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LOK SABHA
JOINT COMMITTEE ON AMENDMENTS
TO
ELECTION LAW

REPORT--PART I

(Presented on The 13th March, 1972)



LOK SABHA SECRETARIAT
NEW DELHI

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C O R R I G E N D A

to

REPORT - PART I OF THE JOINT COMMITTEE ON
AMENDMENTS TO ELECTION LAW

Page (iii) -

- (i) line 14, for "Gover ment" read "Government"
- (ii) line 24, for "Returing" read "Returning"
- (iii) line 4 from bottom, for "58" read "68"

Page (iv) -

- (i) line 2, for "APPENDICE" read "APPENDICES"
- (ii) line 3, for "garding" read "regarding"
- (iii) line 4, for "78" read "79"
- (iv) for pages "79", "80" and "85" read "80", "81" and "86" respectively

Page 7, para 2.5, line 4, for "ast" read "vast"

Page 12, para 3.5, line 1, delete "that"

Page 18, para 4.2, line 2, for "occured" read "occurred"

Page 30, para 3.1, line 3, for "contituency" read "constituency"

Page 40, para 10.1, line 13, for "any interested party" read "by any interested party"

(P.T.O.)

Page 40, heading 'B' -

- (i) for "case" read "cases"
- (ii) for "ballot boxes" read "ballot boxes/ballot"

Page 44, para 11.4, for line 6, read "tion
Commission has pointed out that the
section as it exists does not"

Page 45, para 11.6, line 5, for "declaraing"
read "declaring"

Page 46, para 11.9, line 5, for "and" read "all"

Page 50, footnote, line 1, for "Minister"
read "Minute"

Page 54, para 14.8, line 7, for "televison"
read "television"

Page 56, para 14.13, line 3, for "ocnveyance"
read "conveyance"

Page 57, para 14.14, line 1, for "hat" read "that"

Page 62, para 16.6, line 5, for "patries"
read "parties"

Page 69, para 17.17, in col.1 of the table -

- (i) line 11, for "rrying" read "Carrying"
- (ii) line 12, for "hould" read "should"
- (iii) line 13, for "s well" read "as well"
- (iv) line 14, for "shou ld" read "voters
should"

Page 73, line 4, for "the the" read "the"

Page 74, line 16 from bottom, for "he" read "the"

Page 106, clause 46, line 3, for "sction"
read "section"

Page 109, line 9 from bottom, for "candiate"
read "candidate"

Page 119, clause 61, line 3, delete "Cancellation
of notification for election".

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JOINT COMMITTEE ON AMENDMENTS TO ELECTION LAW
COMPOSITION OF THE COMMITTEE

Shri Jagannath Rao—*Chairman*

MEMBERS

Lok Sabha

2. Shri S. M. Banerjee
- *3. Shri R. D. Bhandare
4. Shri Somnath Chatterjee
5. Shri Amar Nath Chawla
6. Shri H. R. Gokhale
7. Shri Krishnan Manoharan
8. Shri Shyamnandan Mishra
9. Shri K. Narayana Rao
10. Shri Satish Chandra
11. Shri Shiv Nath Singh
12. Pandit D. N. Tiwary
13. Shri Atal Bihari Vajpayee
14. Shri P. Venkatasubbaiah

Rajya Sabha

15. Shri Lal K. Adavani
16. Shri Narayana Kalliyana Krishnan
17. Shri V. B. Raju
18. Shri Triloki Singh
19. Shri Awadheshwar Prasad Sinha
20. Shri Sawaisingh Sisodia
21. Shri Mahavir Tyagi

* Nominated w.e.f. 6th July, 1971 *vice* Shri Rasiklal Parikh resigned.

REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE

1. Shri N. D. P. Namboodiripad, *Joint Secretary Legislative Counsel.*
2. Shri A. K. Srinivasamurthy, *Deputy Legislative Counsel*
3. Shri N. Srinivasan, *Deputy Secretary*
4. Shri S. C. Vermani—*Under Secretary.*

SECRETARIAT

Shri P. K. Patnaik — *Joint Secretary.*

Shri H. G. Paranjpe — *Deputy Secretary.*

REPORT OF THE JOINT COMMITTEE ON AMENDMENTS TO ELECTION LAW

PART—I

INTRODUCTION

1. The Chairman of the Joint Committee on Amendments to Election Law, appointed to consider the question of amending the election law, present this Report—Part I on their behalf. Part II of the Report containing other recommendations relating to election matters will be presented separately on a subsequent date.

2. The Committee were appointed in pursuance of a motion adopted in the Lok Sabha on the 22nd June, 1971 and concurred in by the Rajya Sabha on the 25th June, 1971 (Appendices I & II).

3. The Committee have held 25 sittings so far.

4. As the Committee were not in a position to present their Report to the House within the period of one month stipulated in the motion for appointment of the Committee, the House granted, on a motion being moved to that effect on the 20th July, 1971, an extension of time for presentation of Report upto last day of the first week of the winter session 1971. Another extension of time for presentation of their Report up to the 15th December, 1971, was granted by the House on the 17th November, 1971. Further extension of time upto the last day of the first week of the Budget Session (1972) was granted by the House on the 13th December, 1971.

5. The Committee did not agree to the suggestion that opinion of various political parties and publicmen be invited for their consideration in view of the fact that the recommendations of the Election Commission made on the basis of their experience in the conduct of General Elections and Mid-term polls both for State Assemblies and Lok Sabha were made available to the Committee and also because all major political parties were represented in the Committee.*

6. The Members of Joint Committee were supplied with relevant material by the Ministry of Law and Justice for their perusal. Some of the Members also gave their suggestions to the Committee in writing. The Committee have had the benefit of going through all these papers and come to the conclusions which have been incorporated in this Report.

7. At their sitting held on the 3rd September, 1971, the Committee appointed a Sub-Committee consisting of seven Members to

*Minute of Dissent by Sarvashri Atal Bihari Vajpayee and Lal K. Adavani.

examine in detail the question relating to 'election expenses'. The Sub-Committee submitted its report on the 14th October, 1971. The Committee considered and adopted the Report of the Sub-Committee on the 15th October, 1971 (Appendix III).

8. The Committee adopted this Report—Part I on the 6th January, 1972.

CHAPTER I

BACKGROUND

The Election Law of India is contained in the Representation of the People Act, 1950 and the Representation of the People Act, 1951. These two Acts have been amended several times in the light of the experience gained during the previous elections, the last amendment being in 1966.

1.2. During the course of supplementaries in Lok Sabha on the 18th March, 1969 arising out of Starred Question No. 544 regarding reducing the maximum limit of election expenses, Shri Atal Bihari Vajpayee stated as follows:

“Sir, there is no proposal to amend or effect radical changes in the Representation of the People Act. For example, steps to minimise election expenses, to check casting of bogus votes and purchase of voters. The U.K. has, with a view to amending the electoral laws in force in England convened four conferences so far under the chairmanship of the Speaker of the House of Commons. I want to know whether the Law Minister would convene a conference representing all the Political Parties in the country under the Chairmanship of the Speaker, Lok Sabha to examine the election law *de novo* so that the requisite amendments could be made therein.”

1.3. The then Minister of Law and Social Welfare (Late Shri P. Govinda Menon) replied as follows:

“I shall be very happy if under your guidance and under your chairmanship there would be an examination of the electoral laws in force in our country and I would also be happy to bring legislation to amend the Representation of the People Act. I have had discussions with the Chief Election Commissioner on several aspects of the election laws in force today and he has promised to send recommendations for a comprehensive amendment of the election law which it is hoped, would plug many loopholes. Still there may be very clever people who may be able to get over the constraints imposed by the election law. But the suggestion made by the hon. Member is acceptable to me.”

1.4. The draft proposals of the Election Commission for further amendment of the election law were discussed at the Chief Electoral Officers Conference held in Bombay in January, 1970. Two statements containing the main recommendations of the Commission for amending electoral laws were subsequently laid on the Table of Lok Sabha on the 24th February, 1970 in reply to Starred Question No. 50.

1.5. On the 25th August, 1970, Shri Shri Chand Goyal, a Member of Lok Sabha through Starred Question No. 580, enquired whether a draft of the Bill seeking to amend the election law was ready and whether it would be introduced in Parliament in that session. The reply of the Minister was in the negative. Then during the course of supplementaries on this Starred Question, Shri Atal Bihari Vajpayee again referred to the assurance given by late Shri P. Govinda Menon, Minister of Law and Social Welfare and enquired as to when an All-Party Conference, on the pattern of such conference in the United Kingdom, would be convened under the chairmanship of the Speaker to consider the question of amending the election law. In reply, the Minister of Law and Social Welfare (Shri K. Hanumanthaiya) stated as follows:

“There is no question of Government not trusting the Speaker. We have full trust in the Speaker’s judgment and impartiality. If the hon. Members want you to preside over such a meeting, I for one will be very happy, if you find time.”

1.6. In the context of the above debate, a motion* referring the question of amendments to election law to a Joint Committee of both the Houses of Parliament was adopted in Lok Sabha on the 24th November, 1970 and concurred in by Rajya Sabha on the 3rd Decem-

*That the question of amendments to election law in the context of the debates in the Lok Sabha in the course of supplementaries to Starred Question No. 580 answered on the 25th August, 1970, be referred to a Joint Committee of the Houses for examination and report with instructions to report by the last day of the first week of the next session;

that the Committee shall consist of 21 members, 14 from this House to be nominated by the Speaker and 7 from Rajya Sabha to be nominated by the Chairman, Rajya Sabha;

that the Speaker, if he agrees to be a member of the Committee, shall be the Chairman of the Committee; otherwise, the Speaker may nominate one of the members of the Committee to be its Chairman;

that in order to constitute a sitting of the Joint Committee, the quorum shall be one-third of the total number of members of the Joint Committee;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make; and

that the House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 7 members nominated to the Joint Committee by the Chairman of the Rajya Sabha.

ber, 1970. The Committee was constituted on the 18th December, 1970 and it continued in office till the dissolution of Fourth Lok Sabha on the 27th December, 1970.

1.7. After the coming into being of new Lok Sabha i.e. Fifth Lok Sabha, the Minister of State in the Ministry of Law and Justice (Shri Niti Raj Singh Chaudhury) moved a motion on the 22nd June, 1971 for referring the question of amendments to election law to a Joint Committee comprising of 10 members from Lok Sabha and 5 members from Rajya Sabha. The motion further contemplated that if the Speaker agreed to be a member of the Committee, he should be the Chairman of the Committee; otherwise, the Speaker might nominate one of the members of the Committee to be its Chairman. The Speaker explained that, as many controversial matters might arise, it would be embarrassing for the Speaker to be its Chairman. On the suggestion of some members, the Minister of Law and Justice (Shri H. R. Gokhale) agreed to increase the membership of the Committee from 15 to 21—14 members from Lok Sabha and 7 members from Rajya Sabha. The motion as finally adopted is given in Appendix I. The present Committee was thus constituted on the 30th June, 1971.

1.8. Since the terms of reference of the Joint Committee as contemplated in the motion referred to above were rather wide, at their very first sitting held on the 6th July, 1971, the Committee discussed the scope of their terms of reference and held that the deliberations of the Committee need not be confined to the recommendations made by the Election Commission but may embrace the entire gamut of election law. However, it was decided by the Committee that the draft Bill as prepared by the Election Commission and the one prepared in the Ministry of Law and Justice to serve as a basis for discussion might be taken up together without restricting the right of the Members of the Committee to offer their own suggestions for effecting any other change in the Representation of the People Acts of 1950 and 1951. The Committee have also made use of the various recommendations of the Election Commission contained in their reports.

1.9. It has not been possible for the Committee to go through every Section of the 1950 and 1951 Acts, nor was it felt necessary because all important lacunae in the present election law had been covered by the Election Commission and the Law Ministry in the two draft bills mentioned earlier. Nevertheless some suggestions not pointed out by the Election Commission or the Law Ministry did come up in the course of the discussion. Some fundamental

issues which involved amendment of Constitution were also raised before the Committee. Others involved mere revision of administrative instructions issued by the Election Commission. All these will be dealt with in Part-II of the Committee's Report.

1.10. The clauses of the Draft Bill prepared in the Ministry of Law and Justice to serve as a basis for discussion were in most cases approved by the Committee with some modifications. In those cases where they did not agree with the proposals contained in either of the two draft Bills, or where they have given original suggestions, they directed the Draftsman to formulate new clauses amending|substituting|inserting in the existing election law. All these clauses have been clubbed together in Appendix IV, for facility of reference. It will be pretentious to claim that this collection of clauses (which only seek to give legal formulations to various recommendations of the Committee) can form a complete Bill. Many other changes will perhaps be necessary in the 1950 and 1951 Acts as a result of the Committee's recommendations. The Committee hope that Government will soon bring a comprehensive Bill amending election law in the light of Committee's recommendations.

CHAPTER II

ELECTORAL OFFICERS

A. Chief Electoral Officers and Joint Chief Electoral Officers

Whole-time Joint Chief Electoral Officer

2.1. At present in every State there is a joint chief electoral officer or a deputy chief electoral officer to assist the chief electoral officer in the performance of his functions in connection with elections to Parliament and the State Legislature. As the chief electoral officer who, is generally a Secretary to the State Government, cannot devote his whole time and attention to election work, the joint chief electoral officer or the deputy chief electoral officer is appointed a full time officer to attend to this job; but the office of the joint chief electoral officer has not yet been recognised in the law. It has no *de jure* sanction behind it although *de facto* it has been in existence for the last fifteen years or so. The Election Commission has pointed out that this state of affairs places the joint chief electoral officer in a precarious position and sometimes causes great practical inconvenience. The Election Commission has also suggested that in every State, the chief electoral officer should be assisted by an officer of sufficiently senior status so that he can exercise effective control over the district election officers, the returning officers, the electoral registration officers in the districts and other mufassil areas. A deputy chief electoral officer could not always make his voice heard by these officers some of whom were senior officers, such as, district magistrates, additional district magistrates, etc. and, therefore, the officer next the chief electoral officer should, in every State, be the joint chief electoral officer and not the deputy chief electoral officer. The joint chief electoral officer should devote his whole time and attention to his duties as joint chief electoral officer and should not discharge the functions of any other office.

The Committee have considered the matter and are in agreement with the Election Commission.

Tenure of Chief Electoral Officer

2.2. With regard to the chief electoral officer, the Election Commission has suggested that an officer once appointed as chief electoral

officer should hold office at least for a term of five years and should, on the recommendation of the Election Commission, be eligible for reappointment for the same or lesser term.

The Committee, however, feel that in the context of the present administrative conditions, it may not be necessary to fix any particular tenure for the chief electoral officer or the joint chief electoral officer.

Embargo on transfer of Chief Electoral Officer and Joint Chief Electoral Officer

2.3. The Election Commission has also suggested an embargo to be put on the transferability of the incumbents of the offices of the chief electoral officer and the joint chief electoral officer to any other post as it would make for the independence of the chief electoral officer and joint chief electoral officer to some extent and ensure smooth and undisturbed work in connection with elections before a General Election. The Committee, however, consider that an outright embargo on the transferability of officers would, apart from making serious inroads into the sphere in which the State Governments are very much interested, also create needless practical difficulties. It is, therefore, considered sufficient to limit the embargo on transfer to a specified period of time, namely, when a General Election is in prospect.

In this connection, a question arose as to whether it would be necessary to define the expression 'in prospect'. On considering all aspects of the matter, the Committee came to the conclusion that it is better to leave the expression 'in prospect' as it is without being defined, since that would impart an element of flexibility to that expression.

Additional duties entrusted to Chief Electoral Officer

2.4. The Election Commission has further suggested that a chief electoral officer or joint chief electoral officer might be placed, only with the previous concurrence of the Election Commission, in an additional charge of any other office—or post, but if the Election Commission is of the opinion that such additional charge is interfering, or is likely to interfere, with the efficient discharge of his normal duties as chief electoral officer/joint chief electoral officer, the State Government, on a request from the Election Commission, should relieve the chief electoral officer/joint chief electoral officer of such an additional charge. The Election Commission has pointed

out that these provisions, if adopted, will go a long way in strengthening the electoral machinery at the State levels. The Committee are in agreement with the Election Commission on this point.

Case for independent Election Department

2.5. The Election Commission, while pleading for creation of an independent election department, has stated that from the very nature of election in a representative democracy based upon adult suffrage, as our is, and the size of the electorate in this vast country and their distribution throughout the length and breadth of the country where 80 per cent of the population lives in five lakhs of villages in the country-side, the election machinery has necessarily to be broad-based and not too much top heavy. In other words, the election machinery should be such as to be able to function effectively in each of the five lakhs of villages and in the several thousands of cities, towns and townships.

2.6. The magnitude of the problem, as pointed out by the Election Commission, might be realised from the following estimated figures. In the next general elections, the total number of polling stations to be set up throughout the country will be of the order of four lakhs. The total number of polling personnel (consisting of one presiding officer and three or four polling officers for each polling station) will be about sixteen lakhs. The total number of parliamentary and assembly constituencies throughout the country will be more than 3,500. The total number of returning officers will be this number and the total number of assistant returning officers will be about eight to ten thousand. This is in connection with the conduct of elections.

2.7. For the previous stage of the election work, namely, the preparation or revision of electoral rolls, the total number of enumerators, inspectors and supervisors will be of the order of about three lakhs throughout the country and the total number of electoral registration officers and assistant electoral registration officers will be of the order of about eight to ten thousand and about 80 per cent of this huge army of election staff will be required to do their election work in the villages.

2.8. It is absolutely necessary that maximum possible supervision and vigilance should be exercised over this army of election staff so that they may do their duties in connection with the preparation and revision of electoral rolls and conduct of elections in a smooth, fair and impartial manner. Election Commission has, therefore, suggested that the ideal arrangement would be if an independent Election

Department for the whole of India could be set up under the superintendence, direction and control of the Election Commission of India on the analogy of the Indian Audit and Accounts Department functioning under the supervision and control of the Comptroller and Auditor-General of India. Such an arrangement would instil in the officers of the Election Department a sense of security, independence and impartiality and induce them to attend to the election work with zeal and enthusiasm.

2.9. In the opinion of the Committee, the creation of a big centralized machinery for this purpose will not obviate the need for dependence on State machinery in this huge task. Further, the Committee feel that the effective implementation of this proposal will involve sizeable expenditure which, in the present state of economy, may not be advisable to incur. They do not, therefore, favour creation of a separate Election Department.

In order to achieve the afore-said objectives, the Committee recommend that an amendment on the lines suggested in clause 2 of the draft Bill be made in section 13A of the 1950-Act.

B. District Election Officer

2.10. Section 13AA (1) of the 1950-Act provides that for each district in a State, other than a Union territory the Election Commission shall, in consultation with the Government of the State, designate or nominate a district election officer who shall be an officer of Government. The district election officer holds an important position in the electoral system. He supervises and coordinates the work of electoral registration officers as well as of returning officers. Though the intention was that the district magistrate himself should be appointed as the district election officer, in some States this was not actually done. Sometimes subordinate officers were appointed as district election officers with the result that they could not exercise effective supervision and control either on the electoral registration officers or on the returning officers. Though under executive instructions and directions practically in every district the Collector is appointed as the district election officer, still there are exceptions even now.

2.11. The Election Commission has, therefore, suggested that the district election officer should invariably be the Collector of the district and subject to the superintendence, direction and control of the chief electoral officer, he should coordinate and supervise all work in the area within his jurisdiction not only in connection with preparation and revision but also in connection with the correction and

maintenance up-to-date of electoral rolls and all matters relating thereto. The Committee agree with this view and recommend that section 13AA of the 1950-Act be amended as indicated in clause 3 of the draft Bill.

C. Electoral Registration Officer

2.12. Section 13B of the 1950-Act provides that electoral rolls in each constituency shall be prepared and revised by an electoral registration officer who shall be such officer of Government or of a local authority as the Election Commission may, in consultation with the Government of the State concerned, designate or nominate in this behalf.

2.13. According to these provisions even an officer of a local authority can be appointed as an electoral registration officer, although in actual practice, no such officer is stated to have been appointed till now. The Committee, however, are in agreement with the suggestion of the Election Commission that section 13B should be suitably amended to avoid even such a possibility since an officer of a local authority is not expected to have the same independence as is expected from a permanent employee of the Government.

2.14. Further the expression "prepared and revised" does not lay emphasis on the electoral rolls being corrected and kept up-to-date. The Committee also agree that it should be made clear in the Act itself that the duty of the electoral registration officer is not only to prepare, revise, correct and maintain the electoral rolls up-to-date, but also to perform such other functions in relation to the preparation of electoral rolls of a constituency as he might be required to perform by the 1950-Act.

2.15. To achieve the aforesaid objectives, the Committee have suggested an amendment to section 13B of the 1950-Act as indicated in clause 4 of the draft Bill.

D. Restriction on transfer of Electoral Registration Officer or Assistant Electoral Registration Officer

2.16. The Election Commission has pointed out that sometimes complaints were received that while the preparation or revision of an election roll was in progress the electoral registration officer or the assistant electoral registration officer was suddenly transferred by the Government. This is viewed with suspicion by the political parties, the prospective candidates and others. The Committee feel that in the interests of accuracy of electoral rolls and purity of elections, it is

necessary that there should not be any scope even for such lurking suspicion and therefore such transfers should not be permissible except with the previous concurrence of the Election Commission.

2.17. Clause 5 of the draft Bill, therefore, seeks to insert a new section 13CC in the 1950-Act so as to provide that except with the previous concurrence of the Election Commission no electoral registration officer or assistant electoral registration officer shall be transferred at any time between the commencement of the preparation or revision of an electoral roll and the final publication thereof.*

*Minute of Dissent by Shri ShyamNandan Mishra.

CHAPTER III

ELECTORAL ROLLS FOR ASSEMBLY AND COUNCIL CONSTITUENCIES

A. Definition of "qualifying date"

3.1. Under the existing section 14 of the 1950-Act there is only one qualifying date, namely the 1st day of January of the year in which the electoral roll is prepared or revised. This means that a citizen of India who is less than 21 years of age on the 1st of January of the year in which the electoral roll for a constituency is prepared or revised is not entitled to be registered in that electoral roll. The requirement as to qualifying date is a constitutional requirement directly flowing from article 326 of the Constitution which provides for universal adult suffrage. Under that article every citizen of India who is not less than 21 years of age on such date as may be fixed in that behalf by or under any law is, subject to certain conditions mentioned in that article, entitled to be registered as a voter in the electoral roll. This date is called in our election law as the "qualifying date" following the British practice. Now the qualifying date as at present defined, namely, the 1st of January of the year in which the electoral roll is prepared or revised may cause real hardship to those citizens who have completed the age of 21 years shortly after the 1st day of January but before the holding of any election or even before the final publication of the electoral roll but who cannot exercise their franchise in that election because they were less than 21 years of age, may be by a few days, on the 1st January. Suppose a citizen completes the age of 21 years on the 3rd of January of the particular year in which the roll is prepared or revised, he cannot be registered as voter nor can his name be included in the electoral roll as a voter not only during the period of the whole year but also till the next revision of the roll is taken up. Thus he is deprived of his franchise though he might have been more than 21 years of age at any particular point of time.

3.2. The Committee have considered the suggestion made by the Election Commission in this regard and are of the opinion that instead of one qualifying date, namely, the 1st of January, there should be as many as four qualifying dates in relation to the preparation or revision of an electoral roll, namely, the 1st day of January, the 1st

day of April, the 1st day of July and the 1st day of October. Thus, if the electoral roll is finally published on the completion of its preparation or revision, say in the month of November, then a citizen who has completed the age of 21 years not only on the 1st day of January, or the 1st day of April, or the 1st day of July but also on the 1st day of October of that year will be entitled to be registered as a voter in the electoral roll. The Committee have considered the matter and are in agreement with the Election Commission on this point.

3.3. So far as inclusion of a name as a voter in the electoral roll after the final publication of the roll in accordance with present section 23 of the 1950-Act is concerned, the qualifying date in relation to such inclusion will mean the date on which an application is made by such person for the inclusion of his name in the electoral roll, or where such inclusion is made by the electoral registration officer on his own motion, the qualifying date shall be the date on which the order for such inclusion is made.

3.4. Thus on incorporating the revised definition of "qualifying date" as proposed in clause 6 of the draft Bill, practically every adult citizen will get an opportunity either to have himself registered as a voter during the preparation or revision stage or to have his name included in the electoral roll as a voter after the final publication of the electoral roll*

B. Maintenance of Electoral Rolls up-to-date

3.5. The existing section 15 of the 1950-Act lays down that that for every constituency there shall be an electoral roll which shall be prepared in accordance with the provisions of that Act under the superintendence, direction and control of the Election Commission. The electoral roll, as observed earlier, is prepared or revised with reference to one particular date, namely, the 1st of January of the year in which the roll is prepared or revised and the roll thereafter continues to be in force till a new roll is prepared or revised before bye-election or a general election or till a new roll is prepared or revised under the direction of the Election Commission as provided under section 21 of the 1950-Act. Till such preparation or revision, the electoral roll prepared with reference to the 1st of January of any year may continue to be in force for a number of years with the result that many persons who complete the age of 21 years in the meantime do not get an opportunity to have their names included in the electoral roll.

*Minute of Dissent by Shri Shyamnandan Mishra.

3.6. The existing system has got another serious difficulty. There is no provision for annual preparation or annual revision of electoral rolls. Quite often this causes avoidable delay in holding a bye-election and also a general election. As pointed out by the Election Commission upto now the preparation or revision of the electoral rolls before general election or even a bye-election takes a lot of time and intensive revision may take much more time than six months or even a year. Even a summary revision which should be avoided in normal circumstances cannot be finished in less than three or four months. The Election Commission has further pointed out that there may arise occasions requiring a general election to be held within as short a time as possible; but in our country because the electoral rolls are not maintained up-to-date by a constant revision, it is not possible to hold a general election or even a bye-election within a short time.

3.7. In the United Kingdom the total period of time required for completing an election is 17 days (excluding Sundays and other public holidays) after the issue of the Royal Proclamation dissolving the existing Parliament and summoning the new Parliament. By the same Royal Proclamation the existing Parliament is dissolved and the new Parliament is summoned to meet. By rule 1 of the Parliamentary Elections Rules made by Parliament itself and contained in the Second Schedule to the United Kingdom Representation of the People Act, 1949, the last day for delivery of nomination papers in a general election for constituting the new Parliament is the eighth day after the date of the Proclamation summoning the new Parliament and the date of poll is the ninth day after the last day for delivery of nomination papers. Thus the entire process of election including polling is to be over within 17 days from the date of the issue of the Royal Proclamation.

3.8 The Election Commission has pointed out that in a vast country like India this may not be practicable but if the electoral rolls are always maintained up-to-date, then it will definitely be possible to hold a general election within the maximum period of about 45 days from the date of dissolution of the House of the People or of a State Legislative Assembly and a bye-election within a period of about 35 days from the date when the casual vacancy occurs.

3.9. During the course of discussion, a suggestion was also made that a specific provision making it mandatory on the Election Commission to revise the electoral roll every year till the last date of nomination should be made in the Act. The Committee after taking into consideration all aspects of the matter, are in agreement

with the Election Commission and have proposed a new section 15 as indicated in clause 7 of the draft Bill to provide that an electoral roll shall not only be prepared and revised but shall also be maintained always up-to-date.*

C. Voting rights to Officers and Seamen of Indian Merchant Navy

3.10. At present voting facilities are not available to the officers and seamen of Indian Mercantile Marine. The total number of such officers and seamen is estimated to be about 30,000. The Election Commission has suggested the extension of postal ballot facilities to these officers and seamen of Indian Mercantile Marine who would otherwise be deprived of their franchise. The Committee agree to the amendment proposed in this behalf to section 20 of the 1950 Act as indicated in clause 8 of the draft Bill.

The Committee also desire that the rules regulating the procedure for voting by postal ballot should be simplified so that the maximum number of voters, entitled to vote by such ballot, are able to exercise their franchise in an election.

3.11. In this connection, a question arose whether the expression "ordinarily resident" occurring in section 20 could be more specifically defined. After considering all aspects of the matter, the Committee agreed that no further elaboration of the expression is necessary in the Act.

D. Preparation, revision, correction and maintenance up-to-date of Electoral Rolls

3.12. The existing section 21 of the 1950-Act relating to preparation and revision of electoral rolls provides that the electoral roll for each constituency shall be prepared in the prescribed manner by reference to qualifying date and shall come into force immediately upon its final publication. That section further provides that such electoral roll shall, unless otherwise directed by the Election Commission for reasons to be recorded in writing, be revised by reference to the qualifying date—(i) before each general election to the Lok Sabha or to the Legislative Assembly of a State and (ii) before each bye-election to fill a casual vacancy in a seat allotted to the constituency; and shall be revised in any year by reference to the qualifying date if such revision has been directed by the Election Commission. If the electoral roll is not revised as aforesaid, the existing roll shall continue in operation. Thus, there is no provision for periodical revision of the electoral roll. Further, under the existing provisions, the electoral registration officer does not have the power to

*Minute of Dissent by Shri Shyamnandan Mishra.

keep the electoral rolls up-to-date by way of inclusion of names therein on his own motion.

3.13. In order to remove these deficiencies, the Election Commission has suggested drastic changes in the existing sections 21, 22 and 23 of the 1950-Act. These changes inter alia sought to provide that—

- (i) the Election Commission may direct a special revision of the electoral roll of a constituency or part of that constituency in such manner as it may think fit, even after the last date for making nominations;
- (ii) the electoral registration officer may, by order, direct the correction of electoral rolls by way of deletion of entries or by way of inclusion of names in the electoral roll either on an application made to him or on his own motion.

These suggestions, according to the Election Commission, if implemented, will help in keeping the electoral rolls under perpetual revision and up-to-date.

3.14. The Committee have considered these suggestions in detail and are of the opinion that it would not be advisable to confer power on the Election Commission to direct special revision of electoral roll of a constituency after the last date for making nominations for an election because such a revision might create situations to the disadvantage of one or the other political party or contesting candidate and might lead to increase in election disputes. The Committee, therefore, feel that the salutary provisions as contained in sub-section (3) of the existing section 23 of the 1950-Act forbidding revision of electoral rolls after the last day of nomination, be retained.

3.15. The Committee have accordingly proposed new sections 21 and 22 in substitution of the existing sections 21, 22 and 23 of the 1950-Act as indicated in clause 9 of the draft Bill to make detailed provisions for the preparation, revision and maintenance up-to-date of electoral rolls.

E. Provisions as to certain Electoral Rolls

3.16. Implementation of the changes suggested by the Committee in regard to the preparation and maintenance up-to-date of electoral rolls will take some time. To avoid any delay in holding elections which might take place before the electoral rolls are prepared and finalised in accordance with the aforesaid recommendation, the Committee feel that a clarification to that effect be made in the proposed amending Act itself.

3.17. Accordingly, clause 10 of the draft Bill provides that an electoral roll, which is in force immediately before the commencement of

the proposed Act shall be deemed to be an electoral roll prepared or revised in accordance with the provisions of the 1950-Act, as amended by the proposed Act, and the provisions of the 1950-Act, as so amended, shall apply in relation to such rolls.

F. Appeals

3.18. The amendment sought to be effected in section 24 of the 1950-Act by clause 11 of the draft Bill is consequential to the amalgamation of the existing sections 21 to 23 into two new sections 21 and 22.

G. No fee for getting entries in Electoral Rolls corrected

3.19. At present, section 25 of the 1950-Act provides that every application made under section 22 for correction of entries and under section 23 for inclusion of names in the electoral rolls and every appeal preferred under section 24 should be accompanied by the prescribed fee (10 paise for every application for correction of entries and inclusion of names in electoral rolls and Re. 1 for every appeal) which shall, in no case, be refunded.

3.20. The Election Commission has felt that no fee should be charged for making any application for correction of any entry or inclusion of any name in an electoral roll or for any appeal preferred against the order of the electoral registration officer in relation to such entry or inclusion and has accordingly suggested the omission of section 25 of the 1950-Act. The Committee agree with this suggestion and clause 12 of the draft Bill gives effect to this.

H. Preparation of Electoral Rolls for Council Constituencies

3.21. The existing sub-section (5) of section 27 of the 1950-Act *inter alia* provides that every person who has, for at least three years before the qualifying date, been either a graduate of a university or in possession of any qualification equivalent thereto shall be entitled to be registered in the electoral roll for a graduates' constituency. Similarly every person who has, within the six years immediately before the qualifying date for a total period of at least three years, been engaged in teaching shall be entitled to be registered in the electoral roll for the teachers' constituency. A doubt arises as to the date on which a person becomes a graduate of a university or acquires a qualification equivalent to that of a graduate entitling him to enrol himself for graduates' constituency. Further there has been a doubt as to whether the expression "engaged in teaching" includes "engaged in teaching on a part-time basis" as well.

3.22. These doubts are, therefore, sought to be removed by clause 13 of the draft Bill by providing that the day following the day on which the results of the degree examination or the qualifying examination are published should be the day on which a person becomes entitled for enrolment under section 27(5). The draft clause also provides that the expression "engaged in teaching" shall include "engaged in teaching on part-time basis".

3.23. Further the existing sub-section (6) of section 27 of the 1950-Act provides that for purposes of preparation or revision of electoral rolls for graduates' constituencies and teachers' constituencies the qualifying date shall be the 1st November of the year in which such preparation or revision is commenced. Since a number of qualifying dates instead of one have been suggested by the Committee in relation to an Assembly constituency, it is considered necessary that the same qualifying dates should be made applicable in relation to preparation or revision of electoral rolls for graduates' and teachers' constituencies. Accordingly, the aforesaid sub-section (6) is proposed to be omitted by clause 13 of the draft Bill.

3.24. The Election Commission has suggested that the State Government while specifying the qualifications which shall be deemed to be equivalent to that of a graduate of a university for purposes of electoral rolls of graduates' constituencies, should obtain the previous concurrence of the Election Commission. The Committee feel that the previous concurrence of the Election Commission may not be necessary and the existing provisions of section 27(3) may continue.

I. Use of Electoral Roll for other purposes

3.25. The Election Commission has suggested that an embargo should be put on the electoral roll prepared, revised and maintained under the Representation of the People Act, 1950 from being used for any other purposes not connected with election to Parliament or to the Legislature of a State or to the office of President or Vice-President of India. It was pointed out that as a matter of practice, the electoral rolls were being used for elections to local bodies as well.

3.26. The Committee, however, feel that since considerable time and labour is spent and huge expenditure incurred in preparing the electoral roll there seems to be no justification whatsoever for putting an embargo upon its use by other agencies.

CHAPTER IV

GENERAL PROVISIONS IN 1950-ACT

A. Rule-making power of the Central Government

4.1. In order to facilitate the maintenance up-to-date of the electoral rolls, the Committee agree with the Election Commission that it would be necessary to empower the Central Government to make rules requiring the officers charged with the duty of registration of deaths to forward to the electoral registration officer, at stated intervals, the lists of names, addresses, occupations, ages and sexes together with the dates of death of all persons of the age of 21 years or above whose deaths have been registered during the month or period in respect of the area under the jurisdiction of such officer. Clause 14 of the draft Bill seeks to amend section 28 of the 1950-Act so as to empower the Central Government to make rules for the purpose.

B. Second Schedule to 1950-Act

4.2. It was brought to the notice of the Committee that a typographical mistake in the Second Schedule to the 1950-Act had occurred at the time of enacting the amending Act of 1966 and consequently the number of seats in the West Bengal Legislative Assembly reserved for the Scheduled Castes and Scheduled Tribes were shown respectively as 56 and 17 instead of 55 and 16. Clause 15 of the draft Bill seeks to rectify this mistake.

CHAPTER V

DISQUALIFICATIONS FOR MEMBERSHIP OF PARLIAMENT AND STATE LEGISLATURES

A. Interpretation

5.1 As has been explained in the latter portion of this report, provision has been made in new section 76B for prohibiting unauthorised expenses. In that new section the expression "political party" has been used. This expression has not so far been defined in the Constitution nor has it been defined in the Representation of the People Act, 1951, or the Rules. It is defined only in the Election Symbols (Reservation and Allotment) Order, 1968. It is now, therefore, necessary to include a definition of the expression "political party" in the Act particularly in view of the new section 76B. The Committee agree to the suggestion to add a new clause (ee) to the existing sub-section (1) of section 2 of the 1951-Act.

At present sub-section (5) of section 26 provides that any reference in that Act to the district election officer shall, in relation to a Union territory, be construed as a reference to the returning officer. The Committee agree to the suggestion to add a new clause (j) to the existing sub-section (1) of section 2 of the 1951-Act.

The above changes are as indicated in clause 16 of the draft Bill.

B. Disqualification on conviction for certain offences

5.2. The existing section 8 of the 1951-Act deals with disqualification for conviction for offences referred to in sections 153A, 171E, 171F and 505 of the Indian Penal Code and sections 125, 135 and 136(2)(a) of the Representation of the People Act, 1951. Since the Committee have, as indicated in the latter portion of this Report, added the offences of coercion or intimidation of voters at election (new section 25A), personation at election (new section 125B), illegal hiring or use of vehicle at elections (new section 133), use of vehicle for conveyance of voters at election (new section 133A), plying of mechanically propelled vehicles on a polling day (new section 133B), it is considered necessary in the interest of purity of elections that conviction for these offences should also entail disqualification for membership of Parliament or State Legislature.

Accordingly, the scope of the existing section 8 has been enlarged by including references to the new sections 125A, 125B, 133, 133A and 133B as indicated in clause 17 of the draft Bill.

5.3. One of the proposals discussed by the Committee was that a person who is a member of an association which has been declared unlawful under the Unlawful Activities (Prevention) Act, 1967, should be disqualified for so long as he is a member of such association and shall continue to be disqualified for a further period after he ceases to be such member. During the discussion it was pointed out that this provision was in line with a similar provision made in the Jammu and Kashmir Representation of the People Act, 1957. Under the provisions of the Unlawful Activities (Prevention) Act, Government has power to declare any association as unlawful for any unlawful activity. The Committee feel that inclusion of such additional disqualification is bound to be looked upon with suspicion. Further, it may not be desirable to debar a person from standing for election, even after he has ceased to be a member of an unlawful association. The Committee, therefore, have not favoured the idea of suggesting any amendment in the Election Law to that effect.

C. Disqualification for corrupt or illegal practice

5.4. Under section 8A of the 1951-Act it is laid down that a person found guilty of a corrupt practice by an order under section 99, shall be disqualified for a period of six years from the date on which that order takes effect. Thus, the period of disqualification commences from the date of the order passed by the High Court and thereby causes great hardship to the persons so disqualified because of the inordinate delays involved in finally deciding the election petitions. In many cases final disposal of election petitions takes more than six years and during this period persons arraigned against continue to remain in suspense. The Committee, therefore, feel that in order to mitigate such a hardship it should specifically be provided in the Act that disqualification of six years should commence from the date of declaration of the result of the election in respect of which the order under section 99 has been made or for two years from the date on which the aforesaid order takes effect, whichever is longer.

5.5. In view of the suggestion made by the Committee, as stated later in this Report, to split up corrupt practices mentioned in the existing section 123 into "corrupt practices" and "illegal practices", it is necessary that a distinction should also be made in the period of disqualification for being a member of Parliament or of a State Legislature if he is found guilty of a corrupt or illegal practice.

As has already been explained in the preceding paragraph, the Committee feel that in the case of a corrupt practice, the period of disqualification should be six years from the date of declaration of the result of the election, or two years from the date on which such an order takes effect, whichever is longer. In the case of an illegal practice, the period of disqualification should be for such period as may be specified by the Court according to the gravity of the offence, but the period of disqualification shall in no case be less than two years from the date on which an order under section 99 takes effect. Accordingly, a new section 8A, as proposed in clause 18 of the draft Bill is being sought to be substituted for the existing section 8A in the 1951-Act.

D. Disqualification for Government contract, etc.

5.6. At present under section 9A of the 1951-Act, only a subsisting contract with the 'appropriate Government' disqualifies a person for being a Member of Parliament or of a State Legislature. In other words, if a person enters into a contract of the kind referred to in the section with the Central Government, he is disqualified for membership of Parliament and if a person enters into such a contract with the Government of a State, he becomes disqualified for membership of Legislature of that State. The Election Commission has suggested that it would go a long way towards ensuring the purity of elections and independence of members if it is provided in the law that a contract entered into with the Central Government or the State Government would have the effect of disqualifying a person for membership of both Parliament and the State Legislature. The Committee, while agreeing with the Election Commission, feel that any contract subsisting with any public undertaking should also disqualify a person for being a member of Parliament or a State Legislature because, in the opinion of the Committee, contractual relationship with such an undertaking is likely to impair independence of a Member of Parliament or of a State Legislature to much the same extent as a similar relationship with the Central Government or the State Government. Further such a provision would also be in consonance with the law dealing with disqualifications arising out of office of profit under the Government as envisaged under article 102 of the Constitution. To achieve the twin objective, clause 19 of the draft Bill seeks to substitute a new section for the existing section 9A of the 1951-Act.

E. Period of disqualification for failure to lodge account of election expenses

5.7. During the course of the deliberations, it was pointed out that while under section 10A failure to lodge a return of election

expenses would entail a disqualification for only three years and would not constitute a corrupt practice. Under section 123(6) incurring or authorising expenses in excess of the prescribed amount under section 77 would entail a disqualification for a period of six years and would also constitute a corrupt practice. This may work considerable hardship to the candidates and even produce anomalous consequences. For example, a candidate who has incurred even double or treble of the prescribed amount but fails to lodge a return of the expenses would escape with a comparatively minor punishment of three years disqualification and this would not constitute a corrupt practice either. On the other hand, another candidate who has incurred or authorised expenses which is technically a little over the prescribed amount and has duly lodged a return of his expenses so incurred would come within the mischief of section 123(6) as well as section 8A and thereby would suffer disqualification for six years for having committed a corrupt practice. In order to do away with this anomaly, it was suggested that clause (6) of section 123 should be deleted and brought within the ambit of section 10A dealing with disqualification for failing to lodge account of election expenses. And at the same time, the period of disqualification should be raised from three years to six years. As would be seen from the later portion of this report, under the scheme now proposed by the Committee, incurring or authorising of expenditure in excess of the prescribed amount would be classified as an illegal practice for which the period of disqualification would vary from the minimum of two years to the maximum of six years, depending upon the gravity of the offence. The Committee, therefore, do not consider it necessary to make any change in the existing section 10A to that effect. However, on the recommendation of the Election Commission, the Committee have suggested a verbal modification in section 10A of the 1951-Act, as indicated in clause 20 of the draft Bill.

F. Removal or reduction of period of disqualification by Election Commission

5.8. The existing section 11 of the 1951-Act provides that the Election Commission may, for reasons to be recorded, remove any disqualification for being a member of Parliament or of a State Legislature incurred by a person on the ground of conviction for certain offences (section 8), commission of a corrupt practice (section 8A), dismissal for corruption or disloyalty (section 9), subsistence of a contract with Government (section 9A) holding an office under a Government Company (section 10) and for failure to lodge account of election expenses (10A).

5.9. The Election Commission has expressed the view that since election matters are now being dealt with by the superior courts of the land, it may no longer be necessary that the Commission should retain the power to remove any disqualification incurred by a person under the Representation of the People Act, 1951. An opposite view was also expressed before the Committee during their deliberations that if the power to remove disqualification was taken away from the Election Commission, such power would have to be exercised by the Courts themselves which would necessarily involve considerable delay and would also not make for uniformity by reason of different courts being seized of the matter. It was, therefore, suggested that it would be more conducive for the effective implementation of the provisions from practical point of view that such power should continue to be vested in the Election Commission. The Committee are in agreement with the view of the Election Commission but however suggest that the power of Election Commission to remove disqualifications should be confined to matters in respect of which the Commission itself has authority to disqualify a person i.e. for failure to lodge account of election expenses (section 10-A). Clause 20A of the draft Bill seeks to amend section 11 of the 1951-Act for this purpose.

G. Disqualification for holding an office of profit under Government

5.10. Article 102 of Constitution provides that if a person holds any office of profit under the Government of India or the Government of any State, other than the office declared by Parliament by law not to disqualify its holder, he shall be disqualified for being chosen as and for being a member of either House of Parliament (Article 191 relates to corresponding disqualification for being chosen as and for being a member of a State Legislature). A suggestion was also made that the term "Office of Profit" might be defined in the Representation of the People Act, 1951 itself in order to make its implications more clear and precise. The Committee, after taking into consideration all aspects of the matter, have not agreed with this suggestion.

CHAPTER VI

DISQUALIFICATION FOR VOTING

A. Disqualification arising out of conviction and corrupt and illegal practices

6.1. The existing section 11A of the 1951-Act lays down that if any person is convicted of the offences referred to therein or is found guilty of a corrupt practice by an order under section 99, he shall be disqualified for voting at an election for a period of six years from the date on which the order takes effect. The Committee, have, in the later portion of this Report suggested the addition of new electoral offences relating to coercion and intimidation of voters, personation at an election, illegal hiring or procuring of conveyance at elections, use of vehicle for conveyance of voters at election, plying of mechanically propelled vehicles on a polling day. The Committee have also suggested splitting up of corrupt practices envisaged under the existing section 123 into the "corrupt practices and illegal practices". It is, therefore, necessary that references to these new offences be made in the existing section 11A. In view of the splitting up of corrupt practices into two categories, a distinction has also to be made as regards the consequences flowing therefrom. The Committee, therefore, feel that so far as disqualification arising out of conviction under the various sections of the 1951-Act and the Indian Penal Code is concerned, it should continue to be for a period of six years. In the case of a person found guilty of corrupt practice by an order under section 99, the disqualification for voting at an election should be for a period of six years from the date of declaration of the result of the election in respect of which the aforesaid order is passed or for a period of two years from the date on which such order takes effect, whichever is longer. However, the Committee feel that in the case of a person found guilty of an illegal practice by an order under section 99, the disqualification for voting at an election should be for such period as may be specified by the Court, taking into consideration the gravity of the offence, so however, that the period of disqualification shall in no case be less than two years from the date on which the said order takes effect.

Clause 21 of the draft Bill seeks to amend section 11A of the 1951-Act accordingly.

B. Removal of Disqualification for voting by Election Commission

6.2 The existing Section 11A of the 1951-Act lays down that if any person is convicted of certain offences or is found guilty of any corrupt practice by an order under Section 99, he shall, for a period of six years from the date of conviction or from the date on which the Order takes effect, be disqualified for voting at an election. Section 11-B empowers the Election Commission to remove, for reasons to be recorded, any such disqualification.

6.3. As already observed, the Election Commission have expressed their view that since election matters are now being dealt with by superior courts of the land, it was no longer necessary that the Election Commission should retain the power to remove any disqualification incurred under Section 11A. The Committee are inclined to agree with the Election Commission on this point and therefore suggest the omission of section 11B of the 1951-Act as indicated in clause 21A of the draft Bill.

CHAPTER VII

ADMINISTRATIVE MACHINERY FOR THE CONDUCT OF ELECTIONS

A. Delegation of functions of Election Commission

7.1. The existing section 19A of the 1951-Act provides that the functions of the Election Commission under the Constitution, the 1950 and 1951 Acts or under the rules made thereunder may, subject to the general or special directions given by Election Commission, be performed also by the Deputy Election Commissioner or by the Secretary to the Election Commission. Article 324 of the Constitution vests the power of superintendence, direction and control of elections in the Election Commission. The expression "Secretary to the Election Commission" does not find a place in the Constitution. Therefore any delegation of functions of the Election Commission to the Secretary of the Election Commission would not, in the opinion of the Committee, be in consonance with the constitutional provisions. The Committee do realise that there has been immense increase in the work of the Election Commission during the recent years. Certain suggestions made by the Committee in Part II of this report for the setting up of a multi-member body as the Election Commission and for the appointment of Regional Election Commissioners would go a long way in lightening the burden of work on the single member Election Commission. The Committee have, therefore, sought to remove the words "or by the Secretary of the Election Commission" occurring in section 19A of the 1951-Act by the proposed clause 22 of the draft Bill.

B. Jurisdiction of District Election Officer

7.2. The existing section 20A of the 1951-Act provides that subject to the superintendence direction and control of the Chief Electoral Officer, the district election officer shall coordinate and supervise all work in the district or in the area within his jurisdiction in connection with the conduct of all elections to Parliament and the Legislature of the State. The Election Commission has pointed out that in some cases the area of a constituency falls within more than one district and in that situation the district election officer, who is normally the district collector finds it difficult to supervise and coordinate effectively the work in the area which falls within the

jurisdiction of another district collector. In order to remove this difficulty, the Committee suggest that the word 'district' be substituted by the word 'districts' as indicated in clause 23 of the draft Bill.

C. Returning Officers

7.3. Under the existing section 21 of the 1951-Act even an officer of a local authority may be appointed a returning officer. The Election Commission has suggested that a returning officer should be a permanent Government officer so that he may have some measure of independence in the matter of conduct of elections. An officer of a local authority as well as an officer in the temporary employment of the Government is not expected to have as much independence as a permanent Government officer. The Committee entirely agree and have accordingly suggested in the proposed clause 24 of the draft Bill the substitution of the expression "an officer of Government or of a local authority" in section 21 of the 1951-Act by the expression "an officer in permanent employment of Government".

D. Assistant Returning Officers

7.4. Amendments sought to be made by clauses 25 and 26 of the draft Bill in sections 22 and 23 of the 1951-Act respectively are of a consequential and drafting nature.

E. Restriction on transfer of District Election Officer or Returning Officer

7.5. The district election officer and the returning officers are charged with the responsibility of effectively conducting the elections in the manner provided under the Representation of the People Act, 1951 and the rules and orders made thereunder. As observed earlier in connection with the transferability of electoral registration officers, sudden transfers of district election officers and returning officers is viewed with suspicion by the political parties, the prospective candidates and others. In order to dispel any doubts which might be entertained by political parties and others, the returning officers should not be subjected to transfers while the elections are in prospect. The Committee feel that it should specifically be provided in the 1951-Act that except with the previous concurrence of the Election Commission, no district election officer or no returning officer should be transferred in the case of a general election to the House of the People or the Legislative Assembly of a State at any time within four months immediately preceding the date on which the notification calling such election may be or is likely to be issued and before the date of the declaration of the result of the election in the constituency. In the case of a bye-election for Lok Sabha or a

Legislative Assembly such officers should not be transferred at any time during the period between the occurrence of the casual vacancy necessitating such bye-election and the date of the declaration of the result of the election in such bye-election.

For this purpose clause 27 of the draft Bill seeks to insert a new section 24A in the 1951-Act.*

F. Guide lines for setting up of polling stations for constituencies

7.6. The existing section 25 of the 1951-Act lays down that the district election officer shall, with the previous approval of the Election Commission, provide sufficient number of polling stations for every constituency, the whole or greater part of which lies within his jurisdiction and shall publish in such a manner as the Election Commission may direct, the list showing the polling stations so provided and the polling areas or groups of voters for which they have respectively been provided. The Election Commission has pointed out that very often complaints were received from political parties and candidates that the district election officer does not consult the political parties before preparing list of polling stations or where they are consulted does not take into account the suggestions made by them. The Election Commission has further pointed out that it was conceivable that the setting up of polling stations could be so manipulated as to benefit some parties or some candidates to the detriment of other parties and other candidates. The Committee consider that the setting up of polling stations is a very important matter in the process of elections and therefore are of the opinion that maximum agreement of the parties and the candidates should be obtained in preparing the list of polling stations. Moreover, every attempt should be made to reduce the distance of polling stations from the place of residence of a voter. It is of the utmost importance that the polling stations should be within the easy reach of every voter.

7.7. The Committee, further, feel that elaborate provision should be made for the guidance of district election officers in the matter of setting up of polling stations including mobile polling stations as indicated in clause 28 of the draft Bill which seeks to substitute a new section for the existing section 25 of the 1951-Act. The new section *inter alia* provides that the district election officer shall, before forwarding the draft list of polling stations to the Election Commission for its approval—

- (a) publish copies of the draft lists in some conspicuous place in his office and in other suitable places within the constituency;

*Minute of Dissent by Shri Shyamnandan Mishra.

- (b) invite and hear objections from representatives of all political parties functioning in the constituency; and
- (c) make such changes, if any, in the drafts list in the light of the objections received.

G. Election Officer in Union Territory

7.8. In view of the addition of a new clause (j) in section 2 of the 1951-Act as explained in paragraph 5.1 of this Report so as to provide that any reference in the 1951-Act to the district election officer shall, in relation to a Union territory, be construed as a reference to the returning officer, the existing sub-section (5) of section 26 becomes otiose. Clause 29 of the draft Bill, therefore, seeks to omit the aforesaid sub-section (5).

CHAPTER VIII

NOMINATION OF CANDIDATES

A. Appointment of dates for nominations etc.

8.1. Under the existing section 30 of the 1951-Act, the Election Commission is required to appoint, as soon as the notification calling upon a constituency to elect a Member or Members is issued, by notification in the Official Gazette the last date for making nominations, the date for the scrutiny of nominations and the last date for the withdrawal of candidatures. The Election Commission has pointed out that it is not clear whether any day so appointed, when subsequently declared a public holiday, would still be treated as the last day for making nominations or as the case may be, the date for scrutiny of nominations or the last date for withdrawal of candidatures. Therefore the Election Commission has suggested that in order to remove this doubt, it should be provided in the Act itself that the next succeeding day which is not a public holiday should be deemed to have been appointed as the last date for such purposes. Then Committee are in agreement with this suggestion.

8.2. Section 30 also requires the Election Commission to fix the date for polling, if necessary, which shall not be earlier than the 20th day after the last date for the withdrawal of candidatures. The Committee feel that if this minimum period of 20 days is reduced it will have an effect in reducing the election expenses to be borne by the candidates and the political parties which they would have otherwise spent in holding the election meetings and carrying on other election propaganda for a longer period of time. The Committee, after considering the need for giving adequate time to the contesting candidates to contact their voters, recommend that this interval between the last date of final withdrawal of candidatures and the date of poll should be reduced from 20 days to 17 days.

The necessary amendments to section 30 of the 1951-Act are indicated in clause 30 of the draft Bill.

B. Public notice of intended election

8.3. The existing section 31 of the 1951-Act provides that after the notification appointing the dates for making nominations, scrutiny of nominations, withdrawal of candidatures, and the dates

of poll and the date for completion of election, is issued under section 30, the returning officer shall give public notice of the intended election in such form and manner as may be prescribed, inviting nominations of candidates for such election and specifying the place at which the nomination papers are to be delivered. The Committee agree with the suggestion of the Election Commission that, in addition to the aforesaid information, the public notice of the intended election should also specify the date on which, the time and place at which, the forms of nomination may be obtained and the dates on which and the time during which the nomination papers may be delivered to the returning officer. This additional information in the public notice of intended election will benefit not only the candidates but also the election officers. Clause 31 of the draft Bill seeks to amend section 31 of the 1951-Act for the above purpose.

C. Consequential changes in section 31 relating to public notice of election

8.4. Since the provisions of the existing section 30 of the 1951-Act have been incorporated under sub-section (1) thereof and a new sub-section (2) has been added thereto, a consequential amendment has also been made in section 31 by inserting a reference to sub-section (1) of section 30.

D. Nomination of candidates for Election

8.5. It has been pointed out by the Election Commission that at present there is nothing in the Election Law which clearly shows as to when a person is nominated as a candidate. According to the Election Commission two views are possible. In one view, a person is considered as nominated as a candidate as soon as the nomination paper completed in the prescribed form is signed both by the proposer nominating that person as such candidate and also by that person assenting to the nomination. According to the other view, a person is considered as nominated as a candidate only after the nomination paper completed in the prescribed form and signed by both the proposer and the candidate is delivered to the returning officer in accordance with section 33. The Election Commission has felt that a clarification of this point by an amendment of the law is necessary in view of the recent decision of the Supreme Court in the case of *Pasupati Nath Singh versus Harihar Prasad Singh* [(1968) 2SCR 812] wherein the Supreme Court, while considering the question of the time for taking oath or affirmation under article 84(a) or article 173(a) of the Constitution could be made and subscribed, observed—

"The words having been nominated in this form clearly show that the oath or affirmation cannot be taken or made by a candidate before he has been nominated as a candidate. Further, it is clear that none of the sections from section 30 to section 36 require that this oath should accompany the nomination paper. No reference has been made to the form of oath in section 33 or section 35, although in section 33 it is provided that in certain cases the nomination paper should be accompanied by a declaration or by a certificate issued by the Election Commission. In this case it is common ground that no oath or affirmation was attached to the nomination paper or was filed before the date fixed for the scrutiny."

8.6. Accordingly, the Election Commission has proposed that the existing section 32 be substituted by a new one providing that a person should be considered to be nominated as a candidate for election to fill a seat as soon as a nomination paper completed in the prescribed form is signed both by a proposer nominating that person as such candidate and by that person assenting to the nomination although the nomination paper may be delivered to the returning officer under section 33 on a different date.

8.7. The Committee, having considered the matter in detail, are of the view that unless the nomination paper is delivered to the returning officer, it should not be treated as a valid nomination. The Committee therefore feel that the existing provisions of section 32 are adequate and it is not necessary to effect any change therein.

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

8.8. The Election Commission has pointed out that complaints were received from a number of returning officers that candidates or their proposers sometimes insisted on the acceptance of nomination papers filed after 3 p.m. or before 11 a.m. on any of the dates on which a nomination paper might be filed. It often happened that they brought their nomination paper to the returning officer at 4 or 5 p.m. or even later and then insisted that those papers should be taken as filed within time on the next day. Then again, nomination papers were sometimes delivered by post or by modes other than the one laid down in section 33(1). All these matters were not only irregular and illegal but also affected the basis of a fair and free election. The Election Commission has, therefore, suggested that all these irregularities and illegalities must be stopped. The Committee agree with the Election Commission in this regard.

8.9. The Election Commission has further pointed out that a person should not be allowed to sign as a proposer, a nomination paper or papers on behalf of more than one candidate at the same election. The principle underlying this suggestion was that a candidate must be elected at least by one elector of the constituency. It is on this principle that a candidate is declared elected even when there is no contest because such a candidate has been elected at least by one elector of the constituency, namely the proposer. Now if the same elector is allowed to become a proposer for different candidates at the same election, that will mean in the eye of law that he is taking part in election of a number of contesting candidates which is not permissible in our election law, especially in single member constituencies. In this connection, the Election Commission has cited the case of *Ramchandra Singh vs. State of Punjab* (AIR 1968 Punjab, 178). The Election Commission has accordingly suggested that an embargo should be put on a person signing as a proposer nomination papers of more than one candidate at the same election. In the opinion of the Election Commission it should further be provided that if a person signs as a proposer more than one nomination paper, the nomination paper which was delivered first alone should be valid and others should be treated inoperative. The Committee are in agreement with this view.

8.10. In this connection, it was pointed out that it would be unjust to penalise an innocent party *viz.* the candidate merely by reason of the proposer having signed the nomination paper of more than one person, nor would it be fair and equitable to provide for the rejection of all the nomination papers other than the one which by mere accident happens to be filed first. It was therefore suggested that if a person signs as a proposer nomination papers of more than one candidate at the same election, he should be punishable with imprisonment for a term which may extend to six months or with fine or with both. The Committee have not agreed with the suggestion for punishing the proposer in case he signs more than one nomination paper, in view of the fear that voters in the countryside, majority of them being uneducated, cannot be expected to be conversant with the election law and therefore they might be duped by unscrupulous persons into committing this offence.

8.11. The Election Commission has also suggested that before filing a nomination paper under sub-section (1) of section 33, it should be accompanied by a certificate from the person before whom the oath or affirmation has been made and subscribed and also a declaration to that effect should be made in the nomination paper by a candidate. The Committee agree with this suggestion.

8.12. It was further pointed out by the Election Commission that the Supreme Court in the case of *Pashupati Nath Singh vs. Harihar Prasad Singh* (AIR 1968 SC 1064) held that no oath or affirmation could be made and subscribed by a candidate at any time on the day of scrutiny under the existing law. The Election Commission felt that this restriction put by the Supreme Court could be a source of great inconvenience to candidates. In order to get over this difficulty, they had suggested that it should specifically be provided in the Act that where a candidate has not made and subscribed the oath or affirmation at the time of filing the nomination paper, the returning officer should at the time of the presentation of the nomination paper remind the candidate or his proposer of the candidate's obligation to make and subscribe the oath or affirmation at any time before the time fixed under section 35 for the scrutiny of nominations. Thus, an amendment to this effect will enable the candidate to make and subscribe his oath or affirmation even before the hour of the day fixed for scrutiny of nomination papers. The Committee agree with this suggestion.

8.13. The Election Commission has also pointed out that sometimes more than four nomination papers were presented by or on behalf of a candidate and when the first four nomination papers were found liable to be rejected on scrutiny, the candidate or his proposer insisted that the fifth or the sixth nomination paper which may be a valid one should be taken into account. This state of affairs defeats the very purpose of the proviso to sub-section (6) of section 33. The Election Commission has accordingly suggested that it should absolutely be made clear that under no circumstances more than four nomination papers shall be presented by or on behalf of any candidate or are accepted by the returning officer for election in the same constituency. The Committee endorse this suggestion of the Election Commission.

8.14. The Committee accordingly recommend that section 33 of the 1951-Act be amended as indicated in clause 38 of the draft Bill.*

F. Amount of deposits

8.15. Under section 34 of the 1951-Act, it is provided that a candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited a sum of Rs. 500 in the case of an election from a Parliamentary Constituency (Rs. 250/- for a candidate belonging to a Scheduled Caste or Scheduled Tribe) and a sum of Rs. 250/- in the case of an election from an Assembly or Council Constituency (Rs. 125/- in the case

*Minute of Dissent by Shri Shyamnandan Mishra.

of candidate belonging to a Scheduled Caste or Scheduled Tribe). In order to put a stop to the frivolous practice of persons who do not take to elections seriously standing as candidates, the Election Commission has suggested that the deposits required to be made by a candidate at the time of filing his nomination paper should be doubled. The Committee do not consider that a person who does not want to take elections seriously for reasons known to him would in any way be deterred merely because he has to deposit more amount of money than what he has to do at present. The Committee do not feel that any change is called for in section 34 of the 1951-Act on this account.

G. Certificate of Returning Officer on nomination paper

8.16. Under the existing section 35 of the 1951-Act, there is no provision requiring the returning officer to state in the certificate on the nomination paper also whether the required oath or affirmation has been made and subscribed by the candidate and if not made and subscribed, whether he has reminded the candidate of his obligation to do so before the time fixed for scrutiny of nominations. The Election Commission has suggested that if such a provision is made in the Act, it will be advantageous not only to the candidates but also to the returning officers at the time of scrutiny of nomination papers. The Committee are in agreement with the Election Commission on the point and accordingly recommend that an amendment to section 35 of the 1951-Act be made as indicated in clause 35 of the draft Bill.

H. Scrutiny of nomination papers

8.17. Section 36 of the 1951-Act provides *inter alia* that on the date fixed for the scrutiny of nomination papers, the candidates etc., shall be given all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33. This provision does not clearly bring out the intention that the facility for examining the nomination papers shall be available only for those papers which have not been rejected by the returning officer under section 33. As pointed out by the Election Commission, for example, a person should not be given any facility to examine any nomination paper which has been received by post or which has been delivered beyond the period mentioned in sub-section(1) of section 33 or which has been presented by a person other than the candidate or his proposer or in which the proposer is a person who is already a proposer in the nomination paper of another candidate or which is beyond the maximum number of nomination papers which may be filed by or on behalf of a candidate.

8.18. The Election Commission has also suggested that it should be clarified that the returning officer shall examine under sub-section (2) of section 36 only those nomination papers which have not been rejected by him under section 33. The Election Commission has further pointed out that the judgment of the Supreme Court in *Hira Singh Pal vs. Madan Lal* (1968, 2 SCR 778), may be given effect to by amending sub-section (3) of section 36 of the 1951-Act, so that it becomes binding on the returning officer that if full and correct particulars in respect of any candidate etc. mentioned in one nomination paper can be gathered in respect of such candidate or if any error in any nomination paper in respect of the serial number in the electoral roll or in respect of any other matter can be rectified by reference to all other nomination papers delivered on behalf of that candidate and enclosures thereto, he should do so while scrutinising the nomination papers. The Committee are in agreement with the aforesaid suggestions of the Election Commission and recommend that section 36 of the 1951-Act be amended as indicated in clause 36 of the draft Bill.

I. Withdrawal of Candidature

8.19. Amendment sought to be made in section 37 of the 1951-Act by clause 37 of the draft Bill is consequential to the amendments suggested in respect of section 30.

J. Publication of List of contesting candidates—arrangement of names in alphabetical order

8.20. Sub-section (2) of section 38 of the 1951-Act requires that the names in the list of contesting candidates shall be arranged in alphabetical order. The Election Commission has pointed out that this, in practice gives rise to a number of difficulties as in some parts of India names may be arranged in alphabetical order of the surnames but in other parts where there is no such surnames the question arises whether this list should be arranged according to proper names. Further in areas where there is remnant of the matriachal system still prevalent, arrangement according to alphabetical order gives rise to further difficulties. In arranging names in the alphabetical order with reference to proper names difficulties sometimes crop up as to what exactly is the proper name of a particular candidate. The Election Commission has, therefore, suggested that all these difficulties could be avoided by doing away with the present requirement as to arrangement of names according to alphabetical order. The order to be followed in arrangement of names may best be left

to be prescribed by the rules. Thus the rules may, for example provide that the names of contesting candidates shall be arranged according to the time of the delivery of the nomination papers by the respective candidates.

8.21. The Committee have considered the matter and feel that the suggestion of the Election Commission is more likely to create more difficulties than it seeks to avoid. The Committee feel that it should be left to the candidates to make the choice as to whether it should be the surname or the proper name as might have been indicated in their nomination papers. Therefore, no amendment to section 38 is called for on this account.

CHAPTER IX

CANDIDATES AND THEIR AGENTS

A. Attendance of a contesting candidate or his election agent at polling stations and performance of acts in their presence

9.1. Sub-section (2) of the existing section 50 of the 1951-Act provides that a contesting candidate or his election agent may himself do any act or thing which any polling agent or the counting agent of such contesting candidate if appointed, would have been authorised by or under this Act to do, or may assist any polling agent or the counting agent of such contesting candidate in doing any such act or thing. It does not clearly lay down that any act or thing required or authorised by or under that Act to be done in the presence of a polling or counting agent may be done in the presence of the contesting candidate or his election agent instead of the polling or counting agent.

The Election Commission has therefore suggested that the aforesaid sub-section (2) be substituted by a new sub-section. The Committee agree with the suggestion and recommend that an amendment may be made as indicated in clause 39 of the draft Bill.

B. Revocation of the appointment of a counting agent

9.2. Sub-section (2) of section 48 of the 1951-Act provides *inter alia* that in the event of a revocation of appointment or of the death of a counting agent before the commencement of the counting of votes, the candidate or his election agent may appoint in the prescribed manner another counting agent at any time before the counting of votes is commenced.

During the course of discussion a point was raised that the counting agent may either die or turn hostile even after commencement of counting of votes and it may become necessary to appoint another counting agent in his place. But under the existing provisions another counting agent cannot be appointed in his place.

The Committee feel that in order to meet such contingencies, sub-section (2) should be suitably amended with a view to make it possible for the candidate or his election agent to appoint another counting agent even after the commencement of the counting of votes.

C. Effect of non-attendance of polling or counting agent or contesting candidate or his election agent

9.3. Section 51 of the 1951—Act lays down that where any act or thing is required or authorised by or under this Act to be done in the presence of the polling or counting agents, the non-attendance of any such agent or agents at the time and place appointed for the purpose shall not, if the act or thing is otherwise duly done, invalidate the act or thing done. In view of the changes made in the preceding section 50 of the 1951—Act to the effect that a thing, which could be done in the presence of a polling or counting agent could also be done in the presence of the contesting candidate or his election agent, a consequential change will be necessary in section 51 as indicated in clause 40 of the draft Bill.

CHAPTER X

THE POLL

A. Adjournment of poll in emergencies

10.1. Sub-section (1) of section 57 of the 1951—Act empowers the presiding officer or the returning officer to announce an adjournment of the poll to a date to be notified later, if the election proceedings at any polling station are interrupted or obstructed by any riot, or open violence or if it is not possible to take the poll on account of any natural calamity or any sufficient cause. Under sub-section (2) thereof, the returning officer is required immediately to report the circumstances of the adjournment of poll due to emergencies to the proper authority and the Election Commission. The Committee feel that a burden should be cast on the presiding officer also to inform the returning officer about the adjournment of the poll together with a detailed report setting out the reasons thereof, and including a copy of any complaint made to him by any interested party in this behalf. This would facilitate the task of the returning officer in discharging his duties under sub-section (2) of section 57 to inform the proper authority and the Election Commission in that behalf. The Committee have accordingly suggested an amendment to section 57 as indicated in clause 40A of the draft Bill.

B. Fresh Poll in case of destruction etc. of ballot boxes papers and prevalence of coercion, intimidation at polling station

10.2. At present there is no provision for fresh poll in the cases where ballot papers used or intended to be used at a polling station are unlawfully taken out of the custody of the presiding officer or the returning officer or accidentally or intentionally destroyed or lost or damaged or tampered with. The existing section 58 is intended to cover cases of used ballot boxes being taken away unlawfully. It has been reported to the Election Commission that in some of the States persons armed with fire arms and other lethal weapons sometimes raided a polling station and forcibly snatched away the used ballot papers from the presiding officer. In such cases, there is no provision for a fresh poll. There is also no provision to order fresh poll in cases where because of the prevalence of coercion or intimidation on a large scale at polling stations, the members of the weaker sections of the community are prevented from exercising their

franchise. The Election Commission has suggested that in order to guarantee free and fair elections it is very necessary that in such cases the Commission should have power to order fresh poll. The Committee are generally in agreement with Election Commission on this score. The existing section 58 of the 1951—Act is sought to be amended by clause 41 of the draft Bill to meet the aforesaid eventualities.

C. Manner of voting at elections

10.3. The existing section 59 lays down that at every election where a poll is taken, votes shall be given by ballot in such a manner as may be prescribed, and no votes shall be received by proxy. But there is no express provision for voting by secret ballots although, in practice, the voting at election is only by secret ballot. the Committee, agree with the Election Commission that this should be given a statutory recognition in the Act itself. Accordingly, section 59 of the 1951—Act is sought to be amended by clause 42 of the draft Bill.

D. Special procedure for preventing personation

10.4. Section 61 of the 1951—Act authorises the Central Government to make rules to provide for certain matters specified therein with a view to preventing personation of electors. During the course of the deliberations in the Committee, it was pointed out that the existing measures should be strengthened to prevent personation of electors which was reported to be quite rampant in certain constituencies in the country. The Committee recommend that necessary rules be made for obtaining the signature or thumb impression of the elector on the counterfoil of the ballot paper before delivering such ballot paper or ballot papers to him. The Committee have, accordingly, suggested in clause 42B of the Draft Bill an amendment to section 61 of the 1951—Act.

E. Extension of right to vote in an election to persons in lawful custody

10.5. Section 62 of the 1951—Act *inter alia* lays down that no person shall vote at any election if he is in the lawful custody of the police. During the course of the deliberations of the Committee, it was pointed out that such a voter should not be deprived of his right to vote in an election as he could not be deemed to have been deprived of his right to vote merely because he is under the police custody without being convicted of an offence. The Committee consider that the embargo imposed on a voter in lawful custody of the police from voting in an election should be removed.

The Committee have accordingly suggested in clause 42C of the draft Bill the omission of words "or is in the lawful custody of the police" from sub-section (5) of the Section 62 of the 1951—Act.

10.6. In view of the aforesaid suggestion of the Committee, it is necessary to make a consequential change in section 60 as indicated in clause 42A of the draft Bill so as to extend the postal ballot facility to such voters.

F. Casting of votes by electors who are less than 21 years

10.7 The Election Commission has pointed out that sometimes urchins of ages between 10 and 11 appear before the presiding officer of the polling station and insist on casting their votes because their names find a place in the electoral roll. In the absence of any specific provision in this respect, the polling officer finds it impossible to stop such urchins to cast their votes even though there is very much doubt that they are much below voting age. The Election Commission has suggested to incorporate a provision to this effect.

The Committee feel that the cases of the kind envisaged by the Election Commission are likely to be very rare and to clothe the presiding officer with powers of such arbitrary and wide nature to meet a stray or extreme case would be dangerous. There may be borderline cases but by no stretch of imagination urchins of 10 and 11 years age could pose a problem of this nature. Above all, there must be some finality to the electoral roll. The Committee have therefore, not agreed to incorporate a provision of this nature.

CHAPTER XI

COUNTING OF VOTES

A. Counting of votes

11.1. The existing section 64 of the 1951—Act provides that at every election where a poll is taken, votes shall be counted by or under the supervision and direction of the returning officer, and each contesting candidate, his election agent and his counting agent shall have a right to be present at the time of counting. But there is no provision for recount of votes in suitable cases. This eventuality is contemplated under the existing rule 63 of the Conduct of Election Rules, 1961 which *inter alia* provides as follows:

- “63 Recount of votes.—(1) After the completion of the ‘counting, the returning officer shall record in the result sheet in Form 20 the total number of votes polled by each candidate and announce the same.
- (2) After such announcement has been made, a candidate or, in his absence, his election agent or any of his counting agents may apply in writing to the returning officer to recount the votes either wholly or in part stating the grounds on which he demands such recount.
- (3) On such an application being made the returning officer shall decide the matter and may allow the application in whole or in part or may reject *in toto* if it appears to him to be frivolous or unreasonable.
- (4) Every decision of the returning officer under sub-rule (3) shall be in writing and contain the reasons therefor.”

11.2. Election Commission has rightly pointed out that it would be more appropriate to make a provision for recount in the Representation of the People Act itself rather than in the Conduct of Election Rules. The Committee also note that there is no provision for ordering a recount of votes by the returning officer on his own motion. Clause 43 of the draft Bill therefore seeks to substitute a new section for the existing section 64 for achieving the object aforesaid.*

*Minutes of Dissent by Sarvashri Atal Bihari Vajpayee, Lal K. Advani and Shyamnandan Mishra.

B. Destruction, loss etc., of ballot papers at the time of counting

11.3. The existing section 64A of the 1951—Act provides that if at any time before the counting of votes is completed any ballot papers used at a polling station or at a place fixed for the poll are unlawfully taken out of the custody of the returning officer or are accidentally or intentionally destroyed or lost or are damaged or tampered with, to such an extent that the result of the poll at that polling station or place cannot be ascertained, the returning officer shall forthwith report the matter to the Election Commission. In the opinion of the Election Commission, this section is inadequate to cover those cases where such unlawful taking out of ballot papers or accidental or intentional destruction, loss, damage or tampering has taken place before the ballot papers are put in the custody of the returning officer and is discovered at the time of counting. The Election Commission has therefore suggested that the scope of existing section 64A may be widened so as to cover such cases also. The Committee are in agreement with the Election Commission and accordingly sub-sections (1) and (2) of the existing section 64A are sought to be substituted by new sub-sections as indicated in clause 44 of the draft Bill.

C. Declaration of results

11.4. The existing section 66 of the 1951—Act lays down that when the counting of the votes has been completed, the returning officer shall, in the absence of any direction by the Election Commission to the contrary, forthwith declare the result of the election in the manner provided by this Act or the rules made thereunder. The Election of such counting have been withhold for the time being. For go far enough. It does not specifically spell out what can be done after the counting and the declaration of the results on the completion of such counting have been withhold for the time being. For any follow up action under the existing section 66, the Commission has to rely upon its inherent constitutional power given by article 324 of the Constitution which vests in the Election Commission the power of superintendence, direction and control of elections.

11.5. The Election Commission has therefore, suggested that the existing section 66 may be substituted by a new one to provide that the declaration of results could be withheld in two contingencies, namely, where the Election Commission issues any such direction (which is contemplated even now under the present section) and also in another contingency namely, when a written request is made for a recount by a contesting candidate, his election agent or counting

agent. However, in order to avoid any frivolous request being made by or on behalf of any candidate, two conditions ought to be imposed to the effect that the margin of difference between the valid votes polled at the original count by the winning candidate and the candidate next below to him must not be more than 2 per cent of the total valid votes polled and also the candidate or the person making request for a recount in his behalf should be required to make a non-refundable deposit of a sum of Rs. 1,000|-. The Committee do not approve of the suggestion requiring the candidate or the person making request for recount of votes on his behalf to make a non-refundable deposit of a sum of Rs. 1,000|- as it would take away the very spirit of asking for a recount. Subject to this, the Committee endorse the suggestion of the Election Commission.

11.6. The Committee also consider that the course of action which the Election Commission may adopt after the declaration of the result of an election has been withheld on completion of counting of votes should be specifically laid down to include (i) taking of a fresh poll after declaring the poll already taken to be void, or (ii) re-counting of all ballot papers, or (iii) making of such other orders in relation to the declaration of the result as the Election Commission may deem fit.

Clause 45 of the draft Bill seeks to achieve the aforesaid objectives by the substituting a new section for the existing section 66 of the 1951—Act.*

D. Publication of result of General Election to the House of the People and the State Legislative Assemblies

11.7. Section 73 of the 1951—Act lays down that the results of a general election to the House of the People and of the State Legislative Assemblies shall be notified in the Official Gazette and upon the issue of such notification the House or Assembly shall be deemed to be duly constituted without affecting *inter alia* the duration of the House of the People or State Legislative Assembly functioning immediately before the issue of such notification.

11.8. The Election Commission has suggested that existing proviso to the said section 73 may be substituted with a view to clarify that such notification shall not be issued before the dissolution of the existing House of the People or the existing State Legislative Assembly.

*Minute of Dissent by Shri Shyamnandan Mishra.

11.9. The Committee, having considered this matter in all its aspects, do not agree to this suggestion since, in the opinion of the Committee, the new proviso would change the whole scheme of declaration of results contemplated under the existing section 73 which has worked well and these years without causing any difficulty whatsoever. However, a consequential amendment, due to re-numbering of the existing section 30 as sub-section (1) thereof, has been suggested, as indicated in clause 46 of the draft Bill.

CHAPTER XII

TRIAL OF ELECTION PETITIONS

A. Orders of the High Court on Election Petitions

12.1. Sections 98 and 99 of the 1951—Act provide for the types of order which a High Court at the conclusion of the trial of an election petition is required to make. Section 100 thereof sets out the grounds including commission of corrupt practices on which the election of the returned candidate could be declared void by the High Court. The Committee have suggested, as mentioned in the later portion of this report, the regrouping of the corrupt practices referred to in section 123 of the 1951—Act into two categories, namely, “corrupt practices” and “illegal practices”. The Committee have also suggested (*vide* para 13.4) that the commission of either a corrupt practice or an illegal practice should result in an election being set aside and the person concerned should be disqualified for being chosen as, and for being, a member of either House of Parliament or of a State Legislature. However, in the case of corrupt practice, disqualification should be for a period of six years and in the case of illegal practice the disqualification may extend upto six years subject to a minimum of two years.

In view of this suggestion, it is necessary to make certain consequential changes in the existing sections 99 and 100 of the 1951—Act as indicated in clause 47 of the draft Bill.

12.2. In this connection, a suggestion was made by the Election Commission to combine the existing provisions of sections 98 and 99 of the 1951—Act. The reason advanced by the Election Commission for this suggestion was that in the experience of the Commission it had been noticed that the courts did not follow strictly the provisions of present section 99 even where there was finding as to corrupt practice against a person who was a party to the election petition. The Commission thought that this happened because the provisions of sections 98 and 99 were contained in separate sections and therefore remained unnoticed by the courts. The Commission felt that if sections 98 and 99 were brought together under one section, then the attention of the judges would be more readily drawn to these, than at present.

12.3. The Committee are not convinced by the arguments advanced by the Election Commission for combining the two sections. The Committee have also not agreed to another suggestion to lay down specifically in section 98 that the High Court should record its decision containing a finding, with the reasons therefor, upon each separate issue, unless the finding on any one or more than one issue is sufficient for the disposal of the election petition.

B. Redraft of the section relating to transmission of High Court's orders to the appropriate authority, etc., and its publication

12.4. The Election Commission has suggested the substitution of the existing section 106 of the 1951—Act by a new section containing a redraft of the provision of that section without affecting its substance.

Accordingly, a redraft of that section is given in clause 48 of the draft Bill.

CHAPTER XIII

CORRUPT AND ILLEGAL PRACTICES

13.1. Section 123 of the 1951—Act enumerates various types of corrupt practices for the purposes of that Act. The Election Commission has suggested a number of amendments to the Section. In the first place, it has pleaded for an inclusive definition of the expression “National Emblem” used in clause (3) of section 123 in order to remove any doubt as to the exact meaning and connotation of that expression. Secondly, the Commission has urged to widen the scope of existing clause (5) which deals with the corrupt practice of hiring of vehicles for conveyance of voters. Thirdly, the Commission has sought to introduce new corrupt practices which relate to election expenditure, namely, incurring of unauthorised expenses, making of false return of election expenses by the candidate because the making of false return is neither covered by the existing section 10A, which provides for disqualification for failure to lodge account of election expenses, nor by section 123 of the 1951—Act. Lastly, the Commission has suggested an amendment to sub-section (7) by including in the prohibited category of persons, the teachers of Government schools also. The Election Commission has pointed out that candidates at elections sometimes take the help and assistance of the teachers in Government schools on a large scale which, in the opinion of the Commission, was a bad trend and therefore should be stopped.

13.2. The Committee have carefully considered these suggestions and are generally in agreement with the Election Commission except in respect of their third recommendation referred to in paragraph 13.1 for introduction of new corrupt practices relating to election expenditure. Also, the Committee do not agree to the suggestion that the expression “National Emblem” should include the pictorial representation of Rashtrapati Bhavan, Parliament House or Supreme Court building for purposes of influencing voters so as to fall within the purview of a corrupt practice.

13.3. During the course of the deliberations, a suggestion was also made to include in the category of corrupt practices the commission of any unlawful activity as defined in the Unlawful Activities (Prevention) Act, 1967 by a candidate or his agent or, by any other person or association with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate. The Committee, however, have not agreed to this suggestion.

13.4. The Committee was seized of a major problem in this connection viz., the problem of consequences flowing from the commission of the corrupt practices enumerated under section 123. Under section 8A and 11A, the disqualification resulting from the commission of any corrupt practices was for a period of six years. This had the effect of putting the persons guilty for serious corrupt practices and those guilty of less serious corrupt practices on equal footing. The Committee, after taking into consideration the pros and cons of the matter, are of the view that the provisions of existing section 123 of the 1951—Act should be split up and regrouped into two categories—one dealing with 'corrupt practices' and another dealing with 'illegal practices'. Provisions of the existing clauses (1), (2), (3), (3A), (4) and (7) of section 123 should be grouped under 'corrupt practices' and the provisions of clauses (5) and (6) under 'illegal practices'.* The commission of either a corrupt practice or an illegal practice should result in an election being set aside. However, for purposes of disqualification for being a member of Parliament or of a State Legislature, the period of disqualification, in the case of a corrupt practice should be for six years and in the case of an illegal practice the period of disqualification may extend upto six years subject to a minimum of two years.

13.5. The Committee are also of the view that a candidate or his election agent should be held responsible for acts of omission and commission of any other person in relation to corrupt or illegal practices, only if they have given their express consent for such acts.

13.6. During the course of the deliberations of the Committee, a suggestion was also made regarding the feasibility of incorporating what is termed as 'evil practices' within the purview of either 'corrupt practices' or 'illegal practices'. This suggestion has evidently been made in view of an observation made by the Supreme Court in the case of Ghasi Ram vs. Dal Singh and others (A.I.R. 1968 S.C. 1991) which related to disbursement made out of discretionary grants. The Committee could not give full thought to this suggestion and have therefore left it to be examined in detail by the Government and the Election Commission in the light of its experience in the course of conducting various general elections and bye-elections to Parliament and the State Legislatures.**

* Minister of Dissent by Shri Syamnandan Mishra.

**Minute of Dissent by Sarvashri Atal Bihari Vajpayee and Lal K. Advani.

13.7. While considering the question of corrupt practices relating to promotion of feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community or language, the Committee's attention was drawn to a suggestion made by a Seminar on "Minorities in National Building—International Experience" organised by the India International Centre, New Delhi, in March|April, 1970, for amending the election law so that the following may also be deemed to be a corrupt practice for the purposes of election law—

"The promotion of, or attempt to promote feelings of enmity or hatred between different classes of the citizens of India on grounds of place of birth, religion, race, caste, community, or language or impugning or questioning the right of any such classes of citizens to possess, exercise or enjoy the rights of Indian citizenship or advocating the use of violence against any such class of citizens, by a candidate or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate."

13.8. The Committee have, however, not agreed to the aforesaid suggestion as they feel that the existing provisions are quite adequate.

13.9. It has been brought to the notice of the Committee that in many cases trial of election petitions takes unduly long time for no fault of the parties involved in it. The affected persons, due to inordinate delays in trial of their election petitions, continue in suspense and if the period of disqualification for six years commences from the date of the order of the court, such persons are prevented from being Members of Parliament or of a State Legislature. For the sake of giving relief in such cases, the Committee have agreed to a suggestion that the amending law relating to disqualification for being a member of Parliament or for a State Legislature arising out of any corrupt practice which has ceased to be a corrupt practice should apply with retrospective effect.*

13.10. In order to give effect to the aforesaid recommendations of the Committee, the existing section 123 has been split up into two sections 123 and 124 as indicated in clause 49 of the draft Bill.**

*Minute of Dissent by Sarvashri Atal Bihari Vajpayee and Lal K. Advani.

**Minute of Dissent by Shri Triloki Singh.

CHAPTER XIV

ELECTORAL OFFENCES

A. Coercion or intimidation of voters at elections

14.1. The Election Commission in its report on the mid-term general elections in India 1968-69 (Volume I) while dealing with the problem of intimidation and coercion at elections observed:

"While it may be difficult to prove the truth or otherwise of these complaints according to the strict rules of evidence, the possibility of intimidation, coercion and undue influence being exercised by the powerful and economically better off sections of the community over the weaker and poorer sections cannot be altogether ruled out especially in areas where the more powerful and economically better off sections outnumber the weaker sections".

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"The probable causes of such large scale intimidation, coercion and undue influence are mainly social and economic. Sometimes personal factors of individual candidates also count. Casteism with all its attendant evils still prevails on a large scale in many parts of India. If caste ridden communities are economically well off and outnumber the weaker sections, then they can successfully exercise intimidation and coercion upon the members of the weaker and poorer sections of the community because if they vote against the candidate supported by the stronger and economically better off communities, then members of the weaker and poorer sections may perhaps be boycotted economically and that will mean their hunger, starvation, disease and ultimate ruination. The Harijans and weaker and backward sections of the community cannot under the circumstances dare go against the wishes of the more powerful, economically better off and more numerous caste ridden sections of the electorate. Over and above this, if a candidate belonging to a strong and economically

better off sections is a man of stature and wields influence over the local population then it becomes very difficult for any candidate supported by the weaker sections to get elected. Therefore, if this evil of intimidation, coercion and undue influence on a large scale is to be successfully fought and eliminated, then it has to be met squarely and with courage at the political, economic, social administrative and also legal levels."

14.2. In order to ensure purity of elections, the Election Commission has suggested an amendment of 1951—Act so as to include coercion and intimidation of voters at elections as an electoral offence. The Committee, having considered the matter carefully, are in agreement with the suggestion made by the Election Commission.

In order to give effect to the aforesaid suggestion, the Committee recommend the insertion of new section 125A as indicated in clause 50 of the draft Bill.

B. Personation at Elections

14.3. During the course of the discussion in the Committee, it was pointed out that the evil of personation at elections, specially in urban areas, had taken a disproportionate form. It was felt that if this evil was not nipped in the bud, it might vitiate the conduct of fair elections in our country. It was suggested that the acts of personation at elections should be included in the category of electoral offences and should be made punishable with imprisonment or with fine or with both.

14.4. The Committee, after giving careful consideration to this matter, feel that in order to ensure fairness and purity of elections, the act of personation at elections be made an electoral offence by inserting a new section 125B as indicated in clause 50 of the draft Bill.* The Committee also feel that sub-rule (4) of rule 36 of the Conduct of Election Rules, 1961 be so amended as to make it obligatory on the Presiding Officer to report the matter to the Police.

14.5. During the course of deliberations of the Committee, it was also suggested that to eliminate the chances of impersonation, a poll card could be issued to each elector bearing his/her name, elector number and part etc. of the voters' list and signature on the counter-foil are taken. It was pointed out that any advantage derived by the introduction of this system will not be commensurate with the expenditure and time involved. There is also possibility of abuse of poll cards for the purposes of bogus voting. It was also pointed

* Minute of Dissent by Shri Shyamnandan Mishra.

out that the Election Commission was consulted in the matter and they were totally opposed to the suggestion.

In view of the above, the Committee did not agree with this suggestion.

C. Prohibition of public meetings during period of seventy-two hours ending with hour fixed for conclusion of poll

14.6. The existing section 126 of the 1951-Act prohibits convening, holding or attending any public meeting in any polling area during the period of 48 hours ending with the hour fixed for conclusion of the poll for any election in that polling area. The contravention of this prohibition is punishable with fine which may extend to 250 rupees. The Election Commission from its experience of the working of the 1951-Act discovered that the provisions of this section were very much limited in scope. The Commission has pointed out that in many cases, while polling was actually going on, members belonging to a stronger community loiter in large numbers in the open compound or place in front of a polling station with the object of keeping a watch upon the persons who were standing in the queue awaiting their turn to vote. This sort of activity, the Election Commission has pointed out, instills fear in the minds of voters belonging to the weaker section of the community. The Commission termed it "a very bad form of intimidation". The Election Commission has further pointed out that display of certain election posters, pamphlets etc. on buildings, vehicles, hoarding or place or the writing or depicting any election matter on any street, road, foot-path, building etc. defeated the very purpose of the provisions of that section.

14.7. The Sub-Committee appointed to examine the question of election expenses had recommended that taking out processions, use of loud-speakers and holding of public meetings and other functions in connection with an election in any polling area should be prohibited during the period of 72 hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

14.8. The Committee have considered the matter in all its aspects and feel that the existing section 126 should be amended and made more stringent so as to impose a ban, during the period of 72 hours immediately preceding the conclusion of the poll, on (a) convening, holding, attending, joining or addressing any public meeting or processions, in connection with an election, (b) displaying to the public any election matter by means of cinematograph, television or other similar apparatus, (c) propagating any election matter to public by

holding any musical concert, theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto in any polling area. Further, contravention of these provisions should be made punishable with imprisonment for a term which may extend to two years or with fine or with both.

The Committee have accordingly suggested amendments to section 126 of the 1951-Act as indicated in clause 51 of the draft Bill.

D. Disturbance at election meetings

14.9. Section 127 of the 1951-Act provides for punishment of persons who indulge in creating disturbance at election meetings. The Election Commission has pointed out that at present, even if disturbance takes place in an election meeting, the police can hardly do anything to stop such disturbance or prevent the continuance of such disturbance because under sub-section (3) of the existing section 127 the police can intervene in the matter and take some action only if requested by the chairman of the election meeting. This is a most unsatisfactory state of things because, for obvious reasons, it is hardly practicable for the chairman of a meeting to request the police to take action. The police may be standing at a distance from the seat of the chairman, or the chairman for fear of future molestation may not have the courage to request the police even when there may be some policemen near at hand, or the disturbance may be so sudden and may be so serious and violent from the very beginning that the chairman of the meeting may not even get an opportunity to request the police to take suitable action. The result is that this section has, in the opinion of the Election Commission, for all practical purposes, remained a dead letter. Moreover, the punishment provided is also not deterrent. The maximum punishment is only 250 rupees and there is no provision as to imprisonment.

14.10. The Committee agree with the suggestion of the Election Commission that an offence under this section should be made a cognizable one so that the police may arrest without warrant, if any disturbance takes place at an election meeting. Further, an obligation in specific terms should be laid upon the police to take all necessary steps and use all such force as may be reasonably necessary for keeping order at an election meeting and for ensuring the smooth conduct of such meeting. In order to make the punishment deterrent, the offence under section 127 should be made punishable with imprisonment for a term which may extend to six months or with fine or with both. The Committee hope that with these amendments, the provisions of this section would really be effective in stopping disturbance at election meetings.

Clause 52 of the draft Bill seeks to make suitable amendments in section 127 for the aforesaid objectives.

E. Prohibition of canvassing in or near polling stations

14.11. The existing section 130 of the 1951-Act prohibits canvassing for, or soliciting, etc. votes in or near a polling station within a distance of 100 metres. Any contravention of this prohibition is punishable with fine which may extend to 250 rupees. The offence punishable under this section is cognizable. The Election Commission has, however, pointed out that the spirit of the provision of this section was violated by a new device of canvassing at polling stations. Quite often, supporters of candidates at or near the polling station were found wearing badges, emblems, etc. bearing the names of candidates or the pictorial representation of the candidates. The Election Commission has, therefore, suggested that this type of canvassing should be stopped.

14.12. The Committee have considered this matter and feel that preventing the agents etc. of the candidates from wearing badges, emblems, etc., bearing the names of candidates or the pictorial representation of the candidates etc. will not be conducive to smooth polling because the voters as well as the election officers would not be able to recognise them in the absence of such badges, etc. The Committee, therefore, do not consider it necessary to amend the existing section 130.

F. Illegal hiring, use, etc. of vehicles at elections

14.13. The existing section 133 of the 1951-Act provides for punishment of persons guilty of illegal hiring or procuring of vehicles for purposes of free conveyance of voters at an election. The Election Commission from its experience of working of the 1951-Act has felt that the provisions of this section are inadequate and require to be made more exhaustive so that the practice of providing free conveyance to the voters could be rooted out for good. The Election Commission has accordingly suggested that the offence punishable under section 133 should be made cognizable and provision for minimum punishment, cancellation of licence and forfeiture of the vehicle used for conveying the voters should also be included in the section. The Commission has also suggested that the use of vehicles etc. on the polling day in a polling area except under a written permit granted by the Election Officers should be made a cognizable offence. Further, the Election Commission has suggested that the magistrate or the police officers on duty should be empowered to stop any vehicle etc. for purposes of ascertaining whether any of these provisions was being contravened. The burden of proving

that the vehicle was not used for purposes of conveying the voters should be cast on the owner or driver of the vehicle, if it was found that the vehicle was proceeding in the direction of a polling station with one or more persons in addition to the driver of the vehicle.

14.14. During the course of the discussion, it was pointed out that the suggestions regarding confiscation of vehicle, cancellation of licence and constructive presumption of the offence for conveying the voters were too drastic in nature and difficult to administer effectively and fairly.

14.15. The sub-Committee, which was appointed by the Committee to examine the question of election expenses *inter alia* had recommended that there should be a complete ban on plying of mechanically propelled vehicles on public roads on the polling day subject to certain exceptions which might be prescribed by rules. It also recommended that carrying of voters on vehicles to the polling booths should be made a cognizable offence and the driver as well as the owner of the vehicle used for carrying voters should be made liable for punishment.

14.16. The Committee, after having considered the matter in all its aspects, feel that the question of preventing the misuse of vehicles at elections should be dealt with as indicated below:—

- (1) If any person is found guilty of illegal hiring or procuring and use of any vehicle for carrying voters, he should be punished with imprisonment for a minimum term of three months and a minimum fine of Rs. 250. Such an offence should be made cognizable.
- (2) Where a mechanically propelled vehicle is used for conveying any voter to a polling station, the owner or driver of such vehicle should also be punishable with imprisonment for a term which may extend to three months and also with fine. Such an offence should also be made cognizable. But this should not be made applicable where the vehicle is used by the owner for the conveyance of himself or the members of his family to or from any polling station.
- (3) A complete ban should be imposed on plying of mechanically propelled vehicles used for the purposes of road transport on the date of poll and any person who contravenes this provision should be punishable with fine extending upto Rs. 1000/-.

However, exemptions, e.g., for hospital vans, police vehicles, essential services like public transport etc. may be provided in the Conduct of Election Rules.

The Committee, therefore, recommend that the existing section 133 of the 1951-Act be substituted by sections 133, 133A and 133B as indicated in clause 54 of the draft Bill.

G. Penalty for Government servant for acting as election agent, polling agent or counting agent

14.17. At present, under section 134A of the 1951 Act, a Government employee is liable to punishment if he acts as an election agent or a polling agent or a counting agent of a candidate, but there is no provision for punishing a Government employee if he canvasses for votes for any candidate or addresses any election meeting or indulges in any other propaganda or campaign at an election. It has come to the notice of the Election Commission that sometimes Government servants take part in these activities also. It is absolutely necessary that such activities by Government employees should be stopped and they can be stopped only if these activities are made offences punishable with imprisonment and fine.

14.18. The Committee are of the view that such activities not only by the Government employees but also by the employees of local authorities should be stopped and, therefore, recommend that section 134A of the 1951-Act may be amended as indicated in clause 55 of the draft Bill.

H. Prohibition of going armed to or near a polling station

14.19. Experience has been that in some parts of the country, on a polling day, people go to the polling station or near polling station armed with offensive and lethal weapons to terrorise people including voters. The Committee agree with the Election Commission that this is a serious matter at the time of election and every step should be taken to prevent people from carrying such weapons of any kind within the neighbourhood of a polling station. The Committee further feel that if a person violates this provision, any offensive weapon found in his custody should be confiscated. Accordingly, the Committee recommend that a new section 134B on the lines of clause 56 of the draft Bill may be incorporated in the 1951-Act.

I. Removal of ballot papers from polling station to be an offence

14.20. Section 135 of the 1951-Act provides for punishment for fraudulently taking away of ballot papers out of polling stations. Election Commission has pointed out that some times ballot papers were also taken away or sought to be taken away from polling station not only fraudulently but also with force and violence. In order to check such activities, the Committee recommend that subsection (1) of section 135 of the 1951-Act may be amended on the lines of clause 57 of the draft Bill.

J. Grant of paid holiday to employees on the day of poll

14.21. At present, there is no provision for grant of paid holiday to employees of private concerns and corporate bodies on the day of poll, with the result that a large number of voters are not able to cast their votes. The Election Commission has suggested that the employers should be compelled to allow their employees a paid holiday on the day of poll in order to enable them to cast their votes. The Commission has further suggested that any contravention of the above provisions should be punishable with a fine to the extent of Rs. 50. However, an exception may be made in those cases where absence of employees may cause danger or substantial loss to the business.

14.22. The Committee are in agreement with these views and accordingly suggest the insertion of a new section 135A as indicated in clause 58.

K. Prohibition of sale of liquor etc. on polling day

14.23. The Election Commission has suggested that sale of distribution, etc. of "intoxicating, spirituous or fermented liquors or strong drinks" at any hotel, eating-house, etc. within the polling area on a polling day and during 12 hours immediately preceding that day should be prohibited. While agreeing with the above suggestion, the Committee feel that the duration of such prohibition should be for 24 hours instead of 12 hours and that *ganja* and *charas* may also be brought within the scope of such prohibition.

The Committee note that *ganja* and *charas* were known by different names in various parts of the country and there were a number of preparations containing these materials. The Committee feel that in order to cover *ganja* and *charas*, the expression "Narcotic Drugs" may be used.

In order to give effect to the aforesaid suggestions, a new section 135B may be inserted as indicated in clause 58 of the draft Bill.

CHAPTER XV

POWERS OF ELECTION COMMISSION AS TO DISQUALIFICATION OF MEMBERS

15.1 Section 146(1) of the 1951-Act *inter alia* provides that the Election Commission shall have power of a Civil Court for purposes of making an inquiry in connection with the tendering of any opinion to the President under article 103 or under sub-section (4) of section 14 of the Government of Union Territories Act, 1963 or to the Governor under article 192, etc. Such power of the Election Commission does not extend to inquiries made by it in case of dispute regarding any election symbol or any other matter relating to elections. Accordingly, the Election Commission has suggested substitution of existing sub-section (1) of section 146 by a new sub-section to cover such matters also.

The Committee have considered the implications of this matter and feel that it is not necessary to clothe the Election Commission with the powers of a Civil Court in such general terms as "or any other matters relating to elections."

15.2 The Commission has also suggested some minor modifications in the existing section 146(1). The Committee accordingly suggest that section 146 may be amended as indicated in clause 60 of the draft Bill.

15.3 In view of the aforesaid changes, the title of the chapter also requires modifications as indicated in clause 59 of the draft Bill.

CHAPTER XVI

MISCELLANEOUS PROVISIONS IN THE 1951-ACT

A. Cancellation of notification for election in certain contingencies

16.1 The existing section 153 of the 1951-Act empowers the Election Commission, for reasons which it considers sufficient, to extend the time for the completion of any election by making necessary amendments in the notification issued by it under section 30 or sub-section (1) of section 39. The Election Commission has suggested the insertion of two new sections after section 153, one giving the power to cancel notification of elections in cases of emergencies, such as, flood, fire, earthquake, war, etc. and the other giving power to the Election Commission in cases of failure of a constituency to elect when called upon to do so.

16.2 To obviate this in future, the Committee feel that specific provisions should be made to meet certain contingencies under which it becomes impracticable to hold any election. In such cases, the Election Commission should be empowered to recommend to the President or the Governor or the Administrator for cancelling the notification of general or biennial elections. However, in the case of a notification for bye-election the cancellation may be made by the Election Commission itself.

Accordingly, the Committee suggest the insertion of a new section 153A as indicated in clause 61 of the draft Bill.*

16.3 As regards the Commission's suggestion that the Election Commission need not again be bound to call upon a constituency or an electoral college, in case it fails to elect a Member or Members in pursuance of a notification, under sections 147, 149, 150 and 151 of the 1951-Act, the Committee feel that such a situation is likely to arise rarely and therefore it is not necessary to amend the law as suggested by the Election Commission.

B. Return or forfeiture of candidate's deposit

16.4 The existing sub-section (3) of section 158 of the 1951-Act provides for the return of candidate's deposit in case the candidate is not shown in the list of contesting candidates and also if the candidate dies before the commencement of the poll. The Election Commission wanted to clarify and streamline this section by bifurcating the existing sub-section (3) into two parts dealing with the return of candidate's deposit separately—one where candidate is not shown in the list of contesting candidates, and the other, where poll is countermanded due to the death of the candidate. The Commission

*Minute of Dissent by Shri Shyamnandan Mishra.

also wanted specifically to provide for the return of candidate's deposit in the event of his being elected. It has also suggested some consequential changes in the existing section 158 necessitated by giving effect to the proposed amendments.

The Committee are in agreement with the suggestions made by the Election Commission and recommend that the amendments suggested in clause 62 of the draft Bill be made in section 158 of the 1951-Act.

C. Issue of instructions and directions to election officers

16.5 The Election Commission, in order to ensure smooth, free and fair elections, from time to time, issues instructions in exercise of its powers of superintendence, direction and control of elections vested in it by article 324 of the Constitution. The Election Commission has felt that such directions and instructions should be given a statutory basis and has accordingly suggested an amendment to the Representation of the People Act, 1951. The Committee, after considering all aspects of the matter, feel that a specific provision should be made in the 1951-Act, as suggested by the Election Commission so that the compliance of the instructions and directions given by the Commission become binding on the chief electoral officer and other election officers. The Committee, therefore, recommend that a new section 167A be inserted in the 1951-Act as indicated in clause 63 of the draft Bill.

D. Form of Identity Slips

16.6 At present, candidates and political parties usually issue slips to the electors bearing candidates name, serial number of the elector in the electoral roll and the name of the polling station etc. The form of these identity slips is determined by the candidates and the political parties. The Election Commission has suggested an amendment in section 169(2) of the 1951-Act so that the form of such identity slips may be prescribed by rules.

16.7 In view of the decision of the Committee that polling slips with necessary details indicating date, time and place of polling etc. should be got printed by the Election Commission and supplied to the political parties/contesting candidates, at least 15 days before the date of poll, for distribution to the voters, the Committee consider that it will not be necessary to prescribe the form of such identity slips by rules.

16.8 Some members pointed out that instructions relating to issue of identity slips contained in the 'Hand Book (1968) for Candidate for election to the House of the People and the Legislative Assemblies' issued by the Election Commission of India were as follows:

"It is usual for candidates to issue identity slips to voters giving
(i) the name of the voter;

- (ii) the serial number in the electoral roll, and the number of the part of the electoral roll in which the name occurs; and
- (iii) serial number and names of the polling station where the voter is to cast his vote.

These slips may bear the name of the candidate and/or the name of his party and/or a facsimile of the symbol allotted to the candidate. The slip should not contain any slogans or any exhortation to vote for a particular candidate or party. The circulation of any slip containing such slogan or exhortation within 100 metres of a polling station on a polling day would amount to canvassing which is not permissible under the law, and would be an electoral offence."

16.9 Subsequently, the Election Commission issued the following instructions relating to the issue of 'Unofficial identity slips':

"It would be desirable for the political parties/candidates to issue the unofficial identity slips containing the following information to the voters:

- (i) his name and serial number of the voter in the electoral roll;
- (ii) the number of the part; and
- (iii) the serial number and name of the polling station.

The identity slips should be on white paper and should not contain the name of the candidate and or the name of his party. The slips should not contain any slogans or any exhortation to vote for a party or for a candidate since these would amount to canvassing within the polling station which is not permissible. The circulation of any slips within 100 metres of the polling station would amount to canvassing which is not permissible under the law."

16.10 The Committee having considered the matter recommend that the instructions issued by the Election Commission (*vide* paragraph 16.8 above) should be made operative in supersession of the later instructions (*vide* paragraph 16.9 above).

E. Amendments made in 1951-Act not to apply to pending elections

16.11. The Election Commission has suggested that the comprehensive amendments which might be made in the Representation of the People Act, 1951 should not be made applicable to any election which might be pending at the time of coming into force of the amending Act. In order to provide for this, a saving clause should be added in the amending Act as indicated in clause 65 of the draft Bill.

CHAPTER XVII

ELECTION EXPENSES

A. General Observations

17.1 In no country in the world where representative democracy, whether the parliamentary type or of the Presidential type, prevails, the provisions as to election expenses have been entirely dispensed with. However, the mounting election expenditure incurred by the candidates and political parties, during the last four General Elections and Mid-term elections in India has been the subject of considerable concern. It is generally conceded that the statutory ceilings on election expenses are seldom observed in practice and the actual expenditure incurred by a candidate does not bear any relation to the maximum limits laid down. More or less open admissions have been made of substantial sums of money being spent by a candidate. The law in this regard is clearly inadequate to counter the ingenuity of a candidate in circumventing its provisions successfully and with impunity. The Committee have made some suggestions to plug the loopholes in the law in the subsequent sections of this Chapter. The Committee, however, consider that basically the problem of election expenses, which has not only agitated the minds of the candidates and the thinking of political parties but also of the general public, can be solved only if it is accepted in principle that all election expenses ought to be a legitimate charge on the public funds and efforts should be made to achieve that end. The Committee feel that a process should be initiated whereby the burden of legitimate election expenses at present borne by the candidate or the political party would be progressively shifted to the State*.

17.2 The Committee also feel that leaving the contesting candidates completely free to incur expenditure without any limit in promoting their election prospects would aggravate the evil of overspending and the corrupt influence of money in politics. It would also eliminate the men of moderate means, howsoever, able and eminent they may be, from contesting any election to the Lok Sabha or to a State Legislative Assembly. Further, almost in all countries of the world where representative form of Government prevails, provisions as to election expenses have been made. The Committee, therefore, favour the continuance of the existing legal provisions providing for restrictions on the election expenses.**

*Minute of Dissent by Shri Mahavir Tyagi.

**Minutes of Dissent by Sarvashri Triloki Singh, Atal Bihari Vajpayee and Jai K. Advani.

17.3 The Committee have also considered the recommendations made by the Election Commission in their Reports to the effect that the political parties might also be called upon to account for the expenses incurred by them for the election campaign of their candidates. After careful scrutiny, the Committee have come to the conclusion that due to various practical difficulties, it is not possible to pursue such a course*.

B. Definitions of Election Expenses and Personal Expenses

17.4 At present, the term, 'election expenses' and 'personal expenses' have not been defined in the Representation of the People Act, 1951. The Committee consider that it is absolutely necessary to define these expressions.

17.5 In the Committee's opinion 'election expense' in relation to an election should mean all expenses incurred or authorised by the candidate or his election agent between the date of publication of the notification calling the election and the date of the declaration of the results thereof, both days inclusive. 'Personal expenses' in relation to the expenditure of any candidate at an election should include all reasonable travelling and living expenses of the candidate for the purposes of and in relation to such election.

17. 6. Accordingly, a new section 76A is suggested for insertion in the 1951-Act, as indicated in clause 46A of the draft Bill.**

C. Prohibition of Unauthorised Expenses

17.7 The Election Commission in their report on the Mid-term Elections (1968-69) had recommended that there should be a new provision in the election law which should prohibit election expenses being incurred by any person other than the candidate or his election agent, unless authorised in writing by the candidate or his election agent, or by any club, association, society etc. To this provision, an exception should be made in relation to a political party which sets up a candidate or candidates at an election. It should be provided that such political party may with a view to promoting or procuring the election of any candidate set up by it incur or authorise any expenditure for holding any public meetings etc. or issuing advertisements, notices, circulars etc. or otherwise presenting to the electors, matters relating to principles, policies, programmes achievements of the political party or the candidate's views and the extent or nature of their backing or the public conduct or public activities of the candidates.

*Minute of Dissent by Shri Mahavir Tvagi.

**Minute of Dissent by Shri Shyamna-dan Mishra.

17.8 The Committee are in agreement with this suggestion except that the detailed items suggested by the Election Commission on which a political party may incur expenditure ought not to be enumerated.

17.9 Accordingly, a new section 76B is suggested as indicated in clause 46A of the draft Bill.*

D. Ceiling on Election Expenses

17.10 Under section 77(3) of the 1951-Act, election expenditure cannot be incurred beyond the ceiling prescribed. These ceilings have been prescribed in rule 90 of the Conduct of Election Rules, 1961 as amended from time to time. The ceilings on election expenses were last revised in July, 1971 and accordingly the latest ceilings are as shown below:

| Name of State or Union Territory | Maximum limit of election expenses in any one of | |
|-------------------------------------|--|-----------------------|
| | Parliamentary constituency | Assembly constituency |
| 1 | 2 | 3 |
| I. STATES | | |
| 1. Andhra Pradesh | 35,000 | 10,500 |
| 2. Assam | 35,000 | 9,000 |
| 3. Bihar | 35,000 | 12,000 |
| 4. Gujarat | 35,000 | 10,500 |
| 5. Haryana | 35,000 | 9,000 |
| 6. Himachal Pradesh | 35,000 | 5,000 |
| 7. Jammu & Kashmir | 25,000 | .. |
| 8. Kerala | 35,000 | 10,500 |
| 9. Madhya Pradesh | 35,000 | 10,000 |
| 10. Maharashtra | 35,000 | 12,000 |
| 11. Mysore | 35,000 | 10,000 |
| 12. Nagaland | 15,000 | 2,500 |
| 13. Orissa | 35,000 | 10,500 |
| 14. Punjab | 35,000 | 10,000 |
| 15. Rajasthan | 35,000 | 10,000 |

*Minute of Dissent by Sarvashri Atal Bihari Vajpayee, Lal K. Advani and Shyamnandan Mishra

| 1 | 2 | 3 |
|--|--------|--------|
| 16. Tamil Nadu | 35,000 | 12,000 |
| 17. Uttar Pradesh | 35,000 | 13,500 |
| 18. West Bengal | 35,000 | 10,500 |
| II. UNION TERRITORIES | | |
| 1. Andaman & Nicobar Islands | 12,500 | .. |
| 2. Chandigarh | 10,000 | .. |
| 3. Dadra & Nagar Haveli | 6,000 | .. |
| 4. Delhi | 10,000 | .. |
| 5. Goa, Daman & Diu | 12,500 | 3,000 |
| 6. Laccadive, Minicoy and Amindivi Islands | 12,500 | .. |
| 7. Manipur | 12,500 | 3,000 |
| 8. Pondicherry | 12,500 | 3,000 |
| 9. Tripura | 12,500 | 3,000 |

17.11 As suggested by the Committee in paragraph 17.2 *ante*, the ceiling on election expenditure should continue to be operative. The Committee, however, feel that upper limit of such expenditure should vary from State to State and region to region depending upon the area, population and other relevant factors. The upper limit of such expenditure should be suitably increased in case the elections to the Lok Sabha and State Assemblies are held separately.

The Committee have recommended the insertion of a new section as indicated in clause 46A of the draft Bill.

E. Exclusion of certain Expenses from the Election Expenses of the Candidates

17.12 The Election Commission has recommended in the report on Mid-term Elections 1968-69 that certain amounts which may be incurred or authorised by or on behalf of a candidate should not be included within the said maximum amount. Thus, an amount not exceeding Rs. 250 in the case of an election to a Legislative Assembly or Rs. 500 in the case of an election to the Lok Sabha which a candidate may be required to pay to a political party according to the rules of the party for being accepted as a candidate should not be included within the permissible maximum amount. Similarly, any amount required to be deposited by a candidate under section 34 of the Representation of the People Act, 1951 and an amount not exceeding

Rs. 250 in the case of an election to a Legislative Assembly or Rs. 500 in the case of an election to the Lok Sabha from out of the candidate's personal expenses should be excluded in counting the permissible maximum amount.

17.13 The Election Commission has further recommended that it should be laid down that where a poll is countermanded on the death of a candidate in accordance with section 52 of the Representation of the People Act, 1951, the permissible maximum amount should be increased by a certain specified percentage. Similar provisions should be made where a poll is adjourned for any reason after the last date for withdrawal of candidatures. The Committee are in agreement with these views and accordingly suggest that a new section 77A may be inserted in the 1951-Act as indicated in clause 46A of the draft Bill.

F. Return of Election Expenses

17.14 At present, there is no provision in the law regarding the matters which should be shown in a return of election expenses. The Election Commission in their report on Mid-term Election had pointed out that it was their painful experience that in a majority of cases the return of election expenses that was lodged with the District Election Officers was hardly any return at all. According to the Commission, in no country where there exist provisions relating to the filing of return of election expenses the candidate had been given such a free hand. The Committee, therefore, feel that it would be better if the principal matters which ought to be shown in a return are specifically enumerated in the rules.

17.15 The Committee also feel that a time limit should be prescribed for lodging of returns with the district election officers. They consider that 30 days from the date of election of the returned candidate or if there are more than one returned candidate at the election and the dates of their election are different, the latter of those two dates, would be a reasonable period. Accordingly, a new section 78 is suggested for insertion as indicated in clause 46A of the draft Bill.*

G. Supply of Electoral Rolls, Forms for Appointment of Polling Agents and Counting Agents and Polling Slips

17.16 In keeping with the Committee's views mentioned in paragraph 17.1, namely that the burden of election expenses should be gradually shifted from the candidates to the State, the Committee recommend that the following further measures should be taken:

- (i) Five copies of electoral rolls instead of two, should be supplied free of charge to every recognised political party,

*Minute of Dissent by Shri Shyamandan Mishra.

not later than the date of notification calling for an election.

- (ii) Forms for appointment of polling agents and counting agents should be supplied free of charge to all contesting candidates at least a fortnight before the polling day.
- (iii) Polling slips with necessary details indicating date, time and place of polling etc. should be got printed by the Election Commission and supplied to the political parties|contesting candidates, at least 15 days before the date of poll, for distribution to the voters.*

H. Certain other Suggestions

17.17 The Committee have already dealt with the following amendments to the election law. The Committee consider that if these amendments are accepted by Government it will considerably reduce election expenses:

| Amendments | Dealt in para of the Report | Clause of the draft Bill | Section of the 1950/1951 Act. |
|--|-----------------------------|--------------------------|-----------------------------------|
| 1 | 2 | 3 | 4 |
| Taking out processions, use of loud-speakers and holding of public meetings and other functions in connection with an election in any polling area should be prohibited during the period of 72 hours ending with the hour fixed for the conclusion of the poll for any election in that polling area. | 14.6 and 14.7 | 51 | Section 126 of the 1951-Act. |
| There should be a complete ban on plying of mechanically propelled vehicles on public roads on the polling day subject to certain exceptions which might be prescribed by rules. | 14.15 and 14.16 | 54 | New section 133B of the 1951-Act. |
| Carrying of voters on vehicles to the polling booths should be made a cognizable offence and the driver as well as the owner of the vehicle used for carrying voters should be liable to punishment. | 14.15 and 14.16 | 54 | New section 133A of the 1951-Act. |
| Order to reduce election expenses, it is necessary that the period between the date of final withdrawal and the date of polling be reduced to 17 days. | 8.2 | 30 | Section 30 of the 1951-Act. |

NEW DELHI;
January 18, 1972.

Pausa 18, 1893 (Saka)

JAGANNATH RAO,
Chairman,

Joint Committee on Amendments to
Election Law.

*Minute of Dissent by Shri Triloki Singh.

CHAPTER XVIII

MINUTES OF DISSENT

I

Now that the Committee has more or less concluded its business, I would beg to submit the following as my dissent note to the majority recommendations of the Committee.

First, I do not think there should be any limit on the expenditure incurred in connection with an election. My reasons are obvious, the limit has so far been more or less farcical and observed more in breach than in compliance thereof. The tallest amongst us generally speaking, has not been able to comply with the requirement of maximum election expenditure. I would therefore urge that this limit be removed. It is no use laying down a law which cannot be implemented and which compels those who are entrusted with the administration of the country to file false statements.

Secondly, the majority has decided that the word 'agent' be excluded from all the provisions relating to corrupt practices, as laid down in Section 123 of the Representation of the People Act, 1951. Not only that the majority has also laid down that the consent should be 'expressed' consent. If these recommendations were to be accepted by the Government and become law they would lead to flood gates to corrupt practices. In order to ensure the purity of election which is so necessary in case of a democracy, it is very necessary that the word 'agent' should remain as heretofore in case of corrupt practices. In the U.K. it is not only the actions of the candidate or his election agent or agent but also any corrupt practice committed on his behalf is enough to void an election. The argument that any agent who is not even known to the candidate may do anything does not hold water in view of the provisions contained in Section 100 wherein enough protection has been provided for a candidate when any corrupt practices is committed against his instructions and in spite of himself. Further I do not find myself in agreement with the recommendation of the Committee regarding the supply of Identity slips to all the contesting candidates at an election by the Election Commission. I would instead suggest that the Returning Officer sends poll cards to all the electors giving therein his number on the Electoral roll, the time and place of the election. Such cards may be sent by

post-office. The expense on postage so incurred would be a debit on one head and credit on the other to the Central Revenues. If Identity slips are to be supplied to all the candidates at an election it would mean printing of crores of identity slips which may not even reach the voters as experience shows that it is not possible for all the contesting candidates to reach the voter and if on an average there were five candidates to the Lok Sabha and five to the Assembly from each constituency, the Election Commission shall have to incur expenditure for printing Identity slips of ten times the number of voters whereas in case my suggestion is accepted only one slip will have to be printed.

NEW DELHI;

TRILOKI SINGH

January 6, 1972.

II

Part I of the Committee's Report concerns itself mainly with recommendations made by the Election Commission with regard to amendments to the Representation of the People Acts of 1950 and 1951. The Committee also took into consideration the Law Ministry's views on the Commission's proposals. The outcome is this report, with several aspects of which we find ourselves unable to concur. Hence this Minute of Dissent.

The question of Electoral Reform, we hold, has not received till now the attention it really merits. When our party mooted the idea of an all-party Committee presided over by the Speaker on the lines of U.K.'s Speaker's Conference, the intention was to institutionalise this function of electoral reform, so vital for the healthy functioning of democracy. Somehow it has not been possible to secure the association of the Hon'ble Speaker with this Committee. Even so, we strongly feel that the deliberations of this Committee would have been better informed and made weightier if the opinion of all recognised political parties had been invited. We regret that our suggestion in this regard was not accepted.

We still feel that when the Committee takes up consideration of Part II of its Report, which would deal with other matters relating to elections, and in which several fundamental questions are likely to come up, the Committee would do well to seek the opinion of political parties. Incidentally, we may point out that several impor-

tant political parties like the Socialist Party, Swatantra Pary, Bhartiya Kranti Dal and the Republican Party are not at all represented on this Committee.

There are besides four other major issues regarding which we do not agree with the majority view in this Committee. The first relates to the question of ceilings on election expenditure. As the situation stands today, the law of ceilings is a farce. An overwhelming majority of legislators embark on their parliamentary careers today with a gross lie—the false election returns which they submit. About this sordid fact the Committee was broadly agreed. But it feared that abolition of ceilings altogether “would aggravate the evil of overspending and the corrupt influence of money in politics”. This fear is not unjustified, but failure to recommend any radical measures for curbing election expenses means reconciling with the *status quo* which is acknowledgedly undesirable. Ceilings should be retained only if we are able to enforce them. Otherwise they had better be scrapped.

We strongly feel that if the statutory ceilings on election expenses are to have any meaning, the present situation in which party expenditure is excluded from a candidate's expenses has to be changed. The Election Commission itself had expressed this view and had accordingly recommended several amendments to the law firstly bringing party expenses within the ambit of the ceiling law and secondly, making it obligatory for political parties to submit an account of the expenses incurred by them for the election campaign of their candidates. We regret that this view was not accepted by the majority in the Committee.

The Committee has done well to accept in principle that “all election expenses should be a legitimate charge on public funds” and that “the burden of legitimate election expenses at present borne by the candidate or the political party would be progressively shifted to the State”. But the measures recommended for the implementation of this radical principle are feeble and halting. The corroding influence of money power in elections is tremendous. The malady calls for drastic remedies. Half-heartedness will not do. In this context, we think the proposal of giving election grants to recognised political parties partly in advance on the basis of their performance in the preceding election and partly after the elections on the basis of their actual poll performance needs to be seriously considered.

The second major matter regarding which we would like to record our dissent is regarding amendment of the law relating to

disqualification for membership. The Committee has recommended that the six year period of disqualification entailed by a legislator for corrupt practices should commence not from the date of the court order, as at present, but from the the date of declaration of result. We agree with this recommendation. The present law works very harshly against individuals, whose cases are decided, for no fault of theirs, after an inordinate delay of several years. But we cannot concur with the suggestion that this recommendation should have retrospective effect.

The third point about which we differ with the majority view is on the issue of counting of votes. The original polling-station wise counting system was systematic and scientific, and left no scope for the kind of misgivings and suspicions aroused by the new system introduced in the 1971 Lok Sabha polls. It is significant that in its Report on the Fourth General Elections, the Election Commission itself has referred to the suggestion made for mixing up ballot papers and rejected the suggestion outright. It has very cogently argued:

“The rules provide for the announcement of the result of counting in respect of each polling station separately. It has sometimes been suggested to the Commission that this method of counting naturally results in the political affiliation of small polling areas with about 1000 electors on an average becoming a matter of common knowledge. It is said that this leads to victimisation and harassment of particular areas which have voted strongly against the candidates of the party in power. The Commission doubts if this is true to any appreciable extent and is inclined to think that an odd instance here or there is being exaggerated to make out the prevalence of a reprehensible and undemocratic practice. The method of counting now in vogue has certainly the merit of being systematic which would be lost to some extent if, as suggested, the ballot papers found in a large number of ballot boxes were first mixed up, put in bundles of 1000 or 2000 and then counted. Even on this pattern it should not be difficult for the political parties, if they were so minded, to find out broadly how a particular area voted”.

The argument that the new system prevents intimidation and harassment is unconvincing. Most of the intimidation that takes place is pre-election and not post-election. Besides, as the Election Commission had earlier stated, for persons so minded it is not impossible to find out broadly how a particular area voted.

Lastly, while dealing with the question of electoral corruption, the Committee has failed to recommend measures which can effectively end abuse of governmental machinery by the party in power. In this context, the Supreme Court verdict in *Ghasi Ram versus Dal Singh and others* (A.I.R. 1968 S.C. 1191) needs to be specially attended to. Provision must be made in the law to bring what the court described as "the evil practice" of arranging spending of money from public funds on the eve of elections to corrupt electors within the mischief of the law on corrupt practices. Also, legislative provisions ought to be made to prohibit the use of radio, television, P.I.B., D.A.V.P., official cars, governmental planes, helicopters and such other governmental agencies and instruments by Ministers except on terms of parity with leaders of other political parties.

NEW DELHI;
January 11, 1972.

ATAL BIHARI VAJPAYEE
LAL K. ADVANI

III

I express my dissent from the majority report and suggest that the amendments indicated below may be incorporated in the Draft Representation of the People (Amendment) Bill, 1972 as finalised by the Joint Committee on Amendments to Election Law.

1. Clause 5, as it stands at present, would give over-arching jurisdiction to the Election Commission and restrict the powers and authority of the State Governments. The presumption should be that the State Government would not do anything to the prejudice of elections. I, therefore, suggest the following amendment:

Clause 5: instead of "shall be transferred at any time", substitute "shall ordinarily be transferred."

2. While there is provision for a person to apply for enrolment after the qualifying date, there is no provision for making the registering authority to take proper action within a particular period. If the registering authority fails to take action, there must be an automatic remedy. Hence Clause 6 should be amended as follows:

Clause 6: add (iii) as follows:

"(iii) On receipt of an application for inclusion in an electoral roll from a person who has qualified for such inclusion the registering authority shall accept or reject the application before the next qualifying date and if it fails to reject the application it shall be deemed to have been included."

3. It is highly undemocratic to hold elections with faulty electoral rolls. The following amendment will, therefore, ensure that electoral rolls are revised in time:

Clause 7: at the end of Clause 7, after the word "thereunder",
add:

"and no election can be held if the electoral roll has not been so revised."

4. As a corollary to the amendment in para 2, the following amendment to Clause 27 is suggested:

Clause 27: instead of the words "shall be transferred",
substitute:

"shall ordinarily be transferred".

5. Clause 33: Provisos (i) and (ii) to the proposed sub-section (6) of section 33, curtail the legal right of a person to stand from as many constituencies as he likes. The proposed provisos (i) and (ii) should, therefore, be deleted.

6. It should be made compulsory to have polling-station wise counting. Mixing up of ballot papers of polling booths has given rise to grave misgivings. It would also make it well-nigh difficult to identify offences at particular booths. It may be that a particular booth was overpowered through violence and a correlation may be established between the polling of votes and the offence committed, if counting is done separately. For instance, there might be ballot papers found in bunches or without the signatures of the officer concerned, thus establishing an indirect evidence of the offences. If ballot papers are mixed such a correlation cannot be shown to exist. The Counting Agents can note these peculiarities and nuances on every polling booth. Similarly any complaint filed at a particular booth may lose much of its validity if the counting is not done separately.

The plea that the counting of ballot papers separately gives a handle to some people to oppress the voters is not tenable. The idea of mixing of ballot papers was rejected by the Election Commission

itself earlier, while taking all these complaints into account. So, I suggest the following amendment:

Clause 43—Section 64 of the Representation of the People Act, 1951 be amended as follows:

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

7. Clause 45: clause (c) of sub-section (2) of the proposed section 66 is vague and confers arbitrary powers on the Election Commission. It should be deleted.

8. The date of publication of the notification cannot be the relevant criterion. It should be the date of nomination when the candidate demonstrably makes his choice. Hence the following amendment is suggested:

Clause 46A: Section 76A (a)—Instead of the words “the date of publication of the notification calling the election” substitute: “the date of nomination”.

9. At present a political party can spend as much as it likes on a candidate. The following amendment will act as a check on this objectionable practice. Unless this is done, the concept of a limit on expenditure cannot be meaningful:

Clause 46A: Section 76B (b): Amend the proviso as under:

“Provided that a political party may, with a view to promoting or procuring the election of any candidate set up by it at an election incur or authorise expenditure up to 10 per cent of the expenditure permitted by the Election Commission of India from time to time.”

10. The period of 30 days after the hectic activity of an election is too short a period. It should be increased to 45 days. Hence in Section 78 (1) ‘forty-five days’ should be substituted for ‘thirty days’ (Clause 46A).

11. At present, candidates in power make so called declarations of public policy or promise of public action such as construction of village roads, sinking of tube wells by Government etc. which are of local benefit and are intended to unfairly influence the voter. So, it is necessary to protect only declaration of public policy or public actions affecting the State or the Union of India as a whole. I, therefore, suggest the following amendment:

Clause 49: Proviso (b) to Section 123 (2) be substituted by:

“(b) a declaration of public policy, or a promise of public action affecting the States or the Union of India in the case of election to the Lok Sabha, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.”

12. Persons in Government might use Government transport ostensibly for public purposes but really for electioneering. The following amendment is, therefore, suggested:

Clause 49: Section 124; before sub-section 1(a), the following sub-section be added:

“the use of any mechanically propelled Government vehicle or conveyance when the dominant purpose is electioneering.”

13. Many a time, children are employed for impersonation. Some times they also do it in a spirit of frolic. So in their case this punishment would appear to be very heavy. It is, therefore, necessary to confine the punishment to adults who are conscious of their acts. The following amendment would serve this purpose:

Clause 50: Section 125B(1): After the words “such person”, add “being an adult”.

14. Clause 61, as it stands, is against the principle of natural justice. The parties might have spent a lot of money, time and energy. So they must be heard before the decision for cancellation is taken. If there are extra-ordinary circumstances, parties would certainly agree to cancellation. But one has to guard against any cancellation that would give unfair advantage to any party. The following amendment would guard against this possibility:

Clause 61: The amendment of Section 153A should read as follows:

“where the Election Commission, after considering the objection of the recognised political parties concerned is satisfied that.....”

NEW DELHI;

SHYAMNANDAN MISHRA.

January 12, 1972.

IV

Paragraph 17.1

I beg to disagree with the idea that "all election expenses ought to be legitimate charge on the public funds, and efforts should be made to achieve this end". If the Parliament agrees to it, the result would be chaotic, because hundreds of candidates will offer to contest each seat and it would be impossible for the Exchequer to bear this burden.

Paragraph 17.3

I am fully in agreement with the Election Commission's recommendations that "political parties might also be called upon to account for the expenses incurred by them for the election campaign or their candidates." If this recommendation is rejected, the fixation of any ceiling on election expenses would become meaningless, and it would be a safe device for candidates to throw the whole of the election expenses to their party's account, irrespective of the fact whether the expenditure is legitimate or illegitimate or even when it involves corrupt practices. Moreover, the past few elections have shown that bulk of election expenses are incurred by the political parties, with the result that the rate of election expenses is going far beyond the ceilings fixed and the candidates who are not sponsored by any political party are comparatively at a great disadvantage.

NEW DELHI;

MAHAVIR TYAGI.

February 1, 1972.

APPENDIX I

(Vide paragraph 2 of the Report)

MOTION ADOPTED IN LOK SABHA ON THE 22ND JUNE, 1971 REGARDING THE APPOINTMENT OF A JOINT COMMITTEE ON AMENDMENTS TO ELECTION LAW

"That the question of amendments to election law in the context of the debates in the Lok Sabha in the course of supplementaries to Starred Question No. 580 answered on the 25th August, 1970, be referred to a Joint Committee of the Houses for examination and report with instructions to report within one month;

That the Committee shall consist of 21 Members, 14 from this House to be nominated by the Speaker and 7 from the Rajya Sabha to be nominated by the Chairman, Rajya Sabha;

That the Speaker shall nominate one of the members of the Committee to be its Chairman;

That in order to constitute a sitting of the Joint Committee, the quorum shall be one-third of the total number of members of the Joint Committee;

That in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make; and

That the House recommends to the Rajya Sabha that the Rajya Sabha do join the said Joint Committee and communicate to this House the names of 7 members nominated to the Joint Committee by the Chairman of the Rajya Sabha."

APPENDIX II

MOTION ADOPTED IN RAJYA SABHA ON THE 25TH JUNE, 1971 REGARDING APPOINTMENT OF JOINT COMMITTEE ON AMENDMENTS TO ELECTION LAW

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses to consider the question of amendments to election law and authorises the Chairman to nominate seven members to serve on the said Joint Committee."

APPENDIX III

(Vide paragraph 7 of the Report)

REPORT OF THE SUB-COMMITTEE OF THE JOINT COMMITTEE ON AMENDMENTS TO ELECTION LAW

(As adopted by the Joint Committee)

I, the Chairman of the Sub-Committee of the Joint Committee on Amendments to Election Law, having been authorised by the Sub-Committee to submit the report on their behalf, present their report.

2. The Sub-Committee consisting of seven members (Annexure) was appointed in pursuance of the decision of the Joint Committee taken at their sitting held on the 3rd September, 1971 to examine the question relating to election expenses in its entirety.

3. The Sub-Committee held four sittings in all. The Sub-Committee at their first sitting held on the 6th September, 1971 had desired the Ministry of Law & Justice to place the relevant material on the subject before them for their consideration. Accordingly, the Ministry placed the following material before the Sub-Committee:

- (1) A brief note on the development of the law relating to 'Corrupt Practices' as contained in the Representation of the People Act, 1951, from the time it was originally enacted upto now.
- (2) A Note on Limitation of Election Expenses in certain selected countries.
- (3) Extracts from the proceedings of the Chief Electoral Officers' Conference held at Ooty (September, 1968), Bombay (January, 1970) and New Delhi (March, 1971) relating to election expenses.
- (4) Extracts from judicial pronouncements on the question of election expenses for the years 1953—1971.
- (5) Statement containing the recommendations of the Election Commission re: election expenses in the Third General Elections Report, Fourth General Elections Report, in the Report on Mid-term General Elections and those contained in the proceedings of the Chief Electoral Officers' Conference held at Ottacamund in September, 1968.
- (6) Model form for lodging the return of election expenses.

4. One of the most important issues which the Joint Committee are seized of is the question of mounting election expenditure incurred by candidates and political parties. During the course of the discussion in the Joint Committee on the question of incurring disqualification for exceeding the limit on election expenses, different viewpoints were expressed as to the desirability of retaining the existing law which provided for a ceiling on the election expenses and the violation of which entailed disqualification for being chosen as, and for being, a member of Parliament or of any State Legislature. Concern was also expressed over the mounting election expenditure which made it very difficult for a candidate with meagre resources to contest the elections. The matter was, therefore, referred to this Sub-Committee for consideration.

5. The Sub-Committee have considered the matter in detail and are of the opinion that the problem of election expenses which has not only agitated the minds of the candidates and the thinking of political parties but also of the general public can be solved only if it is accepted in principle that all election expenses ought to be a legitimate charge on public funds and efforts made to achieve that end. The Sub-Committee, therefore, feel that a process should be initiated whereby the burden of legitimate election expenses at present borne by the candidate or the political party is progressively shifted to the State. [*Shri Mahavir Tyagi, however, expressed his total disagreement with this principle on the ground that the public exchequer should not be subjected to any additional burden on behalf of any party or candidate.*] The Sub-Committee have made certain suggestions to that effect.

6. The Sub-Committee have not agreed to the suggestion of scrapping the existing legal provisions providing for putting restrictions on election expenses because the Sub-Committee feel that leaving the contesting candidates completely free to incur expenditure without any limit in promoting their election prospects would aggravate the evil of over-spending and the corrupt influence of money in politics. In case there is no limit on election expenditure, the result may be that men of moderate means, however, able and eminent, may altogether be eliminated from contesting any election to Lok Sabha or a State Legislative Assembly. Further, almost in all countries of the world where representative democracy—whether of the Parliamentary type or of the Presidential type—prevails, provisions as to election expenses have been made.

7. The Sub-Committee have considered the recommendation made by the Election Commission in their successive Reports relating to the expenses incurred by political parties in relation to the election campaign of their individual candidates. Though there is

some force in the recommendation that political parties also may be called upon to account for the expenses incurred by them, after careful scrutiny the Sub-Committee have come to the conclusion that due to various practical difficulties it is not possible to pursue such a course. The Sub-Committee therefore feel that no change in the election law is called for in that respect.

[Sarvashri Mahavir Tyagi and Lal K. Advani disagreed with this view and felt that exclusion of expenditure incurred by political parties would mean leaving one of the biggest loopholes in the present law pertaining to election expenses ceilings unplugged.]

8. Keeping the aforesaid observations as their guide-line, the Sub-Committee recommend as follows:—

- (1) Definitions of election expenses and personal expenses should be incorporated in the Representation of the People Act, 1951. At present the expenses incurred in connection with an election are confined to the period between the date of notification calling the election and the date of declaration of the result thereof.
- (2) The legal provisions relating to election expenses and filing of returns should be spelt out in greater detail so as to make them effective. In particular, there should be a provision which should prohibit election expenses being incurred by any person or agency (excluding a political party sponsoring the candidate) other than the candidate or his election agent unless authorised in writing by the candidate. It should further be provided that where any such authorised person incurs expenses, he should furnish a detailed return of those expenses.
- (3) The ceiling on election expenditure should continue to be operative and the upper limit of such expenditure should vary from State to State and region to region depending upon the area, population and other relevant factors. The upper limit of such expenditure should be suitably increased in case the elections to the Lok Sabha and State Assemblies are held separately.
- (4) Certain amounts which may be incurred or authorised by or on behalf of a candidate should not be included within the said maximum amount. Thus the amount not exceeding Rs. 250 in the case of an election to a Legislative Assembly or Rs. 500 in the case of an election to the Lok Sabha which a candidate may be required to pay to political party according to the rules of the party for being accepted as a candidate should not be included within the permissible maximum amount. Similarly, any amount required to be deposited by a candidate under

section 34 of the Representation of the People Act, 1951 and the amount of the candidate's personal expenditure not exceeding Rs. 250 in the case of an election to a legislative Assembly or Rs. 500 in the case of an election to the Lok Sabha should not be included in counting the permissible maximum amount.

- (5) It should be laid down that where a poll is countermanded on the death of a candidate in accordance with Section 52 of the Representation of the People Act, 1951, the permissible maximum amount should be increased by a certain specified percentage. Similar provisions should be made where a poll is adjourned for any reason after the last date for withdrawal of candidatures.
- (6) At present, there is no provision in the law regarding the matters which should be shown in a return of election expenses. It would be better if the principal matters which ought to be shown in a return are specifically enumerated in the prescribed rules.
- (7) In order to reduce election expenses, it is necessary that the period between the date of final withdrawal and the date of polling be reduced to 17 days.
- (8) Five copies of electoral rolls, instead of two, should be supplied free of charge to every recognised political party not later than the date of notification calling for an election.
- (9) Forms for appointment of polling and counting agents should also be supplied free of charge to all contesting candidates at least a fortnight before the polling day.
- (10) Polling slips with necessary details indicating date, time and place of polling, etc., should be got printed by the Election Commission and supplied to the political parties/contesting candidates, at least 15 days before the date of poll, for distribution to the voters.
- (11) Taking out processions, use of loud-speakers and holding of public meetings and other functions in connection with an election in any polling area should be prohibited during the period of 72 hours ending with the hour fixed for the conclusion of the poll for any election in that polling area. Accordingly section 126 of the Representation of the People Act, 1951 should be suitably amended.

(12) There should be a complete ban on plying of mechanically propelled vehicles on public roads on the polling day subject to certain exceptions which might be prescribed by rules (*Shri Mahavir Tyagi was of the view that the ban should apply only to vehicles carrying voters.*)

(13) Carrying of voters on vehicles to the polling booths should be made a cognizable offence and the driver as well as the owner of the vehicle used for carrying voters should be liable to punishment.

9. The Sub-Committee recommend that the afore-mentioned suggestions be accepted by the Joint Committee.

NEW DELHI;

Dated the 14th Oct., 1971.

Asvina 22, 1893 (Saka).

JAGANNATH RAO,
Chairman,

Sub-Committee of the Joint Committee.

ANNEXURE

Composition of the Sub-Committee of the Joint Committee on amendments to Election Law

Shri Jagannath Rao—Chairman

MEMBERS

Lok Sabha

2. Shri S. M. Banerjee
3. Shri Amar Nath Chawla
4. Shri P. Venkatasubbaiah

Rajya Sabha

5. Shri Lal K. Advani
6. Shri V. B. Raju
7. Shri Mahavir Tyagi

SECRETARIAT

Shri P. K. Patnaik—Joint Secretary.

Shri H. G. Paranjpe—Deputy Secretary.

APPENDIX IV

(Vide para 1.10 of the Report)

DRAFT REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1972.

(As finalised by the Joint Committee)

A BILL

*further to amend the Representation of the People Act, 1950
and the Representation of the People Act, 1951.*

PART I

PRELIMINARY

Short
title and
com-
mence-
ment.

1. (1) This Act may be called the Representation of the People (Amendment) Act, 1972.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

PART II

Amendments to the Representation of the People Act, 1950

Substitu-
tion of
new sec-
tion for
section
13A.

2. In the Representation of the People Act, 1950 (hereafter in this Part referred to as the 1950-Act), for section 13A, the following section shall be substituted, namely:—

“Chief
Electoral
Officers
and Joint
Chief
Electoral
Officers.

13A. (1) There shall be for each State a Chief Electoral Officer and a Joint Chief Electoral Officer each of whom shall be such officer of Government the Election Commission may, in consultation with the Government, designate or nominate in this behalf:

Provided that no such officer shall be transferred to any other post when a general election to the House of the People or to the Legislative Assembly of the State is in prospect.

(2) Where an election is in prospect, the officer of Government designated or nominated as Chief Electoral Officer shall, when so requested by the Election Commission, be relieved from the normal duties pertaining to his office or post, if the

Election Commission is of opinion that such duties are interfering or are likely to interfere with the efficient discharge of the duties as Chief Electoral Officer.

- (3) An officer of Government designated or nominated as Joint Chief Electoral Officer shall, on such designation or nomination, devote his whole time and attention to his duties as Joint Chief Electoral Officer and shall not discharge the functions of any other office.
- (4) The State Government shall make available for the office of the Chief Electoral Officer such staff, gazetted and non-gazetted, as may be necessary for the due discharge of his functions in connection with elections to Parliament and the State Legislature.
- (5) Every person who immediately before the commencement of the Representation of the People (Amendment) Act, 1972 is holding the post of Joint Chief Electoral Officer shall, on such commencement, be deemed to be a Joint Chief Electoral Officer designated or nominated under this Act.
- (6) Notwithstanding anything contained in the foregoing provisions of this section, it shall not be necessary to designate or nominate a Joint Chief Electoral Officer in a Union territory.
- (7) Subject to the superintendence, direction and control of Election Commission, the Chief Electoral Officer shall supervise the preparation, revision, correction and maintenance up-to-date of all electoral rolls in the State under this Act and all matters relating thereto and the Joint Chief Electoral Officer shall assist the Chief Electoral Officer in the performance of his functions under this Act and subject to the control of the Chief Electoral Officer, be competent to perform all or any of the functions of the Chief Electoral Officer."

3. In the 1950-Act, for sub-section (3) of section 13AA, the following shall be substituted:—

Amendment of section 13AA.

- "(3) Subject to the superintendence, direction and control of the Chief Electoral Officer, the district election officer shall coordinate and supervise all work in the district or in the districts or in the area within his jurisdiction in connection with the preparation, revision, correction and maintenance up-to-date of the electoral rolls for all constituencies or parts thereof within such district or districts or area and all matters relating thereto."

Amend-
ment of
section
13B.

4. In the 1950-Act, in section 13B,—

(a) in sub-section (1)—

(i) for the words “prepared and revised”, the words “prepared, revised, corrected and maintained up-to-date” shall be substituted;

(ii) the words “or of a local authority” shall be omitted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) An electoral registration officer shall perform such other functions in relation to the electoral roll of a constituency as he is required to perform by or under this Act.”;

(c) in sub-section (2),—

(i) for the words “the preparation and revision”, the words “the preparation, revision, correction and maintenance up-to-date” shall be substituted;

(ii) after the words “for the constituency”, the words “or for the performance of his other functions under this Act” shall be inserted.

Insertion
of new
section
13CC

5. In Part IIA, after section 13C of the 1950-Act, the following section shall be inserted, namely:—

“Transfer
of
electoral
registra-
tion
officer
or
assistant
electoral
registra-
tion offi-
cer not
permis-
sible
under
certain
circum-
stances.

13CC. Except with the previous concurrence of the Election Commission no electoral registration officer or assistant electoral registration officer shall be transferred at any time between the commencement of the preparation or revision of an electoral roll and the final publication of such roll.”.

Amend-
ment of
section 14.

6. In section 14 of the 1950-Act, for clause (b), the following clause shall be substituted, namely:—

“(b) ‘qualifying date’ means,—

(i) in relation to the preparation and revision of the electoral roll of a constituency, any of the following dates (which may be applicable) of the year in which the electoral roll on its preparation or revision is finally published, that is to say, the 1st day of January, the 1st day of April, the 1st day of July, the 1st day of October;

(ii) in relation to the inclusion of the name of a person as an elector in the electoral roll after

its final publication the date on which an application is made by such person for the inclusion of his name in the electoral roll, or where such inclusion is made by the electoral registration officer on his own motion, the date on which the order for such inclusion is made.”.

7. For section 15 of the 1950-Act, the following section shall be substituted, namely:—

Substitution of new section for section 15.

15. For every constituency, there shall be an electoral roll and every such electoral roll shall, subject to the superintendence, direction and control of the Election Commission, be prepared, revised, corrected and maintained up-to-date in accordance with the provisions of this Act and the rules, orders, instructions and directions made or issued thereunder.”.

“Electoral roll for every constituency.

8. In section 20 of the 1950-Act, in sub-section (8),—
(a) in clause (d), the word “or” shall be added at the end, and

Amendment of section 20.

(b) after clause (d), the following clause shall be inserted, namely:—

“(e) being an officer or seaman of the Indian Mercantile Marine to whom the Merchant Shipping Act, 1958 applies.”.

1958.

9. For sections 21, 22 and 23 of the 1950-Act, the following sections shall be substituted, namely:—

Substitution of new sections for sections 21, 22 and 23.

21. (1) The electoral roll for every constituency shall be prepared in such manner as may be prescribed by reference to such of the qualifying dates as may be applicable and shall come into force immediately upon its final publication in accordance with the rules made under this Act.
- (2) The said electoral roll shall be revised in any year in such manner as may be prescribed by reference to such of the qualifying dates as may be applicable if, and only if, such revision has been directed by the Election Commission.
- (3) The electoral roll revised under sub-section (2) shall come into force immediately upon its final publication in accordance with the rules made under this Act.
- (4) The electoral roll whether prepared under sub-section (1) or revised under sub-section (2) shall

“Preparation, revision, correction and maintenance up-to-date of electoral rolls.

continue to be in force and operation until the said roll being revised under sub-section (2), or a new roll being prepared under sub-section (1) comes into force and operation on its final publication.

- (5) An electoral roll which continues to be in force and operation under sub-section (4) shall be maintained always corrected up-to-date by correction of entries and inclusion of names therein in accordance with the provisions of section 22."

"Maintenance of electoral rolls corrected up-to-date.

22. (1) For the purpose of maintaining an electoral roll corrected up-to-date, the electoral registration officer may, by order, direct,—

- (a) the correction, on application made to him in this behalf, the entries in the electoral roll,—

(i) by rectification of any error or defect in any entry, or in any particular in any entry, in the electoral roll;

(ii) by the transportation of any entry to another place in the electoral roll on the ground that the person to whom the entry relates has changed his residence within the constituency;

(iii) by the deletion of any entry in the electoral roll on the ground that the person to whom the entry relates is dead, or has ceased to be ordinarily resident in the constituency, or has become disqualified for registration in the electoral roll under section 16, or is not otherwise entitled to be registered as a voter in the electoral roll;

- (b) the inclusion, on the application of any person, in the electoral roll of the name of such person if he is not less than 21 years of age on the qualifying date and is otherwise entitled to be registered as a voter in the electoral roll.

- (2) The electoral registration officer may also take any action on his own motion under clause (a) or clause (b) of sub-section (1).

- (3) Before taking any action under sub-section (1) or sub-section (2) the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him and satisfy himself by holding or causing to be held an inquiry that the action proposed to be taken

is justified by the facts and circumstances of the case.

- (4) No action shall be taken under the foregoing provision of this section after the last date for making nominations for an election in that constituency or in the Parliamentary constituency within which that constituency is comprised and before the completion of that election.
- (5) In performing his functions under this section, the electoral registration officer shall be subject to such rules as may be made under this Act and also to such directions, general or special, if any, as may be issued by the Election Commission.
- (6) Every person whether he is an officer of Government or not and every authority shall, when so requested by the electoral registration officer, furnish to him such information as he may require from time to time or at stated intervals for the maintenance up-to-date of the electoral roll.
- (7) The State Government and every local authority in the State shall, when so requested by the electoral registration officer, make available to him such staff as may be necessary for maintaining the electoral roll always up-to-date."

10. (1) An electoral roll in force and operation immediately before the commencement of this Act, shall, unless the Election Commission otherwise directs, be deemed to be an electoral roll prepared or revised in accordance with the provisions of the 1950-Act as amended by this Act and accordingly the provisions of the 1950-Act as so amended with respect to the maintenance of electoral rolls corrected up-to-date shall apply in relation to such roll.

Provisions
as to cer-
tain elec-
toral rolls.

(2) Where the work of preparation or revision of an electoral roll has started before the commencement of this Act but the electoral roll has not been finally published before such commencement, then the electoral roll shall, subject to such instructions and directions, if any, as may be issued by the Election Commission, be prepared or revised in accordance with the provisions of the 1950-Act as amended by this Act before its final publication and accordingly the provisions of the 1950-Act as so amended with respect to the maintenance of electoral rolls corrected up-to-date shall apply in relation to such roll.

11. In clause (a) of section 24, the words and figures "or section 23" shall be omitted.

Amend-
ment of
section 24.

12. Section 25 of the 1950-Act shall be omitted.

Omission
of section
25.

Amend-
ment of
section 27.

13. In section 27 of the 1950-Act,—

(a) for clause (e) of sub-section (2), the following clause shall be substituted, namely:—

“(e) the provisions of sections 15, 16, 18, 22 and 24 shall, as far as may be, apply in relation to local authorities’ constituencies as they apply in relation to assembly constituencies.”;

(b) * * * *

(c) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) The provisions of clause (b) of section 14 and sections 15, 16, 18, 21, 22 and 24 shall, as far as may be, apply in relation to graduates’ constituencies and teachers’ constituencies as they apply in relation to assembly constituencies.”;

(d) in sub-section (5),

(i) in clause (b), for the words “engaged in teaching”, the words “engaged in teaching whether on a whole-time basis or on a part-time basis” shall be substituted;

(ii) after clause (b), the following *Explanation* shall be inserted, namely:—

“*Explanation.*—For the purpose of clause (a), a person shall become a graduate of university in the territory of India or acquire any of the qualifications specified in clause (a) of sub-section (3) on the day next following the day on which the results of the degree examination held by the university or the results of the qualifying examination held by the institution or authority concerned are published by the university, or as the case may be, by such institution or authority.”;

(e) sub-section (6) shall be omitted.

Amend-
ment of
section 28.

14. In sub-section (2) of section 28 of the 1950-Act, after clause (f), the following clause shall be inserted, namely:—

“(ff) the requiring of officers charged with the duty of registration of deaths under any law for the time being in force, to forward to the electoral registration officer as soon as may be after the beginning of each month or any prescribed period, a list of names, addresses, occupations, ages and sexes together with the

dates of death of all persons of the age of 21 years or above whose deaths have been registered during the month or period in respect of the area under the jurisdiction of such officer and situated in the constituency;"

15. In the 1950 Act, in the Second Schedule, against the entry "West Bengal", for the figures "56" in column 6, the figures "55" and for the figures "17" in the column 7, the figures "16" shall be substituted.

Amendment of second Schedule.

PART III

Amendments to the Representation of the People Act, 1951

16. In section 2 of the Representation of the People Act, 1951 (hereafter in this part referred to as the 1951-Act), in sub-section (1),—

Amendment of section 2.

(i) in clause (bb), for the words 'appointed', the words "designated or nominated as such" shall be substituted;

(ii) After clause (e), the following clause shall be inserted, namely:—

"(ee) 'political party' means an association or body of individual citizens of India registered or deemed to be registered with the Election Commission as political party under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968;

(iii) After clause (i), the following clause shall be inserted, namely:—

"(j) any reference in this Act to the district election officer shall, in relation to a Union Territory, be construed as a reference to the returning officer."

17. In section 8 of the 1951-Act,—

Amendment of

(a) in sub-section (1), after words and figures "or under section 125" the words, figures and letters "or section 125A or section 125B or section 133 or section 133A or section 133B" shall be inserted; and

section 8.

(b) in sub-section (3), after the words, brackets and figures "Notwithstanding anything in sub-section (1) and sub-section (2)", the words and figures "and without prejudice to the provisions of section 426 of the Code of Criminal Procedure, 1898" shall be inserted.

Substitution of new section for section 8A.

18. For section 8A of the 1951-Act, the following section shall be substituted, namely:—

“Disqualification for corrupt or illegal practice.

8A. (1) A person found guilty of a corrupt practice, by an order under section 99, shall be disqualified for a period of six years from the date of declaration of the result of the election in respect of which the order under the said section has been made or two years from the date on which the aforesaid order takes effect, whichever is longer.

(2) Any person found guilty of an illegal practice, by an order under section 99 shall, on and from the date of declaration of the result of the election in respect of which an order under that section has been made, be disqualified for such period as may be specified by the court in the aforesaid order:

Provided that the period of disqualification shall in no case be less than two years from the date on which the aforesaid order takes effect.”.

Substitution of new section for section 9A.

19. For section 9A of the 1951-Act, the following section shall be substituted, namely:—

“Disqualification for Government Contracts, etc.

9A. A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the Central Government or a State Government for the supply of goods to, or for the execution of any works undertaken by that Government or with any company or corporation (other than a co-operative society) in the capital of which the Central Government or a State Government has not less than twenty-five per cent share.

Explanation.—For the purposes of this section, where a contract has been fully performed by the person by whom it has been entered into with the Government or the said company or corporation, the contract shall be deemed not to subsist by reason only of the fact that the Government or the company or the corporation has not performed its part of the contract either wholly or in part.”.

20. In section 10A, of the 1951-Act,—for the words “a account of election expenses”, the words “a return of election expenses” shall be substituted.

Amend-
ment of
section
10A.

20A. In section 11 of the 1951-Act, for the word “under this chapter” the words, figures and letter “under section 10A” shall be substituted.

Amend-
ment of
section 11.

21. For section 11A of the 1951-Act, the following section shall be substituted, namely:—

Substitu-
tion of
new sec-
tion for
section
11A.

11A. (1) If any person is convicted of an offence punishable under section 153A, or section 171E or section 171F, or sub-section (2), or sub-section (3) of section 505 of the Indian Penal Code or under section 125, or section 125A, or section 125B or section 133, or section 133A or section 133B or section 135, or clause (a) of sub-section (2) of section 136 of this Act; he shall, for a period of six years from the date of conviction, be disqualified for voting at any election.

“Disquali-
fication
arising
out of
convic-
tion and
corrupt
and
illegal
practices.

(2) If any person is found guilty of a corrupt practice by an order under section 99, he shall be disqualified for voting at any election for a period of six years from the date of declaration of the result of the election in respect of which the order under the said section has been made or two years from the date on which the aforesaid order takes effect, whichever is longer.

(3) Any person found guilty of an illegal practice by an order under section 99 shall, on and from the date of declaration of the result of the election in respect of which an order under that section has been made, be disqualified for such period as may be specified by the court in the aforesaid order:

Provided that the period of disqualification shall in no case be less than two years from the date on which the aforesaid order takes effect.”.

21A. Section 11B of the 1951-Act shall be omitted.

Omission
of section
11B.

22. In section 19A of the 1951-Act, the words “or by the Secretary to the Election Commission” shall be omitted.

Amend-
ment of
section
19A.

Amend-
ment of
section
20A.

23. In sub-section (1) of section 20A of the 1951-Act, for the words "in the district or in the area", the words "in the district or the districts or the area" shall be substituted.

Amend-
ment of
section
21.

24. In section 21 of the 1951-Act, for the words "an officer of Government or of a local authority", the words "an officer in permanent employment of Government" shall be substituted.

Amend-
ment of
section
22.

25. In section 22 of the 1951-Act,—

(a) in sub-section (1),—

(i) for the words "in the performance of his functions", the words "in the performance of his functions; and every such person shall be referred to as an assistant returning officer" shall be substituted.

(ii) in the proviso, the words "or of a local authority" shall be omitted;

(b) in sub-section (2), in the proviso, for the words "the said function", the words "any such function" shall be substituted.

Amend-
ment of
section
23.

26. In section 23 of the 1951-Act, for the words "authorised to perform", the words "competent to perform" shall be substituted.

Insertion
of new
section
24A.

27. After section 24 of the 1951-Act, the following section shall be inserted, namely:—

"Transfer
of district
election
officer or
returning
officer not
permiss-
ible un-
der certain
circums-
tances.

24A. Except with the previous concurrence of the Election Commission, no district election officer or no returning officer shall be transferred—

(a) in the case of a general election to the House of the People or the Legislative Assembly of a State at any time within four months immediately, preceding the date on which the notification calling such election may be, or is likely to be issued and before the date of the declaration of the result of the election in the constituency;

(b) in the case of a bye-election to fill a seat in the House of the People or in the Legislative Assembly of a State, at any time during the period between the occurrence of the casual vacancy necessitating such bye-election and the date of the declaration of the result of the election in such bye-election".

28. For section 25 of the 1951-Act, the following section shall be substituted, namely:—

Substitution of new section for section 25.

25. (1) The district election officer shall, with the previous approval of the Election Commission, provide a sufficient number of polling stations, stationary, and, if necessary, also mobile, for every constituency the whole or greater part of which lies within the local limits of his jurisdiction so however, that each polling station shall be within the easy reach of every elector of the polling area for which a polling station has been provided.

"Polling stations for constituencies."

(2) For the aforesaid purpose, the district election officer shall prepare a draft list showing:—

- (a) the total number of polling stations proposed to be provided for the constituency;
- (b) the number of stationary polling stations;
- (c) the number of mobile polling stations, if any;
- (d) the name and description of each polling station;
- (e) the polling area or the group of electors for which each polling station is proposed to be provided and the number of electors in each polling area;
- (f) the maximum distance which an elector will have to walk to reach the polling station; and
- (g) such other particulars, if any, as may be specified by the Election Commission.

(3) The district election officer shall—

- (a) publish copies of the draft lists in some conspicuous place in his office and in other suitable places within the constituency, and
- (b) invite and hear objections from representatives of all political parties functioning in the constituency; and
- (c) after making such changes, if any, in the draft list in the light of the objections received, forward the same to the Election Commission for its approval.

(4) On receiving the draft list, the Election Commission may approve the draft list and before such approval

call for such information from the district election officer as it may consider necessary.

(5) The list as approved by the Election Commission shall be published by the district election officer in such manner as the Election Commission may direct."

Amend-
ment of
section
26.

29. In section 26 of the 1951-Act, sub-section (5) shall be omitted.

Amend-
ment of
section
30.

30. (i) Section 30 of the 1951-Act shall be renumbered as sub-section (1) and in clause (d) of re-numbered sub-section (1) of section 30 for the words "twentieth day" the words "seventeenth day" shall be substituted.

(ii) after sub-section (1) as so renumbered the following sub-section shall be inserted, namely:—

"(2) For the removal of doubts it is hereby declared that if the last date for making nominations under clause (a) or the date for scrutiny of nominations under clause (b) or the last date of sub-section (1), appointed by notification issued under that sub-section is declared, after the issue of the said notification, to be a public holiday, then, the next succeeding day which is not a public holiday shall be deemed to have been appointed by the notification as the last date for making nominations under clause (a) or as the date for scrutiny under clause (b) or as the last date for withdrawal of candidatures under clause (c), as the case may be, of the said sub-section and for that purpose the Commission may, if necessary, make suitable amendments in the notification issued under sub-section (1) so as to bring it in accord with the provisions of that sub-section."

Amend-
ment of
section
31.

31. In section 31 of the 1951-Act,—

(i) for the words and figures "under section 30", the words, brackets and figures "under sub-section (1) of section 30" shall be substituted;

(ii) for the words "specifying the place at which the nomination papers are to be delivered", the following words, brackets and letters shall be substituted, namely:—

"specifying—

(a) the date or dates on which and the time and place at which, forms of nomination papers may be obtained; and

- (b) the dates on which and the time and place at which, the nomination papers are to be delivered.”.

34.

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Substitu-
tion of
new sec-
tion for
section 32.

33. In section 33 of the 1951-Act,—

Amend-
ment of
section
33.

(a) in sub-section (1),—

- (i) for the word and figures “section 30”, the words, brackets and figures “sub-section (1) of section 30” shall be substituted,
- (ii) for the words “signed by the candidate and by an elector of the constituency as proposer”, the words “signed both by the proposer and the candidate” shall be substituted;
- (iii) after the existing proviso, the following second proviso shall be inserted, namely:—

“Provided further that no paper purporting to be a nomination paper of a candidate which is—

- (a) delivered to the returning officer before eleven O'clock in the forenoon or after three O'clock in the afternoon on any day on which a nomination paper may be delivered in accordance with law, or
- (b) delivered by any person other than the candidate in person or his proposer, or
- (c) received by the returning officer by post or in any other manner shall be treated by the returning officer as a nomination paper and any such paper shall be rejected as soon as it is received by the returning officer and shall not be given any serial number under section 35 or be taken up for scrutiny under section 36.”;

(b) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) No person shall sign as proposer any nomination paper or papers of more than one candidate at the same election in a constituency and if he does so, then of all the nomination papers signed by him as proposer, only the nomination paper or papers of the candidate which or one of which is delivered first to the returning officer shall be accepted and

the nomination papers of all the other candidates shall be rejected as soon as they are received by the Returning Officer and shall not be given any serial number under section 35 or be taken up for scrutiny under section 36.

(1B) If a person after having been nominated as a candidate has, before the presentation of the nomination paper under sub-section (1), made and subscribed the oath or affirmation under clause (a) of article 84, or under clause (a) of article 173, or under clause (a) of section 4 of the Government of Union Territories Act, 1963, as the case may be, then the nomination paper shall, at the time of its presentation, be accompanied by a certificate from the person before whom the oath or affirmation has been made and subscribed, to the effect that it has been so made and subscribed and a declaration that the oath or affirmation has been made and subscribed shall also be made in the nomination paper by the candidate.

20 of 1963

(1C) Where the candidate has not made and subscribed the oath or affirmation as aforesaid, the Returning Officer shall at the time of the presentation of the nomination paper remind the candidate or his proposer of the candidate's obligation to make and subscribe the oath or affirmation at any time before the time fixed under section 35 for the scrutiny of nomination.”;

(c) in sub-section (3), for the words, brackets, letter and figure “clause (f) of section 7”, the word and figure “section 9” shall be substituted;

(d) for the proviso to sub-section (6), the following provisos shall be substituted, namely:—

“Provided that under no circumstances more than four nomination papers shall be delivered by or on behalf of any candidate, or accepted by the Returning Officer for election in the same constituency:

Provided further that—

(i) a person shall not be nominated as a candidate for election in more than three constituencies of the same class; and

(ii) a declaration to that effect—

(a) shall be made in the nomination paper itself, or

(b) shall be filed along with nomination paper."

| | | | | | |
|-----|---|---|---|---|----------------------------------|
| 34. | x | x | x | x | Amend- ment of section 34. |
|-----|---|---|---|---|----------------------------------|

35. In section 35 of the 1951-Act, after the words "the hour at which the nomination paper has been delivered to him", the words, brackets, figures and letter "and also stating whether the oath or affirmation in the form specified has been made and subscribed by the candidate, and where this has not been done, whether he has reminded, under sub-section (IC) of section 33, the candidate or his proposer of the candidate's obligation to make and subscribe the oath or affirmation at any time before the time fixed under this section for the scrutiny of nominations" shall be inserted.

Amend-
ment of
section
35.

36. In section 36 of the 1951-Act,—

Amendment
of sec-
tion 36.

(a) in sub-section (1), for the words and figures "which have been delivered within the time and in the manner laid down in section 23", the following words, brackets and figures shall be substituted, namely:—

"other than those which have been rejected by the returning officer under the second proviso to sub-section (1) of section 33 or under sub-section (1A) of that section.";

(b) in sub-section (2), for the words "the nomination papers", the words, brackets and figures, "all the nomination papers other than those rejected by him under the second proviso to sub-section (1) of section 33 or under sub-section (1A) of that section" shall be substituted;

(c) in sub-section (3), the following words, brackets and figure shall be inserted at the end, namely:—

"or if the full and correct particulars in respect of any candidate or his proposer or any other person or any place or other matter mentioned in one nomination paper can be gathered in respect of such candidate, such proposer, such other person, such place or such other matter from, or if any error in any nomination paper in respect of the serial number in the electoral roll or in respect of any other matter can be rectified by reference to—

(a) all the other nomination papers delivered by or on behalf of the candidate and taken up for scrutiny under sub-section (1); and

- (b) any copy of any electoral roll or part thereof or any certified copy of relevant entries in any electoral roll filed along with any or all of such nomination papers.”.

Amendment of section 37.

37. In section 37 of the 1951-Act, for the word and figures “section 30”, the words, brackets and figures “sub-section (1) of section 30” shall be substituted.

Amendment of section 38.

38. * * * *

Amendment of section 50.

39. For sub-section (2) of section 50 of the 1951-Act, the following sub-section shall be substituted, namely:—

“(2) A contesting candidate or his election agent may do or assist in the doing of any act or thing which any polling or counting agent of the contesting candidate is required or authorised by or under this Act to do; and any act or thing required or authorised by or under this Act to be done in the presence of a Polling or counting agent may be done in the presence of the contesting candidate or his election agent instead of the polling agent or counting agent.”

Amendment of section 51.

40. In section 51 of the 1951 Act for the words “any such agent or agents”, the words “any such agent or agents or of the contesting candidate or the election agent” shall be substituted.

Amendment of section 57.

40A. In sub-section (1) of section 57 of the 1951-Act, the words “of adjournment of the poll together with a detailed report setting out reasons thereof and enclosing a copy of any complaint made to him by any party in this behalf” shall be inserted at the end.

Substitution of new section 58.

41. For section 58 of the 1951-Act, the following section shall be substituted, namely:—

58. (1) if at any election:—

“Fresh poll in certain cases.

(a) any ballot box or ballot papers used or intended to be used at a polling station or at a place fixed for the poll is or are:—

(i) unlawfully taken out of the custody of the presiding officer or the returning officer, or

(ii) accidentally or intentionally destroyed or lost, or

(iii) damaged or tampered with to such an extent that the poll at that polling station or place is likely to be vitiated or that the result of the poll at that polling station or place cannot be ascertained; or

- (b) any such error or irregularity in procedure as is likely to vitiate the poll is committed at a polling station or at a place fixed for the poll; or
- (c) there is not or has not been a free exercise of the right of voting at a polling station or at a place fixed for the poll by reason of the prevalence on a large scale of coercion and intimidation at that polling station or place, and information about the matter is received by the Election Commission from the returning officer or from any other source, the Election Commission shall, after taking all material facts and circumstances into account either,—
 - (1) If satisfied that there is good reason for directing a fresh poll, declare the poll at that polling station or place to be void, appoint a day and fix the hours for taking the fresh poll at that polling station or place and notify the day so appointed and the hours so fixed in such manner as it may deem fit; or
 - (2) If satisfied that the result of a fresh poll at that polling station or place will not in any way affect the result of the election, or that the error or irregularity in procedure is not material, issue such directions to the returning officer as it may deem proper for the further conduct and completion of the election.
- (2) The provisions of this Act and rules and orders made thereunder shall apply to every fresh poll under this section as they apply to the original poll."

42. In section 59 of the 1951-Act, for the words "given by ballot", the words "given by secret ballot" shall be substituted. Amendment of section 59.

42A. In section 60 of the 1951-Act, in clause (b), after the words "for the time being in force", the words "or in lawful custody pending investigation or trial of any offence with which he is charged" shall be inserted. Amendment of section 60.

42B. In section 61 of the 1951-Act, after clause (c), the following clause shall be inserted, namely:— Amendment of section 61.

"(d) for obtaining the signature or thumb impression of the elector on the counterfoil of the ballot paper before the delivery of such ballot paper or ballot papers to him."

42C. In section 62 of the 1951-Act, in sub-section (5), the words "or is in lawful custody of the police" shall be omitted. Amendment of section 62.

Substitu-
tion of
new sec-
tion for
section
64.

43. For section 64 of the 1951-Act, the following section shall be substituted, namely:—

“Count-
ing of
votes and
recount.

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

(2) At any time before the declaration of the result of an election, the returning officer may, either on his own motion or on the written request (in which shall be set forth the reasons for the request) of any contesting candidate or his election agent or any counting agent, order recount of the votes either wholly or in part:

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

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

Amend-
ment of
section
64A.

44. In section 64A of the 1951-Act, for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

“(1) If at any time before the counting of votes is completed, any ballot papers used at a polling station or at a place fixed for the poll are unlawfully taken out, or are found to have been unlawfully taken out, of the custody of the returning officer or are accidentally or intentionally destroyed, lost, damaged or tampered with or are found to have been accidentally or intentionally destroyed, lost, damaged or tampered with, to such an extent that the returning officer is of the opinion that the poll at that polling station or place has been vitiated, or that there is reasonable ground for suspicion that the result of the poll at that polling station or place will not reflect or indicate the real choice of the electors entitled to vote at that polling station or place or that the result of the poll at that polling station or place cannot be ascertained, the returning officer shall forthwith stop the counting and report the matter to the Election Commission for its direction.

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

(a) declare the poll at that polling station or place to be void and direct that—

(i) the counting of votes at that polling station or place which has already been stopped by the returning officer shall remain stopped,

(ii) a fresh poll shall be taken at that polling station or place,

(iii) the votes cast at the fresh poll shall be counted, and thereafter,

(iv) the result of the election will be declared immediately; or

(b) if satisfied that the result of a fresh poll if directed to be taken at that polling station or place will not in any way affect the result of the election, issue such directions to the returning officer as it may deem proper for the resumption and completion of the counting which has been stopped by him and for the further conduct and completion of the election in relation to which the votes have been counted.

(2A) Where a direction for the taking of a fresh poll is ordered under clause (a) of sub-section (2), the Election Commission shall appoint a day and fix the hours for taking such fresh poll and notify the date so appointed and the hours so fixed in such manner as it may deem fit."

45. For section 66 of the 1951-Act, the following section shall be substituted, namely:—

Substitution of new section for section 66.

"66. (1) When the counting of the votes has been completed, the returning officer shall declare the result of the election in the manner provided by this Act or the rules made thereunder: Declaration of results.

Provided that the result of the election shall not be declared—

(i) if the Election Commission issues any direction to that effect;

(ii) if the contesting candidates, their election agents or counting agents make a written request for a recount setting forth the reasons for the request.

(2) Where the declaration of the result of an election has been withheld under a direction of the Election Commission under sub-section (1), the Election Commission shall, after taking all material facts and circumstances into account and after taking all such preliminary steps as it may deem fit,—

- (a) direct the taking of a fresh poll at any polling station or place fixed for the poll after declaring the poll already taken thereat to be void; or
- (b) direct that all the ballot papers used at the election shall be recounted by or under the supervision and direction of an officer nominated or designated by the Election Commission for the purpose; or
- (c) make such other order in relation to the declaration of the result as it may deem fit.

(3) The declaration of the result shall not be withheld at the request made by or on behalf of any candidate unless the margin of difference in the valid votes polled at the original count by the winning candidate and the candidate next below him is equal to or less than two per cent, of all the total votes polled at the election and counted as valid votes at the original count.”.

46. In section 73 of the 1951-Act,—

Amend-
ment of
section
73.

- (i) in the opening paragraph; for the words, brackets, letter and figures “clause (d) of section 30”, the words, brackets, letter and figures “clause (d) of sub-section (1) of section 30” shall be substituted.

(ii) **

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Substitu-
tion of
new
Chapter
for Chap-
ter VIII.

46A. For Chapter VIII of Part V of the 1951-Act, the following Chapter shall be substituted, namely:—

“CHAPTER VIII *Election Expenses*”

Applica-
tion of
Chapter.

76. This Chapter shall apply only to election to the House of the People and to the Legislative Assembly of a State.

Defini-
tions.

76A. For the purposes of this Act, and unless the context otherwise requires,—

- (a) ‘Election expenses’ in relation to an election means all expenses incurred or authorised by the candidate or by his election agent between the date of publication of the notification calling the election and the date of the declaration of the result thereof, both days inclusive;

- (b) 'personal expenses' in relation to the expenditure of any candidate at an election includes all reasonable travelling and living expenses of the candidates for the purposes of and in relation to any such election.

76B. No expenses shall, with a view to promoting or procuring the election of a candidate, be incurred or authorised—

Prohibition of unauthorised expenses.

- (a) by any person other than the candidate, his election agent and any other person authorised in writing in this behalf by the candidate or his election agent, or

- (b) by any club, association, society, organisation or body of persons whether incorporated or not:

Provided that a political party may, with a view to promoting or procuring the election of any candidate set up by it at an election incur or authorise expenditure.

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

Account of Election expenses.

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

77A. (1) The total amount of election expenses which may be incurred or authorised by a candidate or his election agent at an election to the House of the People or as the case may be by a candidate or his election agent at an election to the Legislative Assembly of a State shall not exceed such maximum amount as may be prescribed and the maximum so prescribed may be different for different States.

Maximum amount of election expenses.

(2) The said maximum amount shall not include—

- (a) any amount not exceeding two hundred and fifty rupees in the case of an election to the Legislative Assembly of State or five hundred rupees in the case of an election to the House of the People which the candidate may be required to pay to a political party according to the rules of the party for being accepted as a candidate to be set up by it; or

- (b) any amount required to be deposited by a candidate under section 34; or

- (c) so much of the candidate's personal expenses as does not exceed two hundred and fifty rupees if he is a candidate at an election to the Legislative Assembly of a State or five hundred rupees if he is a candidate at an election to the House of the People.

(3) Where a poll is countermanded on the death of a candidate in accordance with section 52, the said maximum amount shall be increased for all the remaining candidates whose nominations were found valid on scrutiny and who did not withdraw their candidatures under section 37—

- (a) by one-fourth of the said maximum amount where the poll is countermanded at any time within seven days next following the last date for withdrawal of candidatures;

- (b) by one-half of the said maximum amount where a poll is countermanded at any time after the said period of seven days.

(4) The said maximum amount shall be increased for all the contesting candidates by the same amount as specified in clause (a) or, as the case may be, in clause (b) of subsection (3) where the poll is adjourned for any reason after the last date for withdrawal of candidatures.

Lodging
of Return
with the
district
election
officer.

78. (1) Every contesting candidate at an election shall within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates, lodge with the district election officer a return of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 77.

(2) The reference to the district election officer in subsection (1) shall, in relation to a constituency in a Union territory, be construed as a reference to the returning officer for that constituency.”.

Substitu-
tion of
new sec-
tions for
sections
99 and 100.

47. For sections 99 and 100 of the 1951-Act, the following sections shall be substituted, namely:—

“Other
orders
to be
made
by the
High
Court.

99. (1) Where any charge is made in the election petition of any corrupt or illegal practice having been committed at the election, at the time of making an order under section 98, the High Court shall also make an order containing—

- (a) a finding whether such corrupt or illegal practice has or has not been proved to have been committed at the election; and

- (b) the names of all persons who have been proved at the trial to have been guilty of any such corrupt or illegal practice.

(2) Where the High Court makes an order containing a finding of the commission of an illegal practice by any person, it may, direct that the said person shall, on and from the date of declaration of the result of the election in respect of which the aforesaid order is made, be disqualified for the purposes of section 8A or, as the case may be, section 11A for such period not exceeding six years as it may specify in its order.

(3) Notwithstanding anything contained in sub-section (1), a person who is not a party to the election petition shall not be named under clause (b) of that sub-section unless—

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

(4) The High Court may also make an order fixing the total amount of costs payable and specifying the persons by whom and to whom such costs shall be paid.

100. If the High Court is of opinion—

- (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963; or
- (b) that any corrupt or illegal practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
- (i) by the improper acceptance of any nomination, or

Grounds
for dec-
laring
election to
be void.

(ii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iii) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.”.

Substitution of new section for section 106.

48. For section 106 of the 1951-Act, the following section shall be substituted, namely:—

“Transmission of decision of High Court to appropriate authority etc., and its publication.

106. As soon as may be after the receipt of an authenticated copy of the decision sent by the High Court under section 103, the Election Commission shall forward copies of the decision to the appropriate authority and in the case where such decision relates to an election to a House of Parliament or to an election to the House or a House of the Legislature of a State, also to the Speaker or Chairman, as the case may be, of the House concerned and shall cause the decision to be published—

(a) where the decision relates to an election to a House of Parliament, in the Gazette of India as well as in the Official Gazette of the State concerned; and

(b) where the decision relates to an election to the House or a House of the Legislature of a State, in the Official Gazette of the State.”.

Substitution of new Chapters for Chapter I of Part VII.

49. (1) For Chapter I of Part VII of the 1951-Act, the following shall be substituted, namely:—

“CHAPTER I

Corrupt Practices

Corrupt Practices.

123. The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1) ‘Bribery’, that is to say,—

(A) any gift, offer or promise by a candidate or by any other person with the express consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

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

Explanation.—For the purposes of this clause the term 'gratification' is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses *bona fide* incurred at, or for the purpose of, any election and duly entered in the return of election expenses referred to in section 78.

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

Provided that—

- (a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—
 - (i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or
 - (ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

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

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

(3) The appeal by a candidate or by any other person with the express consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Explantion.—In this clause, the expression “national emblem” includes—

- (a) the emblem of the Republic or Union of India or of the Government of India, or the pictorial representation thereof;
- (b) the pictorial representation of Ashoka Chakra as used in the Indian National Flag or in the official seal or emblem of the Government of India or of any Department of the Government of India.

(4) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or any other person with the express consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

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

(6) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or, by any other person with the express consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government or of a local authority.

Explanation.—For the purposes of clause (6), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent of that candidate.

CHAPTER II

Illegal Practices

124. The following shall be deemed to be illegal practice for the purposes of this Act:—

Illegal
Prac-
tices.

(1) (a) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or by any other person with the consent of a candidate or his election agent for the free conveyance of any elector or electors (other than the candidate himself, or his election agent, or the members of the candidate's family or of the election agent's family) to or from any polling station or place fixed for the poll, or

(b) the use of any vehicle or vessel including a vehicle or vessel belonging to the candidate, his election agent, for the free conveyance of any elector or electors (other than the candidate himself, or his election agent, or the members of the candidate's family or of the election agent's family) to or from any polling station or place fixed for poll:

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

Provided further that the use of any public transport vehicle or vessel or any tram-car or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be an illegal practice under this clause.

Explanation.—In this clause, the expression 'vehicle' means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(2) The incurring or authorising of expenditure in contravention of section 77A.

(2) It is hereby declared that—

- (a) any disqualification for membership entailed by any act which has ceased to be a corrupt practice under the 1951-Act as amended by this Act,
- (b) any disqualification for voting at any election incurred by any person by reason of the commission of an act which has ceased to be a corrupt practice under the 1951-Act as amended by this Act,

shall stand removed.”.

Insertion
of new
sections
after
section
125.

50. After section 125 of the 1951-Act, the following sections shall be inserted, namely:—

“Coercion
or intimi-
dation
of voters
at elec-
tion.

125A. (1) Any person who—(a) directly or indirectly, by himself or by any other person on his behalf uses or threatens to use any force, violence or restraint, or inflicts or threatens to inflict by himself or by any other person on his behalf, any injury, damage, harm or loss upon or against an elector in order to compel, frighten, induce or prevail upon that elector to vote or refrain from voting at an election, or to vote or refrain from voting in a particular way or for any particular candidate at such election;

(b) by wrongful restraint, wrongful confinement, abduction or any other forcible or violent method, obstructs or prevents the free exercise by an elector of his right to vote at an election or thereby compels, frightens, induces or prevails upon an elector to vote or refrain from voting at an election or to vote or refrain from voting in a particular way or for any particular candidate at such election; or

(c) resorts to or threatens to resort to social or economic boycott of an elector in order to compel, frighten, induce or prevail upon that elector to vote or refrain from voting at an election, or to vote or refrain from voting in a particular way or for any particular candidate at such election,

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

(2) In this section, the expressions “wrongful restraint”, “wrongful confinement” and “abduction” shall have the meanings respectively assigned to them in the Indian Penal Code.

Persona-
tion at
election.

125B. (1) Any person who at an election applies for a ballot paper or cast his vote in the name of any other person, whether living or dead, or in a fictitious name, or

who having cast his vote once at such election, applies at the same election for a ballot paper in his own name, and whoever abets, procures or attempts to procure the voting by any such person in any such way, shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(2) Nothing contained in section 171D of the Indian Penal Code shall apply in respect of an election held under 45 of 1860. this Act.

125C.

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* Commis-
sion of
unlawful
activity.

51. For section 126 of the 1951-Act, the following section shall be substituted, namely:—

Substitu-
tion of
new sec-
tion for
section
126.

126. (1) No person shall—

“Prohibi-
tion of
public
meetings
during
period of
seventy-
two hours
ending
with
hour
fixed for
conclusion
of poll.

(a) convene, hold, attend, join or address any public meeting or procession in connection with an election; or

(b) display to the public any election matter by means of cinematograph, television or other similar apparatus; or

(c) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto, in any polling area during the period of seventy-two hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

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

(3) In this section, the expression ‘election matter’ means ‘any matter intended or calculated to influence or affect the result of an election’.

52. In section 127 of the 1951-Act—

Amend-
ment of
section
127.

(a) in sub-section (1), for the words “with fine which may extend to two hundred and fifty rupees”, the words “with imprisonment for a term which may extend to six months or with fine or with both” shall be substituted;

(b) for sub-section (3), the following sub-sections shall be substituted, namely:—

“(3) An offence punishable under sub-section (1) shall be cognisable.

(4) It shall be the duty of the police to take all such steps and to use all such force as may be reasonably necessary for keeping order at, and for ensuring the smooth conduct of, every public meeting to which this section applies.”.

Amend-
ment of
section.
130.

53.

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Substitu-
tion of
new sec-
tions for
section
133.

54. For section 133 of the 1951-Act, the following sections shall be substituted, namely:—

“Penalty
for
illegal
hiring or
procuring
of con-
veyance
at elec-
tions.”

133. (1) If any person is guilty of any such illegal practice as is specified in clause (1) of section 124 at or in connection with an election, he shall be punishable with imprisonment for a term which may extend to six months and also with fine:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than three months and such fine shall not be less than two hundred and fifty rupees.

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

Use of
vehicles
for con-
veyance
at elec-
tions.

133A. (1) where any vehicle used or capable of being used for the purpose of road transport propelled by mechanical power is used for conveying any voter to a polling station the owner and driver of the said vehicle shall also be punishable with imprisonment for a term which may extend to three months and also with fine.

(2) Nothing contained in sub-section (1) shall apply where the said vehicle is used by the owner for the conveyance of himself or the members of his family to or from any polling station or place fixed for the poll.

(3) An offence under sub-section (1) shall be cognisable.

133B. (1) No person shall, unless otherwise exempted Ban on under the rules, ply any vehicle used or capable of being plying of used for the purpose of road transport propelled by me- mechani- chanical power on the date of poll. cally propelled vehicles on a polling day.

(2) Any person contravening the provisions of sub- section (1) shall be punishable with fine which may ex- tend to thousand rupees.”.

55. In section 134A of the 1951-Act,

(i) after the word “Government”, the words “or local authority” shall be inserted; Amend- ment of section 134A.

(ii) after the words “of a candidate at an election”, the following words shall be inserted, namely:—

“or canvasses for votes for a candidate or addres- ses any election meeting or indulges in any other election propaganda or campaign at an election.”.

56. After section 134A of the 1951-Act, the following section shall be inserted, namely:— Insertion of new section after section 134A.

134B. (1) Except the returning officer, the presiding officer and any police officer on duty and any other per- son appointed to maintain peace and order at a polling station on duty, at the polling station, no person shall on a polling day go armed with lethal weapons or arms, as defined in the Arms Act 1959, of any kind within the neigh- bourhood of a polling station. “Prohibi- tion of going armed to or near a polling station.

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

(3) Where a person is convicted of an offence under this section, the lethal weapons or arms, as defined in Arms Act, 1959 found with him shall be confiscated to the Government.”.

57. In sub-section (1) of section 135 of the 1951-Act, Amend- for the words “fraudulently takes”, the words “fradulently ment of or with force or violence or show of force or violence section takes” shall be substituted. 135.

Insertion
of new
sections
after
section
135.

58. After section 135 of the 1951-Act, the following sections shall be inserted, namely:—

“Grant of
paid
holiday to
employees
on the
day of
poll.

135A. (1) Every person employed in any business, trade, Industrial Undertaking or any other establishment and entitled to vote at an election to the House of the People or the Legislative Assembly of a State shall, on the day of poll, be granted a holiday.

(2) No deduction or abatement of the wages of any such person shall be made on account of a holiday having been granted in accordance with sub-section (1) and if such person is employed on the basis that he would not ordinarily receive wages for such a day he shall none the less be paid for such day the wages he would have drawn had not a holiday been granted to him on that day.

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

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

Liquor
not to
be sold,
given or
distributed
on
polling
day or
during
twenty-
four
hours
preced-
ing that
day.

135B. (1) No spirituous, fermented or intoxicating liquors, narcotic drugs or other substances of a like nature shall be sold, given or distributed at a hotel, eating house, tavern, shop or any other place, public or private, within a polling area on a polling day and during twenty-four hours immediately preceding that day.

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

Substitu-
tion of
new head-
ing in
Chapter
IV of part
VIII.

59. For the heading of Chapter IV of Part VIII of the 1951-Act, the following heading shall be substituted, namely:—

“Powers of Election Commission in connection with certain Inquiries.”.

Amend-
ment of
section
146.

60. In section 146 of the 1951-Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) For the purposes of any inquiry which the Election Commission may make—

(a) in connection with the tendering of any opinion to the President under article 103 or

1963.
1966.

1969.

under sub-section (4) or section 14 of the Government of Union Territories Act, 1963, or under sub-section (4) of section 19 of the Delhi Administration Act, 1966, or to the Governor under article 192 or under sub-section (4) of section 29 of the Assam Reorganisation (Meghalaya) Act, 1969, or

(b) in a dispute regarding any election symbol.

1908.

the Election Commission shall have the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (i) discovery and inspection;
- (ii) summoning and enforcing the attendance of any person as witness, requiring the deposit of his expenses and examining him on oath;
- (iii) compelling the production of documents or other material objects producible as evidence;
- (iv) granting adjournments;
- (v) reception of evidence taken on affidavits;
- (vi) requisitioning any public document or a copy thereof from any court or office; and
- (vii) issuing commissions for the examination of witnesses or documents or other material objects producible as evidence, and may summon and examine *suo motu* any person whose evidence appears to it to be material.

Explanation—For the purpose of summoning and enforcing attendance of any person as a witness the jurisdiction of the Commission shall extend over the whole of India.”.

61. After section 153 of the 1951-Act, the following sections shall be inserted, namely:—

“Cancellation of notification for election”.

Insertion
of new
section
after
section
153.

153A. Where the Election Commission is satisfied that it is impracticable to hold any election in respect of which a notification has been issued under any of the sections 12, 14, 15, 16, 147, 149, 150 and 151, which may be applicable, by reason of flood, fire, earthquake, war, external aggression or internal disturbance or any other disaster or emergency, the Election Commission may—

- (a) in the case of a general election or a biennial election, recommend to the President or to the

Governor, or to the Administrator, as the case may be, for the cancellation of the notification for the election either in whole or in part and the President or the Governor or the Administrator, as the case may be, may cancel such notification accordingly;

- (b) in the case of a bye-election, itself cancel the notification for the election:

Provided that any notification of cancellation issued under this section shall state the reasons for such cancellation”.

“Failure
of con-
stituency
or mem-
bers to
elect
when
called
upon to
do so.

153B.

* * * *

Amend.
ment of
section
158.

62. In section 158 of the 1951-Act,—

- (a) for sub-section (3), the following sub-sections shall be substituted, namely:—

“(3) In the following cases, that is to say,—

- (a) if the candidate is not shown in the list of contesting candidates prepared under section 38, or

- (b) if because of the death of the candidate the poll is counter-manded under section 52,

the deposit shall be returned in accordance with the provisions of sub-section (1) and sub-section (2).

(3A) The deposit shall also be returned in accordance with the provisions of sub-section (1) and sub-section (2) in the event of the candidate being elected.”;

(b) in sub-section (4), for the word, brackets and figure “sub-section (3)” the words, brackets, figures and letter “sub-section (3) and sub-section (3A)” shall be substituted;

(c) in sub-section (5), for the brackets and figure “(3)”, the brackets, figures and letter “(3), (3A)” shall be substituted.

63. After section 167 of the 1951-Act, the following section shall be inserted, namely:—

Insertion
of new
section
after
section
167.

167A. With a view to ensuring smooth, free and fair election, the Election Commission may, in exercise of its powers of superintendence, direction and control of elections vested in it by article 324 of the Constitution, issue instructions and directions not contrary to the provisions of his Act or rules and orders made thereunder to any Chief Electoral Officer, any district election officer, any returning officer, any assistant returning officer, any presiding officer or any other officer or authority authorised or required to exercise any powers or perform any function under this Act or rules and orders made thereunder and it shall be the duty of officers aforesaid to comply with such instructions or directions.”

“Issue of
instruc-
tions
and
direc-
tions to
election
officers.”

64.

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Amend-
ment of
section
169.

65. Save as otherwise provided in this part, no amendments made by this Act in the 1951-Act shall apply to any election which has been called before the commencement of this Act.

Amend-
ments
made in
1951-Act
not to
apply to
pending
elections.