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INTRODUCTION

Unlike most other democracies, in the case of India the institutional set up and conceptual framework of electoral law is set out in the Constitution itself, rather than an Act of the Legislature. Apart from several scattered provisions governing the subject of popular elections, the Constitution of India contains a separate chapter on elections.

The drafting Committee of the Constitution of India included the right of franchise as one of the fundamental rights and suggested including elections in the chapter on fundamental rights. But on deliberations in the Constituent Assembly it was concluded by consensus that it was not the right of franchise but its free and uninhibited exercise under the superintendence of a separate Constitutional Authority which was more pertinent to democracy.

The chapter on elections defines mainly the setting up of the Election Commission of India, its mandate and authority under the Constitution.

The principal enactments and regulations for superintendence, direction and control of the conduct of elections and related matters are the Representation of the People Act 1950, the Representation of the People Act 1951, the Presidential and Vice-Presidential Elections Act 1952, the Registration of Electors Rules 1960, the Conduct of Elections Rules 1961, and the Election Symbols (Reservation and Allotment) Order 1968.

(The Delimitation Act 1972 was a one time enactment constituting a Delimitation Commission and providing for delimitation of the territorial constituencies for electing members to the House of the People and State Legislative Assemblies on the basis of the population census of 1971.)

The presentation of the laws herein focuses on the scheme applicable to the election of the President of India, the members of the Council of States and the members of the House of the People. Lack of space did not allow the inclusion of the election of members to the States' Legislatures.

— Section 1 —

CONSTITUTIONAL PROVISIONS

1.01 The President of India

There shall be a President of India who shall be elected by the members of an electoral college consisting of:

- (a) the elected members of both Houses of Parliament; and
- (b) the elected members of the Legislative Assemblies of the States.¹

1.02 Manner of Election of President

As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

For the purpose of securing such uniformity among the States *inter se* as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner:

- (a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;
- (b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one;
- (c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) above by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

The expression “population” will continue to mean the population figures published on the basis of the national census conducted in 1971 until the relevant figures for the first census taken after the year 2000 have been published.²

1.03 Term of Office of President

The President shall hold office for a term of five years from the date on which he enters upon his office provided that:

- (a) the President may, by writing under his hand addressed to the Vice-President, resign his office;
- (b) the President may for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61;
- (c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.³

1.04 Eligibility for Re-election

A person who holds, or who has held, office as President shall be eligible for re-election to that office.⁴

1.05 Qualification for Election as President

No person shall be eligible for election as President unless he:

- (a) is a citizen of India;
- (b) has completed the age of thirty-five years; and
- (c) is qualified for election as a member of the House of the People.

A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

A person shall not be qualified to be chosen to fill a seat in Parliament unless he:

- (a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation in the prescribed form;
- (b) is in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and
- (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Office of Profit – for the purposes of this provision, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.⁵

1.06 Office of Vice-President

There shall be a Vice-President of India who shall be *ex officio* Chairman of the Council of States. The Vice-President shall not hold any other office of profit.

During any period when the Vice-President acts as President or discharges the functions of the President, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States.⁶

1.07 Constitution of Parliament

There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.

The Council of States shall consist of:

- (a) twelve members to be nominated by the President; and
- (b) not more than two hundred and thirty-eight representatives of States and of the Union Territories.

The allocation of seats in the Council of States to be filled by representatives of States and of

the Union Territories shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

The members to be nominated by the President shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely: literature, science, art and social service.

The representatives of each State in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.

The representatives of the Union Territories in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

The House of the People shall consist of:

- (a) not more than five hundred and thirty members chosen by direct election from territorial constituencies in the States; and
- (b) not more than twenty members to represent the Union Territories, chosen in such manner as Parliament may by law provide.

For the purposes of sub-clause (a) above:

- (a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and
- (b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and number of seats allotted to it is, so far as practicable, the same throughout the State: provided that the provisions of sub-clause (a) of this clause shall not be applicable for the purpose of allotment of seats in the House of the People to any State so long as the population of that State does not exceed six million.

In these provisions the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

Readjustment after each census – upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine: provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing house; provided further that such readjustment shall take effect from such date as the President may by order specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment; provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies under these provisions.⁷

1.08 Elections

The superintendence, direction, and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President shall be vested in a Commission (referred to as the Election Commission).

The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and the other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Assembly of each State, having such council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of its functions. Regional Commissioners can be appointed only to assist the Commission in the discharge of its functions under clause 1 of article 324, that is, the preparation of rolls for and conduct of elections. Functions of the Commission are not delegated to a Regional Commissioner. He only assists the Commission.

Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine: provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment; provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

The President or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission. The staff made available under any such request are to discharge the functions of preparation of rolls and the conduct of elections.⁸

1.09 No Discrimination for Inclusion in Electoral Roll on Grounds of Religion, Race, Caste or Sex

There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any

special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.⁹

1.10 Adult Suffrage

The elections to the House of the People, and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice shall be entitled to be registered as a voter at any such election. No person shall be registered in more than one constituency and no person shall be registered in the electoral roll of a constituency more than once.¹⁰

1.11 Bar to Interference by Courts in Electoral Matters

The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under the Constitution shall not be called in question in any court.

No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided by or under any law made by the appropriate Legislature.¹¹

1.12 Reservation of Seats for Scheduled Castes and Scheduled Tribes in the House of the People

Seats shall be reserved in the House of the People for:

- (a) the Scheduled Castes;
- (b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and
- (c) the Scheduled Tribes in the autonomous districts of Assam.

The number of seats reserved in any State or Union Territory for the Scheduled Castes or the Scheduled Tribes shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union Territory in the House of the People as the population of the Scheduled Castes in the State or Union Territory or of the Scheduled Tribes in the State or Union Territory or part of the State or Union Territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union Territory.

The number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State.¹²

1.13 Representation of the Anglo-Indian Community

The President may, if he is of the opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People.¹³

—Section 2—

ADMINISTRATIVE MACHINERY FOR THE CONDUCT OF ELECTIONS

2.01 Delegation of Functions of Election Commission

The functions of the Election Commission may, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, be performed also by a Deputy Election Commissioner or by the Secretary to the Election Commission.

(The Commission advised that the word “delegation” in the title of this paragraph is misleading since no power can be delegated. All functions of the Commission can be exercised by a Deputy Election Commissioner or a Secretary of the Commission subject to any general or special directions, if any, issued by the Commission.)¹⁴

2.02 General Duties of Chief Electoral Officers

Subject to the superintendence, direction and control of the Election Commission, the Chief Electoral Officer of each State shall supervise the preparation, revision and correction of all electoral rolls for, and the conduct of all elections superintended by the Electoral Commission of India in, the State under the Representation of the People Acts 1950 and 1951.

(The Chief Electoral Officer shall be an officer of the Government, not necessarily the Government of the State or Union Territory of which he is designated or nominated to be the Chief Electoral Officer. Only “consultation” of the Government is required.)¹⁵

2.03 General Duties of District Election Officer

For each district in a State, other than a Union Territory, 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.

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.

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 the area within his jurisdiction in connection with the preparation and revision of the electoral rolls

for all parliamentary, assembly and council constituencies within his jurisdiction and conduct of elections in his jurisdiction under the Representation of the People Acts 1950 and 1951.¹⁶

2.03A Electoral Registration Officer

The electoral roll for each territorial constituency shall be prepared and revised by an electoral registration officer who shall be such officer of Government or of local authority as the Election Commission may, in consultation with the Government of the State in which the constituency is situated, designate or nominate in this behalf.

An electoral registration officer may, subject to prescribed restrictions, employ such persons as he thinks fit for the preparation and revision of the electoral roll for the constituency.

The Election Commission may appoint one or more persons as assistant electoral registration officers to assist any registration officer in the performance of his functions.^{16A}

2.04 Returning Officers

For every constituency, for every election to fill a seat or seats in the Council of States and for every election by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of the State, the Election Commission shall, in consultation with the Government of the State, designate or nominate a returning officer who shall be an officer of Government or of a local authority. The Election Commission may nominate the same person to be the returning officer for more than one constituency.¹⁷

2.05 Assistant Returning Officers

The Election Commission may appoint one or more persons to assist any returning officer in the performance of his functions.¹⁸

2.06 Functions and Duties 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 the Representation of the People Act 1951, or orders made thereunder.

Every assistant returning officer, subject to the control of the returning officer shall 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.¹⁹

2.07 Presiding Officers, Polling Officers and Polling Stations

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.

The 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 by or on behalf of, or has been otherwise working for, a candidate in or about the election: provided that if a polling officer is absent from the polling station, the presiding officer may appoint any person who is present at the polling station other than a person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election, to be the polling officer during the absence of the former officer, and inform the district election officer accordingly; provided further that nothing in these provisions shall prevent the district election officer from appointing the same person to be the presiding officer for more than one polling station in the same premises.

A polling officer shall, if so directed by the presiding officer perform all or any of the functions of a presiding officer.

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 district election officer to perform such functions during any such absence.

It shall be the general duty of the presiding officer at a polling station to keep order thereat and to see that the poll is fairly taken.

It shall be the duty of the polling officers at a polling station to assist the presiding officer for such station in the performance of his functions.²⁰

2.08 Officers Deemed to be on Deputation to Election Commission

The returning officer, assistant returning officer, presiding officer, polling officer and any other officer appointed and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.

Similarly, the Chief Electoral Officer of a State or Union Territory, the district election officers, the electoral registration officers 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 the period be subject to the control, superintendence and discipline of the Election Commission.²¹

— *Section 3* —

DELIMITATION OF CONSTITUENCIES

3.01 Allocation of Seats and Delimitation of Constituencies

The allocation of seats to the States in the House of the People and the number of seats, if any, to be reserved for the Scheduled Castes and for the Scheduled Tribes of each State shall be as shown in the First and Second Schedules, respectively, of the Representation of the People Act 1950. The term “State” includes Union Territory. The present allocation and delimitation has been done by the Delimitation Order 1976, issued by the Delimitation Commission set up under the Delimitation Act 1972.²²

3.02 Filling of Seats in the House of the People

All the seats in the House of the People allotted to the States shall be seats to be filled by persons chosen by direct election from parliamentary constituencies in the States.

Every parliamentary constituency shall be a single member constituency. Every State to which only one seat is allotted shall form one parliamentary constituency.

The extent of all parliamentary constituencies except the parliamentary constituencies in the Union Territory of Arunachal Pradesh shall be as determined by the orders of the Delimitation Commission made under the provisions of the Delimitation Act 1972 and the extent of the parliamentary constituencies in the Union Territory of Arunachal Pradesh shall be as determined by the order of the Election Commission under the provisions of the Government of Union Territories Act 1963.²³

3.03 Power to Maintain Delimitation Order Up-to-date

The Election Commission may, from time to time, by notification in the Gazette of India and in the official Gazette of the State concerned:

- (a) correct any printing mistake in any of the orders made by 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 orders up-to-date, so, however that the boundaries or areas or extent of any constituency shall not be changed by any such notification. (This power of the Election Commission does not extend to changing the geographical boundaries of any constituencies or to add or subtract or transfer any polling areas but only to carrying out typographical errors in describing the areas, revenue sub-divisions, or districts, etc, contained in a constituency.)

Every notification under these provisions shall be laid, as soon as may be after it is issued, before the House of the People and the Legislative Assembly of the State concerned.²⁴

— *Section 4* —

REGISTRATION OF POLITICAL PARTIES

4.01 Application for Registration

Any association or body of individual citizens of India calling itself a political party and intending to avail itself of these provisions shall make an application to the Election Commission for its registration as a political party for the purposes of the Representation of the People Act 1951.

Every such application shall be made:

- (a) if the association or body is in existence at the commencement of the Representation of the People (Amendment) Act 1988, within sixty days next following such commencement;
- (b) if the association or body is formed after such commencement, within thirty days next following the date of its formation.

Every application shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

Every such application shall contain the following particulars, namely:

- (a) the name of the association or body;
- (b) the State in which its head office is situated;
- (c) the address to which letters and other communications meant for it should be sent;
- (d) the names of its president, secretary, treasurer and other office-bearers;
- (e) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;
- (f) whether it has any local units; if so, at what levels;
- (g) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

The application shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

The Commission may call for such other particulars as it may deem fit from the association or body.

After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body

reasonable opportunity of being heard, the Commission shall decide to register the association or body as a political party or not so to register it; and the Commission shall communicate its decision to the association or body: provided that no association or body shall be registered as a political party unless the memorandum or rules and regulations of such association or body conforms to the requirement of these provisions.

Before registering an association or body as a political party, the Commission shall hold a public hearing at which any person or association can challenge the application for registration.

The decision of the Commission shall be final.

After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material shall be communicated to the Commission without delay.²⁵

4.02 Recognition of Political Parties and Allotment of Symbols

The political parties are recognised under the Election Symbol (Reservation and Allotment) Order 1968, an order of the Election Commission of India. For the purpose of this Order and for such other purposes as the Commission may specify as and when necessity therefor arises, political parties are either recognised registered political parties or unrecognised registered political parties.

The Election Commission of India has a list of symbols on which it holds its proprietary rights. The Election Commission reserves a symbol for a recognised registered political party and a candidate validly set up at an election by a recognised registered political party is mandatorily allotted the said reserved symbol by the returning officer. A candidate set up by an unrecognised registered political party gets second preference in the choice of symbol at an election and cannot be allotted the symbol reserved for a recognised registered political party. An independent candidate can choose only out of free symbols.

A political party shall be treated as a recognised registered political party in a State, if and only if either the conditions specified in clause (A) below are, or the condition specified in clause (B) below is, fulfilled by that party and not otherwise, that is to say –

- (A) that such party –
 - (a) has been engaged in political activity for a continuous period of five years; and
 - (b) has, at the general election in that State to the House of the People or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning, returned either:
 - (i) at least one member to the House of the People for every twenty-five members of that House or any fraction of that number elected from that State; or
 - (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;
- (B) that the total number of valid votes polled by all contesting candidates set up by such

party at the general election in the State to the House of the People, or, as the case may be, to the Legislative Assembly for the time being in existence and functioning (excluding the valid votes of each such contesting candidate in a constituency as has not been elected and has not polled at least one-twelfth of the total number of valid votes polled by all the contesting candidates in that constituency) is not less than four per cent of the total number of valid votes polled by all the contesting candidates at such general election in the State (including the valid votes of those contesting candidates who have forfeited their deposits).

The conditions in clause (A) or (B) above are not deemed to have been fulfilled by a political party if a member of the House of the People or the Legislative Assembly of the State becomes a member of that political party after his election to that House or, as the case may be, that Assembly.^{25A}

4.03 Two Categories of Recognised Political Parties

If a political party is recognised in four, or more, States it is known as a National Recognised Party and enjoys such status throughout India, and if a political party is treated as a recognised political party in less than four States it shall be known as a State Recognised Party and enjoys such status only in the States in which it is recognised.^{25B}

— Section 5 —

REGISTRATION OF VOTERS

5.01 Electoral Roll for Every Parliamentary Constituency

The electoral roll for every parliamentary constituency, other than a parliamentary constituency in the State of Jammu and Kashmir or in a Union Territory not having a Legislative Assembly, shall consist of the electoral rolls for all the assembly constituencies comprised within that parliamentary constituency; and it shall not be necessary to prepare or revise separately the electoral roll for any such parliamentary constituency.²⁶

5.02 Disqualification for Registration in the Electoral Roll

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

- (a) is not a citizen of India; or
- (b) is of unsound mind and stands so declared by a competent court; or
- (c) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.

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 sub-clause (c) above shall forthwith be reinstated on that roll if such disqualification is, during the period such roll is in force, removed under any law authorising such removal.²⁷

5.03 Conditions of Registration

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

No person shall be entitled to be registered in the electoral roll for any constituency more than once. Subject to the foregoing provisions, every person who:

- (a) is not less than eighteen years of age on the qualifying date; and
 - (b) is ordinarily resident in a constituency,
- shall be entitled to be registered in the electoral roll for that constituency.²⁸

5.04 Meaning of “Ordinarily Resident”

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.

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

A member of Parliament or of the Legislature of a 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.

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 by reason thereof be deemed to be ordinarily resident therein. But a person declared insane by a medical (designated) authority is liable to be deleted from an electoral roll. A person in custody though he continues to be a voter, loses his right to vote.

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.

Any person holding any office in India declared by the President in consultation with the Election Commission to be an office to which these provisions 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.

The statement of any such person made in the prescribed form and verified in the prescribed manner, that but for his having the service qualification or but for his holding any such office as is referred to in the preceding paragraph 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.

The wife of any such person referred to above shall if she be ordinarily residing with such person be deemed to be ordinarily resident in the constituency specified by such person.

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 on this behalf by the Central Government in consultation with the Election Commission.

“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 have been made applicable whether with or without modifications; or
- (c) being a member of an armed police force of a State, who is serving outside that State; or
- (d) being a person who is employed under the Government of India.²⁹

5.05 Preparation and Revision of Electoral Rolls

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 Registration of Electors Rules 1960 made under the Representation of the People Act 1950.

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 House of the People or to the Legislative Assembly of a State; and
 - (ii) before each by-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 of such revision as 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.

The Election Commission 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 it may think fit: provided that subject to other provisions of the Representation of the People Act 1950, the electoral roll for the constituency, as in force at the time of the issue of any such direction, shall continue to be in force until the completion of the special revision so directed.³⁰

5.06 Correction of Entries in Electoral Rolls

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

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- (a) is erroneous or defective in any particular;
 - (b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency; or
 - (c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll,

the electoral registration officer shall, subject to such directions, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry: provided that before taking any action on any ground under sub-clause (a) or (b) or (c) above 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 electoral registration officer shall give the person concerned a reasonable opportunity of being heard in open court in respect of the action proposed to be taken in relation to him.³¹

5.07 Inclusion of Names in Electoral Rolls

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. The electoral registration officer shall, if he is satisfied that the applicant is entitled to be registered in that electoral roll, direct his name to be included therein: provided that if the applicant is registered in the electoral roll of any other constituency, the electoral registration officer 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.

No amendment, transposition or deletion of any entry shall be made and no direction for the inclusion of a name in the electoral roll of a constituency shall be given after the last date for making nominations for an election in that constituency or in the parliamentary constituency within which that constituency is comprised and before the completion of that election.³²

5.08 Appeals

An appeal shall lie, within such time and in such manner as may be prescribed, to the Chief Electoral Officer, from any order of the electoral registration officer.³³

5.09 Staff of Local Authorities to be Made Available

Every local authority in a State shall, when so requested by the Chief Electoral Officer of the State, make available to any electoral registration officer such staff as may be necessary for the performance of any duties in connection with the preparation and revision of electoral rolls.³⁴

5.10 Jurisdiction of Civil Courts Barred

No civil court shall have jurisdiction:

- (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 electoral registration officer, or of any decision given by any authority appointed under the Representation of the People Act 1950 for the revision of any such roll. However, a special leave petition to a High Court of competent jurisdiction can be filed against the final order of inclusion or deletion of a name.³⁵

5.11 Making False Declarations

If any person makes in connection with:

- (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 a fine or with both.³⁶

5.12 Breach of Official Duty in Connection with Preparation of Electoral Rolls

If any electoral registration officer, assistant electoral registration officer or other person required by or under the Representation of the People Act 1950 to perform any official duty in connection with the preparation, revision or correction of an electoral roll or the inclusion or exclusion of any entry in or from that roll, is without reasonable cause, guilty of any act or omission in breach of such official duty, he shall be punishable with a fine which may extend to five hundred rupees.

No writ or other legal proceeding shall lie against any such officer or other person for damages in respect of any such act or omission as aforesaid.

No court shall take cognizance of any offence punishable under these provisions unless there is a complaint made by order of, or under authority from, the Election Commission or the Chief Electoral Officer of the State concerned.³⁷

— Section 6 —

CONDUCT OF ELECTIONS

6.01 Notification for Biennial Election to the Council of States

For the purpose of filling the seats of members of the Council of States retiring on the expiration of their term of office the President shall by one or more notifications in the Gazette of India on such date or dates as may be recommended by the Election Commission, call upon the elected members of the Legislative Assembly or, as the case may be, the members of the electoral college, of the State concerned to elect members in accordance with the provisions of the Representation of the People Act 1951 and of the rules and orders made thereunder: provided that no notification 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.³⁸

6.02 Notification for General Election to the House of the People

A general election shall be held for the purpose of constituting a new House of the People on the expiration of the duration of the existing House or on its dissolution.

For the said purpose the President shall, by one or more notifications published in the Gazette of India on such date or dates as may be recommended by the Election Commission, call upon all parliamentary constituencies to elect members in accordance with the provisions of the Representation of the People Act 1951 and of the rules and orders made thereunder: provided that where a general election is held otherwise than on the dissolution of the existing House of the People, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of that House would expire.

Special provisions apply to the filling of the seat allotted to the State of Sikkim in the Council of States and to the House of the People.³⁹

6.03 Appointment of Dates for Nominations

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

- (a) the last date for making nominations, which shall be the 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 the day immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- (c) the last date for the withdrawal of candidatures, which shall be the 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 twentieth day after the last date for the withdrawal of candidatures; and
- (e) the date before which the election shall be completed.⁴⁰

6.04 Public Notice of Election

On the issue of a notification under the provisions above, the returning officer shall give public notice of the intended election in such form and manner as may be prescribed, inviting nominations of candidates for such election and specifying the place at which the nomination papers are to be delivered.⁴¹

6.05 Nomination of Candidates for Election

Any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat.

On or before the date appointed each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified on this behalf in the notice of election a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer: provided that no nomination paper shall be delivered to the returning officer on a day which is a public holiday.

In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State.

Where the candidate is a person who, having held any office under the Government of India or under the Government of any State has been dismissed and a period of five years has not elapsed since dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.

On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls: provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll number 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.

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.

Nothing in these provisions shall prevent any candidate from being nominated by more than one nomination paper: provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same constituency.⁴²

6.06 Deposits

A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited:

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- (a) in the case of an election from a parliamentary constituency, a sum of five hundred rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of two hundred and fifty rupees; and
 - (b) in the case of an election from an assembly or council constituency, a sum of two hundred and fifty rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of one hundred and twenty-five rupees.

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.

Any sum required to be deposited shall not be deemed to have been deposited unless at the time of delivery of the nomination paper, or as the case may be, the candidate has either deposited or caused to be deposited that sum with the returning officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government Treasury.⁴³

6.07 Notice of Nominations

The returning officer shall, on receiving the nomination paper inform the person or persons delivering the same of the date, time and place fixed for the scrutiny of nominations and shall enter on the nomination paper its serial number, and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him; and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of the proposer.⁴⁴

6.08 Scrutiny of Nominations

On the date fixed for scrutiny of nominations, the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner prescribed.

The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:

- (a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the provisions that may be applicable;
- (b) that there has been a failure to comply with any of the stipulated requirements for a valid nomination; or
- (c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

The rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, does not affect the candidature of the candidate if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

The returning officer shall hold the scrutiny on the date appointed in this behalf and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control: provided that in case 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.

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

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.

Immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the names have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.⁴⁵

6.09 Withdrawal of Candidature

Any candidate may withdraw his candidature by a notice in writing which shall contain such particulars as may be prescribed and shall be subscribed by him and delivered before three o'clock in the afternoon on the day fixed to the returning officer either by such candidate in person or by his proposer, or election agent who has been authorised in this behalf in writing by such candidate.

No person who has given a notice of withdrawal of his candidature shall be allowed to cancel the notice.

The returning officer shall, on being satisfied as to the genuineness of a notice of withdrawal and the identity of the person delivering it, cause the notice to be affixed in some conspicuous place in his office.⁴⁶

6.10 Publication of List of Contesting Candidates

Immediately after the expiry of the period within which candidatures may be withdrawn, the

returning officer shall prepare and publish in such form and manner as may be prescribed a list of contesting candidates, that is to say, candidates who were included in the list of validly nominated candidates and who have not withdrawn their candidature within the said period.

The said list shall contain the names in alphabetical order determined by the local official language of the electoral roll of the constituency and the addresses of the contesting candidates as given in the nomination papers together with such other particulars as may be prescribed.⁴⁷

6.11 Candidates and Their Agents

A candidate at an election may appoint in the prescribed manner any one person other than himself to be his election agent and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the returning officer.

Any person who is for the time being disqualified under the Constitution or under the Representation of the People Act 1951 for being a member of either House of Parliament or the House or either House of the Legislature of a State or for voting at elections, shall, so long as the disqualification subsists, also be disqualified for being an election agent at any election.

Any revocation of the appointment of an agent shall be signed by the candidate, and shall operate from the date on which it is lodged with the returning officer.

In the event of such a revocation or of the death of an election agent whether that event occurs before or during the election, or after the election but before the account of the candidate's election expenses has been lodged, the candidate may appoint in the prescribed manner another person to be his election agent and when such appointment is made notice of the appointment shall be given in the prescribed manner to the returning officer.

An election agent may perform such functions in connection with the election as are authorised by or under the Representation of the People Act 1951 to be performed by an election agent.

A contesting candidate or his election agent may appoint in the prescribed manner such number of agents and relief agents as may be prescribed to act as polling agents of such candidate at each polling station.

A contesting candidate or his election agent may appoint in the prescribed manner one or more persons, but not exceeding such number as may be prescribed, to be present as his counting agent or agents at the counting of votes, and when any such appointment is made notice of the appointment shall be given in the prescribed manner to the returning officer.

Any revocation of the appointment of a polling agent shall be signed by the candidate or his election agent and shall operate from the date on which it is lodged with such officer as may be prescribed, and in the event of such a revocation or of the death of a polling agent before

the close of the poll, the candidate or his election agent may appoint in the prescribed manner another polling agent at any time before the poll is closed and shall forthwith give notice of such appointment in the prescribed manner to such officer as may be prescribed.

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 in the prescribed manner another counting agent at any time before the counting of the votes is commenced and shall forthwith give notice of such appointment in the prescribed manner to the returning officer.

At every election where a poll is taken, each contesting candidate at such election and his election agent shall have a right to be present at any polling station provided for the taking of the poll or at the place fixed for the poll.

A contesting candidate or his election agent may himself do any act or thing which any polling agent or the counting agent of such contesting candidate if appointed, would have been authorised by or under the Act to do, or may assist any polling agent or the counting agent of such contesting candidate in doing any such act or thing.

Where any act or thing is required or authorised by or under the Act to be done in the presence of the polling or counting agents, the non-attendance of any such agent or agents at the time and place appointed for the purpose shall not, if the act or thing is otherwise duly done, invalidate the act or thing done.⁴⁸

6.12 General Procedure at Elections

If a candidate whose nomination has been found valid on scrutiny and who has not withdrawn his candidature dies and a report of his death is received before the publication of the list of contesting candidates or if a contesting candidate dies and a report of his death is received before the commencement of the poll, the returning officer shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the Election Commission and also to the appropriate authority and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election: provided that no further nomination shall be necessary in the case of a person who was a contesting candidate at the time of the countermanding of poll; provided further that no person who has given a notice of withdrawal of his candidature before the countermanding of the poll shall be ineligible for being nominated as a candidate for the election after such countermanding.

The “appropriate authority” means, in relation to an election to the House of the People or the Council of States, the Central Government, and in relation to an election to the Legislative Assembly or the Legislative Council of a State, the State Government.

If the number of contesting candidates is more than the number of seats to be filled, a poll shall be taken.

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.

If the number of such candidates is less than the number of seats to be filled, the returning officer shall forthwith declare all such candidates to be elected and the Election Commission shall, by notification in the Official Gazette call upon the constituency or the elected members or the members of the State Legislative Assembly or the members of the electoral college concerned, 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 elected members or the members of the State Legislative Assembly or the members of the electoral college having already been called upon has or have failed to elect a person or the requisite number of persons, as the case may be, to fill the vacancy or vacancies, the Election Commission shall not be bound to call again upon the constituency, or such members to elect a person or persons until it is satisfied that if called upon again, there will be no such failure on the part of the constituency or such members.⁴⁹

6.13 The Poll

The Election Commission shall fix the hours during which the poll will be taken; and the hours so fixed shall be published in such manner as may be prescribed: provided that the total period allotted on any one day for polling at an election in a Parliamentary or Assembly constituency shall not be less than eight hours.

If at an election the proceedings at any polling station or at the place fixed for the poll are interrupted or obstructed by any riot or open violence, or if at an election it is not possible to take the poll at any polling station or such place on account of any natural calamity, or any other sufficient cause the presiding officer for such polling station or returning officer presiding over such polling station or 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 after obtaining instructions from the Election Commission, and where the poll is so adjourned by a presiding officer, he shall forthwith inform the returning officer concerned.

Whenever a poll is adjourned, the returning officer shall immediately report the circumstances to the appropriate authority and the Election Commission, and shall as soon as may be, with the previous approval of the 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.

In every such case as aforesaid, the returning officer shall notify in such manner as the Election Commission may direct the date, place and hours of polling fixed under the foregoing provisions. The total minimum number of hours for polling continues to be eight hours in an adjourned poll; eight hours including the number of hours for which polling went on uninterrupted.

If at any election:

- (a) any ballot box used at a polling station or at a place fixed for the poll is unlawfully taken out of the custody of the presiding officer or the returning officer, or is accidentally or intentionally destroyed or lost, or is damaged or tampered with, to such an extent, that the result of the poll at that polling station or place cannot be ascertained; or
 - (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,
the returning officer shall forthwith report the matter to the Election Commission.

Thereupon the Election Commission shall, after taking into account the report of the returning officer and all material circumstances into account, either:

- (a) 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
- (b) if satisfied that the result of a fresh poll at that polling station or place will not, in any way, affect the result of the election or that the mechanical failure of the voting machine or the error or irregularity in procedure is not material, issue such directions to the returning officer as it may deem proper for the further conduct and completion of the election.

If at any election:

- (a) booth capturing has taken place at a polling station or at a place fixed for the poll in such manner that the result of the poll at that polling station or place cannot be ascertained; or
- (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.

The Election Commission shall, on the receipt of a report from the returning officer and after taking all material circumstances into account, either:

- (a) declare that the poll at that polling station or place 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 in view of the large number of polling stations or places involved in the booth capturing the result of the election is likely to be affected, or that booth capturing had affected counting of votes in such a manner as to affect the result of the election, countermand the election in that constituency.

“Booth capturing” includes among other things, all or any of the following activities:

- (a) seizure of a polling station or a place fixed for the poll by any person or persons

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- making polling authorities surrender the ballot papers or voting machines and doing of any 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 their own supporters to exercise their right to vote and prevent others from voting;
 - (c) threatening any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote;
 - (d) seizure of a place for counting of votes by any person or persons making the counting authorities surrender the ballot papers or voting machines and the doing of anything which affects the orderly counting of votes;
 - (e) doing by any person in the service of Government, of all or any of the aforesaid activities or aiding or conniving at, any such activity in the furtherance of the prospects of election of a candidate.

At every election where a poll is taken votes shall be given by ballot in such manner as may be prescribed, and no votes shall be received by proxy.

With a view to preventing personation of electors provisions may be made by rules under the Act by the Central Government in consultation with the Election Commission:

- (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 the Representation of the People Act 1950, 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.

The giving and recording of votes by voting machines in such manner as may be prescribed, may be adopted in such constituency or constituencies as the Election Commission may, having regard to the circumstances of each case, specify.

No person who is not, and except as expressly provided by the 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.

No person shall vote at a general election in any constituency if he is subject to any of the disqualifications.

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.

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.

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 provision shall apply to a person subjected to preventive detention under any law for the time being in force.⁵⁰

6.14 Postal Voting

The following persons shall, subject to their fulfilling the requirements hereinafter specified, be entitled to vote by post, namely:

- (a) at an election in a parliamentary or assembly constituency:
 - (i) special voters;
 - (ii) service voters;
 - (iii) voters on election duty; and
 - (iv) electors subjected to preventive detention;
- (b) at an election in a council constituency:
 - (i) voters on election duty;
 - (ii) electors subjected to preventive detention; and
 - (iii) electors in the whole or any specified parts of the constituency if directed by the Election Commission in this behalf;
- (c) at an election by assembly members:
 - (i) electors subjected to preventive detention; and
 - (ii) all electors if directed by the Election Commission in this behalf.

A voter who wishes to vote by post at an election shall send an intimation in the prescribed form to the returning officer so as to reach him at least ten days before the date of poll; and on receipt of the intimation the returning officer shall issue a postal ballot paper to him.

A voter on election duty who wishes to vote by post at an election shall send an application in the prescribed form to the returning officer so as to reach him at least seven days or such shorter period as the returning officer may allow before the date of poll; and if the returning officer is satisfied that the applicant is a voter on election duty, he shall issue a postal ballot paper to him.

Where such voter, being a polling officer, presiding officer or other public servant on election duty in the constituency of which he is an elector, wishes to vote in person at an election in a parliamentary or assembly constituency and not by post, he shall send an application in the prescribed form to the returning officer so as to reach him at least four

days, or such shorter period as the returning officer may allow, before the date of poll; and if the returning officer is satisfied that the applicant is such public servant and voter on election duty in the constituency, he shall:

- (a) issue to the applicant an election duty certificate in the prescribed form;
- (b) mark "EDC" against his name in the marked copy of the electoral roll to indicate that an election duty certificate has been issued to him; and
- (c) ensure that he is not allowed to vote at the polling station where he would otherwise have been entitled to vote.

The appropriate Government shall, within 15 days of the calling of an election, ascertain and intimate to the returning officer the name of the electors, if any, subjected to preventive detention together with their addresses and electoral roll numbers and the particulars about their places of detention.

The returning officer shall issue a postal ballot paper to every elector subjected to preventive detention whose name has been intimated to him.

Every postal ballot paper shall have a counterfoil attached thereto, and the said ballot paper and the counterfoil shall be in such form, and the particulars therein shall be in such language or languages as the Election Commission may direct.

The names of the candidates shall be arranged on the postal ballot paper in the order in which they appear in the list of contesting candidates.

If two or more candidates bear the same name, they shall be distinguished by the addition of their occupation or residence or in some other manner.

A postal ballot paper shall be sent by post under certificate of posting to the elector together with:

- (a) a declaration in the prescribed form;
 - (b) a cover in the prescribed form;
 - (c) a large cover addressed to the returning officer in the prescribed form; and
 - (d) instructions for the guidance of the elector in the prescribed form,
- provided that the returning officer may, in the case of a special voter or a voter on election duty, deliver the ballot paper and forms, or cause them to be delivered, to such voter personally.

The returning officer shall at the same time:

- (a) record on the counterfoil of the ballot paper the electoral roll number of the elector as entered in the marked copy of the electoral roll;
- (b) mark the name of the elector in the marked copy of the electoral roll to indicate that a ballot paper has been issued to him without however recording therein the serial number of the ballot paper issued to that elector; and
- (c) ensure that that elector is not allowed to vote at a polling station.

Before any ballot paper is issued to an elector at an election in a local authorities' constituency or by assembly members, the serial number of the ballot paper shall be effectively concealed in such manner as the Election Commission may direct.

Every officer under whose care or through whom a postal ballot paper is sent shall ensure its delivery to the addressee without delay.

After ballot papers have been issued to all the electors entitled to vote by post, the returning officer shall:

- (a) at an election in a parliamentary or assembly constituency, seal up in a packet that part of the marked copy of the electoral roll which relates to service voters and record on the packet a brief description of its contents and the date on which it was sealed and send the other relevant parts of the marked copy to the several presiding officers or mark the names of electors to whom ballot papers are issued at the polling stations without however recording therein the serial numbers of the ballot papers issued to the electors; and
- (b) at any other election, seal up in a packet the marked copy of the electoral roll and record on the packet a brief description of its contents and the date on which it is sealed.

The returning officer shall also seal up in a separate packet the counterfoil of the ballot papers issued to electors entitled to vote by post and record on the packet a brief description of its contents and the date on which it was sealed.

An elector who has received a postal ballot paper and desires to vote shall record his vote on the ballot paper in accordance with the directions contained in prescribed forms.

The elector shall sign the declaration in the prescribed form in the presence of, and have the signature attested by, a stipendiary magistrate or such other officer specified below, as may be appropriate, to whom he is personally known or to whose satisfaction he has been identified:

- (a) in the case of a service voter, such officer as may be appointed in this behalf by the Commanding Officer of the unit, ship or establishment in which the voter or her husband, as the case may be, is employed or such officer as may be appointed in this behalf by the diplomatic or consular representative of India in the country in which such voter is resident;
- (b) in the case of a special voter, an officer not below the rank of a Deputy Secretary to the Government;
- (c) in the case of a voter on election duty on election day, any gazetted officer or the presiding officer of the polling station at which he is on election duty;
- (d) in the case of an elector under preventive detention, the Superintendent of the jail or the Commandant of the detention camp in which the elector is under detention; and
- (e) in any other case, such officers as may be notified in this behalf by the Election Commission.

If an elector is unable through illiteracy, blindness or other physical infirmity to record his vote on a postal ballot paper and sign the declaration, he shall take the ballot paper, together with the declaration and the covers received by him to an officer competent to attest his signature and request the officer to record his vote and sign his declaration on his behalf.

Such officer shall thereupon mark the ballot paper in accordance with the wishes of the elector in his presence, sign the declaration on his behalf and complete the appropriate certificate.

When a postal ballot paper and other papers sent to an elector are for any reason returned undelivered, the returning officer may re-issue them by post under certificate of posting or deliver them or cause them to be delivered to the elector personally on a request being made by him.

If any elector has inadvertently damaged the ballot paper or any of the other papers sent to him in such a manner that they cannot conveniently be used, a second set of the papers shall be issued to him after he has returned the spoiled papers and satisfied the returning officer of the inadvertence.

The returning officer shall cancel the spoiled papers so returned and keep them in a separate packet after noting thereon the particulars of the election and the serial numbers of the cancelled ballot papers.

After an elector has recorded his vote and made his declaration, he shall return the ballot paper and declaration to the returning officer in accordance with the instructions communicated to him so as to reach the returning officer before the hour fixed for the commencement of counting of votes.

If any cover containing a postal ballot paper is received by the returning officer after the expiry of the time fixed, he shall note thereon the date and time of its receipt and shall keep all such covers together in a separate packet.

The returning officer shall keep in safe custody until the commencement of the counting of votes all covers containing postal ballot papers received by him.⁵¹

6.15 Counting of Votes

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

If at any time before the counting of votes is completed any ballot papers used at a polling station or at a place fixed for the poll are unlawfully taken out of custody of the returning officer or are accidentally or intentionally destroyed or lost or are damaged or tampered with, to such an extent that the result of the poll at that polling station or place cannot be ascertained, the returning officer shall forthwith report the matter to the Election Commission.

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.

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 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.

When the counting of the votes has been completed, the returning officer shall, unless otherwise specifically directed by the Election Commission to the contrary, forthwith declare the result of the election in the manner provided by the Representation of the People Act 1951 or the rules made thereunder.

As soon as may be after the result of an election has been declared, the returning officer shall report the result to the appropriate authority and the Election Commission, and in the case of an election to a House of Parliament or of the Legislature of a State also to the Secretary of that House. The Election Commission notifies the results of the returned candidates by a notification called "due constitution" notification, issued under section 73 of the Representation of the People Act 1951.

The date on which a candidate is declared by the returning officer to be elected to a House of Parliament or of the Legislature of a State shall be the date of election of the candidate. But the term of a House is counted from the date of the first sitting of the House.⁵²

6.16 Multiple Elections

Any person who is chosen a member of both the Houses of the People and the Council of States and who has not taken his seat in either House may, by notice in writing signed by him and delivered to the Secretary to the Election Commission within ten days from the date, or the latter 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.

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

Any intimation given shall be final and irrevocable.

The date on which a person is chosen to be a member of either House of Parliament 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 India of his nomination.

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

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

If a person is elected to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State, 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.⁵³

6.17 Publication of Election Results and Nominations

After the elections held in any year, there shall be notified by the appropriate authority in the Official Gazette the names of members elected by the elected members of the Legislative Assemblies of the States and by the members of the electoral colleges for the various Union Territories at the said elections together with the names of any persons nominated by the President to the Council of States.

Where a general election is held for the purpose of constituting a new House of the People or a new State Legislative Assembly, there shall be notified by the Election Commission in the Official Gazette as soon as may be after the results of the elections in all the constituencies other than those in which the poll could not be taken for any reason on the date originally fixed or for which the time for completion of the election has been extended have been declared by the returning officer or, as the case may be, the names of members elected for those constituencies and upon the issue of such notification that House or Assembly shall be deemed to be duly constituted: provided that the issue of such notification shall not be deemed –

- (a) to preclude:
 - (i) the taking of the poll and the completion of the election in any parliamentary or assembly constituency or constituencies in which the poll could not be taken for any reason on the date originally fixed; or
 - (ii) the completion of the election in any parliamentary or assembly constituency or constituencies for which time has been extended; or
- (b) to affect the duration of the House of the People or the State Legislative Assembly, if any, functioning immediately before the issue of the said notification.⁵⁴

6.18 Election Expenses

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 on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

The account shall contain such particulars as may be prescribed.

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

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 and the dates of their election are different, the latter of those two dates lodge with the district election officer an account of his expenses which shall be a true copy of the account kept by him or by his election agent.

The reference to the district election officer shall, in relation to a constituency in a Union Territory, be construed as a reference to the returning officer for that constituency.⁵⁵

— Section 7 —

ELECTION PETITION

7.01 High Court to Try Election Petitions

No election shall be called in question except by an election petition presented in accordance with these provisions to the High Court.

The 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: provided that where the High Court consists only of one Judge, he shall try all election petitions presented to that Court.

No High Court in its discretion may, in the interests of justice or convenience, try an election petition, wholly or partly, at a place other than the place of seat of the High Court.⁵⁶

7.02 Presentation of Petitions

An election petition calling in question any election may be presented on one or more of the grounds specified to the 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 latter of those two dates.

Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.⁵⁷

7.03 Parties of the Petition

A petitioner shall join as respondents to his petition:

- (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 are made in the petition.⁵⁸

7.04 Contents of Petition

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, 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 1908 for the verification of pleadings: 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.⁵⁹

7.05 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.⁶⁰

7.06 Trial of Election Petitions

The High Court shall dismiss an election petition which does not comply with the requirements of the Representation of the People Act 1951.

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.

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.

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.

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 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.

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.

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.⁶¹

7.07 Procedure before the High Court

Every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure 1908 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.

The provisions of the Indian Evidence Act 1872 shall be deemed to apply in all respects to the trial of an election petition.

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.

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

- (a) a witness, who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the High Court; and
- (b) an answer given by a witness to a question put by or before 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.

When a certificate of indemnity has been granted to any witness, it may be pleaded by him

in any court and shall be a full and complete defence to or upon any charge 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 any law.

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

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 commencement of the trial, given notice to the High Court of his intention to do so and has also given the security and the further security required.

Every notice shall be accompanied by the statement and particulars required in the case of an election petition and shall be signed and verified in like manner.⁶²

7.08 Decision of the High Court

At the conclusion of the trial of an election petition 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 candidates to be void and the petitioner or any other candidate to have been duly elected.

At the time of making an order, 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 at the election, and the nature of that 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
- (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 unless:

- (a) he has been given notice to appear before the High Court and to show cause why he should not be so named; and
- (b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the High Court and has given evidence against him, of calling evidence in his defence and of being heard.

If the High Court is of the opinion:

- (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat; or
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by 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
 - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent; or
 - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or
 - (iv) by any non-compliance with the provisions of the Constitution or of the Representation of the People Act 1951 or the rules or orders thereunder,

the High Court shall declare the election of the returned candidate to be void.

If in the opinion of the High Court a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but 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;
- (b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and
- (c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

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

If a 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 the High Court is of opinion:

- (a) that in fact the petitioner or such other candidate received a majority of the valid votes; or
- (b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes,

the 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.

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 may by the returning officer shall, in so far as it determines the question between those 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 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.

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, of the House of Parliament or of the State Legislature concerned and, as soon as may be thereafter, shall send to the Election Commission an authenticated copy of the decision.

As soon as may be after receipt of any order made by the High Court, the Election Commission shall forward copies of the order to the appropriate authority and, in the case where such order relates to an election to a House of Parliament or to an election to the House or a House of the Legislature of a State, also to the Speaker or Chairman, as the case may be, of the House concerned and shall cause the order to be published:

- (a) where the order relates to an election to a House of Parliament, in the Gazette of India as well as in the Official Gazette of the State concerned; and
- (b) where the order relates to an election to the House or a House of the Legislature of the State, in the Official Gazette of the State.

Except where otherwise provided, an order of the High Court takes effect as soon as it is pronounced by the High Court.

Where by an order 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 Parliament or as a member of the Legislature of a State 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.⁶³

7.09 Withdrawal and Abatement of Election Petitions

An election petition may be withdrawn only by leave of the High Court.

Where an application for withdrawal is made, 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 Official Gazette.

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.

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.

If the application is granted:

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

When an application for withdrawal is granted by the High Court and no person has been substituted as petitioner in place of the party withdrawing, the High Court shall report the fact to the Election Commission and thereupon the Election Commission shall publish the report in the Official Gazette.

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

Where an election petition abates, the High Court shall cause the fact to be published in such manner as it may deem fit.

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 High Court may deem fit.

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, the High Court shall cause notice of such event to be published in the Official Gazette, and thereupon any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted in place of such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the High Court may think fit.⁶⁴

7.10 Appeals

An appeal shall lie to the Supreme Court on any question (whether of law or fact) from every order made by a High Court in respect of the trial of an election petition.

Every appeal shall be preferred within a period of thirty days from the date of the order of the High Court: provided that the 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.

An application may be made to the High Court for stay of operation of an order made by the High Court 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, stay the operation of the order; but no application for stay shall be made to the High Court after an appeal has been preferred to the Supreme Court.

Where an appeal has been preferred against an order, 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.

When the operation of an order is stayed by the High Court, the order shall be deemed never to have taken effect; 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 Parliament or of the State Legislature concerned.

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 a final order passed by a High Court in the exercise of its original civil jurisdiction; and all the provisions of the Code of Civil Procedure 1908 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.

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 Parliament or of the State Legislature concerned 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; and
- (b) cause the decision to be published in the Gazette or Gazettes in which that order was published.⁶⁵

7.11 Costs and Security for Costs

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.

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.

No person shall be entitled to be joined as a respondent unless he has given such security for costs as the High Court may direct.

Costs shall be in the discretion of the High Court: provided that where a petition is

dismissed, 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.

If in any order as to costs 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, if any, made by such party on an application made in writing in that behalf within a period of one year, from the date of such order to the High Court by the person in whose favour the costs have been awarded.

If there is any balance left of any of the said security deposits after payment of the costs referred to, such balance, or where no costs have been awarded or no application as aforesaid has been made within the said period of one year the whole of the said security deposits may, on an application made in that behalf in writing to the High Court by the person by whom the deposits have been made, or if such person dies after making such deposits by the legal representative of such person, be returned to the said person or to his legal representative, as the case may be.

Any order as to costs 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, or where such place is within a presidency-town, before the court of small causes having jurisdiction there, 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, no application shall lie 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 owing to the insufficiency of the amount of the security deposits.⁶⁶

— Section 8 —

CORRUPT PRACTICES AND ELECTORAL OFFENCES

8.01 Corrupt Practice

The following shall be deemed to be corrupt practices for the purpose of the Representation of the People Act 1951 –

Bribery, that is to say:

- (A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly, of inducing:
 - (a) a person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate at an election; or

- (b) an elector to vote or refrain from voting at an election, or as a reward to:
- (i) a person 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.

Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right, provided that:

- (a) without prejudice to the generality of these provisions any 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 ex-communication or expulsion from any caste or community; or
 - (ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be 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 these provisions;
- (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 these provisions.

The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the grounds of his religion, race, caste, community or language or the use of, or appeal to, religious symbols or 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 constitutes a corrupt practice: provided that no symbol allotted to a candidate shall be deemed to be a religious symbol or a national symbol.

The promotion of, or attempt to promote, feelings of 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 by any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate constitutes a corrupt practice.

The propagation of the practice or the commission of *sati* or its glorification by a candidate

or his agent or by any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate constitutes a corrupt practice.

The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate being a statement reasonably calculated to prejudice the prospects of that candidate's election is deemed to be a corrupt practice.

The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided or a place fixed for the poll: provided that the hiring of a vehicle or vessel by an 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 if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power; provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice.

The incurring or authorising of expenditure in contravention of the Act is deemed to be a corrupt practice.

The obtaining or procuring or abetting or attempting to obtain or to procure by a candidate or his agent, or by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election from any person in the service of Government and belonging to any of the following classes, namely:

- (a) gazetted officers;
- (b) stipendiary judges and magistrates;
- (c) members of the armed forces of the Union;
- (d) members of the police forces;
- (e) excise officers;
- (f) revenue officers other than village revenue officers known as lambardars, malguzars, patals, desh mukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of a commission on the amount of land revenue collected by them but who do not discharge any police functions; and
- (g) such other class of persons in the service of the Government as may be prescribed, provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to any candidate or his agent or any 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.

Booth capturing by a candidate or his agent or other person constitutes a corrupt practice.⁶⁷

8.02 Electoral Offences

Any person who in connection with an election 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.

No person shall convene, hold or attend any public meeting in any polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

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

Any person who at a public meeting 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, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees, or with both. This provision applies to any public meeting of a political nature held in any constituency between the date of the issue of a notification calling upon the constituency to elect a member or members and the date on which such election is held.

If any police officer reasonably suspects any person of committing an offence under the foregoing provisions, he may, if requested so to do by the chairman of the meeting, require that person to declare to him immediately his name and address and, if that person refuses or fails so to declare his name or address, the police officer may arrest him without warrant.

No person shall print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof.

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.

For the purposes of these provisions:

- (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, handbill 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 handbill, placard or poster merely announcing the date, time, place and other particulars of an election meeting or routine instructions to election agents or workers.

Any person who contravenes any of these provisions is 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.

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

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

No person who is a district election officer 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 of 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.

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 vote of any person at an election in any manner.

Any person who contravenes these provisions commits an offence.

No person shall, on the date or dates on which a poll is taken at any polling station, commit any of the following acts within the polling station or in any public or private place within a distance of one hundred metres 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 official notices) relating to the election.

Any person who contravenes these provisions is guilty of an offence.

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

Any person who contravenes, or wilfully aids or abets the contravention of, these provisions commits an offence. If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence under these provisions, he may direct any police officer to arrest such person, and thereupon the police officer shall arrest him. Any police officer may take such steps, and use such force, as may be reasonably necessary for preventing any contravention of the foregoing provisions, and may seize any apparatus used for such contravention.

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. These powers must not be exercised so as to prevent any elector who is otherwise entitled to vote at a polling station.

If any person who has been 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 a fine, or with both.

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

If any person on official duty to whom this provision 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.

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

The persons to whom this provision applies are the district election officers, returning officers, assistant returning officers, presiding officers, polling officers, and any other person appointed to perform any duty in connection with the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election; and the expression "official duty" shall for the purposes of this provision be construed accordingly but shall not include duties imposed otherwise than by the Representation of the People Act 1951.

If any person in the service of the Government acts as an election agent or a polling agent or

a counting agent of a candidate at an election, he shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.

Any person who at any election fraudulently 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.

If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence, such officer may, before such person leaves the polling station, arrest or direct a police officer to arrest such person and may search such person or cause him to be searched by a police officer: provided that when it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

Any ballot paper found upon the person arrested on search shall be made over for safe custody to a police officer by the presiding officer, or when the search is made by a police officer, shall be kept by such officer in safe custody.

Whoever commits an offence of booth capturing is punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine, and where such offence is committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than one year and with fine.

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
- (c) fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper or any declaration of identity or official envelope used in connection with voting by postal ballot; or
- (d) without due authority supplies any ballot paper to any person or receives any ballot paper from any person or is in possession of any ballot paper; or
- (e) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or
- (f) without due authority destroys, takes, opens or otherwise interferes with any ballot box or ballot papers then in use for the 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 act.

Any person guilty of an electoral offence under the foregoing provisions 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 or with fine or with both.⁶⁸

NOTES

1. Constitution of India, see articles 52 and 54
2. Ibid., see article 55
3. Ibid., see article 56
4. Ibid., see article 57
5. Ibid., see articles 58 and 84
6. Ibid., see articles 63 and 64
7. Ibid., see articles 79-82
8. Ibid., see article 324
9. Ibid., see article 325
10. Ibid., see article 326
11. Ibid., see article 329
12. Ibid., see article 330
13. Ibid., see article 331
14. Representation of the People Act 1951, see section 19A
15. Ibid., see section 20
16. Ibid., see section 20A
- 16A. Representation of the People Act 1950, see sections 13B and 13C
17. Representation of the People Act 1951, see section 21
18. Ibid., see section 22
19. Ibid., see sections 23-24
20. Ibid., see sections 25-28
21. Ibid., see section 28A
22. Representation of the People Act 1950, see section 3
23. Ibid., see section 4
24. Ibid., see section 11
25. Representation of the People Act 1951, see section 29A
- 25A. Notes provided by the Election Commission
- 25B. Ibid.
26. Representation of the People Act 1950, see section 13D
27. Ibid., see section 16
28. Ibid., see sections 17-19
29. Ibid., see section 20
30. Ibid., see section 21
31. Ibid., see section 22
32. Ibid., see section 23
33. Ibid., see sections 24-25
34. Ibid., see section 29
35. Ibid., see section 30
36. Ibid., see section 31
37. Ibid., see section 32
38. Representation of the People Act 1951, see section 12
39. Ibid., see sections 12A, 14 and 14A
40. Ibid., see section 30
41. Ibid., see section 31
42. Ibid., see sections 32-33
43. Ibid., see section 34
44. Ibid., see section 35
45. Ibid., see section 36
46. Ibid., see section 37
47. Ibid., see section 38
48. Ibid., see sections 40-51
49. Ibid., see sections 52-53
50. Ibid., see sections 56-62
51. Conduct of Election Rules 1961, see rules 18-27
52. Representation of the People Act 1951, see sections 64-67A
53. Ibid., see sections 68-70
54. Ibid., see sections 71-73
55. Ibid., see sections 77-78
56. Ibid., see sections 80-80A
57. Ibid., see section 81
58. Ibid., see section 82
59. Ibid., see section 83
60. Ibid., see section 84
61. Ibid., see section 86
62. Ibid., see sections 87-97
63. Ibid., see sections 98-107
64. Ibid., see sections 109-116
65. Ibid., see sections 116A-116C
66. Ibid., see sections 117-122
67. Ibid., see section 123
68. Ibid., see sections 125-136