

THE JAMMU AND KASHMIR REPRESENTATION OF THE PEOPLE ACT, 1957

[Act No. IV of 1957]
[As amended by Act IX of 2014]

[Received the assent of the Sadar-i-Riyasat on 1st February, 1957 and published in Govt. Gazette dated 2nd February, 1957]

An Act to provide for the delimitation of Constituencies for the purpose of elections to the Legislative Assembly and the Legislative Council, the qualifications of voters at such elections, the preparation of electoral rolls, the conduct of elections, the qualifications and disqualifications for membership of the Houses of Legislature, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections and matters connected therewith.

Be it enacted by the Jammu and Kashmir State Legislature in the Eighth Year of the Republic of India as follows:-

PART I

PRELIMINARY

1. Short title

This Act may be called the Jammu and Kashmir Representation of the People Act, 1957.

2. Definitions

(1) In this Act, unless the context otherwise requires,-

- (a) "Assembly Constituency" means a Constituency provided for the purpose of election to the Legislative Assembly;
- (b) "Constitution" means the Constitution of Jammu and Kashmir;
- (c) "Corrupt practice" means any of the practices specified in section 132;
- (d) "Council Constituency" means a Constituency provided for the purpose of election to the Legislative Council;

- ¹[(e) "Election Commission" means the Election Commission appointed by the President under Article 324 of the Constitution of India];
- (f) "election" means an election to fill a seat or seats in either House of the Legislature;
- (g) "elector" in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 12 of this Act;
- (h) "order" means an order published in the Jammu and Kashmir Government Gazette;
- (i) "gazette" means the Jammu and Kashmir Government Gazette;
- (j) "prescribed" means prescribed by rules made under this Act;
- (k) "person" does not include a body of persons;
- ²[(kk) "public holiday" means any day which is a public holiday for the purpose of section 25 of the Negotiable Instruments Act, 1881];
- (l) "sign" in relation to a person who is unable to sign his name, means authenticate in such manner as may be prescribed;
- ³[(m) *Omitted.*]

(2) For the purposes of this Act an Assembly Constituency, a Council Constituency, a Local Authorities' Constituency, ⁴[X X X X] and a Panchayats' Constituency shall each be treated as a Constituency of a different class.

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

PART II

DELIMITATION OF CONSTITUENCIES

⁵**[3. Constitution of Delimitation Commission**

(1) ⁶[As soon as may be after the completion of each census] the Governor shall constitute a Commission to be called the Delimitation Commission which shall consist of three members as follows:-

1 Clause (e) substituted by Act XXVI of 1960.

2 Clause (kk) inserted by Act XI of 1967.

3 Clause (m) omitted *ibid.*

4 Words omitted by Act XXIII of 1963.

5 Section 3 substituted by Act IX of 1966.

6 Substituted by Act I of 1982.

(a) two members, each of whom shall be a person ¹[who is or has] been a Judge of the Supreme Court or of a High Court in India; and

²[(b) a Deputy Election Commissioner nominated by the Chief Election Commissioner:

³[Provided that until the relevant figures for the first census taken after the year 2026 have been published, it shall not be necessary to constitute a Commission to determine the delimitation of Assembly Constituencies in the State under this sub-section.]

(2) The Governor shall nominate one of the members appointed under clause (a) of sub-section (1) to be the Chairman of the Delimitation Commission.

⁴[(3) The Delimitation Commission shall determine the delimitation of Assembly Constituencies in the State within such period as may be specified by the Governor.]

⁵**[3-A. Associate Members**

(1) The Commission shall associate with it five members of the Legislative Assembly to be nominated by the Speaker, having due regard to the composition of the Assembly.

(2) None of the associate members shall have a right to vote and sign any decision of the Commission.

(3) If owing to death or resignation, the office of an associate member falls vacant, it shall be filled, as soon as practicable, in the manner prescribed in sub-section (1) above.]

⁶**[4. Delimitation of Assembly Constituencies**

(1) The Delimitation Commission shall ⁷[XXX]—

(a) read just the extent and boundaries of the Assembly Constituencies; and

(b) determine the number of seats in the Legislative Assembly to be reserved for the Scheduled Castes.

1 Substituted *ibid* for the words "who has".

2 Substituted by Act IX of 1997, s. 2.

3 Inserted by Act XXXIII of 2002 (s-2).

4 Added by Act I of 1982.

5 Section 3-A inserted *vide* Act XVII of 1973.

6 Section 4 substituted by Act IX of 1966.

7 Omitted *vide* Act XXIII of 1975.

¹[(2) The Delimitation Commission shall in the manner herein provided, distribute the ²[eighty-seven seats] in the Legislative Assembly to single member territorial constituencies and delimit them having due regard, as far as practicable to the following;-

- (a) (i) population as ascertained at the last preceding census of which the relevant figures have been published; and
 - (ii) geographical compactness; and
 - (iii) nature of terrain; and
 - (iv) facilities of communication; and
 - (v) the like consideration;]
 - (b) constituencies in which seats are reserved for the Scheduled Castes shall be distributed in different parts of the State and located, as far as practicable in those areas where the proportion of their population to the total is comparatively large.
- (3) The Delimitation Commission shall-
- (a) publish its proposal for the delimitation of constituencies in the Gazette and also in such other manner as it thinks fit;
 - (b) specify a date on or after which the proposals will be further considered by it;
 - (c) consider all objections and suggestions which may have been received by it before the date so specified, and for the purpose of such consideration hold one or more public sittings at such place or places in the State as it thinks fit; and
 - (d) thereafter by order determine the delimitation of Assembly Constituency in the State.

4-A. Procedure and powers of Delimitation Commission

(1) The Delimitation Commission shall determine its procedure and shall in the performance of its function have all the powers of Civil Court under the Code of Civil Procedure, Svt. 1977, while trying a suit, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the production of any document; and
- (c) requisitioning any public record from any court or office.

¹ First paragraph and clause (a) substituted by Act XXIII of 1975.

² Substituted by Act III of 1988.

(2) The Delimitation Commission shall have power to require any person to furnish any information on such points or matters as in the opinion of the Commission may be useful for, or relevant to, any matter under the consideration of the Commission.

(3) The Delimitation Commission may authorise any of its members to exercise any of the powers conferred on it by clauses (a) to (c) of sub-section (1) and sub-section (2), and any order made or act done in exercise of those powers by the member authorised by the Commission in that behalf shall be deemed to be the order or act, as the case may be, of the Commission.

(4) If there is a difference of opinion among the members, the opinion of the majority shall prevail, and acts and orders of the Delimitation Commission shall be expressed in terms of the views of the majority.

(5) The Delimitation Commission shall have powers to act notwithstanding the temporary absence of a member or the existence of a vacancy in the Commission, and no act or proceeding of the Commission shall be invalid or called in question on the ground merely of such temporary absence or of the existence of such vacancy.

(6) The Delimitation Commission shall be deemed to be a Civil Court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, Svt. 1989.

Explanation. — For the purposes of enforcing the attendance of witnesses the local limits of the jurisdiction of the Delimitation Commission shall be the limits of the territory of the State.

4-B. Publication of orders and their date of operation

(1) The Delimitation Commission shall cause its order made under clause (d) of sub-section (3) of section 4 to be published in the Gazette, and upon such publication, the said order shall have the force of law and shall not be called in question in any court.

(2) As soon as may be after such publication, the said order shall be laid before the Legislative Assembly.

(3) Subject to the provisions of sub-section (4), the readjustment of representation of the several territorial constituencies in the Legislative Assembly and the delimitation of those constituencies provided for in the said order shall apply in relation to every election to the Legislative Assembly held after the publication in the Gazette of that order and shall so apply in supersession of the provisions relating to such representation

and delimitation contained in ¹[the last preceding Delimitation of Assembly Constituencies Order.]

(4) Nothing in this section shall affect the representation in the Legislative Assembly existing on the date of publication of the said order until the dissolution of that Assembly.

4-C. Power to maintain delimitation orders up-to-date

(1) The Election Commission may, from time to time, by notification in the Gazette,-

- (a) correct any printing mistake in the final order of the Delimitation Commission or any error arising therein from an inadvertent slip or omission; and
- (b) where the boundaries or name of any district or any territorial division mentioned in any of the said orders are or is altered, make such amendments as appear to it to be necessary or expedient for bringing the order up-to-date.

(2) Every notification under this section shall be laid, as soon as may be after it is issued, before the Legislative Assembly.

5. Delimitation of Council Constituencies

(1) The Council Constituencies and the number of seats allotted to each such constituency shall be as provided in section 50 of the Constitution.

(2) The ²[Governor] shall, as soon as may be after the commencement of this Act, by order specify the local bodies, if any, in the Province of Jammu and in the Province of Kashmir for the purpose of sub-section (5) of section 50 of the Constitution.

³[6. Omitted]

⁴[7. Omitted]

PART III **OFFICERS**

⁵[7-A. Chief Electoral Officer

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

¹ Substituted by Act I of 1982.

² Substituted for "Sadar-i-Riyasat" by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965.

³ Section 6 omitted by Act IX of 1966.

⁴ Section 7 omitted by Act IX of 1966.

⁵ Section 7-A inserted by Act XXVI of 1960.

(2) Subject to the superintendence, direction and control of the Election Commission, the Chief Electoral Officer shall supervise the preparation, revision and correction of all electoral rolls and the conduct of election in the State under this Act.]

¹**[7-B. Delegation of functions of Election Commission**

The functions of the Election Commission under the Constitution and this Act, or under the Rules made thereunder may, subject to such general or special direction, if any, as may be given by the Election Commission in this behalf, be performed also by a Deputy Election Commissioner or by the Secretary to the Election Commission.]

²**[7-C. District Election Officers**

(1) For each district in the State, the Election Commission shall, in consultation with the Government of the State designate or nominate a District Election Officer who shall be an officer of Government:

Provided that the Election Commission may designate or nominate more than one such officer for a district if the Election Commission is satisfied that the functions of the office cannot be performed satisfactorily by one officer.

(2) Where more than one District Election Officer are designated or nominated for a district under the proviso to sub-section (1), the Election Commission shall in the order designating or nominating the District Election Officers also specify the area in respect of which each such officer shall exercise jurisdiction.

(3) Subject to the superintendence, direction and control of the Chief Electoral Officer, the District Election Officer shall co-ordinate and supervise all work in the district or in the area within his jurisdiction in connection with the preparation and revision of the electoral rolls and the conduct of election for all Assembly and Council Constituencies within the district.

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

1 Section 7-B added by Act V of 1987.

2 Section 7-C inserted by Act XI of 1967.

8. Electoral Registration Officers

(1) The electoral roll for each Assembly Constituency and Council Constituency shall be prepared and revised by an ¹[Electoral Registration Officer] who shall be such officer of the Government or of a local authority as the ²[Election Commission] may, in consultation with the Government, designate or nominate in this behalf.

(2) An ³[Electoral Registration officer] may, subject to any prescribed restrictions, employ such persons as he thinks fit for the preparation and revision of the electoral roll for the constituency.

9. Assistant Electoral Registration Officers

(1) The ⁴[Election Commission] may appoint one or more person as Assistant ⁵[Electoral Registration Officer] to assist any ⁶[Electoral Registration Officer] in the performance of his functions.

(2) Every Assistant ⁷[Electoral Registration Officer] shall subject to the control of the ⁸[Electoral Registration Officer] be competent to perform all or any of the functions of the ⁹[Electoral Registration Officer.]

¹⁰9-A. Chief Electoral Officers, District Election Officers, etc. deemed to be on deputation to the Election Commission

The officers referred to in this Part and any other officer or staff employed in connection with the preparation, revision and correction of the electoral rolls for, and the conduct of, all elections shall be deemed to be on deputation to the Election Commission for the period during which they are so employed and such officers and staff shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.

¹¹9B. Observer

(1) The Election Commission may nominate an Observer who shall be an officer of the Government to watch the conduct of election or

1 Substituted by Act IX of 1966, for "Electoral Registrar".

2 Substituted by Act XXVI of 1960, for "Election Commissioner".

3 Substituted by Act IX of 1966, for "Electoral Registrar".

4 Substituted by Act XXVI of 1960, for "Election Commissioner".

5 Substituted by Act IX of 1966, for "Electoral Registrar".

6 Substituted by Act IX of 1966, for "Electoral Registrar".

7 Substituted by Act IX of 1966, for "Electoral Registrar".

8 Substituted by Act IX of 1966, for "Electoral Registrar".

9 Substituted by Act IX of 1966, for "Electoral Registrar".

10 Inserted by Act IX of 1997 (S-3).

11 Inserted by Act IX of 2014, s-2.

elections in a constituency or a group of constituencies and to perform such other functions as may be entrusted to him by the Election Commission.

(2) The Observer nominated under sub-section (1) shall have the power to direct the Returning Officer for the constituency or for any of the constituencies for which he has been nominated, to stop the polling at any time on the day of polling, if in the opinion of the Observer booth capturing has taken place at a large number of polling stations or at places fixed for the poll or any ballot paper used at a polling station or at place fixed for the poll is unlawfully taken out of the custody of the Returning Officer or is accidentally or intentionally destroyed or lost or is damaged or tampered with.

(3) Where an Observer has directed the Returning Officer under this section to stop polling, the Observer shall forthwith report the matter to the Election Commission and thereupon the Election Commission shall, after taking all material circumstances into account, issue appropriate directions under section 68A or section 74A or section 76.

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

PART IV

ELECTORAL ROLLS FOR ASSEMBLY CONSTITUENCIES

10. Definitions

In this part, unless the context otherwise requires,-

- (a) "constituency" means an Assembly constituency;
- (b) "qualifying date" in relation to the preparation or revision of every electoral roll under this Part means ¹[the first day of January, the first day of April, the first day of July, the first day of October] (as may be applicable) of the year in which it is so prepared or revised.

²[X X X X]

¹ Substituted by Act XXVI of 1975, dated 19.8.1975.

² Proviso of section 10 omitted *ibid*.

11. Electoral roll for every constituency

For every constituency 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 ¹[Election Commission].

12. Disqualifications for registration in an electoral roll

(1) A person shall be disqualified for registration in an electoral roll if he-

- (a) is not a citizen of India; or
- (b) is not a permanent resident of the State as defined in Part III of the Constitution; or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) 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.

(2) The name of any person who becomes so disqualified after registration shall forthwith be struck off the electoral roll in which it is included:

Provided that the name of any person struck off the electoral roll of a constituency by reason of a disqualification under clause (d) of sub-section (1) shall forthwith be reinstated in that roll if such disqualification is, during the period such roll is in force, removed under any law authorising such removal.

13. 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.

14. No person to be registered more than once in any constituency

No person shall be entitled to be registered in the electoral roll for any4constituency more than once.

15. Conditions of registration

Subject to the foregoing provisions of this part, every person who ²[X X X]—

¹ Substituted by Act XXVI of 1960, for "Election Commissioner".

² Word omitted by Act IX of 1966.

- (a) is not less than ¹[eighteen years] of age ²[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.

16. Meaning of "ordinarily resident"

³[(1) 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 therein.

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

(1-b) A member of Parliament or of the Legislature of the State shall not during the term of his office cease to be ordinarily resident in the constituency in the electoral roll of which he is registered as an elector at the time of his election as such member, by reason of his absence from that constituency in connection with his duties as such member.]

(2) A person who is a patient in any establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness, or who is detained in prison or other legal custody at any place, shall not only by reason thereof be deemed to be ordinarily resident therein.

⁴[(3) 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.

(4) Any person holding any office in India declared by the Governor in consultation with the Election Commission to be an office to which the provisions of this sub-section 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.

(5) The statement of any such person as is referred to in sub-section (3) or sub-section (4) made in the prescribed form and verified in the

1 Substituted by Act VII of 1989, s. 2.

2 Inserted by Act IX of 1966.

3 Substituted by Act IX of 1966.

4 Sub-section (3) to (8) substituted for sub-sections (3), (4), (5) and (6) by Act VII of 1971.

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 (4) 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.

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

(7) If in any case a question arises as to where a person is ordinarily resident at any relevant time, the question shall be determined with reference to all the facts of the case and to such rules as may be made in this behalf by the Government in consultation with the Election Commission.

(8) In sub-sections (3) and (5) "service qualification" means-

- (a) being a member of the armed forces of the Union; or
- (b) being a member of a force to which the provisions of the Army Act, 1950 (46 of 1950) have been made applicable whether with or without modifications; or
- (c) being a member of an armed police force of the State, who is serving outside the State; or
- (d) being a person, holding any office under the Government and, verified to be moving along with the headquarters of the Government, from Kashmir Province to Jammu Province or vice versa, by such authority as the Governor may, in consultation with the Election Commission, specify.]

¹**[16-A. Special provisions for the permanent residents of the State residing outside India**

(1) Notwithstanding anything contained in this Act, every permanent resident of the State,—

- (a) whose name is not included in the electoral roll ;
- (b) who has not acquired the citizenship of any other country ; and
- (c) who is absenting from his place of ordinary residence in India owing to his employment, education or otherwise outside India (whether temporarily or not), shall be entitled to have his name

¹ Inserted by Act IX of 2014

registered in the electoral roll in the constituency in which his place of residence in the State as mentioned in his passport is located.

(2) The time within which the name of persons referred to in sub-section (1) shall be registered in the electoral roll and the manner and procedure for registering of a persons in the electoral roll under sub-section (1) shall be such as may be prescribed.

(3) Every person registered under this section shall, if otherwise eligible to exercise his franchise, be allowed to vote at an election in the constituency.]

17. 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.

¹[(2) The said electoral roll—

- (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 the Legislative Assembly of the State; and
 - (ii) before each bye-election to fill a casual vacancy in a seat allotted to the constituency; and
- (b) shall, 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 said electoral roll shall not thereby be affected.]

(3) Notwithstanding anything contained in sub-section (2) the ²[Election Commission] ³[xxx] may, at any time for, reasons to be recorded, direct a special revision of the electoral roll for any constituency or part of a constituency in such manner as ⁴[it] may think fit:

1 Section 17(2) substituted by Act XI of 1967.

2 Substituted by Act XXVI of 1960 for "Election Commissioner".

3 Words omitted by Act XXVI of 1960 for "Election Commissioner".

4 Substituted by Act IX of 1966 for 'he'.

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

¹**18. Correction of entries in electoral roll**

If the ²[Electoral Registration Officer] for a constituency, on application made to him or on his own motion, is satisfied after such enquiry as he thinks fit that any entry in the electoral roll of the constituency-

- (a) is erroneous or defective in any particular; 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 ³[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 ⁴[after proper verification of facts in such manner as may be prescribed]:

Provided that before taking any action on any ground under clause (a) or (b) or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the ⁵[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 ⁶[after proper verification of facts in such manner as may be prescribed.]

⁷**19. 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.

1 Section 18 substituted by Act XXVI of 1960.

2 Substituted by Act IX of 1966, for "Electoral Registrar".

3 Words omitted by Act XXVI of 1960 for "Election Commissioner".

4 Added by Act IX of 2014.

5 Words omitted by Act XXVI of 1960 for "Election Commissioner".

6 Added by Act IX of 2014

7 Section 19 substituted by Act XI of 1967.

(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 ¹[after proper verification of facts in such manner as may be prescribed]:

Provided that if the applicant is registered in the electoral roll of any other constituency, the Electoral Registration Officer shall inform the Electoral Registration Officer of that other constituency and that officer, shall on receipt of the information, strike off the applicant's name from that roll ²[after proper verification of facts in such manner as may be prescribed.]

(3) No amendment, transposition or deletion of any entry shall be made under section 18 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.]

³**19-A. Appeals**

An appeal shall lie within such time and in such manner as may-be prescribed-

- (a) to the ⁴[District Magistrate or District Collector or Additional District Magistrate or Executive Magistrate or an officer of equivalent rank] from any order of the ⁵[Electoral Registration Officer] under section 18 or section 19.]
- ⁶(b) to the Chief Electoral Officer, from any order of the District Magistrate or District Collector, Additional District Magistrate or Executive Magistrate or an officer of equivalent rank, as the case may be, under clause (a).]

19-B. Fee for applications and appeals

Every application under section 18 or section 19 and every appeal under section 19-A shall be accompanied by a prescribed fee which shall, in no case, be refunded.]

1 Added by Act IX of 2014

2 Added by Act IX of 2014

3 Section 19-A and 19-B inserted by Act I of 1962.

4 Substituted for the Words "Chief Electoral Officer" by Act IX of 2014

5 Substituted by Act IX of 1966, for "Electoral Registrar".

6 Inserted by Act IX of 2014.

20. Special provisions with regard to the electoral rolls prepared for elections to the first Legislative Assembly

(1) Notwithstanding anything contained in this Act, the electoral rolls prepared pursuant to the Resolution of the Jammu and Kashmir Constituent Assembly, dated 29th September, 1956 for elections to the first Legislative Assembly, whether before or after the commencement of this Act, shall be deemed to be the electoral rolls prepared under this Act.

(2) Anything done and any action taken under the said resolution, whether before or after the commencement of this Act, for the purpose of elections to the first Legislative Assembly, under the Constitution, shall, in so far as they are in conformity with the said resolution, be deemed to have always been valid.

PART V

ELECTORAL ROLLS FOR COUNCIL CONSTITUENCIES

21. Preparation of electoral rolls for Council Constituencies

(1) In this section-

(a) "local authorities constituency" means a constituency for the purpose of elections to the Legislative Council under clauses (a) and (b) of sub-section (4) of section 50 of the Constitution;

¹[(b) Omitted.]

(c) "Panchayats' constituency" means a constituency for the purpose of elections to the Legislative Council under clauses (a) and (b) of sub-section (5) of section 50 of the Constitution.

(2) For the purpose of elections to the Legislative Council in a local authorities' constituency—

(a) the electorate shall consist of members of municipal council, town area committees and Notified Area Committees within the limits for that constituency;

(b) every member of each such local authority within a local authorities constituency shall be entitled to be registered in the electoral roll for that constituency;

(c) ²[the Electoral Registration Officer] for each local authorities constituency shall maintain in his office in the prescribed

¹ Clause (b) of S. 21 omitted by Act XXIII of 1963.

² Substituted by Act IX of 1966.

manner and form the electoral roll for that constituency corrected up-to-date;

- (d) in order to enable the ¹[Electoral Registration Officer] to maintain the electoral roll corrected up-to-date the Chief Executive Officer of each local authority (by whatever designation such officer may be known) shall immediately inform the ²[Electoral Registration Officer] about every change in the membership of that local authority; and the ³[Electoral Registration Officer] shall, on receipt of the information, strike off from the electoral roll the names of persons who have ceased to be, and include therein the names of persons who have become, members of that local authority; and
- (e) the provisions of sections 11, 12, 14, 18 and 19 shall apply in relation to local authorities' constituencies as they apply in relation to Assembly Constituencies.

⁴[(3) *Omitted.*]

(4) For the purpose of elections to the Legislative Council in a Panchayats' constituency,—

- (a) the electorate shall consist of members of Panchayats and such other local bodies, if any, within the limits of the constituency as the ⁵[Governor] may by order specify under sub-section (5) of section 50 of the Constitution;
- (b) every member of the Panchayat and of such local body, if any, within a Panchayats' Constituency as referred to in clause (a) shall be entitled to be registered in the electoral roll for that constituency;
- (c) the ⁶[Electoral Registration Officer] for the each Panchayats' Constituency shall maintain in his office in the prescribed manner and form the electoral roll for that constituency corrected up-to-date;
- (d) in order to enable the ⁷[Electoral Registration Officer] to maintain the electoral roll corrected up-to-date the Panchayat

1 Substituted by Act IX of 1966.

2 Substituted by Act IX of 1966.

3 Substituted by Act IX of 1966.

4 Sub-section (3) omitted by Act XXIII of 1963.

5 Substituted for "Sadar-i-Riyasat" by Jammu and Kashmir (Sixth Amdt.) Act, 1965.

6 Substituted by Act IX of 1966.

7 Substituted by Act IX of 1966.

Officer of the Province of Jammu and of the Province of Kashmir shall immediately inform the ¹[Electoral Registration Officer] about every change in the membership of each Panchayat and of such local body, if any, within the Panchayats' Constituency as referred to in clause (a) and the ²[Electoral Registration Officer], shall, on receipt of the information, strike off from the electoral roll the names of persons who have ceased to be, and include therein the names of persons who have become, members of that Panchayat or local body; and

- (e) the provisions of sections 11, 12, 14, 18 and 19 shall apply in relation to Panchayats' Constituency as they apply in relation to Assembly Constituency.

PART VI

QUALIFICATIONS AND DISQUALIFICATIONS FOR MEMBERSHIP OF LEGISLATURE

22. Qualifications for membership of Legislative Assembly

A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly unless-

- (a) in the case of a seat reserved for the Scheduled Castes, he is a member of any of those castes and is an elector for any Assembly Constituency in the State; and
- (b) in the case of any other seat, he is an elector for any Assembly Constituency in the State:

³[Provided that where on the date of publication of a notification under sub-section (2) of section 27 calling upon certain Assembly Constituencies to elect members the electoral rolls for any other Assembly Constituencies are not prepared and finally published and the ⁴[Election Commission] has recommended that such other constituencies may not be called upon by the said notification to elect members, no person who is not an elector for any of the constituencies called upon to elect members by the said notification shall, notwithstanding anything in this section

1 Substituted by Act IX of 1966.

2 Substituted by Act IX of 1966.

3 Proviso inserted by Act XII of 1957 w.e.f. 2-2-1957.

4 Substituted by Act XXVI of 1960 for "Election Commissioner".

or in any other provision of this Act be qualified to be chosen from any of those constituencies to fill a seat in the Legislative Assembly.]

23. Qualifications for membership of the Legislative Council

(1) A person shall not be qualified to be chosen to fill a seat in the Legislative Council to be filled by election unless he is an elector for any Assembly Constituency in the State.

(2) A person shall not be qualified to be chosen to fill a seat in the Legislative Council to be filled by nomination by the ¹[Governor] unless he is a permanent resident of the State as defined in Part III of the Constitution and is ordinarily resident in the State.

²[24. Disqualification on conviction for certain offences

(1) A person convicted of an offence punishable under ³[section 153-A or section 171-E or section 171-F or sub-section (2) or sub-section (3) of section 505 of ⁴[the Ranbir Penal Code, 1989 or the Jammu and Kashmir Prevention of Corruption Act, Samvat 2006.] ⁵[or under section 10 or section 11 or section 12 or sub-section (1) or sub-section (2) of section 13 of the Unlawful Activities (Prevention) Act, 1967 or under section 132-A or section 132-B] or section 142 or clause (a) of sub-section (2) of section 143 of this Act ⁶[or section 11 of the Customs Act, 1962 (Central Act No. 52 of 1962) or the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act No. 61 of 1985) or section 2 or section 3 of the Prevention of Insults to National Honour Act, 1971 (Central Act No. 69 of 1971)] ⁷[shall be disqualified, where the convicted person is sentenced to—

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

(2) A person convicted by a court in the State or outside the State in India for any offence and sentenced to imprisonment for not less than two years shall be disqualified from the date of such conviction and shall

1 Substituted for "Sadar-i-Riyasat" by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965.

2 Substituted by Act XI of 1967 for "Sections 24, 25 and 26".

3 Substituted by Act XVII of 1970.

4 Substituted by Act XI of 2005 w.e.f. 10-5-2005.

5 Substituted by Act VIII of 1971.

6 Inserted by Act IX of 2014.

7 Substituted by Act XI of 2005, w.e.f. 10.05.2005.

continue to be disqualified for a further period of five years since his release:

Provided that a person convicted by a court in the State or outside the State in India for the contravention of any law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs and sentenced to imprisonment for not less than six months shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of five years since his release.

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

Explanation.—In this section—

- (a) 'law providing for the prevention of hoarding or profiteering' means any law, or any order, rule or notification having the force of law, providing for-
 - (i) the regulation of production or manufacture of any essential commodity;
 - (ii) the control of price at which any essential commodity may be bought or sold;
 - (iii) the regulation of acquisition, possession, storage, transport, distribution, disposal, use or consumption of any essential commodity;
 - (iv) the prohibition or the withholding from sale of any essential commodity ordinarily kept for sale;
- (b) 'drug' has the meaning assigned to it in the Jammu and Kashmir Drugs Act, Samvat 2000;
- (c) 'essential commodity' has the meaning assigned to it in ¹[any law relating to essential commodities for the time being in force in the State];
- (d) 'food' has the meaning assigned to it in the Jammu and Kashmir Prevention of Food Adulteration Act, 1958.

¹ Substituted by Act VIII of 1971.

24-A. Disqualification for corrupt practice

A person found guilty of a practice, by an order under section 107 may be disqualified by the High Court for a period which may extend to six years from the date on which that order takes effect.

¹[24-AA. Disqualification for being a member of unlawful association

A person who is a member of an association which has been declared unlawful under the Unlawful Activities (Prevention) Act, 1967, shall be disqualified for so long as the declaration in respect of the said association remains in operation under that Act, ²[or so long as the person continues to be a member of such association, whichever is earlier.]

24-B. Disqualification for dismissal for corruption or disloyalty

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

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

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

24-C. Disqualification for Government contracts etc.

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

Explanation.— For the purposes of this section, where a contract has been fully performed by the person by whom it has been entered into with

¹ Section 24-AA inserted by Act VII of 1971.

² Substituted by Act XXIV of 1975.

the Government, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part.

24-D. Disqualification for office under Government company

A person shall be disqualified if, and for so long as, he is a managing agent, manager or secretary of any company or corporation (other than a co-operative society) in the capital of which the Government has not less than twenty-five per cent shares.

24-E. Disqualification for failure to lodge account of election expenses

If the Election Commission is satisfied that a person-

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

the Election Commission shall, by order published in the Government Gazette, declare him to be disqualified and any such person ¹[shall be liable to be disqualified for a period which may extend to 3 years from the date of the order.]

24-F. Disqualification for abuse or misuse of office or authority

Where a person has been found-

- (a) by any civil or criminal court; or
- (b) by any Tribunal, Board or Commission set up under any statute, to have illegally or by corrupt means or by otherwise abusing or misusing-
 - (i) the position held by him as a member of the either House of the State Legislature or of Parliament; or
 - (ii) the office held by him by virtue of being such member obtained for himself or for any of his relative any valuable thing or pecuniary advantage, he ²[may be disqualified by such Court, Tribunal, Board or Commission for a period which may extend to ten years from the date of the order]:

Provided that such person had the opportunity of being heard in the proceedings held by such Court, Tribunal, Board or Commission:

¹ Substituted by Act XXIV of 1975, dated 19.08.1976.

² Substituted by Act XXIV of 1975.

Provided further that such Tribunal, Board or Commission was presided over by a person who is or has been a Judge of the Supreme Court of India.

¹**[24-G. Disqualification for false Scheduled Caste Certificate**

A person, elected or nominated, as a Member of the State Legislature on the basis of a false Scheduled Caste Certificate shall be disqualified from the date on which it is found that he had been so elected or nominated, on the basis of such false caste certificate and shall continue to be disqualified for a further period of six years.]

25. Interpretation

In this Part, 'disqualified' means disqualified from being chosen as, and for being a member of the Legislative Assembly or Legislative Council of the State.

26. Removal or reduction of period of disqualification

The Election Commission may, for reasons to be recorded, remove the disqualification under section 24-E or reduce the period of any such disqualification.

²**[PART VI-A**

DISQUALIFICATIONS FOR VOTING

26-A. Disqualification arising out of conviction and corrupt practices

If any person, after the commencement of this Act,-

- (a) is convicted of an offence punishable under section 171-E or section 171-F of the Ranbir Penal Code, 1989 or under section 132-A or section 142 or clause (a) of sub-section (2) of section 143 of this Act, or
- (b) is found guilty of a corrupt practice by an order under section 107, he shall, for a period of six years from the date of the conviction or from the date on which the order takes effect, be disqualified for voting at any election.

26-B. Removal of disqualifications

The Election Commission may, for reasons to be recorded, remove any disqualification under this Part.]

1 Inserted by Act VIII of 2006, dt. 4.4.2006, w.e.f. 4.4.2006.

2 Part VI-A inserted by Act XI of 1967.

PART VII**NOTIFICATION OF GENERAL ELECTIONS****27. Notification for general election to the Legislative Assembly**

(1) A general election shall be held for the purpose of constituting the first Legislative Assembly under the Constitution or, as the case may be, a new Legislative Assembly on the expiration of the duration of the existing Assembly or on its dissolution.

(2) For the said purpose the ¹[Governor] shall, by one or more notifications published in the Gazette on such date or dates as may be recommended by the ²[Election Commission,] call upon all Assembly Constituencies in the State to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder:

³[Provided that where a general election is held otherwise than on dissolution of the existing Legislative Assembly, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of that Assembly would expire under the provisions of sub-section (1) of section 52 of the Constitution.]

⁴[(3) For the avoidance of doubt it is hereby declared that nothing in this section or in any other provision of this Act shall be deemed to preclude the ⁵[Governor] by notification from calling upon the Assembly Constituencies for which electoral rolls have been prepared and finally published to elect members notwithstanding that electoral rolls for certain other Assembly Constituencies in the State are not prepared and finally published on the date of such notification and the validity of the elections held in pursuance of that notification shall not be called in question in any court or tribunal on the ground that the electoral rolls for certain constituencies were not prepared and finally published on the date of the said notification.]

28. Notifications for election to the Legislative Council

For the purpose of constituting the Legislative Council under the Constitution in due time, the ⁶[Governor] shall,-

1 Substituted for "Sadar-i-Riyasat" by the Constitution of Jammu and Kashmir (Sixth Amendment Act, 1965.

2 Substituted by Act XXVI of 1960, for "Election Commissioner".

3 Proviso to sub-section (2) inserted by Act I of 1961.

4 Sub-section (3) inserted by Act XII of 1957 w.e.f. 2-2-1957.

5 Substituted for "Sadar-i-Riyasat" by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965.

6 Substituted by Act XXVI of 1960 for "Election Commissioner".

- (a) by a notification in the Gazette call upon every local authorities' constituency ¹[xxx] and every Panchayats' Constituency to elect in accordance with the provisions of this Act and of the rules and orders made thereunder a member or members before such date as may be appointed in this behalf by the ²[Election Commission] and specified in such notification; and
- (b) after the names of the members of the Legislative Assembly first constituted under the Constitution have been notified under section 77, call upon such members by another notification in the Gazette to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder before such date as may be appointed in this behalf by the ³[Election Commission] and specified in such notification.

29. Notification for biennial election to the Legislative Council

For the purpose of filling the seats of members of the Legislative Council retiring on the expiration of their term of office, the ⁴[Governor] shall, by one or more notifications published in the Gazette on such date or dates as may be recommended by the ⁵[Election Commission], call upon the members of the Legislative Assembly and all the Council Constituencies concerned to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder:

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

PART VIII

ADMINISTRATIVE MACHINERY FOR CONDUCT OF ELECTIONS

30. Definition

In this part and in Part IX, unless the context otherwise requires, "constituency" means an Assembly Constituency, or Council Constituency.

1 Words omitted by Act XXIII of 1963.

2 Substituted by Act XXVI of 1960, for "Election Commissioner".

3 Substituted by Act XXVI of 1960 for "Election Commissioner".

4 Substituted for "Sadar-i-Riyasat" by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965

5 Substituted by Act XXVI of 1960 for "Election Commissioner".

¹[31. Omitted.]

32. Returning Officers

For every constituency and for every election by the members of the Legislative Assembly to fill a seat or seats in the Legislative Council the ²[Election Commission] shall, in consultation with the Government, designate or nominate a Returning Officer who shall be ³[an officer of Government or of a local authority]:

Provided that nothing in this section shall prevent the ⁴[Election Commission] from designating or nominating the same person to be the Returning Officer for more than one constituency.

33. Assistant Returning Officer

(1) The ⁵[Election Commission] may appoint one or more persons to assist any Returning Officer in the performance of his functions:

Provided that every such person shall be ⁶[an officer of Government or a local authority:]

⁷[Provided further that nothing in this section shall prevent the Election Commission from appointing the same person to be the 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 the said function.

34. Returning Officer to include Assistant Returning Officer performing the functions of the Returning Officer

Reference in this Act to the Returning Officer shall, unless the context otherwise requires, be deemed to include an Assistant Returning

1 Section 31 omitted by Act XXVI of 1960.

2 Substituted by Act XXVI of 1960 for "Election Commissioner".

3 Substituted by Act XI of 1967 for "an officer of Government".

4 Substituted by Act XXVI of 1960 for "Election Commissioner".

5 Substituted by Act XXVI of 1960 for "Election Commissioner".

6 Substituted by Act XI of 1967 for "an officer of Government".

7 Inserted by Act IX of 1997 (s. 4).

Officer performing any function which he is authorised to perform under sub-section (2) of section 33.

35. General duty of the Returning Officer

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

¹**36. Provision for polling stations for constituencies**

The District Election Officer shall, with the previous approval of the Election Commission, provide a sufficient number of polling stations for every constituency, the whole or greater part of which lies within his jurisdiction, and shall publish, in such manner as the Election Commission may direct, a list showing the polling stations so provided and the polling areas or groups of voters for which they have respectively been provided.]

²**36-A. Provision of polling stations outside the territorial limits of a constituency for security reasons**

(1) Notwithstanding anything contained in section 36, the District Election Officer shall, with the previous approval of the Election Commission, provide polling stations, outside the territorial limits of the constituency lying within his jurisdiction, to enable such class of persons of that constituency as may be notified under sub-section (2) to vote at an election.

(2) The Election Commission may, in consultation with the Government, by notification in the Government Gazette, specify such class of persons for purposes of sub-section (1) who for reasons of security are not in a position to give their votes in the polling station provided under section 36.]

37. Appointment of Presiding Officers for polling stations

(1) The ³[District Election Officer] shall appoint a Presiding Officer for each polling station and such Polling Officer or Officers as he thinks necessary, but he shall not appoint any person who has been employed

1 Section 36 substituted by Act XI of 1967.

2 Section 36-A inserted by Act IX of 1997 (s-5).

3 Substituted by Act XI of 1976, for "Returning Officer."

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 ¹[District Election Officer] accordingly:

Provided further that nothing in this sub-section shall prevent the ¹[District Election Officer] from appointing the same person to be the Presiding Officer for more than one polling station in the same premises.

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

(3) If the Presiding Officer owing to illness or other unavoidable cause, is obliged to absent himself from the polling station, his functions shall be performed by such Polling Officer as has been previously authorised by the ²[District Election Officer] to perform such functions during any such absence.

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

38. General duty of the 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.

39. Duties of a Polling Officer

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

³[39-A. Returning Officer, Presiding Officer, etc., deemed to be on deputation to the Election Commission

The Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer, and any other officer appointed under this Part, and any Police

¹ Substituted by Act XI of 1976, for "Returning Officer".

² Section 36-A inserted by Act IX of 1997 (s-5).

³ Section 39-A inserted by Act IX of 1997, (s-6).

Officer, designated for the time being by the 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.]

40. Special provisions in case of certain elections

(1) The Returning Officer for an election by the members of the Legislative Assembly to fill a seat or seats in the Legislative Council shall, with the previous approval of the ¹[Election Commission], fix the place at which the poll will be taken for such election and shall notify the place so fixed in such manner as the ²[Election Commission] may direct.

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

PART IX

CONDUCT OF ELECTION

Chapter I — Nomination of candidates

41. Appointment of dates for nominations etc.

As soon as the notification calling upon a constituency to elect a member or members is issued, the ³[Election Commission] shall, by notification in the Gazette, appoint-

- (a) the last date for making nominations, which shall be ⁴[the seventh day after the date of publication of the first mentioned notification] or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- (b) the date for the scrutiny of nominations, which shall be ⁵[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;

1 Substituted by Act XXVI of 1960, for Election Commissioner.

2 Substituted by Act XXVI of 1960, for Election Commissioner.

3 Substituted by Act XXVI of 1960, for Election Commissioner.

4 Substituted by Act VII of 1983, dated 18.03.1983.

5 Substituted by Act XI of 1967 for the second day after.

- (c) the last date for the withdrawal of candidatures, which shall be the ¹[second day] after the date for the scrutiny of nominations or if that day is a public holiday, the next succeeding day which is not a public holiday;
- (d) the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the ²[fourteenth day] after the last date for the withdrawal of candidature; and
- (e) the date before which the election shall be completed.

³[x x x]

42. Public notice of election

On the issue of the notification under section 41, the Returning Officer ⁴[x x x] 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.

43. Nomination of candidates for election

⁵[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 the Constitution and this Act.]

44. Presentation of nomination paper and requirements for a valid nomination

⁶[(1) On or before the date appointed under clause (a) of section 41 each candidate shall, in person or through an agent to be authorised in the prescribed manner, 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 42 a nomination paper completed in the prescribed form and signed by the candidate:

1 Substituted by Act VII of 1983, dated 18.03.1983.

2 Substituted by Act IX of 1997.

3 Explanation to section 41 omitted by Act XXIV of 1975, dated 19.08.1975.

4 Words omitted ibid.

5 Substituted by Act IX of 2014, s-8. Earlier it stood as:- Any person may nominate himself as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act.

6 Substituted by Act XXIV of 1975, dated 19.08.1975.

¹[Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency:

Provided further that no nomination paper shall be delivered to the Returning Officer on a day which is a public holiday.

Explanation. — For the purpose of this sub-section "recognised political party" means a political party for which a symbol is reserved by the Election Commission.]

(1-A) The Returning Officer shall, at the time of the presentation of the nomination paper, remind the candidate to make and subscribe the oath or affirmation on any day previous to the date fixed under section 46 for the scrutiny of nomination.]

(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 ²[particular Scheduled Castes of the State of which he is a member.]

(3) Where the candidate is a person who, having held any office referred to in ³[section 24-B] has been dismissed and a period of five years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by certificate issued in the prescribed manner by the ⁴[Election Commission] to the effect that he has not been dismissed for corruption or disloyalty to the State.

⁵[(4) On the presentation of a nomination paper, the Returning Officer shall satisfy himself that the name and the electoral roll number of the candidates ⁶[XXX] as entered in the nomination paper is the same as that entered in the electoral roll:

⁷[Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate ⁸[x x x

1 Substituted by Act IX of 1997.

2 Substituted by Act XII of 1957 for certain words w.e.f. 2-2-1957.

3 Substituted by Act VIII of 1971 for "Clause (f) of section 24".

4 Substituted by Act XXIV of 1960 for "Election Commissioner".

5 Substituted vide Act XXIV of 1975 w.e.f. 15-8-1977.

6 Omitted vide Act XXIV of 1975.

7 Proviso to sub-section (4) substituted by Act XI of 1967.

8 Omitted vide Act XXIV of 1975.

x] or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the Returning Officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.]

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

¹[(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper:

Provided that not more than four nomination papers shall be presented by ²[x x x] any candidate or accepted by the Returning Officer for election in the same constituency.]

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

- (i) in the case of general election to the Legislative Assembly (whether or not held simultaneously from all Assembly Constituencies), from more than two Assembly Constituencies;
- (ii) in the case of a biennial election to the Legislative Council from more than two Council Constituencies;
- (iii) in the case of bye-elections to the Legislative Assembly which are held for two or more Assembly Constituencies

1 Substituted by Act I of 1962.

2 Omitted by Act XXIV of 1975, dated 19.08.1975.

3 Inserted by Act IX of 2014, S-9.

simultaneously, from more than two such Assembly Constituencies ;

- (iv) in the case of bye-elections to the Legislative Council, from more than two such Council Constituencies."

*Explanation:—*For the purposes of this sub-section, two or more bye-elections shall be deemed to be held simultaneously where the notification calling such bye-elections are issued by Election Commission under sections 27, 28, 29 or, as the case may be 152 and 153, on the same date.]

¹**[44-A. Candidate to furnish information only under the Act and the rules**

Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election which is not required to be disclosed or furnished under this Act or the rules made thereunder.]

²**[44-B. Right to information**

³(1) A candidate shall, apart from any information which he is required to furnish under the Act or the rules made thereunder, also furnish in his nomination paper delivered under sub-section (1) of section 44, the following information, namely:—

- (i) whether he is convicted, acquitted or, discharged of any criminal offence in the past and, if so, whether he is punished within imprisonment or fine;
- (ii) whether he is accused in any pending case, prior to six months of filing of nomination, of any offence punishable with imprisonment for two years or more and in which charge is framed or cognizance is taken by the Court of law and, if so, the details thereof;
- (iii) the assets (immovable, moveable, bank balances, etc.) of the candidate and of her spouse and thereof dependants;

¹ Inserted by Act IX of 2014.

² Section 44-B inserted vide Act XXXIX of 2002, s. 2, w.e.f. 16-8-2002.

³ Sub-section (1) substituted vide Act XI of 2005, s. 3, w.e.f. 10-5-2005.

- (iv) liabilities, if any, particular Government dues or overdues of any public financial institution; and
- (v) the educational qualification of the candidate.]

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 44 also deliver to him an affidavit sworn by the candidate in the prescribed form for verifying the information specified in sub-section (1).

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

45. Deposits

¹[(1) A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited, ²[a sum of ten thousand rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe community, a sum of five thousand rupees] :

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

(2) Any sum required to be deposited under sub-section (1) shall not be deemed to have been deposited under that sub-section unless at the time of delivery of the nomination paper under sub-section (1) of section 44 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 to the credit of the Government as election deposit in the State Bank of India or in the Jammu and Kashmir Bank or in a Government Treasury.

¹ Substituted by Act IX of 1997 (s-9)

² Substituted for the words "a sum of five thousand rupees or where the candidate is a member of a Scheduled Caste, a sum of two thousand and five hundred rupees" by Act IX of 2014

46. 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 44, 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 ¹[containing description of the candidate similar to that contained in the nomination paper.]

47. Scrutiny of nominations

(1) On the date fixed for the scrutiny of nominations under section 41, the candidates, their election agents, ²[x x x] 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 44.

(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 enquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:-

- (a) ³[that on the date fixed for the scrutiny of nominations the candidate] either is not qualified or is disqualified for being chosen to fill the seat under any of the provisions of sections 51 and 69 of the Constitution and Part VI of this Act; or
- (b) that there has been failure to comply with any of the provisions of section 44 or section 45; or
- (c) that the signature of the candidate ⁴[x x x x] on the nomination paper is not genuine.

1 Substituted by Act XXIV of 1975, dated 19.08.1975, w.e.f. 17-9-1975.

2 Omitted by Act XXIV of 1975 (w.e.f. 15.8.1975).

3 Substituted by Act I of 1962 for "that the candidate".

4 Substituted by Act XXIV of 1975, dated 19.08.1975, w.e.f. 17-9-1975.

Explanation.— In the case of a person subject to preventive detention the certificate of the Superintendent of Jail or officer-in-charge of the place of detention that the said person has signed the nomination paper shall be conclusive proof of that fact.

(3) Nothing contained in clause (b) or clause (c) 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 hold the scrutiny on the date appointed in this behalf under clause (b) of section 41 and shall not allow any adjournment of the proceedings except when proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that in case ¹[an objection is raised by the Returning Officer or is made by any other person] the candidate concerned may be allowed

time to rebut it not later than the next day but one following the date fixed for scrutiny, and the Returning Officer shall record his decision on the date to which the proceedings have been adjourned.

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

(7) For the purposes of this section a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency unless it is proved that he is subject to a disqualification mentioned in section 12.

(8) ²[After all the nomination papers] have been scrutinised and decisions accepting or rejecting the same have been recorded, the Return-

¹ Substituted by Act I of 1962 for "an objection is made".

² Substituted by Act XXIV of 1975 w.e.f. 17-9-1975.

ing Officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid and affix it to his notice board.

¹[47A. Omitted.]

²[47B. Omitted.]

48. Withdrawal of candidature

(1) Any candidate may withdraw his candidature by a notice in writing signed by him and delivered before three O'clock in the afternoon on the day fixed under clause (c) of section 41 to the Returning Officer either by such candidate in person or by his ³[x x x] 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.

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

49. Publication of list of contesting candidates

(1) Immediately after the expiry of the period within which candidature may be withdrawn under sub-section (1) of section 48, the Returning Officer shall prepare and publish in such form and manner ⁵[as may be prescribed] a list of contesting candidates, that is to say, candidates who are included in the list of validly nominated candidates and who have not withdrawn their candidature within the said period.

⁶[(2) For the purpose of listing the names under sub-section (1), the candidates shall be classified as follows, namely:—

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

1 Section 47-A omitted by Act VII of 1983, dated 18.03.1983.

2 Section 47-B omitted by Act VII of 1983, dated 18.03.1983.

3 Omitted by Act XXIV of 1975, w.e.f. 17.09.1975.

4 Sub-section (3) substituted by Act I of 1962.

5 Substituted by Act IX of 1966, for "as the Election Commissioner may direct"

6 Substituted by Act IX of 2014, s-12. Earlier it stood as:- "(2) The said list contain names in alphabetical order and the addresses of the contesting candidates as given in the nomination paper together with such other particulars as may be prescribed."

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

50. Nomination of candidates at other elections

(1) As soon as the notification calling upon the members of the Legislative Assembly to elect a member or members is issued, the ¹[Election Commission] shall, by notification in the Gazette appoint-

- (a) the last date for making nominations, which shall be the sixth 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 nomination which shall be ²[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 candidature which shall be the second day after the date for the scrutiny of nomination or, if that day is a public holiday, the next succeeding day which is not public holiday;
- (d) the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the seventh day after last day for the withdrawal of candidature; and
- (e) the date before which the election shall be completed.

³[x x x].

(2) The provisions of section 42 to 49 excluding sub-sections (2) and (5) of ⁴[sections 44 and 45] shall apply in relation to any such election as they apply in relation to an election in any constituency:

Provided that—

- (a) any references in the said provisions to the electoral roll of the constituency shall, unless the context otherwise requires, be

1 Substituted by Act XXVI of 1960 for "Election Commissioner".

2 Substituted by Act XI of 1967, for "the second day after".

3 Explanation omitted *ibid*.

4 Substituted by Act VII of 1983, dated 18.03.1983.

construed, in the case of an election by the members of the Legislative Assembly, as references to the list of members of that Assembly maintained under sub-section (1) of section 154;

- ¹[(aa) in the case of an election to the Legislative Council, by members of the Legislative Assembly, clause (a) of sub-section (2) of section 47 shall be construed as including reference to sub-section (2) and (3) of section 50 of the Constitution];
- (b) any reference in the said provisions to section 41 shall be construed as reference to sub-section (1) of this section; and
- (c) at the time of presenting the nomination paper, the Returning Officer may require the person presenting the same to produce either a copy of the electoral roll, or part of the electoral roll, in which the name of the candidate is included or a certified copy of the relevant entries in such roll.

²**[50-A. Allocation of equitable sharing of time**

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

(2) The allocation of equitable sharing of time under sub-section (1), in respect of an election, shall be made after the publication of list of contesting candidates under section 49 for the election and shall be valid till forty-eight hours before the hour fixed for poll for such election.

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

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

Explanation :—For the purposes of this section,—

¹ Clause (aa) inserted by Act XI of 1967.

² Inserted by Act IX of 2014, s-13.

- (a) "electronic media" includes radio and any other broadcasting media notified by the State Government in the Government Gazette ;
- (b) "cable television network" and "cable operator" have the meanings respectively assigned to them under the Cable Television Networks (Regulation) Act, 1995 (Central Act No. 7 of 1995).]

CHAPTER II

CANDIDATES AND THEIR AGENTS

51. 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 to the Returning Officer.

¹[x x x]

²**[52. Disqualification for being an election agent**

Any person who is for the time being disqualified for being a member of either House of Parliament or of the Legislature of the State or for voting at elections to Parliament or Legislature of the State, shall, so long as the disqualification subsists, also be disqualified for being an election agent at any election under this Act.]

53. 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 revocation or of the death of an agent whether that event occurs before or during the election, or after the election but before the account of the candidate's elections expenses has been lodged in accordance with the provisions of section 86, the candidate may appoint another person to be his election agent and when such appointment is made, notice of the appointment shall be given to the Returning Officer.

¹ Proviso omitted by Act IX of 1997, (s.10).

² Section 52 substituted by Act XXII of 1981.

54. Functions of election agents

An election agent may perform such functions in connection with the election as are authorised by or under this Act to be performed by an election agent.

55. Appointment of polling agents

A contesting candidate or his election agent may appoint 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 36 or at the place fixed under sub-section (1) of section 40 for the poll.

56. Appointment of counting agents

A contesting candidate or his election agent may appoint 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.

57. 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 revocation or of the death of a polling agent before the close of the poll, the candidate or his election agent may appoint another polling agent at any time before the poll is closed and shall forthwith give notice of such appointment 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 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 another counting agent at any time before the counting of votes is commenced and shall forthwith give notice of such appointment to the Returning Officer.

58. Function 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.

59. 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 ¹[contesting candidate] at such election and his election agent shall have a right to be present at any polling station provided under section 36 for the taking of the poll or at the place fixed under sub-section (1) of section 40 for the poll.

(2) A ²[contesting candidate] or his election agent may himself do any act or thing which any polling agent or the counting agent of such ³[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 ⁴[contesting candidate] in doing any such act or thing.

60. 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, the place appointed for the purpose shall not, if the act or thing is otherwise duly done, invalidate the act or thing done.

CHAPTER III

GENERAL PROCEDURE AT ELECTIONS

⁵61. Death of the candidate before the Poll

- (1) If a candidate set up by a recognised political party,-
- (a) dies at any time after 11.00 A.M. on the last date for making nominations and his nomination is found valid on scrutiny under section 47; or
 - (b) whose nomination has been found valid on scrutiny under section 47 and has not withdrawn his candidature under section 48, dies, and in either case, a report of his death is

1 Substituted by Act IX of 1966.

2 Substituted by Act IX of 1966.

3 Substituted by Act IX of 1966

4 Substituted by Act IX of 1966

5 Section 61 substituted by Act IX of 1997, (s.11)

received at any time before the publication of the list of contesting candidates under section 49; or

- (c) dies as a contesting candidate and a report of his death is received before the commencement of the poll, the Returning Officer shall, upon being satisfied about the fact of the death of the candidate, by order announce an adjournment of the poll to a date to be notified later and report the fact to the Election Commission and also to the Government:

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

(2) The Election Commission shall, on the receipt of a report from the Returning Officer under sub-section (1), call upon the recognised political party, whose candidate had died, to nominate another candidate for the said poll within seven days of issue of such notice to such recognised political party and the provisions of sections 41 to 48 shall, so far as may apply in relation to such nomination as they would apply to other nominations:

Provided that no person who has given a notice of withdrawal of his candidature under sub-section (1) of section 48 before the adjournment of the poll shall be ineligible for being nominated as a candidate for the election after such adjournment.

(3) Where a list of contesting candidates had been published under section 49 before the adjournment of the poll under sub-section (1), the Returning Officer shall again prepare and publish a fresh list of contesting candidates under that section so as to include the name of the candidate who has been validly nominated under sub-section (2).

Explanation. — For the purposes of this section, "recognised political party" means a political party for which a symbol is reserved by the Election Commission.]

62. Procedure in contesting and uncontesting 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 ¹[Election Commission] shall, by notification in the Gazette, call upon the constituency or members of the Legislative Assembly, as the case may be, to elect a person or persons to fill the remaining seat or seats:

Provided that where the constituency or the members of the Legislative Assembly 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 ²[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 constituency or such members.

³[63. Omitted].

64. 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 and this Act.

⁴[65. Omitted].

**CHAPTER IV
THE POLL**

66. Fixing time for Poll

The ⁵[Election Commission] shall fix the hours during which the poll will be taken, and the hours so fixed shall be published in such manner as may be prescribed:

Provided that the total period allotted on any one day, for polling at an election in a constituency shall not be less than eight hours.

¹ Substituted by Act XXVI of 1960 for "Election Commissioner".

² Section 63 omitted by Act I of 1962.

³ Section 63 omitted by Act I of 1962.

⁴ Section 65 omitted by Act XXVI of 1960.

⁵ Substituted by Act XXVI of 1960 for "Election Commissioner".

67. Adjournment of poll in emergencies

(1) If at an election the proceedings at any polling station provided under section 36 or at the place fixed under sub-section (1) of section 40 for the poll are interrupted or obstructed by any riot or open violence, or if at any election it is not possible to take the poll at any polling station or, such place an account of any natural calamity, or any other sufficient cause, the Presiding Officer for such polling station or the Returning Officer presiding over such place, as the case may be, shall announce an adjournment of the poll to a date to be notified later, and where the poll is so adjourned by a Presiding Officer, he shall forthwith inform the Returning Officer concerned.

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

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

⁴68. Fresh poll in certain cases

(1) If at any election—

- (a) any ballot box or ballot papers used or intended to be used at a polling station or at a place fixed for the polls is or are—
 - (i) unlawfully taken out of the custody of the Presiding Officer or the Returning Officer; or
 - (ii) accidentally or intentionally destroyed or lost, or
 - (iii) damaged or tempered with to such an extent that the poll at that polling station or place is likely to be vitiated or that the result of the poll at that polling station or place cannot be ascertained; or

1 Section 68 substituted by Act XXIV of 1975, dated 19.08.1975.

2 Section 68 substituted by Act XXIV of 1975, dated 19.08.1975.

3 Substituted by Act XXVI of 1960 for "Election Commissioner".

4 Section 68 substituted by Act XXIV of 1975, dated 19.08.1975.

- ¹[(aa) any voting machine develops a mechanical failure during the course of the recording of votes; or]
- (b) any such error or irregularity in procedure as is likely to vitiate the poll is committed at a polling station or at a place fixed for the poll; or
- (c) there is not or has not been a free exercise of the right of voting at a polling station or at a place fixed for the poll by reason of the prevalence on a large scale of coercion and intimidation at that polling station or place, and information about the matter is received by the Election Commission from the Returning Officer or from any other source.

the Election Commission shall after taking all material facts and circumstances into account, either—

- (i) if satisfied that there is good reason for directing a fresh poll, declare the poll at that polling station or place to be void, appoint a day and fix the hours for taking a fresh poll at that polling station or place and notify the day so appointed and the hours so fixed, in such manner as it may deem fit; or
- (ii) if satisfied that the result of a fresh poll at that polling station or place will not in any way affect the ²[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 directions to the Returning Officer as it may deem proper for the further conduct and completion of the election.

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

³**68-A. Adjournment of poll of countermanding of election on grounds 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 polling station or place cannot be ascertained; or

¹ Inserted by Act I of 2002, (s.2).

² Substituted by Act I of 2002, s. 2.

³ Section 68-A inserted by Act IX of 1997, s. 12.

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

the Returning Officer shall forthwith report the matter to the Election Commission.

(2) In every case referred to in clause (a) or clause (b) of sub-section (1), the Election Commission shall, on the receipt of a report from the Returning Officer under sub-section (1) or otherwise, after taking all material circumstances into account, either-

- (a) declare that the poll at that polling station be void, appoint a day and fix the hours, for taking fresh poll at that polling station or place and notify the date so appointed and hours fixed in such manner as it may deem fit; or
- (b) if satisfied that in view of the large number of polling stations or places involved in booth capturing the result of the election is likely to be affected, or that booth capturing had affected counting of votes in such a manner as to affect the result of the election declare that the poll in that constituency be void, appoint a day and fix the hours for taking fresh poll in that constituency and notify that date so appointed and the hours so fixed in such manner as it may deem fit or countermand the election in that constituency.

Explanation.— In this section, "booth capturing" shall have the same meaning as in section 142-A.]

69. 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, ¹[and, save as expressly provided by this Act, no vote shall be received by proxy]:

²[Provided that the votes at every election to fill a seat or seats in the Legislative Council shall be given by open ballot.]

¹ Substituted for the words "and no vote shall be received by proxy" by Act IX of 2014.

² Inserted by Act No. XIX of 2011, dt. 21.10.2011.

70. Special procedure for voting by certain classes of persons

¹[Without prejudice to the generality of the provisions contained in section 69, provision may be made, by rules made under this Act, for enabling,—

- (a) any of the persons as is referred to in clause (a) or clause (b) of sub-section (8) of section 16 of this Act, to give his vote either in person or by postal ballot, or by proxy, but not in any other manner, at an election in constituency where poll is taken ;
- (b) any of the following persons to give his vote either in person or by postal ballot, but not in any other manner, at an election in a constituency where a poll is taken, namely:—
 - (i) any person as is referred to in clause (c) and clause (d) of sub-section (8) of section 16 of this Act ; and
 - (ii) the wife of any such person as is referred to in sub- clause (i) to whom the provisions of sub-section (6) of section 16 of this Act apply ;
- (c) any person belonging to a class of persons notified by the Election Commission in consultation with the Government to give his vote by postal ballot, but not in any other manner, at an election in a constituency where a poll is taken subject to the fulfillment of such requirement as may be specified in those rules ; and
- (d) any person subjected to preventive detention under any law for the time being in force to give his vote by postal ballot, but 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 those rules.]

1 Section 70 substituted by Act IX of 2014, s-15. Earlier it stood as:- "Without prejudice to the generality of the provisions contained in section 69, provision may be made by rules made under this Act for enabling- (a) any of the following persons to give his votes by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken, namely:- (i) any person whom the provisions of sub-section (3) of section 16 of this Act apply; (ii) the wife of any such person as is referred to in clause (i) to whom the provisions of sub-section (6) of the said section 16 apply; (b) any person subject 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 those rules. (c) any class of persons notified by the Election Commission in consultation with the Government to give their votes by postal ballot and not in any other manner at an election in a constituency where a poll is taken subject to the fulfilment of such requirements as may be specified in those rules.

¹[71. Special procedure for preventing personation of election

With a view to preventing personation of electors provision may be made by rules made under this Act,-

- (a) for the marking with indelible ink of the thumb or any other finger of every elector who applies for a ballot paper or ballot papers for the purpose of voting at a polling station before delivery of such paper or papers to him;
- (b) for the production before the Presiding Officer or a Polling Officer of a polling station by every such elector as aforesaid of his identity card before the delivery of a ballot paper or ballot papers to him if under rules made in that behalf under this Act, electors of the constituency in which the polling station is situated have been supplied with identity cards with or without their respective photographs attached thereto; and
- (c) for prohibiting the delivery of any ballot paper to any person for voting at a polling station if at the time such person applies for such paper he has already such a mark on his thumb or any other finger or does not produce on demand his identity card before the Presiding Officer or a Polling Officer of the polling station.]

²[71-A. Voting machine at elections

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

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

¹ Section 71 substituted by Act VIII of 1971.

² Inserted by Act I of 2002, (s. 3)

72. Right to vote

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

(2) No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in section 12.

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

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

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

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

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

²[73. Omitted]

CHAPTER V**COUNTING OF VOTES****³[74. Counting of votes and recount**

(1) 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.

(2) At any time before the declaration of the result of an election, the Returning Officer may order recount of the votes either wholly or in part:

¹ Inserted by Act IX of 2014, s-16.

² Section 73 omitted by Act I of 1962.

³ Section 74 substituted by Act XXIV of 1975, dated 19.08.1975.

Provided that the Returning Officer shall also order recount of the votes when so directed by the Election Commission before the declaration of the result under any provision of this Act.

(3) The same procedure shall as far as may be, be followed in a recount as in original count.

¹[74-A. Destruction, loss etc. of ballot papers at the time of counting

(1) If at anytime 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 tempered with, to such an extent that the result of the poll at that polling station or place cannot be ascertained, the Returning Officer shall forthwith report the matter to the Election Commission.

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

- (a) direct that the counting of votes shall be stopped, declare the poll at that polling station or place to be void, appoint a day, and fix the hours, for taking a fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner as it may deem fit; or
- (b) if satisfied that the result of a fresh poll at that polling station or place will not, in any way, affect the result of the election, issue such directions to the Returning Officer as it may deem proper for the resumption and completion of the counting and for the further conduct and completion of the election in relation to which the votes have been counted.

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

75. Equality of votes

If after the counting of the votes is completed, an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of those candidates to be declared elected, the Returning

¹ Section 74-A inserted by Act XI of 1967.

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.

76. Declaration of results

When the counting of the votes has been completed, the Returning Officer ¹[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.

77. Report of the result

As soon as may be after the result of an election has been declared, the Returning Officer shall report the result to the Government and the ²[Election Commission] and also to the Secretary of the concerned House of the Legislature, and the Government shall cause to be published in the Gazette the declarations containing the names of the elected candidates.

78. Date of election of candidate

For the purposes of this Act, the date on which a candidate is declared by the Returning Officer under the provisions of section 62, ³[xxx] ⁴[xxx] or section 76 to be elected to a House of the Legislature shall be the date of election of that candidate.

CHAPTER VI

MULTIPLE ELECTIONS

79. Vacation of seats when elected to both Houses of the Legislature

(1) Any person who is chosen a member of both the Legislative Assembly and Legislative Council and who has not taken his seat in either House may by notice in writing signed by him and delivered to the ⁵[Chief Electoral Officer] within ten days from the date, or the later of the dates on which he is so chosen, intimate in which of the Houses he wishes to serve, and thereupon, his seat in the House in which he does not wish to serve shall become vacant.

¹ Substituted by Act V of 1967, for "shall forthwith declare".

² Substituted by Act XXVI of 1960 for "Election Commissioner".

³ The words and figures "section 63" omitted by Act I of 1962.

⁴ The words and figures "section 65" omitted by Act XXVI of 1960.

⁵ Substituted *ibid.*

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

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

(4) For the purposes of this section and of section 80, the date on which a person is chosen to be a member of either House of the Legislature shall be, in the case of an elected member, the date of his election, and in the case of a nominated member, the date of first publication in the Gazette of his nomination.

80. Vacation of seats by person already members of one House on election to other House of Legislature

(1) If a person who is already a member of the Legislative Assembly and has taken his seat in such House, is chosen a member of the Legislative Council, his seat in the Legislative Assembly shall, on the date on which he is so chosen, become vacant.

(2) If a person who is already a member of the Legislative Council and has taken his seat in such Council is chosen a member of the Legislative Assembly his seat in the Legislative Council shall, on the date on which he is so chosen, become vacant.

81. Election to more than one seat in either House of the Legislature

If a person is elected to more than one seat in either House of Legislature, then, unless within the prescribed time he resigns all but one of the seats by writing under his hand addressed to the Speaker or Chairman, as the case may be, or to such other authority or officer as may be prescribed all the seats shall become vacant.

CHAPTER VII

PUBLICATION OF ELECTION RESULTS AND NOMINATIONS

82. Publication of results of general elections to the Legislative Assembly and of names of persons nominated thereto

Where a general election is held for the purpose of constituting the first Legislative Assembly under the Constitution or a new Legislative Assembly, as the case may be, there shall be notified by the Government in the Gazette, as soon as may be, after the date originally fixed for the completion of the election under clause (e) of section 41, the name of the

members elected for the various constituencies by that date ¹[xxxx] and upon the issue of such notification the Assembly shall be deemed to be duly constituted:

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

- (a) to preclude the completion of the election in any Assembly Constituency or Constituencies for which time has been extended under the provisions of section 155; or
- (b) to affect the duration of the Legislative Assembly, if any, functioning immediately before the issue of the said notification.

83. Publication of results of elections to the Legislative Council and names of persons nominated to such Council

(1) Where elections are held for the purpose of constituting the first Legislative Council under the Constitution in pursuance of the notifications issued under section 28, there shall be notified by the Government in the Gazette the names of the members elected for the various Council Constituencies and by the members of the Legislative Assembly at the said elections together with the names of any persons nominated by the ²[Governor], as the case may be, under sub-section (6) of section 50 of the Constitution and upon the issue of such notification the Council shall be deemed to be duly constituted.

(2) After the elections held in any year in pursuance of the notification issued under section 29, there shall be notified by the Government in the Gazette the names of the members elected for the various Council Constituencies and by the members of the Legislative Assembly at the said election together with the names of any persons nominated by the ³[Governor] as the case may be, under sub-section (6) of section 50 of the Constitution.

⁴83-A. Declaration of assets and liabilities

(1) Every member of the Legislature of the State, whether elected or nominated, shall, within ninety days from the date on which he makes and subscribes an oath or affirmation, according to the form set out for

¹ Certain words omitted by Act I of 1962.

² Substituted for "Sadar-i-Riyasat" by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965.

³ Substituted for "Sadar-i-Riyasat" by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965.

⁴ Inserted by Act XXXIX of 2002 (s.4) w.e.f. 16.8.2002.

the purposes in the Fifth Schedule to the Constitution, for taking his seat in the Legislative Assembly of the State, or the Legislative Council of the State, as the case may be, furnished the information, relating to-

- (i) the movable and immovable property of which he is the owner or a beneficiary;
- (ii) his liabilities to any public financial institution; and
- (iii) his liabilities to the Central Government or the State Government to the Chairman of the Legislative Council of the State or the Speaker of the Legislative Assembly of the State, as the case may be.

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

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

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

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

Explanation. — For the purposes of this section,-

- (i) "immovable property" means the land and includes any building or other structure attached to the land or

permanently fastened to anything which is attached to the land;

- (ii) "moveable property" means any other property which is not the immovable property and includes corporeal and incorporeal property of every description;
- (iii) "public financial institution" means a public financial institution within the meaning of section 4A of the Companies Act, 1956 and includes bank; and
- (iv) "bank" referred to in clause (iii) means-
 - (a) "State Bank of India" constituted under section 3 of the State Bank of India Act, 1955;
 - (b) "Subsidiary Bank" having the meaning assigned to it in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959;
 - (c) "Regional Rural Bank" established under section 3 of the Regional Rural Banks Act, 1976;
 - (d) "corresponding new bank" having the meaning assigned to it in clause (a) of section 5 of the Banking Regulation Act, 1949; and
 - (e) "Co-operative Bank" having the meaning assigned to it in clause (cci) of section 5 of the Banking Regulation Act, 1949 as modified by sub-clause (i) of clause (c) of section 56 of that Act.]

CHAPTER VIII

ELECTION EXPENSES

84. Application of chapter

This Chapter shall apply only to elections to the Legislative Assembly.

85. Account of election expenses

(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of result thereof, both dates inclusive.

¹[*Explanation 1*:—For removal of doubts, it is hereby declared that—

- (a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorized by a candidate of that political party or his election agent for the purposes of this sub-section; and
- (b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 132 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorized by a candidate or by his election agent for the purposes of this sub-section.

Explanation 2:—For the purposes of clause (a) of Explanation 1, the expression "leaders of a political party", in respect of any election, means:—

- (i) where such political party is a recognized political party, such persons not exceeding forty in number ; and
- (ii) where such political party is other than a recognized political party, such persons not exceeding twenty in number, whose names have been communicated to the Election Commission and the Chief Electoral Officer of the State by the political party to be leaders for the purposes of such election within a period of seven days from the date of the notification for such election published in the Government Gazette of the State, as the case may be under this Act:

¹ Explanations 1 & 2 substituted by Act IX of 2014, s-17. Earlier it stood as:- "Explanation I. — Any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be expenditure in connection with the election incurred or authorised by the candidate or by his election agent for the purpose of this sub-section.

Explanation II. — For the removal of doubt, it is hereby declared that any expenditure incurred in respect of any arrangements made, facilities provided or any other act, or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 132 in the discharge or purported to discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by the candidate or by his election agent for the purposes of this sub-section."

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

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

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

86. Lodging of account with the District Election Officer

Every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election find the dates of their election are different, the later of those two dates, lodge with the ¹[District Election Officer] an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 85.

²[PART IX-A

FREE SUPPLY OF CERTAIN MATERIAL TO CANDIDATES OF RECOGNIZED POLITICAL PARTIES

86A. Free supply of copies of electoral rolls

(1) The Government shall, at any election to be held for the purposes of constituting the Legislative Assembly supply, free of cost, to the candidates of recognized political parties such number of copies of the electoral roll, as finally published under this Act and such other material as may be prescribed.

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

- (i) subject to such conditions as may be imposed by the Government in consultation with the Election Commission with respect to the reduction of the maximum expenditure which may be incurred by the candidate under section 85 ; and

¹ Substituted by Act XI of 1967 for "Returning Officer".

² Part IX-A inserted by Act IX of 2014, S. 18.

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

86-B. Supply of certain items to candidates, etc.

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

(2) Where the Election Commission supplies the items to the candidates under sub-section (1), the Government may, in consultation with the Election Commission, impose conditions with respect to the reduction of the maximum expenditure which may be incurred by the candidate under section 85.

*Explanation:—*For the purposes of section 50-A, this Chapter and clause (bb) of sub-section (2) of section 168, the expression "recognized political party", means a political party for which a symbol is reserved by the Election Commission]

PART X

DISPUTES REGARDING ELECTIONS

CHAPTER I

INTERPRETATION

87. Definitions

In this Part and in ¹[Part XI] unless the context otherwise requires-

- (a) "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate;
- (b) "costs" means all costs, charges and expenses of, or incidental to, a trial of an election petition;

¹ Substituted by Act XI of 1967 for "Parts XI and XII".

- (c) "electoral right" means the right of a person to stand or not to stand as, or ¹[to withdraw or not to withdraw] from being, a candidate, or to vote or refrain from voting at an election;
- ²[(d) "High Court" means the High Court of Jammu and Kashmir];
- (e) "returned candidate" means a candidate whose name has been published under section 77 as duly elected.

CHAPTER II

PRESENTATION OF ELECTION PETITIONS TO ³[HIGH COURT].

88. Election Petition

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

⁴[*Omitted*].

⁵**88-A. High Court to try election petitions**

(1) The Court having jurisdiction to try an election petition shall be the High Court.

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

89. Presentation of petitions

(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 108 and section 109 to the ⁶[High Court] by any candidate at such election or any elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates.

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

⁷[(2) *omitted*]

1 Substituted by Act XI of 1967 for "to withdraw".
 2 Clause (d) Substituted by Act XI of 1967.
 3 Substituted *ibid* for "Election Commissioner".
 4 Omitted by Act VII of 1983, dated 18.03.1983.
 5 Section 88-A inserted by Act XXIV of 1975, dated 18.03.1983.
 6 Substituted by Act XI of 1967.
 7 Sub-section (2) omitted by Act XXIV of 1975, dated 19.08.1975.

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

90. Parties to the petition

A petitioner shall join as respondents to his petition-c.

- (a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and
- (b) any other candidate against whom allegations of any corrupt practice and the particulars thereof.

91. Contents of petition

(1) An election petition-

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission, of each such practice; and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, Samvat 1977 (Act X of 1977) for the verification of pleadings:

³[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof].

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

1 Sub-section (3) inserted by Act I of 1962.

2 Words omitted by Act XI of 1967.

3 Proviso inserted by Act I of 1962.

92. Relief that may be claimed by the petitioner

A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.

¹[93. Omitted.]

CHAPTER III**TRIAL OF ELECTION PETITIONS****²[94. Trial of election petitions**

(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 89 or section 90 or section 125.

Explanation.— An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 106.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 88-A.

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

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

Explanation.— For the purposes of this sub-section and of section 105, the trial of a petition shall be deemed to commence on the date fixed for the respondent to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its

¹ Section 93 omitted by Act XI of 1967.

² Section 94 and 95 substituted by Act XI of 1967 for "sections 94 to 100".

opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

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

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

95. Procedure before the High Court

(1) Subject to the provisions of this Act and any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the provisions applicable under the Code of Civil Procedure, Samvat 1977 to the trial of suits:

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

(2) The provisions of the Evidence Act, Samvat 1977, shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.

96. Omitted.

97. Omitted.

98. Omitted.

99. Omitted.

100. Omitted.]

101. Documentary evidence

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

102. 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.

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

103. Answering of criminating questions and certificate of indemnity

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

Provided that-

- (a) a witness who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from ²[the High Court]; and
- (b) an answer given by a witness to a question put by or before ³[the High Court] shall not except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against him in any civil or criminal proceeding.

(2) When a certificate of indemnity has been granted to any witness, it may be pleaded by him in any court and shall be full and complete defence to or upon any charge under Chapter IX-A of the Ranbir Penal Code, Samvat 1989 or Part XI 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.

104. Expenses of witnesses

The reasonable expenses incurred by any person in attending to give evidence may be allowed by ⁴[the High Court] to such person shall, unless ⁵[the High Court] otherwise directs, be deemed to be part of the costs.

1 Inserted by Act No. XIX of 2011, dt. 21.10.2011.

2 Substituted by Act XI of 1967, for "the Tribunal".

3 Substituted by Act XI of 1967, for "the Tribunal".

4 Substituted by Act XI of 1967, for "the Tribunal".

5 Substituted by Act XI of 1967, for "the Tribunal".

105. Recrimination when seat claimed

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

Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of the commencement of the trial, given notice to ¹[the High Court] of his intention to do so and has also given the security and the further security referred to in sections 125 and 126 respectively.

(2) Every notice referred to in sub-section (1) shall be accompanied by the statement and particulars required by section 91 in the case of an election petition and shall be signed and verified in like manner.

106. Decision of ²[the High Court]

At the conclusion of the trial of an election petition ³[the High Court] shall make an order-

- (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 candidate to be void and the petitioner or any other candidate to have been duly elected.

107. Other orders to be made by ⁴[the High Court]

(1) At the time of making an order under section 106 ⁵[the High Court] shall also make an order-

- (a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording-
 - (i) a finding whether any corrupt practice has or has not been proved to have been committed by, or with the consent of,

1 Substituted by Act XI of 1967, for "the Tribunal".

2 Substituted by Act XI of 1967, for "the Tribunal".

3 Substituted by Act XI of 1967, for "the Tribunal".

4 Substituted by Act XI of 1967, for "the Tribunal".

5 Substituted by Act XI of 1967, for "the Tribunal".

any candidate or his agent at the election, and the nature of the corrupt practice; and

- (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and
- ¹[(iii) the period, if any, for which a person shall be disqualified; and]

- (b) fixing the total amount of costs payable, and specifying the persons by and to whom 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) of clause (a) unless-

- (a) he has been given notice to appear before ²[the High Court] and to show cause why he should be 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 ³[the High Court] and has given evidence against him, of calling evidence in his defence and of being heard.

(2) In this section and in section 108 the expression "agent" has the same meaning as in section 132.

108. Grounds for declaring election to be void

(1) Subject to the provisions of sub-section (2), if ⁴[the High Court] is of opinion-

- (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act; or
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or any 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

¹ Inserted by Act No. XXIV of 1975 dated 19-8-1975.

² Substituted by Act XI of 1967, for "the Tribunal".

³ Substituted by Act XI of 1967, for "the Tribunal".

⁴ Substituted by Act XI of 1967, for "the Tribunal".

- (ii) by any corrupt practice committed in the interests of the returned candidate ¹[by an agent other than his election agent]; or
- (iii) by the improper reception, refusal or rejection of any vote or the reception, of any vote which is void; or
- (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

²[the High Court] shall declare, the election of the returned candidate to be void.

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

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;
- ⁵(b) Omitted.]
- (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practice at the election; and
- (d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents;

then ⁶[the High Court] may decide that the election of the returned candidate is not void.

109. Grounds for which a candidate other than the returned candidate may be declared to have been elected

If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and ⁷[the High Court] is of opinion—

1 Substituted by Act XI of 1967.

2 Substituted by Act XI of 1967 for "the Tribunal".

3 Substituted by Act XI of 1967 for "the Tribunal".

4 Substituted by Act XI of 1967 for "the Tribunal".

5 Clause (b) omitted ibid.

6 Substituted by Act XI of 1967 for "the Tribunal".

7 Substituted by Act XI of 1967 for "the Tribunal".

- (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;

¹[the High Court] shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected.

110. Procedure in case of an equality of votes

If during the trial of an election petition it appears that there is an equality of votes between any candidates at the election and that the addition of a vote would entitle any of those candidates 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 these candidates, be effective also for the purposes of the petition; and
- (b) in so far as that question is not determined by such a decision, ²[the High Court] shall decide between them by lot and proceed as if the one on whom the lot then falls had received an additional vote.

³**111. Communication of order of the High Court**

The High Court shall, as soon as may be, after the conclusion of the trial of an election petition, intimate the substance of the decision to the Election Commission and the Speaker or Chairman, as the case may be, or the House of the Legislature and, as soon as may be thereafter, shall send to the Election Commission an authenticated copy of the decision.]

112. Transmission of order to the Government, etc. and its publication

As soon as may be after the receipt of any order made by ⁴[the High Court] under section 106 or section 107, the ⁵[Election Commission] shall forward copies of the order to the Government and also to the Speaker

1 Substituted by Act XI of 1967 for "the Tribunal".

2 Substituted by Act XI of 1967 for "the Tribunal".

3 Section 111 substituted by Act XI of 1967

4 Substituted by Act XI of 1967 for "the Tribunal".

5 Substituted by Act XXVI of 1960 for "Election Commissioner".

or Chairman, as the case may be, of the House of Legislature and shall cause the order to be published in the Gazette.

113. Effect of orders of ¹[the High Court]

(1) Every order of ²[the High Court] under section 106 or section 107 shall take effect as soon as it is pronounced by ³[the High Court.]

(2) Where by an order under section 106 the election of a returned candidate is declared to be void, acts and proceedings in which that returned candidate has, before the date thereof, participated as a member of the Legislature shall, not be invalidated by reason of that order, nor shall such candidate be subjected to any liability or penalty on the ground of such participation.

CHAPTER IV

WITHDRAWAL AND ABATEMENT OF ELECTION PETITIONS

⁴[114. Omitted.]

⁵[115. **Withdrawal of election petitions**

An election petition may be withdrawn only by leave of the High Court. (2) Where an application for withdrawal is made under sub-section (1), notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Government Gazette.]

⁶[116. **Procedure for withdrawal of election petition**

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

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

(3) If the application is granted,-

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

1 Substituted by Act XI of 1967 for "the Tribunal"

2 Substituted by Act XI of 1967 for "the Tribunal"

3 Substituted by Act XI of 1967 for "the Tribunal"

4 Section 114 omitted *ibid.*

5 Section 115 substituted by Act XI of 1967.

6 Section 116 substituted by Act XXVI of 1960.

- (b) the High Court shall direct that the notice of withdrawal shall be published in the Government Gazette and in such other manner as it may specify and thereupon the notice shall be published accordingly;
- (c) a person who might himself have been a petitioner may within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit.]

117. Report of withdrawal by ¹[the High Court] to the Election Commission

When an application for withdrawal is granted by ²[the High Court] and no person has been substituted as petitioner under clause (c) of sub-section (3) of section 116 in place of the party withdrawing, ³[the High Court] shall report the fact to the ⁴[Election Commission] and thereupon the ⁵[Election Commission] shall publish the report in the Gazette.

⁶118. Abatement of election petitions

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

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

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

1 Substituted by Act XI of 1967.

2 Substituted by Act XI of 1967.

3 Substituted by Act XI of 1967.

4 Substituted by Act XXVI of 1960.

5 Substituted by Act XXVI of 1960.

6 Section 118 substituted by Act XI of 1967 for "sections 118 to 121"

119. Omitted.

120. Omitted

121. Omitted.]

122. Abatement or substitution on death of respondent

If before the conclusion of the trial of an election petition, the sole respondent dies or gives notice that he does not intend to oppose the petition or any of the respondents dies or gives such notice and there is no other respondent who is opposing the petition ¹[the High Court] shall cause notice of such event to be published in the Gazette, and thereupon any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted in place of such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as ²[the High Court] may think fit.

CHAPTER V

APPEALS

³[**123. Appeals to Supreme Court**

(1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie in the Supreme Court on any question (whether of law or fact) from every order made by the High Court under section 106 or section 107.

(2) Every appeal under this Chapter shall be preferred within a period of thirty days from the date of order of the High Court under section 106 or section 107:

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

124. Stay of operation of order of High Court

(1) An application may be made to the High Court for stay of operation of an order made by the High Court under section 106 or section 107 before the expiration of the time allowed for appealing therefrom and the High Court may, on sufficient cause being shown and on such terms and conditions as it may think fit, stay the operation of the order; but no

¹ Substituted by Act XI of 1967

² Substituted by Act XI of 1967.

³ Section 123, 124 and 124-A substituted *ibid* for "sections 123 and 124".

application for stay shall be made to the High Court after an appeal has been preferred to the Supreme Court.

(2) Where an appeal has been preferred against an order made under section 106 or section 107, the Supreme Court may on sufficient cause being shown and on such terms and conditions as it may think fit, stay the operation of the order appealed from.

(3) When the operation of an order is stayed by the High Court or, as the case may be, by the Supreme Court, the order shall be deemed never to have taken effect under sub-section (1) of section 113, and a copy of the stay order shall immediately be sent by the High Court or, as the case may be, the Supreme Court, to the Election Commission and the Speaker or Chairman, as the case may be, of the House of Legislature.

124-A. Procedure in appeal

(1) Subject to the provisions of this Act and the rules, if any, made thereunder, every appeal shall be heard and determined by the Supreme Court as nearly as may be in accordance with the procedure applicable to the hearing and determination of an appeal from any final order passed by the High Court in the exercise of its original civil jurisdiction; and all the provisions of the Code of Civil Procedure, 1977 and the Rules of the Court (including provisions as to the furnishing of security and the execution of any order of the Court) shall, so far as may be, apply in relation to such appeal.

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

- (a) forward copies thereof to the authorities to which copies of the order of the High Court were forwarded under section 112; and
- (b) cause the decision to be published in the Government Gazette.]

CHAPTER VI

SECURITY FOR COSTS

¹[125. **Security for costs**

(1) At the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the rules of the High Court a sum of two thousand rupees as security for costs of the petition.

¹ Sections 125, 126 and 127 substituted by Act XI of 1967 for section 125 to 129.

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

126. Security for costs from a respondent

No person shall be entitled to be joined as respondent under sub-section (4) of section 94 unless he has given such security for costs as the High Court may direct.

127. Costs

Costs shall be in the discretion of the High Court:

Provided that where a petition is dismissed under clause (a) of section 106, the returned candidate shall be entitled to the costs incurred by him in contesting the petition and accordingly the High Court shall make an order for costs in favour of the returned candidate.

128. Omitted.

129. Omitted.]

130. Payment of costs out of security deposits and return of such deposits

(1) If in any order as to costs under the provisions of this Part there is a direction for payment of costs by any party to any person, such costs shall, if they have not been already paid, be paid in full, or so far as possible, out of the security deposit and the further security deposit, if any, made by such party under this Part, on an application made in writing in that behalf¹[within a period of one year, from the date of such order] to ²[the High Court] ³[xxxx] by the person in whose favour the costs have been awarded.

(2) If there is any balance left of any of the said security deposits after payment under sub-section (1) of the costs referred to in that sub-section, such balance, or where no costs have been awarded or no application as aforesaid has been made within the said period of ⁴[one year], the whole of the said security deposits may, on an application made in that behalf in writing to ⁵[the High Court] ⁶[****] by the person by whom the deposits, have been made, or if such

1 Substituted by Act XI of 1967.

2 Substituted by Act XI of 1967 for "the Election Commission".

3 The words "or such other officer as the Sadar-i-Riyasat may appoint in this behalf" omitted by Act XXVI of 1960.

4 Substituted by Act IX of 1966 for "six months".

5 Substituted by Act XI of 1967 for "the Election Commission".

6 The word "or such officer as the Sadar-i-Riyasat may appoint in this behalf" omitted by Act XXVI of 1960.

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.

131. Execution of orders as to costs

Any order as to costs under the provisions of this Part may be produced before the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, and such court shall execute the order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit:

Provided that where any such costs or any portion thereof may be recovered by an application made under sub-section (1) of section 130 no application shall lie under this section ¹[within a period of one year from the date of such order] unless it is for the recovery of the balance of any costs which has been left unrealised after an application has been made under that sub-section owing to the insufficiency of the amount of the security deposits referred to in that sub-section.

PART XI

CORRUPT PRACTICES AND ELECTORAL OFFENCES

CHAPTER I

CORRUPT PRACTICES

132. Corrupt Practices

The following shall be deemed to be corrupt practices for the purpose of this Act:-

²[(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, ³[to any person or public institution] with the object, directly or indirectly of including—
 - (a) a person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate at an election, or

¹ Substituted by Act XI of 1967.

² Sub-section (1) substituted by Act XI of 1967.

³ Substituted by Act XXIV of 1975, dated 19.08.1975.

- (b) an elector to vote or refrain from voting at an election, or as a reward to-
 - (i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or
 - (ii) an elector for having voted or refrained from voting;
- (B) the receipt of, or agreement to receive, any gratification whether as a motive or a reward-
 - (a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or
 - (b) by any person whomsoever for himself or any other person for voting, or refraining from voting or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation. — For the purposes of this clause the term ‘gratification’ is not restricted to pecuniary gratification or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 86.]

- (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 any other person, ¹[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 is referred to therein who-
 - (i) threatens any candidate or any elector, or any person in whom a candidate or an elector, is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community, or

¹ Inserted by Act XI of 1967.

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

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

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

¹[(3) The appeal by a candidate or his agent or by any other person with the consent, ²[connivance or knowledge] 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.

(3-a) The promotion of, or attempt to promote, feelings, or enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community or language, by a candidate or his agent or any other person with the consent, ³[connivance or knowledge] 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.]

⁴[(3-b) The commission of any unlawful activity by a candidate or his agent or by any other person or association with the consent ⁵[connivance or knowledge] 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.

1 Substituted by Act I of 1962 for sub-section (3).

2 Substituted by Act XXIV of 1975, dated 19.08.1975.

3 Substituted by Act XXIV of 1975, dated 19.08.1975.

4 Sub-section (3-b) inserted by Act VIII of 1971.

5 Substituted by Act XXIV of 1975, dated 19.08.1975.

Explanation. — In this sub-section, the expression "unlawful activity" shall have the meaning assigned to it in the Unlawful Activities (Prevention) Act, 1967.]

- (4) The publication by a candidate or his agent or by any other person ¹[with the consent ²[connivance or knowledge] or a candidate or his election agent] of any statement of fact which is false, and which he either believes to be false, or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, ³[xxxx] of any candidate being a statement reasonably calculated to prejudice the prospects of that candidate's election.

- (5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person ⁴[with the consent, ⁵[connivance or knowledge] 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 under section 36 or a place fixed under sub-section (1) of section 40 for the poll:

Provided that the hiring of a vehicle or a vessel by any elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel by an 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

1 Inserted by Act XI of 1967.

2 Substituted by Act XXIV of 1975, dated 19.08.1975.

3 Omitted by Act XI of 1967.

4 Substituted by Act XI of 1967 "for the conveyance".

5 Substituted by Act XXIV of 1975, dated 19.08.1975.

otherwise and whether used for drawing other vehicles or otherwise.

(6) The incurring or authorising expenditure in contravention of section 85.

¹[(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person ²[with the consent of a candidate or his election agent] any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any public servant as defined in section 21 of the Ranbir Penal Code, 1989:]

³[Provided that where any person in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported to discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to or in relations to any candidate or his election agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.]

Explanation — (1) In this section the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purposes of clause (7) a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent of that candidate.

⁴[(8) Booth capturing by a candidate or his agent or other person.]

1 Substituted by Act XXIV of 1975.

2 Inserted by Act IX of 1997.

3 Inserted by Act IX of 1997 (s.15).

4 Inserted by Act IX of 1997, (s.15).

CHAPTER II
ELECTORAL OFFENCES

¹**[132-A. Promoting enmity between classes in connection with election**

Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred between different classes of the citizens of India shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.]

²**[132AA. Penalty for filing false affidavit, etc.**

A candidate who himself or through his proposer, with intent to be elected in an election,-

- (i) fails to give information relating to sub-section (1) of section 44B; or
- (ii) gives false information which he knows or has reason to believe to be false; or
- (iii) conceals any information,

in his information paper delivered under sub-section (1) of section 44 or in his affidavit which is required to be furnished therein under sub-section (2) of section 44B as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable, with imprisonment for a term which may extend to six months, or with fine, or with both.]

³**[132-B. Commission of unlawful activity**

Any person who in connection with an election under this Act commits any unlawful activity shall be punishable with imprisonment for the term which may extend to seven years and shall also be liable to fine.

Explanation.— In this section the expression "unlawful activity" shall have the meaning assigned to it in the Unlawful Activities (Prevention) Act, 1967.]

¹ Section 132-A inserted by Act I of 1962

² Section 132-AA inserted by Act XXXIX of 2002, w.e.f. 16-8-2002

³ Section 132-B inserted by Act VIII of 1971.

¹[133. Prohibition of public meetings during the period of forty-eight hours ending with hour fixed for conclusion of poll

(1) No person shall—

- (a) convene, hold, attend, join or address any public meeting or procession in connection with an election ; or
- (b) display to the public any election matter by means of cinematograph, television or other similar apparatus ; or
- (c) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto, in any polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

(2) Any person who contravenes the provisions of sub- section (1) shall be punishable with imprisonment of a term which may extend to two years or with fine, or with both.

*Explanation:—*In this section, the expression "election matter" means any matter intended or calculated to influence or affect the result of an election.]

²[133-A. Restriction on publication and dissemination of result of exit polls, etc.

(1) No person shall conduct any exit poll and publish or publicise by means of the print or electronic media or disseminate in any other manner, whatsoever, the result of any exit poll during such period, as may be notified by the Election Commission in this regard.

1 Section 133 Substituted by Act IX of 2014, s-19. Earlier it stood as:- "Section 13:- Prohibition of public meetings:-(1) No person shall convene, hold, attend or address any public meeting in connection with election-

(a) in any polling area during the period of thirty six hour prior to the hour fixed for the commencement of the poll for any election in that area; and

(b) in any building belonging to or taken in lease by or under occupation of any Department of the Central or the State Government or any local body, corporation or autonomous body established by or under any law for the time being in force in the State.

(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."

2 Section 133-A inserted by Act IX of 2014, s-20

(2) For the purposes of sub-section (1), the Election Commission shall, by a general order, notify the date and time having due regard to the following, namely:—

- (a) in case of a general election, the period may commence from the beginning of the hours fixed for poll on the first day of poll and continue till half an hour after closing of the poll;
- (b) in case of bye-election or a number of bye-elections held together, the period may commence from the beginning of the hours fixed for poll on and from the first day of poll and continue till half an hour after closing of the poll:

Provided that in case of a number of bye-elections held together on different days, the period may commence from the beginning of the hours fixed for poll on the first day of poll and continue till half an hour after closing of the last poll ;

(3) Any person who contravenes the provisions of this section shall be punishable with imprisonment for a term which may extend to two years or with fine or with both."

Explanation:—For the purpose of this section—

- (a) "exit poll" means an opinion survey respecting how electors have voted at an election or respecting how all the electors have performed with regard to the identification of a political party or candidate in an election ;
- (b) "electronic media" includes internet, radio and television including internet protocol television, satellite, terrestrial or cable channels, mobile and such other media either owned by the Government or private person, or by both ;
- (c) "print media" includes any newspaper, magazine or periodical, poster, placard, handbill or any other document ; and
- (d) "dissemination" includes publication in any print media or broadcast or display on any electronic media.]

¹[133-B. Offences by Companies

(1) Where an offence under section 133-A has been committed by a company, every person who, at the time the offence was committed, was incharge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be

¹ Section 133-B inserted by Act IX of 2014, s-20

guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

*Explanation:—*For the purpose of this section,—

- (a) "company" means anybody corporate, and includes a firm or other association of individuals ; and
- (b) "director", in relation to a firm, includes a partner in the firm.]

134. Disturbances of election meetings

(1) Any person who at a public meeting to which this section applies acts, or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, ¹[shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees.]

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

(2) This section applies to any public meeting of a political character held in any constituency between the date of the issue of a notification under this Act calling upon the constituency to elect a member or members and the date on which such election is held.

(3) If any police officer reasonably suspects any person of committing an offence under sub-section (1), he may, if requested so to do by the Chairman of the meeting, require that person to declare to him immedi-

¹ Substituted for the words "shall be punishable with fine which may extend to two hundred and fifty rupees." by Act IX of 2014, s-21.

² Inserted by Act IX of 2014, s-21.

ately his name and address, and if that person refuses or fails so to declare his name and address, or if the police officer reasonably suspects him of giving a false name or address, the police officer may arrest him without warrant.

¹**[134-A. 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 address of the printer and the publisher thereof.

(2) No person shall print or cause to be printed any election pamphlet or poster-

- (a) unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally known, is delivered by him to the printer in duplicate; and
- (b) unless within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer, together with one copy of the document-
 - (i) where it is printed in the capital of the State, to the Chief Electoral Officer; and
 - (ii) in any other case, to the District Magistrate of the district in which it is printed.

(3) For the purposes of this section,

- (a) any process for multiplying copies of a document, other than copying it by hand, shall be deemed to be printing, and the expression 'printer' shall be construed accordingly; and
- (b) 'election pamphlet or poster' means any printed pamphlet, hand-bill or other document distributed for the purpose of promoting or prejudicing the election of a candidate or group of candidates or any placard or poster having reference to an election, but does not include any hand-bill, placard or poster merely announcing the date, time, place and other particular of an election meetings 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

¹ Section 134-A inserted by Act I of 1962.

which may extend to six months, or with fine which may extend to two thousand rupees or with both.

135. Maintenance of secrecy of voting

(1) Every officer, clerk, agent or other person who performs any duty in connection with the recording or counting of votes at an election shall maintain, and aid in maintaining, the secrecy of the voting and shall not, except for some purpose authorized by or under any law, communicate to any person any information calculated to violate such secrecy:

¹[Provided that the provisions of this sub-section shall not apply to such officer, clerk, agent or other person who performs any such duty at an election to fill a seat or seats in the Legislative Council.]

(2) Any person who contravenes the provision of sub-section (1) shall be punishable with imprisonment for a term which may extend to three months or with fine or with both:

136. Officers etc. at elections not to act for candidates or to influence voting

(1) No person who is ²[a District Election or a Returning Officer] or an Assistant Returning Officer or a Presiding or Polling Officer at an election, or an officer or clerk appointed by the Returning Officer or the Presiding Officer to perform any duty in connection with an election shall, in the conduct or the management of the election, do any act (other than the giving of vote) for the furtherance of the prospects of the election of a candidate.

(2) No such person as aforesaid, and no member of a police force, shall endeavour-

- (a) to persuade any person to give his vote at an election, or
- (b) to dissuade any person from giving his vote at an election, or
- (c) to influence the voting of any person at an election in any manner.

(3) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment which may extend to six months ³[and with fine.]

1 Inserted by Act No. XIX of 2011, dt. 21.10.2011.

2 Substituted by Act XI of 1967 for "a Returning Officer".

3 Substituted by Act XXIV of 1975, dated 19.08.1975.

¹[(4) An offence punishable under sub-section (3) shall be cognizable.]

137. Prohibition of canvassing in or near polling stations

(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 ²[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 election.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to two hundred and fifty rupees.

(3) An offence punishable under this section shall be cognizable.

138. Penalty for disorderly conduct in or near polling stations

(1) No person shall, on the date or dates on which a poll is taken at any polling station,-

- (a) use or operate within or at the entrance of the polling station, or in any public or private place in the neighborhood thereof, any apparatus for amplifying or reproducing the human-voice, such as a megaphone or a loud-speaker; or
- (b) shout or otherwise act in a disorderly manner, within or at the entrance of the polling station or in any public or private place in the neighborhood thereof so as to cause annoyance to any person visiting the polling station, for the poll, or so as to interfere with the work of the officer and other persons on duty at the polling station.

(2) Any person who contravenes or wilfully aids or abets the contravention of the provisions of sub-section (1) shall be punishable with

¹ Sub-section (4) inserted by Act XI of 1967.

² Substituted by Act XI of 1967 for "one hundred yards".

imprisonment which may extend to three months or with fine or with both.

(3) If the Presiding Officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under this section, he may direct any police officer to arrest such person, and thereupon the police officer shall arrest him.

(4) Any police officer may take such steps, and use such force, as may be reasonably necessary for preventing any contravention of the provisions of sub-section (1) and may seize any apparatus used for such contravention.

139. Penalty for misconduct at the polling station

(1) Any person who during the hours fixed for the poll at any polling station misconducts himself or fails to obey the lawful directions of the Presiding Officer may be removed from the polling station by the Presiding Officer or by any police officer on duty or by any person authorised in this behalf by such Presiding Officer.

(2) The powers conferred by sub-section (1) shall not be exercised so as to prevent any elector who is otherwise entitled to vote at a polling station from having any opportunity of voting at that station.

(3) If any person who has been so removed from a polling station re-enters the polling station without the permission of the Presiding Officer, he shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

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

140. Penalty for illegal hiring or procuring of conveyance at elections

If any person is guilty of any such corrupt practice as is specified in clause (5) of section 132 at or in connection with an election, he ¹[shall be punishable with imprisonment which may extend to three months and with fine which may extend to two thousand rupees.]

²[140-A. Making of false declaration

If any person makes in connection with-

1 Substituted for the words "shall be punishable with fine which may extend to one thousand rupees." by Act IX of 2014, s-22.

2 Section 140-A inserted by Act XXVI of 1960.

- (a) the preparation, revision or correction of an electoral roll, or
- (b) the inclusion or exclusion of any entry in or from an electoral roll, a statement or declaration in writing which is false and which he either knows or believes to be false or does not believe to be true he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.]

141. Breaches of official duty in connection with election

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

²[(1-A) An offence punishable under sub-section (1) shall be cognisable.]

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

(3) The persons to whom this section applies are the ³[Electoral Registration Officers], Assistant ⁴[Electoral Registration Officers, District Election Officers, Returning Officers], Assistant Returning Officers, Presiding Officers, Polling Officers, and any other person appointed to perform any duty in connection with ⁵[the preparation, revision or correction of an electoral roll,] the inclusion or exclusion of any entry in or from an electoral roll, the receipt of nomination 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.

⁶[141-A. Penalty for Government servants for acting as, election agent, polling agents or counting agent

(1) If any person in the service of the Government acts as an election agent or polling agent or a counting agent of a candidate at an election,

1 Substituted by Act XXIV of 1975, 19.08.1975.

2 Sub-Section (1-A) inserted by Act XI of 1967.

3 Substituted by Act IX of 1966.

4 Substituted by Act XI of 1967, for "Returning Officer".

5 Substituted by Act XXVI of 1960, for "the preparation of an electoral roll".

6 Section 141-A inserted by Act XI of 1967.

he shall be punishable with imprisonment for a term which may extend to three months, or with fine or with both.]

¹[**141-B. Prohibition of going armed to or near a polling station**

(1) No person, other than the returning officer, the presiding officer, any police officer and any other person appointed to maintain peace and order at a polling station who is on duty at the polling station, shall, on a polling day, go armed with arms, as defined in the Arms Act, 1959, of any kind within the neighbourhood of a polling station.

(2) If any person contravenes, the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to two years or, with fine or with both.

(3) Notwithstanding anything contained in the Arms Act, 1959, where a person is convicted of an offence under this section, the arms as defined in the said Act found in his possession shall be liable to confiscation and the licence granted in relation to such arms shall be deemed to have been revoked under section 17 of that Act.

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

142. Removal of ballot papers from polling stations to be an offence

(1) Any person who at any election ²[unauthorisedly] takes, or attempts to take, a ballot paper out of a polling station, or wilfully aids or abets the doing of any such act, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.

(2) If the Presiding Officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under sub-section (1), such officer may, before such person leaves the polling station, arrest or direct a police officer to arrest such person and may search such person or cause him to be searched by a police officer:

Provided that when it is necessary to cause a woman to be searched the search shall be made by another women with strict regard to decency.

(3) Any ballot paper found upon the person arrested on search shall be made over for safe custody to police officer by the Presiding Officer,

1 Section 141-B inserted by Act IX of 2014, s-23.

2 Substituted for the word "fraudulently" by Act IX of 2014, s-142.

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.

¹**[142-A. Offence of booth capturing**

(1) Whoever commits an offence of booth capturing shall be punishable with imprisonment for a term which shall not be less than ²[one year] but which may extend to ³[three years] and with fine, and where such offence is committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine.

Explanation.— For the purpose of ⁴[this sub-section and section 9B], booth capturing includes, among other things, all or any of the 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 free exercise of their right to vote;
- (c) coercing or intimidating or threatening directly or indirectly any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote;
- (d) seizure of a place for counting of votes by any person or persons, making the counting authorities surrender the ballot papers or voting machines and the doing of anything which effects the orderly counting of votes;
- (e) doing by any person in the service of the Government of all or any of the aforesaid activities or aiding or conniving at, any such activity in the furtherance of the prospects of the election of a candidate.

(2) An offences punishable under section (1) shall be cognizable.]

1 Inserted by Act IX of 1997.

2 Substituted for the word "six months" by Act IX of 2014, s-25.

3 Substituted for the word "two years" by Act IX of 2014, s-25.

4 Substituted for the words "this section" by Act IX of 2014, s-25.

¹[142-B. Grant of paid holiday to employees on the day of poll

(1) Every person employed in any business, trade, industrial undertaking or any other establishment and entitled to vote at an election to the Legislative Assembly shall, on the day of poll, be granted a holiday.

(2) No deduction or abatement of the wages of any such person shall be made on account of a holiday having been granted in accordance with sub-section (1) and if such person is employed on the basis that he would not ordinarily receive wages for such a day, he shall nonetheless be paid for such day the wages he would have drawn had not a holiday been granted to him on that day.

(3) If an employer contravenes the provisions of sub-section (1) or sub-section (2), then such employer shall be punishable with fine which may extend to five hundred rupees.

(4) This section shall not apply to any elector whose absence may cause danger or substantial loss in respect of the employment in which he/she is engaged.]

²[142-C. Liquor not to be sold, given or distributed on polling day

(1) No spirituous, fermented or intoxicating liquors or other substances of a like nature shall be sold, given or distributed at a hotel, eating house, tavern, shop or any other place, public or private, within a polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in the polling area.

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

(3) Where a person is convicted of an offence under this section, the spirituous, fermented or intoxicating liquors or other substances of a like nature found in his possession shall be liable to confiscation and the same shall be disposed of in such manner as may be prescribed.]

143. Other offences and penalties therefor

A person shall be guilty of an electoral offence if at any election he-

- (a) fraudulently defaces or fraudulently destroys any nomination paper; or
- (b) fraudulently defaces, destroys or removes any list, notice or other document affixed by or under the authority of a Returning Officer; or

¹ Section 142-B inserted by Act IX of 2014, s-26.

² Section 142-C inserted by Act IX of 2014, s-26.

- (c) fraudulently defaces or fraudulently destroys any ballot paper of 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 purposes of the election; or
 - (g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such acts.
- (2) Any person guilty of an electoral offence under this section shall-
- (a) if he is a Returning Officer or an Assistant Returning Officer or a Presiding Officer at a polling station or any other officer or clerk employed on official duty in connection with the election, be punishable with imprisonment for a term which may extend to two years or with fine or with both;
 - (b) if he is any other person, be punishable with imprisonment for a term which may extend to six months 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 any election including the counting of votes or to be responsible after an election for the used ballot papers and other documents in connection with such election but the expression "official duty" shall not include any duty imposed otherwise than by or under this Act.

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

²[144. Omitted.]

145. Amendment of Act XXIII of 1989

In the Code of Criminal Procedure, Samvat 1989

1 Sub-section (4) inserted by Act XI of 1967.

2 Section 144 omitted *ibid*.

- (a) in section 196, after the words and figures "section 127" the words, figures and letter "and section 171-F, so far as it relates to the offence of personation" shall be inserted;
- (b) in Schedule II-
 - (i) in the entry relating to section 171-F of the Ranbir Penal Code (XII of 1989) from the paragraph in column 2, the words "and personation" shall be omitted;
 - (ii) after the paragraph in column 2 of the said entry as so amended, the following paragraph shall be inserted, namely- "personation at an election"
 - (iii) in column 3, opposite the paragraph inserted by sub-clause (ii), the following paragraph shall be inserted, namely:- "may arrest without warrant";
 - (iv) in columns 4, 5, 6, 7 and 8, opposite the paragraph inserted by sub-clause (ii), the word "ditto" shall be inserted;
 - (v) in the entry relating to section 171-G of the Ranbir Penal Code, in column 3, for the word "ditto" the words "shall not arrest without warrant" shall be substituted.

¹**[145-A. Offences triable by Special Magistrate**

Notwithstanding anything contained in any other law for the time being in force, offences punishable under this chapter shall be triable by a Special Judicial Magistrate empowered under section 14 of the Code of Criminal Procedure, 1989.]

²**PART XII**

DISQUALIFICATIONS

146-151. Omitted.

PART XIII

BYE-ELECTIONS

152. Casual vacancies in the Legislative Assembly

(1) When the seat of a member elected to the Legislative Assembly becomes vacant or is declared vacant or his election to the Legislative Assembly is declared void, the ³[Election Commission] shall, subject to the provisions of sub-section (2), by a notification in the Gazette, call upon the Assembly Constituency concerned to elect a person for the purpose

¹ Substituted by Act XXIV of 1975, dated 19.08.1975.

² Part XII omitted by Act XI of 1967.

³ Substituted by Act XXVI of 1960, for "Election Commissioner".

of filling the vacancy so caused before such date as may be specified in the notification, and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

¹[*Omitted.*]

(2) If the vacancy so caused be a vacancy in a seat reserved in any such constituency for the Scheduled Castes, the notification issued under sub-section (1) shall specify that the person to fill that seat shall belong to the Scheduled Castes.

153. Casual vacancies in the Legislative Council

When before the expiration of the term of office of a member elected to the Legislative Council, his seat becomes vacant or is declared vacant or his election to the Legislative Council is declared void, the ²[Election Commission] shall, by a notification in the Gazette call upon the Council Constituency concerned or the members of the Legislative Assembly, as the case may be, to elect a person for the purpose of filling the vacancy so caused before such date as may be, specified in the notification, and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

³[**153-A. Time limit for filling vacancies referred to in sections 152 & 153**

Notwithstanding anything contained in section 152 and section 153, a bye-election for filling any vacancy referred to in any of the said sections shall be held within a period of six months from the date of the occurrence of the vacancy:

Provided that nothing contained in this section shall apply if—

- (a) the remainder of the term of a member in relation to a vacancy is less than one year; or
- (b) the Election Commission in consultation with the Government certifies that it is difficult to hold the bye-election within the said period.]

1 Omitted by Act VII of 1983, dated 18.03.1983.

2 Substituted by Act XXVI of 1960, for "Election Commissioner".

3 Section 153-A inserted by Act IX of 2014, s-27.

PART XIV
MISCELLANEOUS

154. List of members of the Legislative Assembly to be maintained by the Returning Officer

(1) The Returning Officer for an election by the members of the Legislative Assembly to fill a seat or seats in the Legislative Council shall, for the purposes of such election, maintain in his office in the prescribed manner and form a list of members of the Legislative Assembly.

(2) Copies of the list referred to in sub-section (1) shall be made available for sale.

155. Extension of time for completion of election

It shall be competent for the ¹[Election Commission] for reasons which it considers sufficient, to extend the time for the completion of any election by making necessary amendments in the notification issued by ²[it] under section 41 or sub-section (1) of section 50.

156. Term of office of members of the Legislative Council

(1) The term of office of a member of the Legislative Council, other than a member chosen to fill a casual vacancy, shall be six years but upon the first constitution of the Council the ³[Governor] shall, after consultation with the ⁴[Election Commission], make by order such provision as he thinks fit for curtailing the term of office of some of the members then chosen in order that, as nearly as may be, one-third of the members holding seats of each class shall retire in every second year thereafter.

⁵[(1-A) Notwithstanding anything contained in sub-section (1), the provisions relating to the first constitution of Legislative Council shall mutatis mutandis apply for curtailing the term of office of some of the members elected by the members of the Legislative Assembly constituted vide Notification SRO-349 dated 9th October, 1996.]

(2) A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office.

1 Substituted by Act XXVI of 1960, for "Election Commissioner".

2 Substituted by Act IX of 1966 for "him".

3 Substituted by the Jammu & Kashmir Constitution (6th Amdt.) Act, 1965 for "Sadar-i-Riyasat".

4 Substituted by Act XXVI of 1960, for "Election Commissioner".

5 Added by Act No. IX of 1997, (S-17).

157. Commencement of the term of office of members of the Legislative Council

(1) The term of office of a member of the Legislative Council whose name is required to be notified in the Gazette under section 83 shall begin on the date of such notification.

(2) The term of office of a member of the Legislative Council whose name is not required to be notified under section 83 shall begin on the date of publication in the Gazette of the declaration containing the name of such person as elected under section 77 or of the notification issued under sub-section (6) of section 50 of the Constitution, announcing the nomination of such person to the Council, as the case may be.

¹[158. Return or forfeiture of candidate's deposit

(1) The deposit, made under section 45 or under that section read with sub-section (2) of section 50, shall either be returned to the persons making it or his legal representative or be forfeited to the appropriate authority in accordance with the provisions of this section.

(2) Except in cases hereafter mentioned in this section, the deposit shall be returned as soon as practicable after the result of the election is declared.

(3) If the candidate is not shown in the list of contesting candidates, or if he dies before the commencement of the poll, the deposit shall be returned as soon as practicable after the publication of the list or after his death, as the case may be.

(4) Subject to the provisions of sub-section (3) the deposit shall be forfeited if at an election where a poll has been taken the candidate is not elected and the number of valid votes polled by him does not exceed one-sixth of the total number of valid votes polled by all candidates or in the case of more than one member at the election, one-sixth of the total number of valid votes so polled divided by the numbers to be elected:

Provided that where at an election held in accordance with the system of proportional representation by means of the single transferable vote, a candidate is not elected, the deposit made by him shall be forfeited if he does not get more than one-sixth of the number of votes prescribed in this behalf as sufficient to secure the return of a candidate.

1 Section 158 substituted by Act XI of 1967

- (5) Notwithstanding anything in sub-sections (2), (3) and (4),-
- (a) if at a general election, the candidate is a contesting candidate in more than one Assembly Constituency not more than one of the deposits shall be returned, and the others shall be forfeited;
 - (b) if the candidate is a contesting candidate at an election in more than one Council Constituency or at an election in a Council Constituency and at an election by the members of the State Legislative Assembly to fill seats in the Legislative Council, not more than one of the deposits shall be returned, and the others shall be forfeited.]

¹[159. **Staff of certain authorities to be made available for election work**

(1) The authorities specified in sub-section (2) shall, when so requested by Election Commission or the Chief Electoral Officer or any returning officer, make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election.

(2) The following shall be the authorities for the purpose of sub-section (1), namely:—

- (i) every local authority;
- (ii) every university established or incorporated by or under a Central or State Act;
- (iii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (iv) any other institution, concern or undertaking which is established by or under a Central, or State Act or which is controlled, or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or the State Government.]

¹ Section 159 substituted by Act IX of 2014, s-28. Earlier it stood as: "Section 159:-Staff of every local authority to be made available for election work:-Every local authority shall, when so requested by the Election Commission or the Chief Electoral Officer make available to any Electoral Registration Officer or any Returning Officer such staff as may be necessary for the performance of any duties in connection with an election."

160. Requisitioning of premises, vehicles, etc. for election purposes

(1) If it appears to the Government that in connection with an election-

- (a) any premises are needed or are likely to be needed for the purpose of being used as a polling station or for the storage of ballot boxes after a poll has been taken, or
- (b) any vehicle, vessel or animal is needed or is likely to be needed for the purpose of transport of ballot boxes to or from any polling station, or transport 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 Government may by order in writing requisition such premises, or such vehicle, vessel or animal, as the case may be and may make such further orders as may appear to it to be necessary or expedient in connection with the requisitioning:

Provided that no vehicle, vessel or animal which is being lawfully used by a candidate or his agent for any purpose connected with the election of such candidate shall be requisitioned under this sub-section until the completion of the poll at such election.

(2) The requisition shall be effected by an order in writing addressed to the person deemed by the 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 or road transport, whether propelled by mechanical power or otherwise.

161. Payment of compensation

(1) Whenever in pursuance of section 160 the Government requisitions any premises, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely:-

- (i) the rent payable in respect of the premises or if no rent is so payable, the rent payable for similar premises in the locality;
- (ii) if in consequence of the requisition of the premises the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change:

Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the 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 Government may determine:

Provided further that where there is any disputes as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred by the Government to an arbitrator appointed in this behalf by the Government for determination, and shall be determined in accordance with the decision of such arbitrator.

Explanation.— In this sub-section, the expression "person interested" means the person who was in actual possession of the premises requisitioned under section 160 immediately before the requisition, or where no person was in such actual possession, the owner of such premises.

(2) Whenever in pursuance of section 160 the 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 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 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 Government may determine:

Provided further that where immediately before the requisitioning the vehicle or vessel was by virtue of a hire-purchase agreement in the possession of a person, other than the owner, the amount determined under this sub-section as the total compensation payable in respect of the requisition shall be apportioned between that person and the owner in such manner as they may agree upon, and in default of agreement, in such manner as an arbitrator appointed by the Government in this behalf may decide.

162. Power to obtain information

The Government may with a view to requisitioning any property under section 160 or determining the compensation payable under section 161, by order, require any person to furnish to such authority as may be specified in the order, such information in his possession relating to such property as may be specified.

163. Power of entry into and inspection of premises etc.

(1) Any person authorised in this behalf by the Government may enter into any premises and inspect such premises and any vehicle, vessel or animal therein for the purpose of determining whether, and if so in what manner, an order under section 160 should be made in relation to such premises, vehicle, vessel or animal, or with a view to securing compliance with any order made under that section.

(2) In this section, the expression "premises" and "vehicle" have the same meanings as in section 160.

164. Eviction from requisitioned premises

(1) Any person remaining in possession of any requisitioned premises in contravention of any order made under section 160 may be summarily evicted from the premises by any officer empowered by the 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 break open any door of any building or do any other act necessary for effecting such eviction.

165. Release of premises from requisition

(1) When any premises requisitioned under section 160 are to be released from requisition, the possession thereof, shall be delivered to the person from whom the possession was taken at the time when premises were requisitioned, or if there were no such person, to the person deemed by the Government to be

owner of such premises, and such delivery of possession shall be a full discharge of the Government from all liabilities in respect of such delivery, but shall not prejudice any rights in respect of the premises which any other person may be entitled by due process of law to enforce against the person to whom possession of the premises is so delivered.

(2) Where the person to whom possession of any premises requisitioned under section 160 is to be given under sub-section (1) cannot be found or is not readily ascertainable or has no agent or any other person empowered to accept delivery on his behalf, the Government shall cause a notice declaring that such premises are released from requisition to be affixed on some conspicuous part of such premises and publish the notice in the Gazette.

(3) When a notice referred to in sub-section (2) is published in the Gazette, the premises specified in such notice shall cease to be subject to requisition on and from the date of such publication and be deemed to have been delivered to the person entitled to possession thereof and the Government shall not be liable for any compensation or other claim in respect of such premises for any period after the said date.

166. Delegation of functions of the Government with regard to requisitioning

The Government may, by notification in the Gazette, direct that any power conferred or any duty imposed on the Government by any of the provisions of sections 160 to 165 shall, under such conditions, if any, as may be specified in the direction, be exercised or discharged by such officer or class of officers as may be so specified.

167. Penalty for contravention of any order regarding requisitioning

If any person contravenes any order made under section 160 or section 162, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

PART XV **GENERAL**

168. Power to make rules

(1) The Government may, after consulting the ¹[Election Commission], by notification in the Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the particulars to be entered in the electoral rolls;

¹ Substituted by Act XXVI of 1960 for "Election Commissioner".

- (b) the preliminary publication of electoral rolls;
- ¹[(bb) the manner of allocation of equitable sharing of time on the cable television network and other electronic media.]
- (c) the manner in which and the time within which claims and objections as to entries in electoral rolls may be preferred;
- ²[(d) *Omitted.*]
- (e) the manner in which notice of claims or objections shall be published;
- (f) 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;
- (g) the final publication of electoral rolls;
- (h) the revision and correction of electoral rolls, and inclusion of name therein;
- ³[(hh) the procedure for proper verification of facts for amending, transposing or deleting any entry in the electoral rolls, under section 18.
- (hhh) the procedure for proper verification of facts for inclusion of or striking off, names in the electoral rolls, under sub-section (2) of section 19.]
- (i) the duties of Presiding Officers and Polling Officers at polling stations;
- (j) the checking of voters by reference to the electoral rolls;
- ⁴[(jj) the form of affidavit under sub-section (2) of section 44.
- (jjj) the form of contribution report.]
- (k) 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;
- (l) the manner in which votes are to be given by a Presiding Officer, Polling Officers, 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;

1 Inserted by Act IX of 2014, s-29.

2 Clause (d) omitted by Act IX of 1966.

3 Inserted by Act IX of 2014, s-29.

4 Inserted by Act IX of 2014, s-29

- (m) the procedure to be followed in respect of the tendered vote by a person representing himself to be an elector after an other person has voted as such elector;
- ¹[(mm) the manner of giving and recording of votes by means of voting machines and the procedure as to voting to be followed at polling stations where such machines are used;]
- (n) the procedure as to voting to be followed at elections held in accordance with the system of proportional representation by means of the single transferable vote;
- (o) the scrutiny and Counting of votes including cases in which a recount of votes may be made before the declaration of the result of the election;
- ²[(oo) the procedure as to counting of votes recorded by means of voting machines;]
- (p) the safe custody of ³[voting machines], ballot papers and other elections papers, the period for which such papers shall be preserved and the inspection and production of such papers;
- ⁴[(pp) the material to be supplied by the Government to the candidates of recognized political parties at any election to be held for the purposes of constituting the Legislative Assembly.]
- (q) any other matter required to be prescribed by this Act.

⁵[(3) Every rule made under this Act shall be laid as soon as may be after it is made before each House of the Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the sessions in which it is so laid or the session immediately following, both Houses agree that the rule should be either modified or annulled, the rule shall thereafter have effect only in such modified form or be of no effect, as the case, may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

169. Jurisdiction of Civil Courts barred

No Civil Court shall have jurisdiction—

1 Inserted by Act I of 2002, (s-3).

2 Inserted by Act I of 2002, (s-3).

3 Inserted by Act I of 2002, (s-3).

4 Inserted by Act IX of 2014, s-29

5 Inserted by Act I of 1962.

- (a) to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll for a constituency; or
- (b) to question the legality of any action taken by or under the authority of an ¹[Electoral Registration Officer], or any decision given by any authority appointed under this Act for the revision of any electoral roll or of any action taken or decision given by the Returning Officer or by any other person appointed under this Act in connection with an election.

170. Repeal

Subject to the provisions of section 20, all laws, rules, orders and notifications relating to the matters provided for in this Act are hereby repealed.

¹ Substituted by Act IX of 1966 for "Electoral Registrar".