908) and Rules and Orders of the High 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 High Court shall intimate the substance of the decision to the Election Commission and as soon as may be thereafter, shall send to the Election Commission an authenticated copy of the decision.

(3) On the receipt of the decision, the Election Commission shall--

- (a) forward copies, thereof to the authorities to which copies of the order of the Election Tribunal were forwarded under section 92; and
- (b) cause the decision to be published in the Official Gazette.

103. Security For Costs :-

(1) At the time of presenting an election petition, the petitioner shall deposit in the Election Tribunal such sum, as may be prescribed as security for the costs of the petition.

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

104. Security For Costs From A Respondent :-

No person shall be entitled to be joined as a respondent under sub-section (3) of section 80 unless he has given such security for costs as the Election Tribunal may direct.

105. Costs :-

Costs shall be in the discretion of the Tribunal:

Provided that where a petition is dismissed under clause (a) of section 87, the returned candidate shall be entitled to the costs incurred by him in contesting the petition and accordingly the Election Tribunal shall make an order for costs in favour of the returned candidate.

106. Payment Of Costs Out Of Security Deposited And Return Of Such Deposits :-

(1) If in any order as to costs under the provisions of this Chapter, there is a direction for payment of costs by any party to any person, such costs shall, if these have not already been 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 Chapter on an application made in writing in that behalf, within a period of one year from the date of such order, to the Election Tribunal by the person in whose favour the costs have been awarded.

(2) If there is any balance of the security deposits referred to in sub-section (1), is left after making payment 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 one year, the whole of the said security deposits, may, on an application made in that behalf in writing to the Election Tribunal 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.

107. Execution Of Orders As To Costs :-

Any order as to costs under the provisions of this Chapter may be produced before a 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 of business, 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 can be recovered by an application made under sub-section (1) of section 106, no application shall lie under this section 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 security deposits referred to in that sub-section.

CHAPTER 13

CORRUPT PRACTICES AND ELECTORAL OFFENCES

108. Corrupt Practices :-

The following shall be deemed to be corrupt practices for the purposes of this Act, namely:--

(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 whosoever, with the object, directly or indirectly of inducing,--

(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 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.

Explanation.-- For the purposes of this clause the term "gratification" is not restricted to pecuniary gratification 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.

(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 with the consent of the candidate or his election agent, with the free exercise of any electoral right:

Provided that,-

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

(i) threatens any candidate or any elector, or any person whom a candidate or an elector is interested, with injury to 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 considered 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;

(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;

(4) The promotion of, or an attempt to promote feelings of enmity or hatred between different classes of 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;

(5) 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;

(6) The publication by a candidate or his agent or by any other person 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, in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidates election;

(7) 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 with the consent of a candidate or his election agent, or 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 that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purposes 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 vehicle or otherwise.

(8) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance other than the giving a vote for the furtherance of the prospects of that candidates election, from any person in the service of the State 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 Force;
- (e) excise officers;
- (f) revenue officers other than village revenue officers known as lambardars 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;
- (g) Electoral Registration Officers; and
- (h) such other class of persons in the service of the State Government or a local body, as may be prescribed:

Provided that where any person, in the service of the State 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 candidates election;

(9) Booth capturing by a candidate or his agent or other person;

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;

Explanation.-- (2) For the purpose of clause (8), a person shall be deemed to assist in furtherance of the prospects of a candidates election, if he acts as an election agent of that candidate;

Explanation.-- (3) For the purpose of clause (8), notwithstanding anything contained in any other law for the time being in force, the publication in the Official Gazette of the appointment, resignation, termination of 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.

Explanation--(4) For the purpose of clause (9), "Booth capturing" shall have the same meaning as in section 123.

109. 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 ground of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens, shall be punishable with imprisonment for a term, which may extend to three years, or with fine, or with both.

110. Prohibition Of Public Meetings On The Day Preceding The Election Day And On The Election Day :-

(1) No person shall convene, hold or attend 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 any election in that polling area.

(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.

111. 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 purposes of preventing the transaction of the business for which the meeting was called together, 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.

(2) The provisions of 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 at 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 to giving a false name and address, the police officer may arrest him without warrant.

112. 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) if it is printed at Chandigarh, to the Secretary of the Commission; 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 purposes of promoting or prejudicing the election of a candidate or group of candidates of any playcard or poster having reference to an election, but does not include any hand-bill, playcard 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.

113. 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 purposes authorised by or under any law), communicate to any person any information calculated to violate such secrecy.

(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.

114. Officers, Etc. At Elections Not To Act For Candidates Or To Influence Voting :-

(1) No person who is a District Electoral Officer or a Returning Officer, or an Assistant Returning Officer, or a Presiding Officer or a 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 endeavor,-

(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.

(4) An offence punishable under sub-section (3), shall be cognizable.

115. 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 one hundred meters 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 elections.

(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.

116. Penalty For Disorderly Conduct In Or Near A Polling Station :-

(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 or 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 or in the neighbourhood thereof, so as to cause annoyance to any person visiting the polling station for the poll, 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 willfully 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.

(3) If the Presiding Officer of a polling station has reasons 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.

117. 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 power conferred by sub-section (1), 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.

(3) If any person who has been so removed from a polling station, reenters 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.

118. Penalty For Failure To Observe Procedure For Voting :-

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

119. 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 (7) of section 108 or in connection with an election, he shall be punishable with fine which may extend to one thousand rupees.

120. Breach Of Official Duty In Connection With Elections :-

(1) If any person to whom this section applies, is, without reasonable cause, guilty of any act or omission in the breach of his official duty, he shall be punishable with fine, which may extend to five hundred rupees.

(2) An offence punishable under sub-section (1) shall be cognizable.

(3) No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.

(4) The persons to whom this section applies, are the District Election Officer, Returning Officer, Assistant Returning Officers, Presiding Officers, Polling Officers and any other person appointed to perform any duty in connection with the receipt of nominations or withdrawal of candidature, 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.

121. Penalty For Government Servants And Employees Of Local Bodies For Acting As Election Agent, Polling Agent Or Counting Agent :-

If any person in any service of the State Government or a local body 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.

122. Removal Of Ballot Papers From Polling Station To Be An Offence :-

(1) Any person who at any election fraudulently takes, or attempts to take a ballot paper out of polling station, or willfully 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 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.

(4) An offence punishable under sub-section (1), shall be cognizable.

123. 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 a Government or a local body, 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.

Explanation. - For the purposes of this section "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 prevent others from voting;
- (c) threatening 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 concerned authorities to 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 a Government, of all or any of the aforesaid activities, or aiding or conniving at, any such activity in furtherance of the prospect of the election of a candidate.

124. Other Offences And Penalties :-

(1) A person shall be guilty of an electoral offence if at any election he, -

- (a) fraudulently defaces or destroys any nomination paper; or
- (b) fraudulently defaces, destroys or removes any list, notice or other documents affixed by or under the authority of a Returning Officer; or
- (c) fraudulently defaces or destroys any ballot paper or the official mark on any ballot paper or any declaration of identity or official envelope used in connection with voting by postal ballot; or
- (d) without due authority supplies any ballot paper to any person 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 purpose of the election; or

(g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts or willfully 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; and

(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 duty imposed otherwise than by or under this Act.

(4) An offence punishable under sub-section (2), shall be cognizable.

CHAPTER 14

POWER OF ELECTION COMMISSION IN CONNECTION WITH INQUIRIES AS TO DISQUALIFICATION OF MEMBERS

125. Power Of Election Commission :-

(1) Where in connection with the tendering of any opinion to the State Government under section 12, the Election Commission considers it necessary or proper to make an inquiry and the Election Commission is satisfied that on the basis of the affidavits filed and the documents produced in such enquiry by the parties concerned of their own accord, it cannot come to a decisive opinion on the matter which is being inquired into, the Election Commission shall have, for the purpose of such inquiry, the powers of a Civil Court, while trying a suit under the Code of Civil Procedure, 1908 (Central Act 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 documents 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; and
 - (e) issuing commissions for the examination of witnesses or documents.
- (2) The Election 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 its opinion may be useful for or relevant to, the subject-matter of the inquiry.
- (3) The Election Commission shall be deemed to be a Civil Court and when any such offence as described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code, 1860 (Central Act 45 of 1860) is committed in the view or presence of the Election Commission, the Election Commission may, after recording the facts constituting the offence and the statement of the accused, 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 order for forwarding the case to the said Magistrate had been made under section 482 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).
- (4) Any proceeding before the Election Commission shall be deemed to be judicial proceedings with the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

126. Statement Made By Person To The Election Commission :-

No statement by a person in the course of giving evidence before the Election Commission shall 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 Election Commission to answer; and
- (b) is relevant to the subject-matter of the inquiry.

127. 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.

128. Protection Of Action Taken In Good Faith :-

No suit, prosecution or other legal proceedings shall lie against the Election Commission or any person acting under the direction of the Election Commission in respect of anything which is done in good faith 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 Election Commission to the State Government or in respect of the publication, by or under the authority of the Election Commission of any such opinion, paper or proceedings.

CHAPTER 15

MISCELLANEOUS

129. Staff Of Every Local Authority To Be Made Available For Election Work :-

Every local authority in a District shall, when so requested by the District Electoral Officer, make available to any Returning Officer such staff, as may be necessary for the performance of duties in connection with an election.

130. 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 for the purposes 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;

the State Government, may, by an order in writing requisition such premises, or such vehicles, 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.

(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.

131. Payment Of Compensation :-

(1) Whenever in pursuance of the provisions of section 130, 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 factors, 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; and

(ii) if as a result 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 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 right to receive the compensation, it shall be referred to by the State

Government to an arbitrator appointed in this behalf by the State 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 130 immediately before the requisition, and where no person was in such actual possession, the owner of such premises.

(2) Whenever in pursuance of section 130, 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 or 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 farther that where immediately before the requisitioning, the vehicle or vessel or animal 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 the arbitrator appointed by the State Government in this behalf, may decide.

132. Power To Obtain Information :-

The State Government may with a view to requisitioning any property under section 130 or determining the compensation payable under section 131, by an order, require any person to furnish to such authority, as may be specified in the order, such information relating to such property in his possession as may be so specified.

133. Powers Of Entry Into And Inspection Of Premises, Etc. :-

(1) Any person authorised 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 130 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 meaning as in section 130.

134. Eviction From Requisitioned Premises :-

(1) Any person remaining in possession of any requisitioned premises in contravention of any order made under section 130, 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.

135. Release Of Premises From Requisition :-

(1) When any premises requisitioned under section 130 are to be released from requisition, the possession thereof shall be delivered to the person from whom such 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 right 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 130 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 that 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 the 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.

136. 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 the State Government by any of the provisions of sections 132 to 135 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.

137. Penalty For Contravention Of Any Order Regarding Requisitioning :-

If any person contravenes any order made under section 130 or section 132, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

138. Extension Of Time For Completion Of Election :-

The Election Commission may for sufficient reasons to be recorded in writing, extend the time for completion of any election by making an amendment to this effect in the notification issued under section 35.

139. Power To Make Rules :-

(1) The State Government may, after consultation with the Election Commission, 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 provisions, such rules may provide for all or any of the following matters, namely :--

(a) the duties of the Presiding Officers and Polling Officers at polling stations;

(b) the checking of voters by reference to the electoral roll;

(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 tendering a vote by a person representing himself to be an elector after another person has voted as such elector;
- (f) the manner of giving and recording of votes by means of voting machines and the procedure as to voting to be followed at polling station where such machines are used;
- (g) the procedure as to voting to be followed at elections held in accordance with the system of proportional representation by means of a single transferable vote;
- (h) the security and counting of votes including cases in which recounting of the votes may be made before the declaration of the result of the election;
- (i) the procedure as to counting of votes recorded by means of voting machine;
- (j) the safe custody of 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;
- (k) the determination of ordinary residence under sub-section (9) of section 29;
- (l) the particulars to be entered in the electoral rolls;
- (m) the preliminary publication of electoral rolls;
- (n) the manner in which and the time within which claims and objections as to entries in electoral rolls may be preferred;
- (o) the manner in which notices of claims or objections shall be published;
- (p) the place, date and time at which claims or objections shall be heard and the manner in which claims or objections shall be heard and disposed of;
- (q) the final publication of electoral rolls;
- (r) the revision and correction of electoral rolls and inclusion of names therein;
- (s) the registration of political parties;
- (t) election agents;
- (u) election expenses;
- (v) costs and security for costs;
- (w) the staff of the Election Commission and the Election Tribunals;
- (x) service conditions of the Presiding Officers of Election Tribunals and officers and employees of the Election Commission;

(y) any other matter required to be prescribed by or under this Act.

(3) Every rule made under this Act shall be laid as soon as may be, after it is made before the State Legislature while it is in session for a total period of ten days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or successive sessions aforesaid, the State Legislature agrees in making any modification in the rule or the State Legislature agrees 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, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

140. 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.

141. Power To Remove Difficulties :-

(1) If any difficulty arises in giving effect to the provisions of this Act, or by reason of anything contained in this Act in relation to any other enactment for the time being in force, the State Government may, as occasion arises, by order, direct that this Act shall during such period as may be specified in the order but not extending beyond the expiry of two years from the date of commencement of this Act have effect subject to such adaptation whether by way of modification, addition or omission as it may deem necessary to and expedient.

(2) Every order made under sub-section (1) shall as soon as may be, after it is made, be laid before the State Legislature.

142. Over-Riding Effect :-

The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force relating to the conduct of elections to the Panchayats or Municipalities or any incidental matter thereto.

143. Repeal And Savings :-

(1) The provisions of any State Law corresponding to the provisions of this Act are hereby repealed:

Provided that such repeal shall not affect -

(a) the previous operation of the corresponding provisions of any State Law so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability occurred, accrued or incurred under the corresponding provisions of any State Law so repealed; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the corresponding provisions of any State Law so repealed; or

(d) any legal proceedings, investigation or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such legal proceedings, investigation or remedy may be instituted or continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

(2) Notwithstanding such repeal, anything done or any action taken under the corresponding provisions of any State Law so repealed (including any notification, order notice issued, application made or permission granted, if any) which is not inconsistent with the provisions of this Act, shall be deemed to have been done or taken under the corresponding provisions of this Act, as if this Act was in force at the time, such thing was so done or action so taken and shall continue to be in force unless and until superseded by anything done or any action taken under this Act.