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INTRODUCTION

The Constitution of Sri Lanka contains several important provisions relating to the conduct of elections. It confers on Parliament the power to make laws in respect of electoral matters. It deals with matters such as the secrecy of the ballot and the electoral system that has been established in Sri Lanka. The Constitution also provides for establishment of an election management system based on the appointment of a Commissioner of Elections and the establishment of a Delimitation Commission to deal with the delimitation of electoral districts.

The principal enactment dealing with elections is the Parliamentary Elections Act 1981, referred to herein as “the Act”. This presentation focuses on election of members of Parliament.

— Section 1 —

RELEVANT CONSTITUTIONAL PROVISIONS

1.01 Parliament May Make Provision in Respect of Elections

The Parliament may by law make provision for:

- (a) the registration of electors;
- (b) the prescribing of a qualifying date on which a person should be resident in any electoral district to be entered in the register of electors of that electoral district;
- (c) the prescribing of a qualifying date on which a person should have attained the age of eighteen years to qualify for the purposes of registration as an elector;
- (d) the preparation and revision of registers of electors;
- (e) the procedure for the election of members of Parliament;
- (f) the creation of offences relating to such elections and punishment therefor;
- (g) the grounds for avoiding such elections, and where an election has been held void the manner of holding fresh elections;
- (h) the form and manner in which vacancies shall be filled when all the candidates whose names appearing in the nomination paper of a recognised political party or independent group have been exhausted by election or otherwise; and
- (i) the manner of determination of disputed elections and such other matters as are necessary or incidental to the election of members of Parliament.¹

1.02 Election by Secret Ballot

The voting for the election of the President of the Republic and of the members of Parliament and at any referendum shall be free, equal and by secret ballot.²

1.03 Right to be an Elector

Every person shall, unless disqualified, be qualified to be an elector at the election of the President and of the members of Parliament and that no such person shall be entitled to vote unless his name is entered in the appropriate register of electors.³

1.04 Proportional Representation

At any election of members of Parliament, the total number of members which an electoral district is entitled to return shall be the number specified by the Commissioner of Elections in the order required under the Constitution.

Every elector at an election of members of Parliament shall in addition to his vote, be entitled to indicate his preferences for not more than three candidates nominated by the same recognised political party or independent group.

Any recognised political party or any group of persons contesting as independent candidates (referred to as an “independent group”) may for the purpose of any election of members of Parliament for an electoral district, submit one nomination paper setting out the names of such number of candidates as is equivalent to the number of members to be elected for that electoral district, increased by three.

Each elector whose name appears in the register of electors shall be entitled to only one vote notwithstanding that his name appears in the electoral register in more than one electoral district.

The recognised political party or independent group which polls the highest number of votes in any electoral district shall be entitled to have the candidate nominated by it, who has secured the highest number of preferences, declared elected.

Every recognised political party and independent group polling less than one-twentieth of the total votes polled at any election in any electoral district shall be disqualified from having any candidates of such party or group being elected for that electoral district.

The votes polled by the disqualified parties and independent groups, if any, shall be deducted from the total votes polled at the election in that electoral district and the number of votes resulting from such deduction is referred to as the “relevant number of votes”.

The relevant number of votes shall be divided by the number of members to be elected for that electoral district reduced by one. If the number resulting from such division is an integer, that integer, or if that number is an integer and fraction, the integer and fraction is referred to as the “resulting number”.

The number of votes polled by each recognised political party and independent group (other than those parties or groups disqualified) beginning with the party or group which polled the highest number of votes shall then be divided by the resulting number and the returning officer shall declare elected from each such party or group, in accordance with the

preferences secured by each of the candidates nominated by such party or group (the candidate securing the highest number of preferences being declared elected first, the candidate securing the next highest number of preferences being declared elected next and so on) such number of candidates (excluding the candidate declared elected) as is equivalent to the whole number resulting from the division by the resulting number of the votes polled by such party or group. The remainder of the votes, if any, after such division, shall be dealt with, if necessary, under these provisions.

Where after the declaration of the election of members there are one or more members yet to be declared elected, such member or number of members shall be declared elected by reference to the remainder of the votes to the credit of each party or group after the declaration made and the votes polled by any party or group not having any of its candidates declared elected under the preceding paragraph, the candidate nominated by the party or group having the highest of such votes, who has secured the highest or next highest number of preferences being declared elected a member and so on until all the members to be elected are declared elected.

Where the number of votes polled by each recognised political party or independent group is less than the resulting number, the party or group which has polled the highest number of votes shall be entitled to have the candidate nominated by that party or group (excluding the candidate, already declared) who has secured the highest number of preferences declared elected and if there are one or more members yet to be declared elected, the party or group having the next highest number of votes polled shall be entitled to have the candidate nominated by that party or group who has secured the highest number of preferences declared elected and so on, until all the members to be elected for that electoral district are declared elected.

After the determination under the foregoing paragraph if there are one or more members yet to be declared elected in respect of that electoral district the provision of that paragraph shall, *mutatis mutandis*, apply to the election of such members.

Where an equality is found to exist between the votes polled by two or more recognised political parties or two or more independent groups or any combination of them and the addition of a vote would entitle the candidate of one such party or group to be elected, the determination of the party or group to which such additional vote shall be deemed to have been given shall be made by lot.

For the purposes of these provisions the number of votes polled shall be deemed to be the number of votes counted other than rejected votes.

Where a member of Parliament ceases, by resignation, expulsion or otherwise, to be a member of a recognised political party or independent group on whose nomination paper (referred to as the "relevant nomination paper") his name appeared at the time of his becoming such member of Parliament, his seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member.

Where the seat of a member of Parliament becomes vacant the candidate from the relevant

recognised political party or independent group who has secured the next highest number of preferences shall be declared elected to fill such vacancy.⁴

1.05 Election on the Basis of the Total Number of Votes Polled

After the one hundred and ninety-six members referred to in Article 98 of the Constitution have been declared elected at a general election of members of Parliament, the Commissioner of Elections shall forthwith apportion the balance of twenty-nine seats among the recognised political parties and independent groups contesting such general election in the same proportion as the proportion which the number of votes polled by each such party or group at such general election bears to the total number of votes polled at such general election and for the purposes of apportionment the provisions of Article 98 of the Constitution shall, *mutatis mutandis*, apply.

Every recognised political party or independent group contesting a general election shall submit to the Commissioner of Elections within the nomination period specified for such election a list of persons qualified to be elected as members of Parliament, from which it may nominate persons to fill the seats, if any, which such party or group will be entitled to, on such apportionment. The Commissioner of Elections shall cause every list submitted to him to be published forthwith in the Gazette and in one Sinhala, Tamil and English newspaper upon the expiry of the nomination period.

Where a recognised political party or independent group is entitled to a seat, the Commissioner of Elections shall by a notice, require the secretary of such recognised political party or group leader of such independent group to nominate within one week of such notice, persons qualified to be elected as members of Parliament (being persons whose names are included in the list submitted to the Commissioner of Elections or in any nomination paper submitted in respect of any electoral district by such party or group at that election) to fill such seats and shall declare elected as members of Parliament, the persons so nominated.

The Commissioner of Elections shall before issuing the aforesaid notice determine whether the number of members belonging to any community, ethnic or otherwise, elected to Parliament under Article 98 is commensurate with its national population ratio and request the secretary of such recognised political party or group leader of such independent group in so nominating persons to be elected as members of Parliament to ensure as far as practicable, that the representation of all communities is commensurate with its national population ratio.

For the purposes of these provisions the number of votes polled at a general election shall be deemed to be the number of votes actually counted and shall not include any votes rejected as void.⁵

1.06 Other Constitutional Provisions

Other constitutional provisions which merit treatment herein, namely, those dealing with the Commissioner of Elections and the delimitation of electoral districts are dealt with in Sections 2 and 3 respectively, below.

— *Section 2* —

ELECTION ADMINISTRATION

2.01 Commissioner of Elections

There shall be a Commissioner of Elections who shall be appointed by the President and who shall hold office during good behaviour.

The salary of the Commissioner of Elections shall be determined by Parliament, shall be charged on the Consolidated Fund and shall not be diminished during his term of office.

The office of the Commissioner of Elections shall become vacant:

- (a) upon his death;
- (b) on his resignation in writing addressed to the President;
- (c) on his attaining the age of sixty years;
- (d) on his removal by the President on account of ill health or physical or mental infirmity;
- or
- (e) on his removal by the President upon an address of Parliament.

Whenever the Commissioner of Elections is unable to discharge the functions of his office, the President may appoint a person to act in the place of the Commissioner of Elections.

The President may in exceptional circumstances permit a Commissioner of Elections who has reached the age of sixty years to continue in office for a period not exceeding twelve months.⁶

2.02 Powers and Functions of Commissioner of Elections

The Commissioner of Elections shall exercise, perform or discharge all such power, duties or functions as may be conferred or imposed on or vested in him by the law for the time being in force relating to elections to the office of President of the Republic and of members of Parliament, and to referenda, or by any other written law.⁷

2.03 Returning Officers

The Commissioner, shall, from time to time, by notice in the Gazette, appoint by name or by office a person to be the returning officer of each electoral district, and may appoint by name or by office one or more persons to assist the returning officer in the performance of his duties. A person so appointed to assist any returning officer shall have all the powers and may perform all the duties of the officer whom he is appointed to assist, and any reference in the Act to a returning officer shall, unless the context otherwise requires, be deemed to include a reference to an assistant returning officer. An appointment made by the Commissioner may be revoked by him at any time.

If the returning officer is by reason of illness or other cause prevented or disabled from

performing any of his duties and there is no time for another person to be appointed by the Commissioner, the returning officer may appoint by name or by office a deputy to act for him. Every such appointment shall as soon as possible be reported to the Commissioner and may be revoked by him, but without prejudice to the validity of anything already done by such deputy.⁸

2.04 Presiding Officers

Subject to the general or special directions of the Commissioner, each returning officer shall appoint, and may revoke the appointment of, one or more persons (referred to as “presiding officer”) to preside at each polling station in his electoral district. If more than one presiding officer is appointed for any polling station, the returning officer may appoint one of the presiding officers to be the senior presiding officer who shall exercise general supervision over the other presiding officers, and over all arrangements for the conduct of the poll on that station.

If any presiding officer is by reason of illness or other cause, prevented from acting at any election, and there is not time for another person to be appointed by the returning officer, the presiding officer may appoint a deputy to act for him. Every such appointment shall as soon as possible be reported to the returning officer and may be revoked by the returning officer, but without prejudice to the validity of anything already done by such deputy.

The returning officer may, if he thinks fit, preside at any polling station, and the provisions of the Act relating to a presiding officer shall apply to such returning officer.⁹

2.05 Counting Officers

Subject to the general or special directions of the Commissioner, each returning officer shall appoint, and may revoke the appointment of, a counting officer to be in charge of the counting of votes at each counting centre, and such number of assistants and clerks and other officers to assist such counting officer in the performance of his duties.

The returning officer may, if he thinks fit, perform the duties of a counting officer and the provisions of the Act relating to a counting officer shall apply to such returning officer.¹⁰

— Section 3 —

DELIMITATION OF ELECTORAL DISTRICTS

3.01 Delimitation Commission

The President shall for the delimitation of the electoral districts establish a Delimitation Commission consisting of three persons appointed by him who he is satisfied are not actively engaged in politics. The President shall appoint one of such persons to be Chairman.

If any member of the Delimitation Commission shall die or resign or if the President is satisfied that any such member has become incapable of discharging his functions as such, the President shall, in accordance with these provisions appoint another person in his place.¹¹

3.02 Electoral Districts

The Delimitation Commission shall divide Sri Lanka into not less than twenty and not more than twenty-four electoral districts, and shall assign names thereto.

Each Province of Sri Lanka may itself constitute an electoral district or may be divided into two or more electoral districts.

Where a Province is divided into a number of electoral districts the Delimitation Commission shall have regard to the existing administrative districts so as to ensure as far as is practicable that each electoral district shall be an administrative district or a combination of two or more administrative districts or two or more electoral districts together constitute an administrative district.

The electoral districts of each Province shall together be entitled to return four members, (independently of the number of members which they are entitled to return by reference to the number of electors whose names appear in the register of electors of such electoral districts), and the Delimitation Commission shall apportion such entitlement equitably among such electoral districts.

In the event of a difference of opinion among the members of the Delimitation Commission, the opinion of the majority thereof shall prevail and shall be deemed to be the decision of the Commission. Where each member of the Commission is of a different opinion, the opinion of the Chairman shall be deemed to be the decision of the Commission. Any dissentient member may state his reasons for such dissent.

The Chairman of the Delimitation Commission shall communicate the decisions of the Commission together with the reasons, if any, stated by a dissentient member to the President.¹²

3.03 Number of Members to be Returned by the Electoral Districts

The several electoral districts shall together be entitled to return one hundred and ninety-six members.

The apportionment of the number of members that each electoral district shall be entitled to return shall, in the case of thirty-six members be determined in accordance with the provisions of paragraph (4) of Article 94 of the Constitution.

The Commissioner of Elections, as soon as possible after the certification of the registers of electors for all the electoral districts, shall, by order published in the Gazette, certify the number of members which each electoral district is entitled to return.

The total number of electors whose names appear in the registers of electors of all the electoral districts shall be divided by one hundred and sixty. The whole number resulting from such division (any fraction not being taken into account) is hereinafter referred to as the “qualifying number”.

The total number of electors whose names appear in the register of electors of each electoral district shall be divided by the qualifying number and each electoral district shall be entitled to return such number of members as is equivalent to the whole number resulting from the division of the total number of such electors in that electoral district by the qualifying number and the balance number of such electors, if any, after such division shall be dealt with, if necessary, in accordance with these provisions.

Where the total number of members to be returned by all the electoral districts ascertained by reference to the qualifying number is less than one hundred and sixty members, the apportionment of the entitlement among the electoral districts of the balance number of members shall be by reference to the balance number of such electors and in the case of any electoral district not entitled to return a single member according to the determination of the fifth paragraph of these provisions, the total number of electors whose names appear in the register of electors of such electoral district, the electoral district having the highest of such balance number of such electors or such total number of electors, being entitled to return one or more members and so on until the total number of members to be returned number one hundred and sixty.

Where in making an apportionment, an equality is found to exist between two or more balance number of such electors or two or more total number of such electors or any combination of them and the addition of one such elector would entitle one electoral district to return an additional member, the determination of the electoral district to which one such elector shall be deemed to be added shall be determined by lot.

The Commissioner of Elections, as soon as possible after certification of the registers of electors for all the electoral districts, shall by order published in the Gazette certify the number of members which each electoral district is entitled to return and the number of candidates required to be set out in the nomination paper.

For the purposes of these provisions “the register of electors” means the register of electors for the time being in operation on the basis of which an election is being held.¹³

3.04 Polling Divisions

Each polling division and each polling district for the time being in force under the Registration of Electors Act (No. 44 of 1980), shall be deemed to be a polling division and a polling district, respectively for the purposes of the Act.¹⁴

— *Section 4* —

REGISTER OF ELECTORS

The register of electors to be used in any electoral district for the purposes of the Act shall be the register of electors in operation for that electoral district on the date of the publication of the proclamation or order requiring the holding of an election, notwithstanding that a new register may have come into operation after the publication of such proclamation or order.

A register of electors shall be conclusive evidence for the purpose of determining whether a person is or is not entitled to vote at an election under the Act and the right of voting of any person whose name is for the time being contained in such register shall not be prejudiced by any appeal pending under any written law for the time being in force in respect of the entry of such person's name in the register and any vote given by any such person during the pendency of such appeal shall be as good as though no such appeal were pending and shall not be affected by the subsequent decision of the appeal: provided that if any person, who by reason of his conviction of a corrupt practice or an illegal practice or by reason of any of the provisions of the Constitution is incapable of voting at an election under the Act, votes at such election, he shall, on conviction before a magistrate, be liable to a fine not exceeding five hundred rupees or to imprisonment for a period not exceeding six months.¹⁵

— *Section 5* —

POLITICAL PARTIES

A political party entitled to be treated as a recognised political party on the day immediately preceding the date of coming into operation of the Act, shall be entitled to be treated as a recognised political party for the purposes of elections under the Act.

Where a political party is entitled to be treated as a recognised political party for the purpose of elections, the approved symbol allotted to such party under the Order in Council shall be deemed to be the approved symbol allotted to that party for such purposes until the date on which such party ceases to be so entitled as provided in the Act, or the date on which such party is allotted a new approved symbol by the Commissioner by order as provided in the Act, whichever date is earlier.

The secretary of any political party, other than a party which is already entitled to be treated as a recognised political party for the purpose of elections, may at any time make on behalf of that party a written application to the Commissioner, that such party be treated as a recognised political party for the purpose of elections. The application shall also specify which one of the approved symbols such party desires to be allotted to such party if so treated.

The secretary of a political party shall, at the time an application is made under the

foregoing paragraph, furnish to the Commissioner a copy of the constitution of such party and list of office-bearers of such party.

Where such an application is made in respect of a political party and is disallowed by the Commissioner, no application shall be made in respect of that political party until after the expiration of a period of six months from the date of the order disallowing the first application.

Upon a receipt of an application duly made on behalf of any political party, the Commissioner shall, after such inquiry as he may deem fit:

- (a) if in his opinion such party is a political party and is organised to contest any election under the Act, make order:
 - (i) that such party shall be entitled to be treated as a recognised political party for the purpose of elections, subject, however, to the provisions of the Act; and
 - (ii) allotting an approved symbol to such party, being the approved symbol specified in the application or any other approved symbol determined by him in his absolute discretion, but not being the approved symbol of any other political party which is entitled to be so treated; or
- (b) if in his opinion, such party is not a political party and is not organised to contest any election under the Act, make order disallowing the application.

A political party is not entitled to be treated as a recognised political party if its name is identical with the name of any party which is already entitled to be treated as a recognised political party; or in the opinion of the Commissioner so nearly resembles such name as to be calculated to mislead, confuse or deceive.

The order of the Commission on any application shall be final and shall not be called in question in any court.

A political party which is entitled to be treated as a recognised political party for the purpose of elections shall be referred to as a “recognised political party”.

It shall be the duty of the secretary of every recognised political party to submit to the Commissioner a copy of the constitution of such party together with a list of the office-bearers of such party: in the case of a recognised political party, within three months after the Act comes into operation, and in the case of a newly recognised political party, within three months from the date on which such party is entitled to be treated as a recognised political party.

Where a recognised political party amends its constitution or changes its office-bearers, the secretary of such party shall, before the expiry of a period of thirty days from the date of such amendment or change, inform the Commissioner in writing of such amendment or change.

Where any recognised political party fails to comply with the provisions of the Act, such party shall cease to be a recognised political party.

The Commissioner may, upon application made in writing in that behalf by the secretary of a recognised political party, in his absolute discretion, extend the periods referred to above by a further period not exceeding sixty days.¹⁶

— Section 6 —

ELECTION PREPARATION

6.01 Nominations

The President shall, in every proclamation dissolving Parliament or in any order requiring the holding of an election, specify:

- (a) the period (referred to as the “nomination period”) during which nomination papers shall be received by the returning officer during normal office hours at his office; and
- (b) the date on which the poll shall be taken.

The nomination period shall commence on the tenth day after the date of publication in the Gazette of the aforementioned proclamation or order and expire at twelve noon on the seventeenth day after the date of publication of such proclamation or order.

The date fixed shall be:

- (a) a day not less than five weeks and not more than seven weeks from the closing day of the nomination period;
- (b) any day other than a Full Moon Poya day or any public holiday; and if, after the publication of the proclamation or order referred to above, the day specified in such proclamation or order is declared to be a public holiday, such declaration shall in no way affect the validity of anything done on such day for the purpose of taking the poll.

After the date of publication in the Gazette of a proclamation or order requiring the holding of an election, the secretary of a recognised political party shall, if such party intends contesting such election, give the Commissioner written notice of such intention. Such notice shall be given as to reach the Commissioner within seven days from that date.

Where the Commissioner has reasonable cause to believe that difficulties may arise at an election which is due to be held in any electoral district by reason of the fact that there are rival sections of a recognised political party all of whom claim to be that party, the Commissioner may, in order to remove such difficulties, issue in his absolute discretion a direction to the returning officer for that district that in the case of such election such recognised political party is either any one such section or none of such sections. It shall be the duty of such returning officer or any other officer, at such election, to act in accordance with that direction. No suit or other proceeding shall lie against:

- (a) the Commissioner by reason of his having issued a direction under the foregoing provisions; or

- (b) a returning officer or any other officer for any act or thing done or omitted to be done in accordance with that direction.

A direction issued to a returning officer shall be final and shall not be called in question in any court.

These provisions and any direction issued thereunder shall have effect notwithstanding anything to the contrary in any other provisions of the Act.

Any person who is qualified to be elected as a member of Parliament may be nominated as a candidate for election as hereinafter provided.

Any recognised political party or any group of persons contesting as independent candidates (referred to as an “independent group”) may, for the purpose of an election of members of Parliament for any electoral district, submit one nomination paper setting out the names of such number of candidates as is equivalent to the number of members to be elected for that electoral district, increased by three. Such nomination paper shall be in the prescribed form.

The written consent of each candidate to be nominated by a recognised political party or an independent group and an oath or affirmation, as the case may be, in the prescribed form, taken or subscribed or made or subscribed, as the case may be, by every such candidate, shall be endorsed on the nomination paper.

Each nomination paper shall be signed by the secretary of a recognised political party or in the case of any independent group by the candidate whose name appears first in the nomination paper (referred to as the “group leader”) and shall be attested by a Justice of the Peace or by a notary public.

Such nomination paper shall be delivered to the returning officer at his office during normal office hours within the nomination period by the secretary of a recognised political party or by the candidate whose name appears first in such nomination paper (referred to as the “authorised agent”) in the case of a recognised political party, or by the group leader in the case of an independent group.

Where, due to any reason whatsoever, the secretary of a recognised political party or the authorised agent or the group leader is unable to deliver a nomination paper, the candidate whose name appears second on such nomination paper shall deliver such nomination paper to the returning officer.

The returning officer shall as soon as practicable make a copy of each nomination paper received by him and display such copy on his notice board.

The returning officer shall, on application made on any date after the publication of the proclamation or order requiring the holding of an election and before the expiry of the nomination period, supply free of charge a nomination paper to any recognised political party or any independent group; but the Act does not preclude the use of any form of

nomination paper not supplied by the returning officer, so long as such form does not differ substantially from the prescribed form.

Where it appears to the secretary of a recognised political party or an authorised agent or a group leader that there is any omission or clerical error in a nomination paper submitted by such party or independent group he may make an application to the returning officer before the expiry of the nomination period to correct such omission or error on such paper.

Where the returning officer is satisfied that such omission or error is due to inadvertence, the returning officer may allow such secretary or authorised agent or group leader to correct such omission or error in his presence.

For the purposes of these provisions, the omission of the name of a candidate, or the failure of a candidate to endorse his consent on a nomination paper, or the failure of the secretary of a recognised political party or a group leader to sign a nomination paper, or the failure of a Justice of the Peace or notary public to attest such signature shall be deemed not to be an omission or a clerical error due to inadvertence.

A group leader or any person authorised by such group leader, shall, between the date of publication of the proclamation or order requiring the holding of an election and the submission of the nomination paper of that group, deposit in legal tender with the returning officer a sum calculated at two thousand rupees in respect of each candidate nominated by such group.

No deposit made by a group leader or a person authorised by such group leader shall be accepted by the returning officer unless it is made within the time prescribed.

Where a deposit is accepted by the returning officer, such officer shall forthwith issue to the person by whom the deposit was made, a receipt in writing signed by such officer acknowledging his acceptance of such deposit, and the receipt shall state:

- (a) the name of the group leader by whom the deposit was made or of the authorised person by whom and on whose behalf the deposit was made;
- (b) the number of candidates;
- (c) the amount of the deposit; and
- (d) the time and date of the deposit.

Where the number of votes polled by any independent group does not exceed one-twentieth of the total number of votes polled at the election in any electoral district, the deposit made in respect of the candidates of such group shall be declared forfeited and shall be transferred by the returning officer from the deposit account to the Consolidated Fund, and in every other case the deposit shall be returned to the person who made the deposit as soon as may be after the result of the election is declared.

The returning officer shall immediately after the expiry of the nomination period examine the nomination papers received by him and reject any nomination paper:

- (a) that has not been delivered in accordance with the Act;
- (b) that does not contain the total number of candidates required to be nominated in terms of the Constitution; or
- (c) in respect of which the deposit required has not been made; or
- (d) where the consent of one or more candidates nominated or the oath or affirmation, in the prescribed form, of one or more candidates, has or have not been endorsed on the nomination paper; or
- (e) where the signature of the secretary in the case of a recognised political party, or of the group leader in the case of an independent group does not appear on the nomination paper or where such signature has not been attested as required.

Objections to a nomination paper may be made to the returning officer between twelve noon and one-thirty o'clock in the afternoon of the last day of the period of nomination, and no such objection shall be entertained by the returning officer after one-thirty o'clock in the afternoon of that day.

Where any nomination paper has been rejected by the returning officer, the returning officer shall inform the secretary of the recognised political party or group leader, as the case may be, who had submitted such nomination paper the fact of such rejection. The decision of the returning officer to reject such nomination paper shall be final.

Where the candidates of only one recognised political party or one independent group stand nominated for election, the returning officer shall call upon the secretary of such recognised political party or the group leader of such independent group to decide, within such period as may be specified by the returning officer, which of the candidates whose names appear in such nomination paper shall be declared elected as members. If such secretary or group leader communicates his decision to the returning officer within the period specified by the returning officer, the returning officer shall declare elected as members of Parliament the respective candidates specified in such declaration. If on the other hand, such secretary or group leader fails to communicate his decision to the returning officer within the period specified by the returning officer, then such number of candidates, in the order in which their names appear in such nomination paper, as is equal to the number of members to be elected shall be declared elected.

The returning officer shall forthwith make a return, which shall be substantially in the prescribed form, to the Commissioner who shall cause the names of the members so declared elected to be published in the Gazette.

If at the expiry of the nomination period and after the rejection of any nomination paper, candidates of more than one recognised political party or independent group stand duly nominated for election, the returning officer shall forthwith allot:

- (a) to each recognised political party for the purpose of that election, the approved symbol of that party; and
- (b) in respect of each independent group, an approved symbol and where there is more than one independent group an approved symbol and a distinguishing number determined:

- (i) in the first instance by agreement among the group leaders; or
 - (ii) in the absence of such agreement by lots cast or drawn in such a manner as the returning officer may, in his absolute discretion, determine,
- and such symbol shall be printed on the ballot paper opposite:
- (i) the name of such party; and
 - (ii) in the case of an independent group, the words “Independent Group” and the distinguishing number, if any, allotted to that group.

After the allocation of symbols, the returning officer shall forthwith:

- (a) adjourn such election to enable a poll to be taken;
- (b) report to the Commissioner the election is contested; and
- (c) send to the Commissioner copies of the nomination papers of the recognised political parties and independent groups, a statement of the symbols allotted to each party or group, and where there is more than one independent group the distinguishing numbers allotted to each such group, and a statement giving the situation of the polling station or polling stations for each of the polling districts in that electoral district and the particular polling stations, if any, reserved for female voters.

Unless the returning officer considers it necessary or expedient in the special circumstances of any case to provide a separate polling station for the female voters of any polling district, there shall be for each polling district one polling station and no more.

The location of the polling station shall be such as to cause the minimum inconvenience to the electors of the polling district.¹⁷

6.02 Voting by Post

A person who is entitled to be treated as a postal voter for the purpose of an election in any electoral district may vote by post, and shall not vote in person, at such election.

Any person who votes in person at an election in contravention of the preceding provisions is guilty of an offence.

An application to be treated as a postal voter in any electoral district may be made:

- (a) by a member of the Sri Lanka Army, Sri Lanka Navy, Sri Lanka Air Force, or an officer or servant in the Department of Police, Department of Prisons, the Sri Lanka Government Railway, the Department of Posts and the Department of Telecommunications or the Sri Lanka Central Transport Board or any Regional Transport Board, on the ground that he is unable or likely to be unable to vote in person at the polling station allotted to him by reason of the particular circumstances of his employment as such member, officer or servant; and
- (b) by any other officer or servant in the public service or of the Central Bank of Ceylon, or the Local Government Service on the ground of the particular circumstances of his employment on the date of the poll for a purpose connected with the election or of his being likely to be employed for that purpose; and

- (c) by a candidate at a general election on the ground that he is unable or likely to be unable to vote in person at the polling station allotted to him by reason of his candidature in some other electoral district.

An application to be treated as a postal voter shall be made to the returning officer so as to reach him not earlier than the seventh day and not later than the fourteenth day after the date of publication of the proclamation or order requiring the holding of an election. Such application shall be in the prescribed form.

No application to be treated as a postal voter shall be allowed by a returning officer unless he is satisfied that the application is in accordance with the preceding provisions.

The returning officer may, for the purpose of the disposal of application to be treated as a postal voter, by notice require any person to give such officer any such information as may be necessary for that purpose.

The decision of a returning officer on an application to be treated as a postal voter shall be communicated in writing to the applicant. The decision of the returning officer to allow or disallow an application to be treated as a postal voter shall be final.

Where an application to be treated as a postal voter is allowed by a returning officer, the applicant shall be a person entitled to be treated as a postal voter for the purpose of an election.

The returning officer shall, as soon as practicable, send by post to each person who is entitled to be treated as a postal voter, to the address furnished by such person:

- (a) a ballot paper;
- (b) a form of declaration of identity;
- (c) an envelope which shall be smaller than the envelope referred to in sub-paragraph (d) below and which shall be marked "ballot paper envelope" and also with the number printed on the postal ballot paper issued to such person, and in which the postal ballot paper shall be enclosed when it is returned duly marked; and
- (d) an envelope for the return of the aforementioned documents.

The form of the ballot paper and the form of the declaration of identity which are to be used by persons entitled to be treated as postal voters, and the procedure to be followed at the proceedings on their issue, shall be according to the regulations contained in the Second Schedule to the Act.

A ballot paper issued to a person entitled to be treated as a postal voter is in the Act referred to as "postal ballot paper".

The returning officer of any electoral district where there is an election shall, as soon as practicable, prepare a list (referred to as the "postal voters' list") specifying the name, address and registration number on the register of electors of every person entitled to be treated as a postal voter. Such list shall be prepared in such manner as may be prescribed in that behalf by the regulations.¹⁸

6.03 Poll Card

The returning officer shall send to each elector whose name appears in the register a poll card (referred to as an “official poll card”) in such form as may be determined by the Commissioner, and specifying:

- (a) the name and number of the electoral district;
- (b) the name, qualifying address, and registration number of the elector as stated in the register;
- (c) the polling division;
- (d) the polling district;
- (e) the polling station allotted to the elector; and
- (f) the date and hours of the poll,

provided that no such card shall be sent to an elector who is entitled to be treated as a postal voter or to an elector in respect of whom an application made under section 127B has been allowed.

An official poll card shall be sent to an elector by ordinary post as to reach him at least seven days before the date of the poll. Where a post office fails to deliver such card to the person to whom it is addressed, it shall be retained until the date of the poll in such post office to be delivered to the addressee if he calls for it.

Every person who:

- (a) without authority supplies any official poll card to any other person; or
 - (b) sells or offers to sell any official poll card to any other person or purchases or offers to purchase any official poll card from any other person,
- shall be guilty of an offence.

Every person, other than a public officer acting in the course of his duty as such officer, who has in his possession the official poll card of any other person, shall be guilty of an offence.¹⁹

6.04 Facilities at Polling Stations

For the purposes of an election in any electoral district, the returning officer of that district shall:

- (a) appoint such officers and servants as may be necessary for taking the poll;
- (b) furnish each polling station in that electoral district with such number of compartments as may be necessary to accommodate a reasonable number of voters at any one time and to ensure that the voters are screened from observation when they mark their ballot papers;
- (c) furnish each presiding officer with a copy of that part of the register of electors containing the names of electors in such register assigned to his polling station and a list of such of the names of electors in that copy as appear in the postal voters' list. A distinguishing mark shall be placed against the name of every elector who is entitled to be treated as a postal voter and against the name of every elector in respect of whom an

application made under section 127B has been allowed in the part of that register supplied to each presiding officer;

- (d) furnish each presiding officer with such number of ballot boxes and ballot papers as, in the opinion of the returning officer, may be necessary for the number of voters assigned to that polling station;
- (e) provide each polling station with materials to enable voters to mark the ballot papers, with instruments for perforating or stamping thereon the official mark;
- (f) do such other act and things as may be necessary for effectually conducting the election in the manner prescribed.

An election shall not be questioned by reason of non-compliance with the foregoing provisions or any informality relative to polling stations.

During the taking of the poll, the presiding officer at every polling station shall cause to be exhibited:

- (a) outside the polling station and in every compartment thereof, a notice substantially in the prescribed form, giving directions for the guidance of voters; and
- (b) outside the polling station a notice specifying the name of each recognised political party contesting the election or in the case of independent groups contesting the election, the words "Independent Group" for each such group and the distinguishing number, if any, allotted to it together with the names of the candidates (as indicated by the candidates) in alphabetical order, according to the Sinhala alphabet of each such recognised political party or independent group, the serial number assigned to each such candidate and the approved symbol allotted to each such party or group.

Every notice under these provisions shall be in Sinhala, Tamil and English.

The votes at every election in any electoral district shall be given by ballot. The ballot of each voter shall consist of a ballot paper in the form and containing the particulars prescribed.

Every ballot paper shall be substantially in the prescribed form, and:

- (a) shall contain the names of the recognised political parties contesting the election, in Sinhala, Tamil and English, arranged alphabetically, according to the Sinhala alphabet, in order of names of such parties and with the symbol allotted to each such party, set out against the name of each such party, and immediately thereafter if there are any independent groups contesting the election, the words "Independent Group" repeated for each group and the distinguishing number, if any, in the serial order and the symbol allotted to each such group and set out against the distinguishing number of such group and immediately below this, such number or numbers placed in serial order as is equal to the number of members to be elected from the electoral district, increased by three;
- (b) shall be capable of being folded;
- (c) shall have a number printed on the reverse; and
- (d) shall have attached a counterfoil with the same number printed on the face.

Unless the Commissioner, by notification in the Gazette, appoints any other hour, the poll in any electoral district shall open at seven o'clock in the forenoon of the day specified and shall close at four o'clock in the afternoon of that day.²⁰

6.05 Polling Agents

The secretary of each recognised political party or its authorised agent or any group leader may appoint a reasonable number of polling agents for each polling station having regard to the need to revoke the appointment of any polling agent for that polling station during the poll. Notice in writing of every such appointment stating the names, the numbers of the national or other identity cards issued by a government department or public corporation and addresses of the persons so appointed shall be given by such secretary or authorised agent or group leader to the presiding officer at that station before the opening of the poll or during the poll.

The secretary of a recognised political party or its authorised agent or a group leader may delegate the powers vested in such secretary, authorised agent or group leader, to any candidate nominated by such party or independent group for such election so however, that such powers shall not be delegated to more than one candidate in respect of each polling division. Any delegation shall be notified in writing to the returning officer not later than seven days before the date of the poll.

Where such secretary, authorised agent or group leader or candidate after informing the presiding officer of the name of any polling agent appointed to act at such station, revokes the appointment of that polling agent and appoints another polling agent to such station, such secretary, authorised agent or group leader or candidate, as the case may be, shall inform such officer in writing of the revocation of such appointment and of the name, the number of the national or other identity card issued by a government department or public corporation and address of the new polling agent appointed to such station.

Not more than two polling agents of each recognised political party or independent group shall at any time be admitted to or be allowed to remain in any polling station.²¹

6.06 General Conduct of the Poll

No person shall be admitted to vote at any polling station other than the polling station set apart for the group of voters to which he belongs.

The presiding officer shall keep order in his station, and shall regulate the number of voters to be admitted at a time and shall exclude all other persons except the candidates, the polling agents, the police officers on duty and other persons officially employed at the polling station: provided however, that only one candidate from each recognised political party or independent group shall be admitted to the polling station at any one time.

If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, the presiding officer may cause him to be removed forthwith from the

polling station by any police officer or by any other person authorised in writing by the presiding officer or by the returning officer.

Any person removed from a polling station in the above-mentioned manner:

- (a) shall not, except with the permission of the presiding officer, be allowed to enter the polling station again during the hours of the poll; and
- (b) may, if he is charged with the commission of any offence in that station, be kept in custody until he can be brought before a magistrate: provided that the powers conferred by the foregoing provisions shall not be exercised so as to prevent any voter who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station.

Immediately before the commencement of the poll, the presiding officer at a polling station:

- (a) shall show the ballot papers, the official seal, the official mark and the copies of the parts of the register of electors, to be used at the poll to such persons, if any, as may be present in such station; and
- (b) shall also show each ballot box to be used at the commencement of the poll empty to the persons aforesaid so that they may see that it is empty, and shall then lock it up and place his seal upon it in such manner as to prevent it being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers and keep it so locked and sealed.

Each voter shall be given one ballot paper and shall have one vote.

The ballot paper shall be delivered to the voter by the presiding officer or a person acting under his authority. Immediately before the ballot paper is delivered to the voter:

- (a) the number, name and description of the voter as stated in the copy of the register of electors shall be called;
- (b) the number of the voter shall be marked on the counterfoil, and the ballot paper detached therefrom;
- (c) the ballot paper shall be either stamped, embossed or perforated with the official mark; and
- (d) a mark shall be placed in the register against the name of the voter to denote that he has received a ballot paper, but without showing the particular ballot paper he has received.

No ballot paper shall be delivered to a voter at an election:

- (a) if he refuses to allow the presiding officer or a person acting under his authority to make the appropriate inspection; or
- (b) if, having allowed such inspection, it discloses that such voter has already been marked with the appropriate mark; or
- (c) if, having allowed such inspection, it discloses that such voter has not already been

marked with the appropriate mark but such voter refuses to allow such officer or person to mark such voter with the appropriate mark, and accordingly such voter shall not be entitled to vote at such election.

The presiding officer of a polling station shall enter on a list, in the prescribed form, the following particulars relating to each voter to whom a ballot paper was not delivered at such station:

- (a) the number of such voter in the register of electors;
- (b) the name of such voter as it appears in such register; and
- (c) the ground on which a ballot paper was not delivered to such voter.

Such list is in the Act called the “list of voters to whom ballot papers are not delivered under section 38”.

The expression “appropriate mark” means a mark made with indelible ink.

The term “appropriate” with reference to any context connected with or relating to the inspection or marking of a voter, means:

- (i) the little finger of his left hand or, if such finger is missing, any other finger of his left hand; or
- (ii) if all the fingers of his left hand are missing, the little finger of his right hand or, if such finger is missing, any other finger of his right hand; or
- (iii) if all the fingers of his left and right hands are missing, such extremity of his left or right hand such voter possesses.

The voter, on receiving the ballot paper, shall forthwith proceed into the compartment to which he is directed by the presiding officer or any person acting under that officer’s authority and there secretly mark the ballot paper as near as may be in accordance with the directions given for the guidance of voters and fold the ballot paper so as to conceal his vote, and shall then show to the presiding officer the reverse of the paper, so as to disclose the official mark, and put the ballot paper, so folded, into the ballot box in the presence of the presiding officer.

The presiding officer may at any time while a poll is proceeding take such steps as may be necessary to ensure that no voter delays unduly in any place reserved for marking of ballot papers.

The presiding officer, or any person authorised by the presiding officer, may, if he thinks fit on the application of any voter, explain to the voter, within sight and hearing of the polling agents, if present, the method of voting specified in the directions given for the guidance of voters in the prescribed form, but in so doing shall be careful to abstain from any action which might be construed by the voter as advice or, a direction to vote for any particular recognised political party or independent group.

The presiding officer, on the application of any voter who is incapacitated by blindness or

other physical cause from voting in accordance with the directions given for the guidance of voters in the prescribed form shall, in the presence of another member of his polling staff, mark the ballot paper of such voter in the manner directed by the voter and shall cause such ballot paper to be placed in the ballot box.

No voter is entitled to vote by proxy at any election in any electoral district.

If any person at an election under the Act:

- (a) votes in more than one electoral district or asks for a ballot paper for the purpose of so voting; or
 - (b) votes more than once in the same electoral district or asks for a ballot paper for the purpose of so voting,
- he shall be guilty of an illegal practice.

The presiding officer at any polling station may in his discretion, and, if required so to do by a polling agent, shall, require any voter, before he is given a ballot paper, to make and subscribe all or any of the relevant declarations in the prescribed form.

If any person refuses to make any such declaration, the presiding officer may refuse to give him a ballot paper.

If any person wilfully makes a false statement in any declaration, he is guilty of an offence.

A voter who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of such inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in place of the ballot paper so delivered up (referred to as a "spoilt ballot paper"), and the spoilt ballot paper shall be immediately cancelled by the presiding officer.

If a person representing himself to be a particular elector named in the register applies for a ballot paper after another person has voted as such elector, the applicant shall on making and subscribing a declaration, which shall be in the prescribed form, be entitled to receive a ballot paper and to vote in the same manner as any other voter, but the ballot paper, in the Act referred to as a "tendered ballot paper", shall be of a colour different from the other ballot papers, and, before being placed in the ballot box, shall be endorsed by the presiding officer with the name of the voter and his number in the register, and that number shall be entered on a list, (called the "tendered votes list"), which shall be in the prescribed form.

No ballot paper shall be delivered to a voter after the hour fixed for the closing of the poll. But if at the hour aforesaid there is in any polling station any voter to whom a ballot paper has been delivered, such voter shall be allowed to record his vote.

As soon as practicable after the closure of the poll, the presiding officer of each polling station shall, in the presence of the polling agents make up into separate packets, sealed with his own seal and the seals of such polling agents as desire to affix their seals:

-
- (a) each ballot box at that station, each such box remaining locked as it was at the time of the opening of the poll and being sealed after the closure of the poll so as to prevent the introduction of any ballot papers thereafter;
 - (b) the key of each ballot box;
 - (c) the unused and spoiled ballot papers placed together;
 - (d) the marked copies of the register of electors and the counterfoils of the ballot papers;
 - (e) the list of voters to whom ballot papers were not delivered under section 38; and
 - (f) the tendered votes list,
- and shall deliver the packets to the counting officer.

The packets shall be accompanied by a statement (referred to as “the ballot paper account”) made by the presiding officer, showing the number of ballot papers entrusted to him and accounting for them under the heads of:

- (a) ballot papers issued to voters, other than spoiled ballot papers;
- (b) spoiled ballot papers; and
- (c) unused ballot papers.²²

6.07 Counting of Votes and Declaration of Result

The returning officer shall make arrangements for counting the votes as soon as possible after the close of the poll and shall give notice in writing to each secretary or the authorised agent of a recognised political party and the group leader of any independent group contesting the election, of the situation of each counting centre, the date and time of the commencement of the count, and a statement setting out the counting centres and the polling station or stations assigned to each such counting centre.

The secretary of each recognised political party or its authorised agent or a group leader may appoint:

- (a) not more than five agents (referred to as “counting agents”) to attend at the counting of votes at each counting centre where such counting centre has been assigned more than one polling station;
- (b) not more than two counting agents to attend at the counting of votes at each counting centre where such counting centre has been assigned only one polling station.

Any candidate to whom the power of appointing polling agents has been delegated may, in like manner, be delegated the power of appointing counting agents in respect of any counting centre under sub-paragraph (b).

Notice in writing stating the names, the numbers of national or other identity cards issued by a government department or public corporation and addresses of the persons appointed shall be given by the secretary of such recognised political party or its authorised representative or the group leader or the candidate to the counting officer before the counting of votes commences. The counting officer may refuse to admit to the counting centre any counting agent whose name, number of national or other identity card issued by a government department or public corporation and address has not been so given and

who does not produce a letter from the returning officer authorising him to be present at that counting centre.

The counting officer shall commence the counting of votes after he has received all the ballot boxes from every polling station assigned to his counting centre.

Before the counting officer proceeds to count the votes he or a person authorised by him shall in the presence of such of the counting agents as attend:

- (a) show such counting agents the ballot paper account and permit them to take copies thereof; and
- (b) open each ballot box, and having taken out the ballot papers therein, count and record the number of such papers in each such box and then mix together the whole of the papers contained in the ballot boxes.

The counting officer, while counting the votes, shall keep the ballot papers with their faces upwards and take all proper precautions for preventing any person from seeing the numbers printed on the reverse of such papers.

The counting officer shall as far as practicable proceed continuously with counting the votes and shall endorse "rejected" on any ballot paper which he may reject as invalid.

The counting officer shall not count the tendered ballot papers but shall place them in separate packets according to the recognised political party or independent group they support and shall mark each packet with the name of such party or the words "Independent Group" and the distinguishing number, if any, of such group as the case may be, and hand over such packets to the returning officer.

Any ballot paper:

- (a) which does not bear the official mark; or
- (b) on which votes are given for:
 - (i) more than one recognised political party; or
 - (ii) more than one independent group; or
 - (iii) a combination of one or more recognised political parties and independent groups; or
- (c) on which anything is written or marked by which the voter can be identified except the printed number on the reverse; or
- (d) which is unmarked; or
- (e) which is void for uncertainty,

shall be rejected by the counting officer. The counting officer shall endorse the word "rejected" on any such ballot paper.

Where the counting officer is satisfied that any mark made on a ballot paper clearly indicates the intention of the voter to give his vote and the recognised political party or independent group for which he gives his vote, the counting officer shall not reject the ballot paper on the ground solely that it has not been marked in all respects in accordance with the prescribed directions given for the guidance of voters.

Where the counting officer is satisfied that a ballot paper is not a forged or counterfeit ballot paper he shall not reject it solely on the ground that it is not stamped or perforated with the official mark. Before deciding not to reject a ballot paper the counting officer shall show it to each counting agent if present and hear his views thereon.

Before rejecting a ballot paper, the counting officer shall show it to each counting agent if present and hear his views thereon taking all proper precautions to prevent any person from seeing the number printed on the reverse of the paper.

The counting officer shall draw up a statement showing separately the number of ballot papers rejected, under each ground specified, and shall on request allow any counting agent to copy the statement.

The counting officer shall prepare a written statement in words as well as in figures of the number of votes given for each recognised political party and independent group and a separate statement, in words as well as in figures of the number of preferences indicated for every candidate nominated by each such party or group and each such statement shall be certified by the counting officer and witnessed by one of his assistants or clerks and the counting agents of any party or group as are present and desire to sign. The counting officer shall on request allow any counting agent to copy the statement.

The preferences indicated by a voter on his ballot paper for the candidates nominated by a recognised political party or independent group shall be disregarded if such voter has indicated preferences for more than three candidates nominated by such party or group.

Where a voter indicates in his ballot paper more than one preference for a candidate nominated by a recognised political party or independent group all the preferences so indicated shall be regarded as one preference.

Any preference indicated by a voter in his ballot paper which is void for uncertainty as to the candidate for whom it is indicated shall be rejected.

Before the counting officer makes a written statement, such number of recounts may be made as the counting officer deems necessary; and a recount or recounts shall be made upon the application of a counting agent so however that the maximum number of recounts that shall be so made, on the application of any counting agent or all the counting agents, shall not exceed two.

The decision of the counting officer as to any question arising in respect of any ballot paper shall be final and conclusive.

Upon the completion of the counting at any counting centre, the counting officer shall forthwith deliver in sealed packets to the returning officer:

- (a) the counted ballot papers;
- (b) the rejected ballot papers;
- (c) the tendered ballot papers;

- (d) the ballot paper account;
- (e) the packets containing unused and spoilt ballot papers, the marked copies of the register of electors and counterfoils of the ballot papers, the list of voters to whom ballot papers were not delivered and the tendered votes list;
- (f) the record of the count; and
- (g) the statement showing the number of rejected ballot papers and the grounds for rejection; and
- (h) the written statement of the number of votes given to each recognised political party or independent group and the number of preferences secured by each candidate nominated by each such party or group.

The postal ballot papers in respect of any electoral district shall be counted in accordance with the postal voters' regulations at a separate counting centre or such number of counting centres as may be determined by the returning officer.

The returning officer shall, before he proceeds to declare the result of an election, give notice in writing to the secretary or authorised agent of a recognised political party or the group leader of an independent group contesting that election, of the time and place at which the result will be declared.²³

6.08 Declaration of Result

After the receipt of the documents upon the closure of the poll and the count, the returning officer shall from the statements furnished to him by all the counting officers (including the counting officers of the counting centre or centres where postal ballot papers were counted) add up and determine the number of votes given for each recognised political party and independent group and the number of preferences indicated for each candidate nominated by each party or group. The returning officer shall, before he opens a sealed packet, upon a request made by an agent appointed for the purpose of witnessing the count permit such agent to inspect the seals of such packet.

Upon such determination, the returning officer shall forthwith declare elected, in accordance with the provisions of the Constitution, such number of members which the electoral district is entitled to return as has been specified by the Commissioner in the order published in accordance with the Constitution.

The returning officer shall forthwith after the result has been declared by him, make a return, substantially in the prescribed form, to the Commissioner, who shall cause the names of the members so elected to be published in the Gazette.

The returning officer shall retain the packets and all documents forwarded to him for a period of six months reckoned from the date of the receipt thereof and thereafter shall cause the said packets and documents to be destroyed unless otherwise directed by the Commissioner.

An Election Judge may make an order that any ballot paper or other document relating to an election which has been sealed as required by the Act be inspected, copied, or produced at

such time and place and subject to such conditions as the Judge may deem expedient, but shall not make such an order unless he is satisfied that such inspection, copying or production is required for the purpose of instituting or maintaining a prosecution or an election petition in connection with the election. Save as aforesaid, no person shall be allowed to inspect any such ballot paper or document while it is in the custody of the returning officer.²⁴

— Section 7 —

OFFENCES

7.01 Offences Relating to Nomination Papers, Ballot Papers, etc

Every person who:

- (a) forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any nomination paper knowing the same to be forged; or
- (b) forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper; or
- (c) without due authority supplies any ballot paper to any person; or
- (cc) wilfully displays a marked ballot paper inside a polling station; or
- (d) sells or offers to sell any ballot paper to any person or purchases or offers to purchase any ballot paper from any person; or
- (e) not being a person entitled under the Act to be in possession of any ballot paper which has been marked with the official mark in accordance with the Act, has any such ballot paper in his possession; or
- (f) puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or
- (g) without due authority takes out of any polling station any ballot paper or is found in possession of any ballot paper outside a polling station; or
- (h) without due authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers in use or intended to be used for the purpose of an election; or
- (i) without due authority prints any ballot paper or what purports to be or is capable of being used as a ballot paper at an election; or
- (j) manufactures, constructs, imports into the Republic, has in his possession, supplies or uses for the purpose of an election, or causes to be manufactured, constructed, imported into the Republic, supplied or used for the purpose of an election, any appliance, device or mechanism by which a ballot paper may be extracted, affected or manipulated after having been deposited in a ballot box during the polling at an election; or
- (k) wilfully makes a false statement on any application to be treated as a postal voter under the Act, or in any declaration of identity sent to him under the postal voters' regulations; or
- (l) without due authority destroys, takes, opens, or otherwise tampers or interferes with,

any application to be treated as a postal voter, or any declaration of identity, or any covering envelope or ballot paper envelope within the meaning of the postal voters' regulations; or

- (m) without due authority prints any official poll card or what purports to be or is capable of being used as an official poll card at an election; or
- (n) without due authority places an appropriate mark on any voter at an election or what purports to be or is capable of being mistaken for that mark; or
- (o) fraudulently defaces an appropriate mark placed on any voter at an election without due authority; or
- (p) votes at an election knowing that he is legally incapable of, or disqualified from, so voting,

is guilty of an offence and shall on conviction by the High Court, be liable to imprisonment of either description for a term not exceeding two years and shall, by conviction, become incapable, for a period of seven years from the date of his conviction, of being registered as an elector or of voting at an election under the Act, or of being elected as a member of Parliament, and if at that date he has been elected as a member of Parliament, his election shall be vacated from the date of such conviction.²⁵

7.02 Maintenance of Secrecy at Elections

Every officer, clerk, candidate and agent authorised to attend at a polling station, or at the counting of the votes, shall, before so attending make a statutory declaration of secrecy. Such declaration shall be made by the returning officer in the presence of a Justice of the Peace and by a presiding officer or a counting officer in the presence of a Justice of the Peace or of the returning officer, and when made by any other person shall be made in the presence of the returning officer or of a Justice of the Peace or of a presiding officer or of a counting officer.

Every officer, clerk, candidate, and agent in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting in such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of electors of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark.

No such officer, clerk, candidate or agent, and no person whosoever shall attempt to obtain in the polling station information as to the recognised political party or independent group for which any voter in such station is about to vote or has voted, or communicate at any time to any person any such information obtained in a polling station as to the recognised political party or independent group for which any voter in such station is about to vote or has voted, or as to the number on the reverse of the ballot paper given to any voter at such station.

Every officer, clerk, candidate and agent in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the reverse of any ballot paper or communicate any information obtained at such counting as to the recognised political

party or independent group for which any vote is given by any particular ballot paper.

No person, except a presiding officer acting for a purpose authorised under the Act, or a person authorised by the presiding officer and acting for such purpose as aforesaid, shall communicate or attempt to communicate with any voter after such voter has received a ballot paper and before he has placed the same in a ballot box.

Every person who acts in contravention of these provisions is guilty of an offence.

Every person who is convicted under these provisions shall, by conviction, become incapable for a period of seven years from the date of his conviction, of being registered as an elector or of voting at an election under the Act.²⁶

7.03 Corrupt Practices

Personation

Every person who at any election:

- (a) votes in person or by post as some other person, whether that other person is living or dead or is a fictitious person; or
 - (b) votes more than once in or under his own name at such election,
- is guilty of the offence of personation.

For the purposes of these provisions, a person who:

- (a) has applied for a ballot paper for the purpose of voting in person; or
 - (b) has made an application to be treated as a postal voter; or
 - (c) has marked, whether or not validly, and returned a ballot paper issued for the purpose of voting by post,
- shall be deemed to have voted.

Treating

Every person who corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays or engages to pay wholly or in part the expense of giving or providing any meat, drink, refreshment or provision or any money or ticket or other means or device to enable the procuring of any meat, drink, refreshment or provision, to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election or on account of any such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election, and every elector who corruptly accepts or takes any such meat, drink or refreshment or provision or any such money or ticket or who adopts such other means or device to enable the procuring of such meat, drink, refreshment or provision is guilty of the offence of treating.

Undue Influence

Every person who directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at an election; or who by abduction, duress, or any fraudulent device or contrivance impedes or prevents the free exercise of the franchise of any elector, or thereby compels, induces or prevails upon any elector either to give or refrain from giving his vote at an election shall be guilty of the offence of undue influence.

Every person who, at any time in the period commencing from the first day of the nomination period at any election and ending on the day following the date of the poll at such election:

- (a) utters at any religious assembly any words for the purpose of influencing the result of such election or inducing any elector to vote or refrain from voting for any recognised political party or independent group at such election; or
 - (b) for such purpose distributes or displays at any religious assembly, any handbill, placard, poster, drawing, notice, photograph of a candidate, symbol, sign, flag or banner; or
 - (c) holds or causes to be held a public meeting at a place of worship for the purpose of promoting the election or the election campaign of any recognised political party or independent group at such election,
- is guilty of the offence of undue influence.

Any member or official of a religious order or organisation:

- (a) who denies, or threatens to deny, to any member or adherent or the family of such member or adherent, any spiritual ministrations, service or benefit, to which such member or adherent would in the ordinary course have been entitled; or
- (b) who excludes, or threatens to exclude, such member or adherent from such order or organisation,

in order to induce or compel such member or adherent to vote or refrain from voting for any recognised political party or independent group at an election, or to support or refrain from supporting any recognised political party or independent group at such election, or on account of such member or adherent having voted or refrained from voting for any recognised political party or independent group at such election, or having supported or refrained from supporting any recognised political party or independent group at such election, is guilty of the offence of undue influence.

Any person who, being the employer of any other person:

- (a) terminates or threatens to terminate such employment; or
- (b) denies or threatens to deny to such other person any benefit or service which such other person already enjoyed, or would have enjoyed, in the ordinary course of such employment,

in order to induce or compel such other person to vote or refrain from voting for any recognised political party or independent group at an election, or to support or refrain from supporting any recognised political party or independent group at such election, or on account of such other person having voted or refrained from voting for any recognised political party or independent group at such election, or having supported or refrained from supporting any recognised political party or independent group at such election, is guilty of the offence of undue influence.

Bribery

The following persons shall be guilty of the offence of bribery:

- (a) every person who directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector, or to or for any person on behalf of any elector or to or for any other person, in order to induce any elector to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector having voted or refrained from voting at an election under the Act;
- (b) every person who directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises, or promises to procure or to endeavour to procure any office, place or employment to or for any elector, or to or for any person on behalf of any elector, or to or for any other person, in order to induce such elector to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any elector having voted or refrained from voting at an election under the Act;
- (c) every person who directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the return of any person as a member of Parliament, or the vote of any elector at an election under the Act;
- (d) every person who upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement procures or engages, promises or endeavours to procure, the return of any person as a member of Parliament, or the vote of any elector at an election under the Act;
- (e) every person who advances or pays or causes to be paid any money to or to the use of any other person with intent that such money or any part thereof shall be expended in bribery at an election under the Act or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at such election;
- (f) every elector who, before or during an election under the Act, directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at such election;
- (g) every person who, after an election under the Act, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on

- account of any person having voted or refrained from voting or having induced any other person to vote or to refrain from voting at such election;
- (h) every person who directly or indirectly, by himself or by any other person on his behalf, on account of and as payment for voting or for having voted or agreeing or having agreed to vote for any recognised political party or independent group at an election, or on account of and as payment for his having assisted or agreed to assist any recognised political party or independent group at an election, applies to any candidate nominated by such recognised political party or independent group, or to his agent or agents, for the gift or loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration or for any office, place or employment or for the promise of any office, place or employment;
 - (i) every person who directly or indirectly, by himself or by any person on his behalf, in order to induce any other person to agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate gives or procures any office, place or employment or agrees to give or procure or offers or promises to procure or to endeavour to procure any office, place or employment to or for such other person, or gives or lends, or agrees to lend or give, or offers or promises to procure or to endeavour to procure any money or valuable consideration to or for any person or to or for such other person, or to or for any person on behalf of such other person.²⁷

7.04 Punishment and Incapacities for Corrupt Practices

Every person who:

- (a) commits the offence of personation, or aids, abets, counsels or procures the commission of the offence of personation; or
 - (b) commits the offence of treating, undue influence or bribery; or
 - (c) makes or publishes, before or during an election, for the purpose of affecting the result of that election, any false statement of fact in relation to the personal character or conduct of any candidate; or
 - (d) makes or publishes, before or during an election, for the purpose of affecting the result of that election, any false statement of the withdrawal of any candidate at such election,
- is guilty of a corrupt practice, and shall on conviction by the High Court be liable, in the case referred to in sub-paragraph (a) above, to rigorous imprisonment for a term not exceeding twelve months, and, in any other case, to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

Every person who is convicted of a corrupt practice shall, by conviction, become incapable for a period of seven years from the date of his conviction of being registered as an elector or of voting at any election under the Act or of being elected as a member of Parliament, and if at that date he has been elected as a member of Parliament, his election shall be vacated from the date of such conviction.

A prosecution for a corrupt practice shall not be instituted without the sanction of the Attorney-General.

Where a corrupt practice is committed in connection with an election under the Act by any candidate who was not elected as a member at the election or with his knowledge or consent or by any of his agents, such candidate shall on conviction by the High Court be liable, in the case of the offence of personation, to imprisonment for a term not exceeding twelve months, and, in any other case, to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment: provided, however, that such candidate must not be convicted of such corrupt practice under the preceding provisions consisting of the offence of treating or undue influence committed by any of his agents if he proves to the High Court:

- (a) that no corrupt or illegal practice was committed at the election by such candidate and any such offence was committed contrary to the orders and without the sanction or connivance of such candidate; and
- (b) that such candidate took all reasonable means for preventing the commission of corrupt and illegal practices at the election; and
- (c) that any such offence was of a trivial, unimportant and limited character; and
- (d) that in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and his agents.

Every person who is convicted under these provisions of a corrupt practice shall, by conviction, become incapable for a period of seven years from the date of his conviction of being registered as an elector or of voting at an election under the Act or of being elected as a member of Parliament, and if at that date he has been so elected, his election shall be vacated from the date of such conviction.

A prosecution for a corrupt practice shall not be instituted against any candidate at an election under the Act who was not elected as a member at such election:

- (a) except within the period during which an election petition could, if such candidate had been elected as a member at such election, have been presented against him in connection with his election; and
- (b) except by a person who would have had a right to present such petition; and
- (c) except with the sanction of the Attorney-General.²⁸

7.05 Illegal Practices

Except as allowed by the Act, if any payment or contract for payment is knowingly made in contravention thereof, either before, during or after an election, the person making such payment or contract is guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of the Act, is also guilty of an illegal practice.

Where there is published in any newspaper any false statement concerning, or relating to:

- (a) the utterances, or activities at an election of any candidate, or any recognised political party or independent group which is contesting such election; or

(b) the conduct or management of such election by such candidate, or any such recognised political party, or independent group, and such statement is capable of influencing the result of such election, then, every person who at the time of such publication was the proprietor, the manager, the editor, the publisher or other similar officer of that newspaper or was purporting to act in such capacity, shall each be guilty of an illegal practice unless such person proves that such publication was made without his consent or connivance, and that he exercised all such diligence to prevent such publication as he ought to have exercised having regard to the nature of his function in such capacity and in all the circumstances.

“Newspaper” includes any journal, magazine, pamphlet or other publication.

A candidate or his agent, who prints, publishes, distributes or posts up or causes to be printed, published, distributed or posted up any advertisement, handbill, placard or poster which refers to an election and which does not bear upon its face the names and addresses of its printer and publisher is guilty of an illegal practice.

Every person who commits an illegal practice shall on conviction by the High Court be liable to a fine not exceeding three hundred rupees and shall by conviction become incapable for a period of three years from the date of his conviction of being registered as an elector or of voting at an election under the Act or of being elected as a member of Parliament, and if at that date he has been elected as a member of Parliament, his election shall be vacated from the date of such conviction.

A prosecution for an illegal practice shall not be instituted without the sanction of the Attorney-General.²⁹

7.06 Excuse to Corrupt or Illegal Practice

Where, upon the trial of an election petition respecting an election under the Act, the Election Judge reports that a candidate at such election has been guilty by his agents of the offence of treating or undue influence or of any illegal practice in reference to such election, and the Election Judge further reports, after giving the Attorney-General an opportunity of being heard, that the candidate has proved to the court:

- (a) that no corrupt or illegal practice was committed at such election by the candidate and the offences mentioned in the said report were committed contrary to the orders and without the sanction or connivance of such candidate; and
- (b) that such candidate took all reasonable means for preventing the commission of corrupt and illegal practices at such election; and
- (c) that the offences mentioned in the said report were of a trivial, unimportant and limited character; and
- (d) that in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents,

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under the Act.³⁰

— *Section 8* —

ELECTION PETITIONS

8.01 Avoidance of Election by Conviction of Candidate

The election of a candidate as a member of Parliament is avoided by his conviction for any corrupt or illegal practice.³¹

8.02 Avoidance of Election on Election Petition

The election in respect of any electoral district shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge, namely:

- (a) that by reason of general bribery, general treating or general intimidation or other misconduct or other circumstances, whether similar to those enumerated before or not, a section of electors was prevented from voting for the recognised political party or independent group which it preferred and thereby materially affected the result of the election;
- (b) non-compliance with the provisions of the Act relating to elections, if it appears that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance materially affected the result of the election.

The election of a candidate as a member shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge, namely:

- (a) that a corrupt or illegal practice was committed in connection with the election by the candidate or with the knowledge or consent or by any agent of the candidate;
- (b) that the candidate personally engaged a person as a canvasser or agent or to speak on his behalf knowing that such person had within seven years previous to such engagement been found guilty of a corrupt practice under the law relating to the election of the President or the law relating to referenda or under the Ceylon (Parliamentary Elections) Order in Council, 1946, or under the Act, by a court of competent jurisdiction or by the report of an Election Judge;
- (c) that the candidate personally engaged a person as a canvasser or agent or to speak on his behalf knowing that such person had been a person on whom civic disability had been imposed by a resolution passed by Parliament in terms of Article 81 of the Constitution, and the period of such civic disability specified in such resolution had not expired;
- (d) that the candidate was at the time of his election a person disqualified for election as a member.

Every election petition shall be tried by the Court of Appeal. The place of the trial of an election petition shall be in or as near as practicable to the electoral district to which that petition relates.

An election petition may be presented to the Court of Appeal by any one or more of the following persons, namely:

- (a) some person claiming to have had a right to be returned or elected at such election;
- (b) some person alleging himself to have been a candidate at such election.

All or any of the following reliefs to which the petitioner may be entitled may be claimed in an election petition, namely:

- (a) a declaration that the election in respect of any electoral district is void;
- (b) a declaration that the return of any person elected was undue;
- (c) a declaration that the candidate was duly elected and ought to have been returned.

A petitioner shall join as respondents to his election petition:

- (a) where the petition, in addition to claiming that the election of all or any of the returned candidates is void or was undue, 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 declaration is claimed, all the returned candidates; and
- (b) any other candidate or person against whom allegations of any corrupt or illegal practice are made in the petition.

Any candidate not already a respondent to an election petition shall, upon application in that behalf made by him to the Election Judge, be entitled to be joined as a respondent to such petition: provided that no candidate shall be entitled to be joined of his own motion as a respondent to such petition unless he has given such security for costs as the Election Judge may determine.

An election petition:

- (a) shall state the right of the petitioner;
- (b) shall state the holding and result of the election;
- (c) shall contain a concise statement of the material facts on which the petitioner relies;
- (d) shall set forth full particulars of any corrupt or illegal practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of such practice; and shall also be accompanied by an affidavit in support of the allegation of such corrupt or illegal practice and the date and place of the commission of such practice;
- (e) shall conclude with a prayer as, for instance, that the election in respect of any electoral district should be declared void, and shall be signed by all the petitioners.

The Election Judge may, upon such terms as to costs or otherwise as he may deem fit, allow the particulars of any corrupt or illegal practice specified in an election petition to be amended or amplified in such manner as may, in his opinion, be necessary for ensuring a fair or effective trial of the petition so however, that he shall not allow such amendment or

amplification if it will result in the introduction of particulars of any corrupt or illegal practice not previously alleged in the petition.

Every petition shall be tried as expeditiously as possible and every endeavour shall be made to conclude the trial of such petition within a period of six months after the date of the presentation of such petition. The Election Judge shall make his order deciding such petition without undue delay after the date of the conclusion of the trial of such petition.

At the conclusion of the trial of an election petition the Election Judge shall determine whether the member whose return or election is complained of, or any other and what person was duly returned or elected, or whether the election was void, and shall certify such determination in writing.

Such certificate shall be kept in the custody of the Registrar of the Court of Appeal to be dealt with as prescribed.³²

8.03 Report of Judges as to Corrupt or Illegal Practice

At the conclusion of the trial of an election petition the Election Judge shall also make a report setting out:

- (a) whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, or by his agent, and the nature of such corrupt or illegal practice, if any; and
- (b) the names and descriptions of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice: provided, however, that before any person, not being a party to an election petition nor a candidate, is reported by an Election Judge, the Election Judge shall give such person an opportunity of being heard and of giving and calling evidence to show why he should not be so reported.³³

8.04 Appeal against Decision of Election Judge

An appeal of the Supreme Court shall lie against:

- (a) the determination of an Election Judge; or
- (b) any other decision or order of an Election Judge.

Any such appeal may be preferred, either by the petitioner or by the respondent in the election petition, before the expiry of a period of one month next succeeding the date of the determination or decision against which the appeal is preferred.

Notice of filing of a petition of appeal, accompanied by a copy of the petition, shall, within ten days of the filing thereof, be served by the appellant on the other party or each of the other parties to the election petition and on the Attorney-General. Such service on a party may be effected in any manner prescribed in the Parliamentary Election Petition Rules for the service of the notice and copy of an election petition.

Every appeal preferred, for the purpose of stamp duties, is deemed to be an appeal in a civil action of the value of ten thousand rupees.

Every appeal under these provisions shall be heard by the Supreme Court and shall, as far as practicable, be given priority over other business of that Court. The Court may give all such directions as it may consider necessary in relation to the hearing and disposal of each appeal.

The Attorney-General shall be entitled to appear or be represented in any appeal under these provisions.

At the time of filing of a petition of appeal or within three days afterwards, security for the payment of all costs, charges and expenses that may become payable by the appellant shall be given on behalf of the appellant.

The security shall be an amount of not less than ten thousand rupees. The security required by these provisions shall be given by a deposit of money.

If the security is not given by the appellant, no further proceedings shall be heard on the appeal, and the respondent may apply to the Supreme Court for an order directing the dismissal of the appeal and for the payment of the respondent's costs. The costs of hearing and deciding such application shall be paid as ordered by the Supreme Court, and in default of such order shall form part of the general costs of the appeal.

The deposit of money by way of security for the payment of the costs, charges and expenses payable by the appellant shall be made by payment to the Registrar of the Supreme Court which shall be vested in and drawn upon from time to time by the Chief Justice for the purposes for which the security is required.

The Registrar of the Supreme Court shall keep a book open to the inspection of all parties concerned in which shall be entered from time to time the amount and the appeal to which it is applicable.

The Supreme Court may, upon any appeal preferred, vary or reverse the determination or decision of the Election Judge to which the appeal relates.

Where the Supreme Court reserves on appeal the determination of the Election Judge, that Court shall decide whether the member whose return or election was complained of in the election petition, was duly returned or elected, or whether the election was void, and a certificate of such decision shall be issued by that Court.

The Supreme Court may, in the case of any appeal, order that the election petition to which the appeal relates shall be tried anew in its entirety or in regard to any matter specified by that Court and give such directions in relation thereto as that Court may think fit.

The Supreme Court may make any order which it may deem just as to the costs of the appeal and as to the costs of, and incidental to, the presentation of the election petition and of the proceedings consequent thereon, and may by such order reverse or vary any order, as to

costs made by the Election Judge; and the provisions of the Parliamentary Election Petition Rules as to the award, taxation and recovery of costs shall, *mutatis mutandis*, apply in relation to the award of such costs by the Supreme Court and the taxation and recovery thereof.³⁴

8.05 Report to President

Where no appeal is preferred against the determination of an Election Judge within the period specified in that behalf, the Election Judge shall transmit to the President the certificate of such court together with the report of such Judge in respect of any corrupt or illegal practice.

Where an appeal is preferred to the Supreme Court, the Election Judge shall transmit to the Supreme Court the certificate of the Election Judge issued together with the report of the Election Judge in respect of any corrupt or illegal practice.

Where the determination of the Election Judge is reversed by the Supreme Court on appeal, the Supreme Court shall transmit to the President the certificate of the decision of that Court, together with:

- (a) the report of the Election Judge made in respect of any corrupt or illegal practice, if it is in the opinion of the Supreme Court not affected by the decision in the Appeal; or
- (b) if the Supreme Court considers it necessary, a report in respect of the matters relating to a corrupt or illegal practice made by the Supreme Court in accordance with the Act.³⁵

8.06 Effect of Certificate and Report

Upon the transmission to the President of the certificate of the determination of an Election Judge or of the decision of the Supreme Court, the determination or decision, as the case may be, shall take effect and accordingly:

- (a) the return or the election shall be confirmed; or
- (b) the return or the election shall be altered in accordance with such determination or decision, as the case may be; or
- (c) where the determination or the decision is to the effect that the election in respect of any electoral district is to be declared void, the President shall, within one month of the receipt of such certificate, by order published in the Gazette require the holding of an election in respect of that electoral district.

The President shall, upon receipt of the report of the Election Judge, or of the Supreme Court transmitted to him, forthwith cause a copy of the report to be published in the Gazette.

Where this report is to the effect that a corrupt or illegal practice has been committed by any person, that person shall be subject to the same incapacities as if at the date of the said report he had been convicted of that practice and the returning officer shall expunge the name of such person from any nomination paper in respect of the election which was the subject matter of the election petition.

Where the report is to the effect that such corrupt or illegal practice was committed with the knowledge and consent of a person who was a candidate at an election or by his agent, that person shall be subject to the same incapacities as aforesaid.

It shall be the duty of every registering officer forthwith to peruse every such report which is published in the Gazette, and forthwith to delete from the register of electors the name of every person appearing from the report to be incapable of voting at an election.³⁶

8.07 Time for Presentation

Every election petition shall be presented within twenty-one days of the date of publication of the result of the election in the Gazette: provided that an election petition questioning the return or the election upon the ground of a corrupt or illegal practice and specifically alleging a payment of money or other act to have been made or done since the date aforesaid by the member whose election is questioned or by an agent of the member or with the privity of the member in pursuance or in furtherance of such corrupt or illegal practice may, so far as respects such corrupt or illegal practice, be presented at any time within twenty-eight days after the date of such payment or act.

An election petition presented in due time may, for the purpose of questioning the return or the election upon an allegation of a corrupt or illegal practice, be amended with the leave of the Election Judge within the time within which an election petition questioning the return or the election upon that ground may be presented.³⁷

8.08 Prohibition of Disclosure of Vote

No elector who has voted at an election shall, in any proceeding to question the election, be required to state for which recognised political party or independent group he has voted.³⁸

8.09 Votes to be Struck Off at a Scrutiny

On a scrutiny at the trial of an election petition the following votes only shall be struck off:

- (a) the vote of any person who was not on the register of electors assigned to the polling station at which the vote was recorded;
- (b) the vote of any person whose vote was procured by bribery, treating or undue influence;
- (c) the vote of any person who committed or procured the commission of personation at the election;
- (d) where the election was a general election, the vote of any person proved to have voted at such general election in more than one electoral district;
- (e) the vote of any person who was incapable of voting at the election pursuant to Article 89 of the Constitution;
- (f) the vote of any person who was treated as a postal voter, and who voted in person at the election.

On a scrutiny, any tendered vote proved to be a valid vote shall on the application of any party to the petition, be added to the poll.³⁹

NOTES

1. Constitution of Sri Lanka, see article 101
2. Ibid., see article 93
3. Ibid., see article 88
4. Ibid., see article 99
5. Ibid., see article 99A
6. Ibid., see article 103
7. Ibid., see article 104
8. Parliamentary Elections Act 1981, see section 6
9. Ibid., see section 28
10. Ibid., see section 49
11. Constitution of Sri Lanka, see article 95
12. Ibid., see article 96
13. Ibid., see article 98
14. Parliamentary Elections Act 1981, see section 3
15. Ibid., see sections 4 and 5
16. Ibid., see sections 7-9
17. Ibid., see sections 10-25
18. Ibid., see section 26
19. Ibid., see section 27
20. Ibid., see sections 29-33
21. Ibid., see section 34
22. Ibid., see sections 35-47
23. Ibid., see sections 50-58
24. Ibid., see sections 60-63
25. Ibid., see section 66
26. Ibid., see section 76
27. Ibid., see sections 77-80
28. Ibid., see sections 81-82
29. Ibid., see sections 83-88
30. Ibid., see section 89
31. Ibid., see section 91
32. Ibid., see sections 92-100
33. Ibid., see section 101
34. Ibid., see sections 102-104
35. Ibid., see section 105
36. Ibid., see sections 106-107
37. Ibid., see section 108
38. Ibid., see section 109
39. Ibid., see section 110