

HOUSE OF THE PEOPLE

THE REPRESENTATION OF THE PEOPLE (NO.2) BILL, 1950

(REPORT OF THE SELECT COMMITTEE)



**PARLIAMENT SECRETARIAT
NEW DELHI.**

March, 1951

**REPORTS OF SELECT COMMITTEE PRESENTED
TO PARLIAMENT IN - 1951.**

S. No.	Short title of the Bills.	Date of intro- duction. (Presentation) 3.	Date of Publica- tion. (in the Gazette) 4.
	2.		
1.	The Port Trusts and Ports (Amendment) Bill, 1950.	7- 2-51.	24-2-51.
2.	The Representation of the People (No.2) Bill, 1950.	31- 3-51.	14-4-51.
3.	The Finance Bill, 1951.	21- 4-51.	24-4-51.
4.	The Constitution (First Amendment) Bill, 1951.	25- 5-51.	2-6-51.
5.	The State Financial Corporations Bill, 1951.	10- 8-51.	25-8-51.
6.	The Tariff Commission Bill, 1951. ✓	-do-	-do-
7.	The Forward Contracts (Regulation) Bill, 1950.	20- 8-51.	1- 9-51.
8.	The Indian Companies (Amendment) Bill, 1951. ✓	30- 8-51.	8- 9-51.
9.	The Evacuee Interest (Separation) Bill, 1951.	10- 9-51.	29- 9-51.
10.	The Benares Hindu University (Amendment) Bill, 1951.	7- 9-51.	29- 9-51.
11.	The Aligarh Muslim University (Amendment) Bill, 1951.	-do-	-do-
12.	The Press (Incitement to Crime) Bill, 1951.	27-9-51.	6-10-51.
13.	The Industries (Development and Control) Bill, 1949.	24- 9-51.	-do-
14.	The Plantations Labour Bill, 1951. ✓	29- 9-51.	13-10-51.

1.	2.	3.	4.
15. The Delhi Premises (Requisition and Ejection) Amendment Bill, 1951.	10- 9-51.	22- 9-51.	
16. The Displaced Persons (Debts Adjustment) Bill, 1951.	1-10-51.	20-10-51.	
17. The Notaries Bill, 1951.	4-10-51.	-do-	

REPRESENTATION OF THE PEOPLE (NO. 2) BILL, 1950

REPORT OF THE SELECT COMMITTEE

WE, the undersigned members of the Select Committee to which the Bill to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt and illegal practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections was referred, have considered the Bill and have the honour to submit this our Report with the Bill as amended by us annexed hereto.

2. Upon the changes proposed by us which are not formal or consequential we note below.

Clause 2.—We have inserted the definitions of “elector”, “primary election” and “scheduled Part C State” for the convenience of reference.

In view of the provisions of section 27K of the Representation of the People Act, 1950, we have added a new sub-clause (6) to this clause to provide that when a body is created by Parliament by law under article 240 of the Constitution to function as a Legislature for a Part C State, the references to the electoral college for such State or to the Coorg Legislative Council in certain provisions of the Bill would be construed as references to that body.

Clauses 3, 4, 5 and 6.—In these clauses we have suggested the use of the words “is an elector” in place of the words “is entitled to vote in the choice of a member” to enable persons whose names are included in the electoral rolls to be qualified for membership even if they are not entitled to vote under sub-clause (5) of clause 61 (old clause 58) by reason of being in the lawful custody of the police or being subjected to preventive detention.

We have also proposed certain changes in clause 3 in view of the provisions made in Part IV-A of the Representation of the People Act, 1950, with regard to the filling of seats in the Council of States allotted to Part C States.

We think that the provisions of sub-clause (b) of clause 4 should be brought in line with those of sub-clause (a) thereof and we have accordingly proposed necessary changes in sub-clause (b) of that clause.

Clause 7.—We have omitted the words “relating to elections” from paragraph (a) of sub-clause (1) of this clause as being unnecessary.

We considered the question whether it should be provided in sub-clause (1) (b) of this clause that the Election Commission in allowing any reduction of the period of disqualification under that sub-clause should take into consideration, among other things, the motive of the offence and should reduce the period of the disqualification in all cases where the motive of the offender was not to achieve any private or personal end. We do not think such a provision to be necessary in view of the discretion vested in the Election Commission to reduce the period of the disqualification in appropriate cases.

We consider that a provision should be included in sub-clause (1) of this clause to make the holding of a contract for the supply of goods to, or for the execution of any works or the performance of any service undertaken by, Government, a disqualification for membership of Parliament and the Legislatures of States on the lines of similar provisions in force in the United

Kingdom under the House of Commons (Disqualifications) Act, 1782, as subsequently amended. We also consider that a person holding a licence, permit or authorisation issued by Government under any law regulating the supply, movement or price of any goods for the purpose of trading in such goods should be also disqualified for such membership. We have accordingly included necessary provisions for the purpose in sub-clause (1) of clause 7. In the case where a public company holds any such contract, licence, permit or authorisation, we have provided an exception in respect of the share-holders of the company but not in respect of any director as in our opinion the director of a company exercises great influence over the affairs of the company and should not, therefore, be exempted. We have also included in sub-clause (1) provisions debarring from membership of Parliament and of the Legislatures of States directors or managing agents of, or persons holding offices of profit under, any corporation in which Government has any share or interest, and also persons dismissed from Government service for corruption or disloyalty to the State. In the latter case, we have provided by the addition of a new sub-clause to this clause that a certificate from the Election Commission that the dismissal was not for corruption or disloyalty to the State would be conclusive evidence of the fact that a person is not disqualified for such membership on the ground of his dismissal.

We have omitted sub-clause (2) of this clause as originally drafted as persons sentenced to transportation or imprisonment for not less than two years and serving such a sentence will be disqualified under clause 7(1) (b), and we do not consider it necessary to disqualify persons serving a sentence of transportation or imprisonment for less than two years, for if any such person is elected his seat may be declared vacant under clause (4) of article 101 or clause (4) of article 190 of the Constitution if he is absent without permission from the meetings of the House concerned for a period of sixty days.

We do not think that persons disqualified on account of conviction should be debarred from sitting and voting in Parliament or in the Legislature of a State while appeals from their conviction are pending, and we have modified sub-clause (2) [old sub-clause (3)] of clause 7 accordingly.

Chapter IV (Clauses 8 and 9).—This Chapter is new. We have inserted this Chapter to provide for the qualification and disqualification for membership of the electoral colleges for certain Part C States.

Clause 10 (old clause 8).—We have recast paragraph (b) of sub-clause (1) and also paragraph (b) of sub-clause (2) of this clause to include therein provisions for calling upon members of electoral colleges for Part C States and members of the Coorg Legislative Council to elect members to the Council of States. We think it would be more convenient if the Election Commission is empowered to fix the dates before which, instead of the time within which, elections are to be completed and we have made necessary changes for the purpose in this clause as well as in other clauses in Part III of the Bill.

Clause 11.—This clause is new. It has been inserted to provide for the issue of notifications for the constitution or reconstitution of electoral colleges for Part C States.

Clauses 13 and 15 (old clauses 10 and 12).—Each of these two clauses as originally drafted contemplated the issue of one notification calling upon the constituencies to elect at a general election. We consider that it may not be possible to hold elections in all the constituencies at the same time and it may be necessary to issue more than one notification calling upon the constituencies to elect. We have revised these two clauses accordingly.

Clause 18 (old clause 15).—We have added a proviso to this clause to make it clear that it would be open to the Election Commission to appoint the same person to be the Returning Officer for more than one constituency, if necessary.

Clause 19 (old clause 16).—We have recast this clause to cover the appointment of Returning Officers for elections by the members of electoral colleges for Part C States and by the elected members of the Coorg Legislative Council to fill seats allotted to the Part C States in the Council of States.

Clause 23 (old clause 20).—It was suggested to us that a provision should be included in this clause to ensure that there would be one polling booth for every one thousand voters. We are of the opinion that not more than one thousand voters should be ordinarily assigned to a polling booth but we do not consider it necessary to include any provision to that effect in the Bill as we presume that the Election Commission will take note of our views. We recommend that, as far as practicable, every polling station should be so situated that a voter will not have to walk more than three miles to vote at such station. We also recommend that every candidate nominated for election to fill a seat in any constituency should be supplied with a list of the polling stations in that constituency.

Clauses 24 and 27 (old clauses 21 and 24).—We think that not only persons who have been employed by or on behalf of a candidate in or about the election but also persons who engage themselves voluntarily in the election work of a candidate should be debarred from being appointed as presiding officers or polling officers at a polling station. We have accordingly modified clause 24 (old clause 21) and sub-clause (2) of clause 27 (old clause 24). We have also recast sub-clause (1) of clause 27 (old clause 24) to cover the case of elections by the members of electoral colleges for Part C States or by the elected members of the Coorg Legislative Council to fill seats allotted to Part C States in the Council of States.

Clause 28 (old clause 25).—We consider that the last date for making nominations should not be a date earlier than the eighth day after the issue of the notification inviting nominations for it might ~~take~~ about five days to enable persons in the distant villages to know about the notification and such persons should get at least three days more for making nominations. We also consider that the last date for the withdrawal of candidatures should be the third day after the date for the scrutiny of nominations and that the period between the last date for the withdrawal of candidatures and poll should not be less than thirty days. We also consider that in the case of a bye-election the notification fixing the dates for nominations, etc., should be issued by the Election Commission and not by the appropriate authority. We have revised this clause accordingly.

Clause 29 (old clause 26).—We think that the place at which the nomination papers are to be delivered should be also notified by the Returning Officer and we have accordingly added the necessary provision to this clause.

Clause 31 (old clause 28).—We consider that every candidate for a seat reserved for the Scheduled Castes or for the Scheduled Tribes or for an autonomous district of Assam should furnish along with his nomination paper a declaration that he is eligible to fill such seat. We also consider that where the candidate is a person dismissed from Government service, he should furnish along with his nomination paper a certificate from the Election Commission that he has not been dismissed on the ground of corruption or disloyalty to the State. We have accordingly included the necessary provisions in sub-clause (3).

We have also added a new sub-clause (6) to this clause to make it clear that a candidate may present more than one nomination paper for election in the same constituency.

Clause 32 (old clause 29).—We have recast this clause to include therein a provision for enabling the sum required to be deposited under this clause to be deposited in cash with the Returning Officer at the time of the presentation of the nomination paper. We have also provided that a sum of fifty rupees will be required to be deposited under this clause in the case of a primary election in a Council of States constituency.

Clause 34 (old clause 31).—We have made a slight drafting change in sub-clause (4).

We think that the Returning Officers should be also empowered to adjourn the proceedings relating to the scrutiny of nomination papers when such proceedings are interrupted or obstructed by causes beyond their control. We have accordingly made the necessary provision in sub-clause (5).

Clause 35 (old clause 32).—We have added the words “in the same constituency” in sub-clause (2) to make the intention clearer.

Clause 36 (old clause 33).—We have omitted the proviso to this clause as we have suggested the omission of old clause 35.

Clause 37 (old clause 34).—We have revised this clause to cover the case of elections by the members of electoral colleges for Part C States and the elected members of the Coorg Legislative Council to fill seats in the Council of States. We have made certain changes with regard to the dates to be fixed for nominations, etc. under this clause and have also made some consequential changes.

Old Clause 35.—We considered the question as to whether the issue regarding the validity of a nomination paper could be treated as a preliminary issue and disposed of before the poll by providing appeals from the decisions of Returning Officers on such issue or the present practice with regard to the filing of an election petition after the election was over for the setting aside of the election on the ground that a nomination paper had been improperly accepted or rejected should be allowed to continue. We feel that the advantage of having a provision regarding appeal for the purpose of final determination of any such issue would be that double elections could be avoided in the case where the first election was set aside for improper acceptance or rejection of a nomination paper, but we apprehend that if such a provision is made the number of appeals may be so large and the proceedings before the appellate authority may be so protracted that it may be difficult to hold the elections according to programme. We have, therefore, omitted this clause.

Some members of the Committee have, however, expressed the view that if a procedure could be evolved for the speedy disposal of such appeals to get over the difficulty referred to above, then the question of restoring this clause with suitable modifications should be considered during the passage of the Bill in Parliament.

Clause 44 (old clause 42).—We think this clause should apply not only to direct elections to be held in constituencies but also to indirect elections by the members of Legislative Assemblies and electoral colleges. We consider that it would be sufficient if the polling agent is appointed and the notice of such appointment is given at least three days before the commencement of the poll. We also consider that a candidate should be enabled to appoint two relief agents instead of one. We have accordingly made necessary changes in this clause.

Clause 45.—This clause is new. We have inserted this clause in view of the provision made in clause 144 (old clause 140) that a person who is disqualified for membership of Parliament or of the Legislature of a State or for voting at elections will be also disqualified for being a polling agent at an election.

Clause 46 (old clause 43).—We consider that it would be sufficient if the counting agent is appointed before the commencement of the counting of votes and have accordingly made necessary changes in this clause.

Clause 49 (old clause 46).—We have made certain modifications in this clause to make it clear that every candidate shall have the right to be present at any polling station whenever he likes.

Clauses 52 and 53 (old clauses 49 and 50).—In sub-clauses (2) and (3) of clause 52 (old clause 49) and in the corresponding provisions of clause 53 (old clause 50) we have substituted the words "forthwith declare" for the word "declare" to ensure that whenever the number of candidates is equal to, or less than, the number of seats to be filled, the candidates will be immediately declared elected to those seats.

Sub-clause (3) of clause 52 (old clause 49) has been further revised to cover the case of elections by the members of electoral colleges for Part C States and by the elected members of the Coorg Legislative Council to fill seats in the Council of States.

Sub-clause (3) of clause 53 (old clause 50) which provides for the filling of both the reserved seats and seats not reserved by candidates qualified to be chosen to fill the reserved seats does not contain any provision for determination of the question as to which of the candidates will be declared elected to the reserved seats. We think this question should not be left undetermined especially in view of the provisions made in sub-clause (2) of clause 148 (old clause 143) and sub-clause (2) of clause 149 (old clause 144) with regard to the notification of casual vacancies in the House of the People and the State Legislative Assemblies. We consider that such determination should be made by lot and we have included a provision to that effect in sub-clause (3) of clause 53.

Clause 55 (old clause 52).—We consider that the total period allotted on any one day for polling at an election in a constituency should not be less than eight hours and we have included a provision to that effect in this clause.

Clause 56 (old clause 53).—We do not consider it necessary to include any reference to the failure of arrangements for taking the poll in sub-clause (1) of this clause and have accordingly omitted this reference from that sub-clause.

We consider that when a poll is adjourned at any polling station under sub-clause (1), the votes cast at other polling stations at the election should not be counted until the adjourned poll has been completed for the result of such counting might affect the result of the adjourned poll. We have revised sub-clause (2) of this clause accordingly.

We have omitted sub-clause (4) of this clause as we do not consider its retention necessary.

Clause 62 (old clause 59).—We are of the opinion that if an elector gives more than one vote to any one candidate in contravention of the provisions of sub-clause (1) of this clause, only one of the votes given by him should be taken into account and the remaining votes should be rejected. We have revised sub-clause (2) of this clause accordingly.

Clause 66 (old clause 63).—We have revised this clause to cover the case of elections of members of electoral colleges for Part C States.

Clause 70 (old clause 67).—We have revised this clause to include therein provisions for the publication of results of elections by the members of electoral colleges for Part C States and by the elected members of the Coorg Legislative Council to fill seats in the Council of States.

Clause 71.—This clause is new. We have inserted it to provide for the publication of results of primary elections for the constitution or reconstitution of electoral colleges for Part C States.

Clauses 72 and 73 (old clauses 68 and 69).—We have made some consequential changes in these two clauses in view of the modifications suggested by us in clauses 13 and 15 of the Bill.

Clause 77 (old clause 73).—We have revised this clause to cover the case of elections of representatives of Part C States in the Council of States.

Clause 80 (old clause 76).—We have recast sub-clause (1) of this clause. We do not think it necessary to include any provision in sub-clause (1) for the presentation of an election petition by an officer empowered by Government on the ground that the corrupt practice of bribery or undue influence has extensively prevailed at the election for we consider it unlikely that no elector will come forward to call in question such election. We have accordingly omitted paragraph (b) of sub-clause (1) of old clause 76. We have made it clear that the expression "candidate" as used in sub-clause (1) means a candidate at the election to which the election petition relates and the expression "elector" as used in that sub-clause means a person entitled to vote at such election.

Clause 85 (old clause 81).—We consider that judicial officers below the rank of a District Judge should not be appointed to the Election Tribunal. We do not however think that the personnel of the Tribunal should be restricted only to High Court Judges and District Judges as in that case it will be difficult to get the required number of such judges for the disposal of election petitions the number of which is likely to be very large. We see no objection to the appointment of advocates to the Tribunal if such appointment is made by the Election Commission from a list of advocates approved by the High Courts. We consider that retired High Court Judges and retired District Judges should be also appointed to the Tribunal. We are therefore of the view that the personnel of the Tribunal should be drawn from (a) persons who are or have been High Court Judges (b) persons who are or have been District Judges and who are in the opinion of the High Courts fit to be appointed as members of the Tribunal, and (c) advocates of High Courts of not less than 10 years' standing who are in the opinion of the High Courts fit to be so appointed. We think that the Chairman of the Tribunal should be either a person who is or has been a High Court Judge or a person who is or has been a District Judge. We have revised this clause accordingly.

Clause 88 (old clause 84).—We have revised sub-clause (1) of this clause to cover the case of election petitions in relation to primary elections.

Clause 89 (old clause 85).—We have made it clear in sub-clause (1) of this clause that the list of particulars required by clause 82 (old clause 78) should be also served on the respondents along with the petition. We have revised the first proviso to sub-clause (2) of this clause to include therein provision for enabling the evidence of any witness to be taken down at length where special reasons would so require. We consider that when the Tribunal would refuse to examine any witness it should record in writing the reasons for such refusal and we have included necessary provision to that effect in the second proviso to sub-clause (2) of this clause.

We are of the opinion that the power to condone failure to present an election petition within the prescribed time should be exercised by the Election Commission provisionally and that the final decision in the matter should rest in the hands of the Election Tribunal. We have accordingly omitted the proviso to sub-clause (4) of the old clause 85.

Clause 90 (old clause 86).—We have recast the proviso to this clause to make the intention clearer.

Clause 96 (old clause 92).—We consider that the claim that a candidate other than the returned candidate has been duly elected can be made only in an election petition. We have accordingly substituted the words "in an election petition" for the words "at a trial of an election petition" in sub-clause (1) of this clause.

Clause 98 (old clause 94).—We have redrafted the proviso to sub-clause (1) of this clause on the lines of sub-section (1) of section 140 of the U. K. Representation of the People Act, 1949, so as to enable any person whose name is proposed to be reported by the Election Tribunal as being guilty of any corrupt or illegal practice to call any evidence in his defence or to cross-examine any witness who has already given evidence before the Tribunal.

Clause 99 (old clause 95).—In paragraph (c) of sub-clause (1) of this clause we have omitted the words "in the case of the first elections under this Act" in view of the omission of the old clause 35 of the Bill. We have added an explanation to sub-clause (1) of this clause so as to give a definition of the expression "coercion or intimidation" used in paragraph (b) of that sub-clause.

Clause 103 (old clause 99).—We have revised sub-clause (5) of this clause to provide that in case of difference of opinion among the members of the Tribunal the reference shall be made in the case where the election has taken place in Bhopal to the High Court of Madhya Bharat, in the case where the election has taken place in Bilaspur, Himachal Pradesh or Vindhya Pradesh to the court of the Judicial Commissioner of that State, and in the case where the election has taken place in Manipur or Tripura to the High Court at Calcutta.

Clause 105 (old clause 101).—We have revised this clause to cover the cases where election petitions are presented in relation to primary elections in Council of States constituencies.

Clause 115 (old clause 111).—We have made some drafting changes in this clause to make the intention clearer.

Clause 122 (old clause 118).—We have added an explanation to sub-clause (8) of this clause to make it clear that in the said sub-clause a person serving under the Government of any State would include a patwari, chaukidar, dafedar, lambardar, zaildar, shanbagh, karnam, talati, talari, patil, village munsif, village headman or any other village officer employed in that State.

Clause 139 (old clause 135).—We see no reason why the provisions of paragraph (b) of sub-clause (1) of this clause should not apply in relation to elections by the members of the Legislative Assembly of a State to fill seats in the Council of States or in the Legislative Council of the State or to elections by the members of electoral colleges or by the elected members of the Coorg Legislative Council to fill seats in the Council of States. We have accordingly revised sub-clause (1) of this clause to make paragraph (b) of that sub-clause applicable also in relation to such elections.

Clause 140 (old clause 136).—We have made a few drafting changes in sub-clause (a) of this clause to bring it into line with the provisions of sub-clause (1) of clause 138 (old clause 134).

Clause 141 (old clause 137).—We see no reason why the provisions of this clause should not also apply in relation to elections by the members of the Legislative Assembly of a State to fill seats in the Council of States or in the Legislative Council of the State or to elections by the members of electoral colleges or by the elected members of the Coorg Legislative Council to fill seats in the Council of States. We have revised this clause to make it applicable also in relation to such elections.

Clause 144 (old clause 140).—We consider that a person disqualified for being a member of either House of Parliament or the House or either House

of the Legislature of a State or for voting at elections should be also disqualified for being a polling agent at an election. We have revised this clause accordingly.

Clause 145 (old clause 141).—We have recast this clause. We have included references to offences punishable under clause 134 (old clause 130) and under paragraph (a) of sub-clause (2) of clause 135 (old clause 131) in this clause. We consider that the period of disqualification under this clause should be six years instead of five years. We also think that the Election Commission should before removing any disqualification under this clause record in writing the reasons for doing so.

Clauses 146 to 150 (old clauses 142 to 145).—We consider that in the case of bye-elections the power to issue notifications calling upon to elect should be conferred on the Election Commission. We have made necessary changes to that effect in clauses 146 to 150.

We have also revised clause 146 (old clause 142) to include therein provisions for calling upon the members of electoral colleges for Part C States and the elected members of the Coorg Legislative Council to elect.

Clause 147 is new. We have inserted it to provide for the filling of casual vacancies in the electoral colleges for Part C States.

Clause 151 (old clause 146).—We have added a new sub-clause to this clause to provide for the maintaining of a list of members of the electoral colleges for Part C States and also a list of elected members of the Coorg Legislative Council. We have also made provision in this clause for making copies of such lists and also of the lists of members of Legislative Assemblies available for sale.

Clause 153 (old clause 148).—We have changed the word “nominated” in sub-clause (1) of this clause to “elected” as the representative of the States of Manipur and Tripura in the Council of States would be elected instead of being nominated.

Clause 158.—This clause is new. We have inserted this clause to enable the Returning Officer to obtain the services of the staff of any local authority for the purposes of duties in connection with an election.

Clause 159 (old clause 153).—Sub-clause (3) of this clause is new. We have inserted this sub-clause to provide that whenever any property is requisitioned under sub-clause (1) of this clause, the period of such requisition shall not extend beyond the period for which the property is required for any of the purposes mentioned in the said sub-clause (1).

Clause 160 (old clause 154).—We are of the opinion that the expression “person interested” in sub-clause (1) of this clause should be defined to mean the person who was in actual possession of the premises requisitioned immediately before its requisition, or where no person was in such actual possession, the owner of such premises. We have revised the explanation to sub-clause (1) of this clause accordingly.

Clause 164 (old clause 158).—We consider that when any premises is released from requisition the possession thereof should be delivered to the person from whom possession was taken at the time when the premises was requisitioned, or if there were no such person, to the person deemed by the Government of the State to be the owner of such premises and that if no such person is found or is readily ascertainable, then the premises should be released from requisition by the publication of a notification in the Official Gazette. We have revised this clause accordingly.

3. The Bill was published in Part II—Section 2 of the Gazette of India dated the 23rd December, 1950.

4. We consider that the Bill has not been so altered as to require circulation under rule 77(4) of the Rules of Procedure and the Conduct of Business, and we recommend that it be passed as now amended.

M. ANANTHASAYANAM AYYANGAR.
 B. R. AMBEDKAR
 L. K. BHARATHI
 CHANDRIKA RAM
 *GOKULBHAI D. BHATT
 *M. A. HAQUE
 HUSSAIN IMAM
 *T. R. DEOGIRIKAR
 THAKUR DAS BHARGAVA
 *SARANGDHAR DAS
 *SYAMA PRASAD MOOKERJEE
 S. SIVAN PILLAY
 PADMAJA NAIDU
 *KRISHNA KANT VYAS
 *H. N. KUNZRU
 G. S. GUHA
 *RAJ BAHADUR
 *BHOPINDER SINGH MAN
 *M. V. RAMA RAO
 SHYAMNANDAN MISHRA
 *M. L. DWIVEDI
 R. K. CHAUDHURI
 *BISWANATH DAS
 FRANK ANTHONY
 SURENDRA MOHAN GHOSE
 *R. N. GOENKA
 *H. V. KAMATH
 *KHANDUBHAI K. DESAI

NEW DELHI;

The 31st March, 1951.

* Subject to a Minute of Dissent.

**Subject to Minutes of Dissent.

MINUTES OF DISSENT

I

I am sorry to disagree with the majority of my colleagues and therefore I have to write this separate minute of dissent.

2. Disqualifications for Membership.—Clause 7 lays down certain disqualifying categories. Disqualifications should be the minimum required. One can understand a contractor being disqualified from becoming a member in the sphere of contract and so (d) (i) is not objectionable; but (ii) of (d) of clause 7 has a far reaching effect and if it is retained, it will disqualify many a man.

This part (ii) of (7) (d) is as follows:—

“he holds a licence, permit or authorisation of a like nature issued by the Government of India or the Government of State for the purpose of trading in a commodity, the supply, movement or price of which is regulated by that Government.”

3. Scanning the words as they stand here, one will arrive at the conclusion that this disqualifying condition is unworkable and it strikes at the very root of our Fundamental Rights. If one were to examine this condition from a practical point of view, he will at once be convinced that very many persons have to hold licences, permits by way of routine. A trader, whether he is of long standing or new, has to possess a license under prescribed rules; and how many of such license-holders are there in India? Should we debar all such persons from entering the Parliament or the Legislatures? The sub-clause does not stop at that; “whether by himself, or by any other person in trust for him or for his benefit or on his account,” is a further hindrance.

4. I need not comment any further but draw the attention to Article 19(1) (g) of our Constitution—

(g) “to practise any profession, or to carry on any occupation, trade or business.”

Of course (g) is regulated by (6) of the same Article but that does not take away the right of a citizen to be a member of the Parliament or Legislature.

5. Corrupt practices.—Sub-clause 8 of clause 122 is in a way salutary.

“The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any persons with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person.

Explanation.—In this clause, a person serving under the Government or a State shall include a patwari, chaukidar, dafedar, lambardar, zaildar, shanbagh, karnam, talati, patil or any other village officer, by whatever name he is called, employed in that State whether the office he holds is a whole-time office or not.”

But this embraces even the ordinary employees who do not exercise any influence outside their own circle of workers. These workers have an inherent right to canvass for any candidate of their choice. I think that this point requires serious reconsideration and some *via media* be evolved.

6. Illegal practices.—Sub-clause 8 of clause 124 lays down an Illegal Practice.

“The issuing of any circular, placard or poster having a reference to the election which does not bear on its face the name and address of the printer and publisher thereof.”

7. Any opponent, to mar the chances of a candidate and to involve him in trouble, can manipulate such a practice and therefore this sub-clause can safely be omitted.

GOKULBHAI D. BHATT.

NEW DELHI;
The 31st March, 1951.

II

There is a reason which appears to us to be of a compelling nature which impels us to append this minute of dissent to the report of the Select Committee. It pertains to the question whether a ruler, as defined in article 366 Clause 22 of the Constitution, can in view of certain provisions of the Constitution be entitled to stand for an election to the legislature of a State or to any of the Houses of Parliament. The ruler is a person who is entitled to receive a specific sum out of the consolidated fund of India and the payment of such a sum has been guaranteed or assured to him under the provision of the Article 291 of the Constitution. It is beyond doubt that before the integration or merger of a State its ruler held a definite office under the Government of that State. Even after the merger or integration of any such State the ruler holds an office of profit as mentioned in article 191 of the Constitution. It can hardly be disputed that even under the constitution the ruler does hold an office of profit. A ruler, as defined in the Constitution, has got to perform certain functions which are of a positive and obligatory nature. The Rajpramukh of a State is invariably the president of the "Council of Rulers" of that particular State and the President of the "Council of Rulers" of any such State is elected by the rulers in compliance of the terms of the covenants executed by them. The function of electing the President and consequently the Rajpramukh of a State has got to be performed by a ruler. Further a ruler as a member of the council of Rulers is called upon to decide the disputed cases of succession to the Gaddi of a Ruler. It cannot, therefore, be said that the office of the ruler is a mere sinecure or that it yields no profit. As such it is obvious that at least so far as the rulers of the States now integrated into Part B States are concerned they hold specific offices of profit. As such a ruler is essentially a person who "shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State" (Article 101) or for that matter "for being chosen a member of either House of Parliament" (Article 102). Apart from this definite constitutional reason, it is hardly in consonance with the spirit of the Constitution which contemplate and ensure equality for all the citizens of India that a person receiving large sums of money from the Exchequer of the nation be allowed to contest an election with a common citizen who does not receive any emolument or allowance or other sums from the State or enjoys no such privileges as a ruler enjoys by reason of the office he holds.

2. In this connection it may also be mentioned that the recent amendments effected in the Code of Criminal Procedure and Civil Procedure bring the ruler exactly on par with a "public servant" who is definitely debarred from contesting an election. It, therefore, in our humble opinion stands to reason that a ruler as defined in article 366 clause 22 of the Constitution should be disqualified under the provisions of section 7 of the Representation of People's Bill from contesting an election or being chosen as a member of the Legislature of

any State or of either House of Parliament. This should and can be done by the addition of a suitable clause in this behalf.

RAJ BAHADUR
M. L. DWIVEDI
KRISHNA KANT VYAS
BISWANATH DAS
M. A. HAQUE
BHOPINDER SINGH MAN

NEW DELHI;
The 31st March, 1951.

III

I do not accept clause 60 in which provision is to be made by rules under this Act for the marking with indelible ink the thumb or any other finger of the voter. I think it is derogatory to democratic conceptions to do so. It is highly objectionable from human considerations as well. Democracy should be allowed to develop unfettered and sufficient provision should be made to penalise the guilty, but to express doubts about every voter is not proper. I therefore think that this clause should not remain in the Act.

T. R. DEOGIRIKAR.

NEW DELHI;
The 31st March, 1951.

IV

I have to submit the following minute of dissent to the Report of the Select Committee on the Representation of the People (No. 2) Bill 1950:

2. My disagreement with the decisions of the Committee on the points described below are based on the fundamental necessity of having free and fair elections. It is therefore necessary to plug every loophole that is likely to vitiate the conduct of the elections, and therefore afford advantage to one candidate as against another.

3. *Clauses 13 and 15.*—I agree that it may not be possible to hold elections in all the constituencies at the same time, and therefore more than one notification will be necessary. But, I am of the opinion that the counting of votes in all the constituencies must be done at the same time. Otherwise, the results of the earlier elections will undoubtedly influence polling in the later ones.

4. *Clause 62.*—The distributive system of voting is against all principles of the fair representation of political minorities. My objection to this system is therefore fundamental. The constituencies are not yet delimited. Legally it is still an open question if we would have single-member or multi-member constituencies. When Parliament agreed to the Advisory Committees on delimitation, no directive was given on this issue. With a view to eliminate all difficulties, I am strongly of the view that we should have only single-member constituencies throughout.

5. In accordance with the provisions of the Constitution certain number of seats have to be reserved for the Scheduled Castes and Scheduled Tribes for a period of ten years. The objective is to bring them up to a higher status

from their backward and neglected condition, politically, socially and economically, and I have, from the very beginning of the framing of the Constitution welcomed this provision. But, there is no call for the creation of multi-member constituencies. Articles 330 and 332 call for reservation of certain single-member constituencies for candidates of these two categories. The distinction made in the discussion of the Committee between the word 'seat' and the word 'constituency' cannot stand scrutiny. A 'seat' flows from a 'constituency', and cannot be created out of thin air, unless the procedure of nomination had been specified in the Constitution. It is therefore, evident that, in providing for the reservation of seats for these two categories of representatives, the article of the Constitution envisaged single-member constituencies, just the same as for the seats other than the reserved ones.

6. The objection to a single-member constituency for a reserved seat arises from the fact that the non-scheduled electors in that constituency do not have any choice, and are therefore compelled to vote for a scheduled-caste or Scheduled-tribe candidate. Such an objection strikes me as obscurantist. One cannot absolve himself of his duty as a citizen on the ground of caste prejudice. A scheduled-caste or tribe candidate is as good a representative for the non-scheduled electors in the reserved constituency, as a non-scheduled candidate in a general constituency is for the scheduled electors resident in such general constituency. Therefore, Clause 62, which envisages the combination of a reserved constituency with a general one and provides for distributive voting, panders to caste prejudice. Then again, when such distribution is not compulsory, it is still more repugnant. It tells the elector in a direct manner "You need exercise only one of your two votes." This is a surrender to caste prejudice, and after casting one's vote, he may say, "I did not vote for the Scheduled caste candidate" or *vice versa*.

7. The Constitution provides for reservation for the two categories for a period of ten years. In so doing it presumes that those conditions that necessitate these transition measures will cease to operate at the end of that period. What are those conditions? Firstly it is a legacy from a social system that created division among men on the basis of birth. Though this division ceased to have validity when the Constitution recognised equality of citizenship, it assumed that until social mobility gains momentum, certain safeguards are necessary. The second condition is explicit. It is economic, and can be recognised in the depressed living conditions of these groups. Here again, measures designed to remove economic inequality can alone be the corrective.

8. It is therefore obvious that political action alone can remove the conditions that make these safeguards necessary. Constitutional procedure should be so regulated as to provide for the removal of these static conditions, and to bring change within the sphere of political action.

9. Lastly, by combining two regular constituencies into one double-member constituency the area becomes so unwieldy that it is impossible for any candidate to cover every nook and corner of the constituency and for the successful representative to keep in touch with his constituents, particularly when one keeps in view that most of these areas are without roads, and are cut up by mountains, rivers and gullies. These conditions are doubly disadvantageous for the members of the scheduled castes and tribes. Therefore, instead of removing the present disabilities of these groups in this transition period, as is the intention of the Constitution, the creation of double-member constituencies will perpetuate the existing division between man and man on the basis of birth; and when reservation for these groups ceases, they will have no representation, as the political, social and economic dominance of the non-scheduled people will again prevail.

10. Judging from every point of view, I am definitely of the opinion that in the larger interests of welding all communities, forward and backward, into one nation within a measurable length of time, it is absolutely necessary to have

single-member constituencies throughout. Then it will not be necessary to provide for 'distributive' or 'cumulative' system of voting.

11. *Clause 75.*—In consideration of the poverty of the country, and yet of the large number of voters to be reached at least once by post, the maximum amount of election expenses within the reach of a candidate of ordinary means, should be Rs. 7,000 for a House of the People seat, and Rs. 3,000 for a State Assembly seat. It is essential that the law of elections enacted by Parliament should itself lay down these maxima instead of leaving it to the rule-making authority. The upper limit of expenses would then bear a sanctity attached thereto.

12. It might be contended that the maxima are pitched too low. My reply to such a contention is in the negative. In such a poor country as ours, with a very low standard of living, the money spent on elections should be rigidly curtailed. That alone will offer equality of opportunity to qualified and meritorious candidates who have not the support derived from wealth.

13. *Clause 122, sub-clause (6).*—The clause, as it stands, is of infinite advantage to the rich candidate, who can mobilise a fleet of private cars, buses and other conveyances, and his rich supporter has only to say "Of course my vehicles are conveying voters to the polling station. But, I am not doing it on behalf of any candidate or his agent."

14. The proviso to this clause, even as it stands, negatives the first paragraph, as it will be easy for a candidate to have his rich supporters distribute the necessary fares to the voters, who will declare that they are paying out of their own pockets. In view of the fact that a voter will have to walk not more than three miles to his polling booth, and that our people are in the habit of walking tens of miles on their own business, it is strange that the Committee is so solicitous of the same village folks to have the joy of a car ride on the election day only. The real purpose to my mind is to throw a temptation before the voter, as it is being extensively practised under the existing law.

15. Transportation of voters in motor vehicles particularly should be completely banned. With a view to bring such hiring or procuring of any vehicle or vessel under major corrupt practices, my proposal, is to delete the phrase "with the connivance of a candidate or his agent" and to delete the proviso to the clause.

16. *Clause 123, sub-clause (5).*—The sanctity and universal honour due to the national flag and the national emblem are rightly preserved when their use is banned. But, it is necessary to ban the use of any colourable imitation thereof, as otherwise such imitation is likely to confuse the minds of the voters, who may think that the display of the "National Flag" commands them to vote for the candidate who has any such colourable imitation.

17. Clause 167 provides for the power of making Rules. Though in theory the power of legislation includes the power to authorise the making of Rules by some authority other than the legislature, the strictly defined power vested in Parliament under Article 327 of the Constitution must be exercised more strictly than it is usually the case. If, however, it be found necessary to vest the power to make Rules for purposes enumerated in sub-clause 2 of clause 161 in some executive authority, it should be vested in the President who shall be required to consult the Election Commission before he finally promulgates the Rules. The Government must be kept out of the picture altogether. The spirit of Articles 108, 192 and of the whole Part XV is defeated if the Government either of the Union or of a State is allowed to figure in this scheme. The legislation under Article 327 differs in essence from an ordinary legislation which Parliament enacts, and Parliament must function in a different spirit from that which may inspire it in respect of ordinary legislation.

18. Clauses 10, 11, 13, 15 and 16 vest in the head of the Union and heads of States certain powers in respect of elections. These are vested in the name of the whole people. Therefore, it ought to be made clear that the Council of Ministers either of the Union or of a State shall not have the right to advise the head either of the Union or of a State in the exercise of these powers. The President or the Head of a State must have the right to exercise these powers in his discretion and the right of advice shall be vested in the Election Commission if necessary.

SARANGDHAR DAS.

NEW DELHI;
The 31st March, 1951.

V

We cannot agree to the clause 123 sub-clause (5) as it stands at present. It would tantamount to creating difficulties and placing hurdles against parties which wish to fight the coming elections but have certain symbols which they have adopted for a very long time to carry on their political programme, but which can be construed to be covered by this clause.

SYAMA PRASAD MOOKERJEE
BHOPINDER SINGH MAN.

NEW DELHI;
The 31st March, 1951.

VI

Sub-clause (1) of clause 62 (old clause 59) lays down that in a plural member constituency no elector shall give more than one vote to any one candidate. Plural member constituencies with cumulative voting will enable substantial political minorities to secure representation in Parliament and the other Legislatures and are, therefore, both desirable and necessary. But there is no justification for having such constituencies with distributive voting. The larger size of the constituencies will greatly increase the election expenses and make the task of approaching the electors, which will be difficult in any case, much more difficult without any corresponding advantage. It is understood that constituencies with no reserved seats will be single member constituencies and that only those constituencies will be two-member constituencies in which a seat is reserved either for a candidate belonging to the Scheduled Castes or for a candidate belonging to the Scheduled Tribes. Thus the two-member constituencies will add greatly to the expense and worry of an election for candidates belonging to the poorest sections of the populations. I think, therefore, that if cumulative voting is not allowed there should be single member constituencies only. Two member constituencies when an elector can not give both his votes to any one candidate cannot be justified on any ground.

H. N. KUNZRU.

NEW DELHI;
The 31st March, 1951.

VII

With reference to clause 7 which deals with various disqualifications for membership of Parliament or of a State Legislature, I consider that it is necessary to have an additional paragraph (e) in sub-clause (1) of clause 7 laying down that any person who is receiving any sum or sums out of the Consolidated Fund of India the payment of which has been guaranteed or assured under Article 291 of the Constitution shall also be disqualified for membership of Parliament or of a State Legislature.

2. With reference to clause 28 (old clause 25) I am of opinion that the last date for making nominations should not be a date earlier than the twelfth day after the issue of the notification inviting nominations, for it is a matter of common knowledge that in the interior of the rural parts of this country there is only a weekly postal delivery and persons residing in such parts should not be handicapped by the last date being fixed "not earlier than the eighth day" which might legally be done by fixing the ninth day which would not be reasonable.

3. In regard to clause 44 (old clause 42) I consider that it is not reasonable to require a candidate to give three days' notice of the appointment of the polling agent for each polling station. It should be sufficient to give such notice not later than the second day before the date of the poll.

4. With reference to the provisions relating to the poll, I consider that it is necessary to provide for the issue of official poll-cards to every elector setting out the name of the constituency, the elector's name, qualifying address and number on the Electoral Roll, and the date and hours of the poll and the situation of the elector's polling station.

5. With reference to clause 62 (old clause 59) I am of opinion that no plural-member constituencies should be created at all. If they are to be created for the purpose of reserving "a seat in a Constituency" for the Scheduled Castes or the Scheduled Tribes, the result will be that the candidates seeking election to the general seat as well as the Scheduled Caste or Scheduled Tribe candidates seeking election to the Reserved seat in that particular plural-member constituency will be put to the unjustifiable necessity of seeking election at the hands of an electorate at least twice as numerous as that in any other normal constituency and to the hardship of having to make electioneering arrangements over an area atleast twice as large as a normal constituency and easily extending up to eight or even ten thousand square miles. In my opinion this would be a very strange way of enabling Scheduled Castes and Scheduled Tribes candidates to have equality of electioneering opportunity. There is also no reason why the candidates seeking election to the non-reserved seat in such a constituency should be put to similar difficulties while candidates seeking election to other seats from single-member constituencies enjoy the advantages of a convenient-sized constituency and a not-too-large electorate. All the arguments advanced against these considerations are based upon an extreme legalistic interpretation of the phrase "reservation of a seat in a constituency". I am not at all convinced that reservation of the seat in single-member constituency offends any principle of the Constitution. On the contrary I am certain that this device for compelling Scheduled Castes and Scheduled Tribes candidates to seek election from constituencies which are unreasonably large both in extent and in the number of electors, does offend the spirit of the constitution which seeks to enable the Scheduled Castes and Scheduled Tribes to achieve the same position as the rest of the community in the space of ten years.

6. With reference to clause 108 (old clause 99), I am of opinion that in case of difference of opinion among the members of the Tribunal in respect of an election in Coorg, the reference should be made to the High Court of Mysore.

and not to the High Court at Madras. I regret that this suggestion of mine was not acceptable to the Hon'ble the Law Minister notwithstanding the fact that the Hon'ble the Minister of Home Affairs stated in Parliament in answer to my Starred Question No. 2074 on 10th March 1951 that Government are actively considering the question of including Coorg within the jurisdiction of the High Court of Mysore and that a decision would be taken as soon as the concurrence of the Mysore Government is received. The balance of convenience undoubtedly lies in favour of the High Court of Mysore and it would not be reasonable to require the parties to an election dispute to attend the High Court at Madras.

I also consider it desirable to incorporate a provision in the Bill entitling every candidate at an election to send by post, free of charge, his election-manifesto or appeal to the electors consisting of printed matter not exceeding five tolas in weight, to every elector in a constituency who is not illiterate.

I reserve my right to table and move amendments seeking to effect these changes in the Bill, during the debate in the House.

M. V. RAMA RAO.

NEW DELHI;
The 31st March, 1951.

VIII

I want to record my emphatic dissent against the decisions of the Committee on one point. That is about sub-clause (1) (d) of clause 7 relating to disqualifications. Time was when the Commercial & Industrial community had separate representation in the legislatures of the country. Those days are now over. We are now living under a Constitution which guarantees equality to all the citizens of India. We are working a democracy on the principle of 'one man one vote'. That is as it ought to be. But to treat one class of citizens as a dangerous element, as a class that ought to be kept out of the legislatures, is a dangerous innovation in the future life of the country. The principle that a person who benefits primarily by his relations with the Government should not have a share in running it, is unexceptionable. But to say that any person who holds a license, permit or authorisation issued by Government for the purposes of trading in a commodity, the supply movement or price of which is regulated, is to effectively shut out practically the whole of the Industrial and business community from the legislatures. It is a denial of the principle of equality embodied in the Constitution. If we were living in an age of *Laissez faire*, free international trade, freedom of foreign exchange and a period of plenty internally, such a provision, though bad in itself might not be productive of much harm. But we are living in an age of chronic shortage of food, clothing, foreign exchange, imported goods and every industrial raw material and agricultural produce as well as manufactured goods. This has led to control of price, movements and supply of every commodity. We have in force an Essential Supplies (Temporary Powers) Act, the supply and Prices of goods Act, which enable control of supply, production, distribution and control of prices of every article. There is in force control over imports, exports, foreign exchange. There is hardly any facet of our life which is not under control. It is not as though this is a temporary or short term phenomenon. We have had these things with us for the last ten years and with the ever present threat of war the conditions might last another ten or twenty years at the least. That apart, the tendency of our whole economic system is towards a planned and controlled economy. The provisions of the clause 1 object to, in fact, amounts to disenfranchising the business community. We might not be aware of it but unconsciously by disenfranchising a stable element in the country's

life, we would be guilty of driving the thin end of the wedge of communism. Let us therefore understand what we are about. If we are to take such a step let us do with our eyes open. I am afraid I have put it strongly but I feel strongly on the matter and this is not the occasion for mincing words.

2. The other point is a small one about sub-clause (1) of Clause 124. We were assured that the word "person" there would not include the Party to which a candidate belongs. I am not quite happy about that assurance and in any case am not quite sure that Courts will take the same view. As there is no dispute about the point that a party should not be prohibited from spending on public meetings, or advertisements, circulars and other forms of electioneering, it is better to make the matter clear by specific mention.

R. N. GOENKA.

NEW DELHI;
The 31st March, 1951.

IX

1. Though several salutary changes have been made by the Select Committee, yet I feel that there is still some scope for amending the Provisions relating to disqualifications for membership of Parliament or of a State Legislature, and those dealing with corrupt and illegal practices.

2. As an instance of the former, in clause 7 (1) (b) of the Bill the Select Committee holds that it is desirable to reduce the period of disqualification in those cases where the motive of the offender was not to achieve any private or personal end but some public benefit or public good. But discretion to so reduce the period has been vested in the Election Commission. I consider that it is necessary to have a statutory provision in this regard, and the category or class of such cases may be defined by Parliament.

3. As regards corrupt and illegal practices, which in the Bill are so numerous that they are likely to provide a fertile field for election disputes and petitions, "gratification" in clause 122 includes all forms of entertainment; a remark invoking divine displeasure or spiritual censure is deemed undue interference with the free exercise of electoral right. "Corrupt practices" will have to be more rigidly defined than in this manner lest the provisions be grossly abused. So also, religions and national symbols referred to in clause 123 ought to be more precisely described.

4. These and other cognate matters will be the subject of suitable amendments when the Bill as reported by the Select Committee is taken into consideration by Parliament.

H. V. KAMATH.

NEW DELHI;
The 31st March, 1951.

X

In my opinion, the sub-clause (8) of Clause 122, is very wide in its implications as far as the ordinary employees, working in Government undertakings like railways, mines, ordnance factories and depots, mint, security printing press and such other commercial and Industrial establishments are concerned. The participation of such ordinary employees in the election of a candidate, by way of canvassing or assisting the furtherance of the prospect of a candidate should not be made an act of corrupt practices, as contemplated in this Bill. The employees, other than those holding positions of managerial capacities in government's industrial and commercial undertakings should be excluded from this clause as these employees are not different from any other employees, engaged in private commercial or Industrial establishments. This

clause is an infringement of the right of the ordinary industrial workers, working in government industries to exercise their freedom as citizens of the state in election. Such a restriction is unheard of in any civilized democracy. I fail to understand how a miner, working in government railway colliery is different from a miner working in a private colliery as far as his political right in the matter of election is concerned.

2. I also object to sub-clause (i) of clause 124 as in spite of explanation given in the Select Committee I feel that a political party or a trade-union organisation will be prohibited from increasing any expenses, for the purpose of promoting or procuring the election of the candidate, adopted by them. Therefore this clause should be suitably amended as not to leave any doubt in the matter.

KHANDUBHAI K. DESAI.

NEW DELHI;
The 31st March, 1951.

THE REPRESENTATION OF THE PEOPLE (NO. 2) BILL, 1950.

[AS AMENDED BY THE SELECT COMMITTEE]

(Words underlined or sidelined indicate the amendments suggested by the Committee; asterisks indicate omissions)

A

BILL

to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt and illegal practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

Be it enacted by Parliament as follows:—

PART I

PRELIMINARY

1. **Short title.**—This Act may be called the Representation of the People Act, 1951.
2. **Interpretation.**—(1) In this Act, unless the context otherwise requires,—
 - (a) each of the expressions defined in section 2 or sub-section (1) of section 27 of the Representation of the People Act, 1950, (XLIII of 1950), but not defined in this Act, shall have the same meaning as in that Act;
 - (b) “appropriate authority” means, in relation to an election to the House of the People or * the Council of States or to a primary election, the Central Government, and in relation to an election to the Legislative Assembly or the Legislative Council of a State, the State Government;
 - (c) “corrupt practice” means any of the practices specified in section 122 or section 123;
 - (d) “election” means an election to fill a seat or seats in either House of Parliament or in the House or either House of the Legislature of a State other than the State of Jammu and Kashmir and includes a primary election;
 - (e) “elector”, in relation to a constituency, means a person whose name is for the time being entered in the electoral roll of that constituency;
 - (f) “illegal practice” means any of the practices specified in section 124;
 - (g) “prescribed” means prescribed by rules made under this Act;
 - (h) “primary election” means an election for the purpose of constituting or reconstituting an electoral college under section 27A of the Representation of the People Act, 1950 (XLIII of 1950) for a scheduled Part C State or for the purpose of filling any casual vacancy in the seat of a member of such electoral college;

(i) "scheduled Part C State" means any Part C State or group of such States specified in the first column of the Fifth Schedule to the Representation of the People Act, 1950 (XLIII of 1950);

(j) "sign" in relation to a person who is unable to write his name means authenticate in such manner as may be prescribed;

(k) "Tribunal" means a tribunal appointed by the Election Commission under section 85.

(2) For the purposes of this Act, a Council of States constituency, a Parliamentary constituency, an Assembly constituency, a Council constituency, a local authorities' constituency, a graduates' constituency and, a teachers' constituency shall each be treated as a constituency of a different class.

(3) Any requirement under this Act that a notification, order, rule, declaration, notice or list issued or made by any authority shall be published in the Official Gazette, shall, unless otherwise expressly provided in this Act, be construed as a requirement that the notification, order, rule, declaration, notice or list shall—

(a) where it is issued or made by the Central Government, be published in the Gazette of India;

(b) where it is issued or made by a State Government, be published in the Official Gazette of the State; and

(c) where it is issued or made by any other authority, be published in the Gazette of India if it relates to an election to, or membership of, either House of Parliament or to a primary election, and in the Official Gazette of the State if it relates to an election to, or membership of, the House or either House of the Legislature of a State.

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

(5) Any reference in this Act to a law which is not in force in a Part B State shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.

(6) Any reference in sections 10, 37, 52, 70, 146 and 151 to—

(a) the electoral college for any scheduled Part C State other than the group of States of Bilaspur and Himachal Pradesh shall, on the constitution of the body created under article 240 to function as a Legislature for that State, be construed as a reference to the body so created;

(b) the electoral college for the group of States of Bilaspur and Himachal Pradesh shall, after a body has been created for each of those states to function as a Legislature for that State and both such bodies have been constituted, be construed as a reference to the bodies so created for those States;

(c) the Coorg Legislative Council shall, on the constitution of the body created under article 240 to function as a Legislature for the State of Coorg, be construed as a reference to the body so created.

PART II

QUALIFICATIONS AND DISQUALIFICATIONS FOR MEMBERSHIP

CHAPTER I

Qualifications for membership of Parliament

3. Qualifications for membership of the Council of States.—(1) A person shall not be qualified to be chosen as a representative of any Part A or Part B State (other than the State of Jammu and Kashmir) in the Council of States unless he is an elector for a Parliamentary constituency in that State.

(2) A person shall not be qualified to be chosen as a representative of the States of Ajmer and Coorg or of the States of Manipur and Tripura in the Council of States unless he is an elector for any Parliamentary constituency in the State in which the election of such representative is to be held.

(3) Save as otherwise provided in sub-section (2) a person shall not be qualified to be chosen as a representative of any Part C State or group of such States in the Council of States unless he is an elector for a Parliamentary constituency in that State or in any of the States in that group, as the case may be.

4. Qualifications for membership of the House of the People.—A person shall not be qualified to be chosen to fill a seat in the House of the People, other than a seat allotted to the State of Jammu and Kashmir, unless—

(a) in the case of a seat reserved for the scheduled castes in any State, he is a member of any of the scheduled castes, whether of that State or of any other State, and is an elector for any Parliamentary constituency;

(b) in the case of a seat reserved for the scheduled tribes in any State (other than those in the autonomous districts of Assam), he is a member of any of the scheduled tribes, whether of that State or of any other State (excluding the tribal areas of Assam), and is an elector for any Parliamentary constituency;

(c) in the case of a seat reserved for the scheduled tribes in the autonomous districts of Assam, he is a member of any of those scheduled tribes and is an elector for the Parliamentary constituency in which such seat is reserved or for any other Parliamentary constituency comprising any such autonomous district; and

(d) in the case of any other seat he is an elector for any Parliamentary constituency.

CHAPTER II

Qualifications for membership of State Legislatures

5. Qualifications for membership of a Legislative Assembly.—A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless—

(a) in the case of a seat reserved for the scheduled castes or for the scheduled tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly constituency in that State;

(b) in the case of a seat reserved for an autonomous district of Assam, other than a seat the constituency for which comprises the cantonment and municipality of Shillong, he is a member of a scheduled tribe of that district and is an elector for the Assembly constituency in which such seat or any other seat is reserved for that district; and

(c) in the case of any other seat he is an elector for any Assembly constituency in that State.

6. Qualifications for membership of a Legislative Council.—(1) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by election unless he is an elector for any Assembly constituency in that State.

(2) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by nomination by the Governor unless he is ordinarily resident in the State.

CHAPTER III

*Disqualifications***7. Disqualifications for membership of Parliament or of a State Legislature.—**

(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State—

(a) if, whether before or after the commencement of the Constitution, he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice * * * which has been declared by section 138 or section 139 to be an offence or practice entailing disqualification for membership of Parliament and of the Legislature of every State, unless such period has elapsed as has been provided in that behalf in the said section 138 or section 139 as the case may be;

(b) if, whether before or after the commencement of the Constitution, he has been convicted by a court in India of any offence and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Election Commission may allow in any particular case has elapsed since his release;

(c) if, having been nominated as a candidate for Parliament or the Legislature of any State or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by or under this Act, unless five years have elapsed from the date by which the return ought to have been lodged or the Election Commission has removed the disqualification;

(d) if, whether by himself or by any other person in trust for him or for his benefit or on his account,—

(i) he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by, the Government of India or the Government of any State; or

(ii) he holds a licence, permit or authorisation of a like nature issued by the Government of India or the Government of any State under a law regulating the supply, movement or price of any goods for the purpose of trading in such goods;

(e) if he is a director or managing agent of, or holds any office of profit under, any corporation in which the Government of India or the Government of any State has any share or interest;

(f) if, having held any office under the Government of India or the Government of any State he has been dismissed for corruption or disloyalty to the State unless five years have elapsed from the date of such dismissal:

Provided that—

(i) a disqualification under clause (c) shall not take effect until the expiration of two months from the date by which the return ought to have been lodged or of such longer period as the Election Commission may in any particular case allow;

(ii) a disqualification under clause (d) shall not, where the share or interest in the contract or, any interest in the licence, permit or authorisation devolves on a person by inheritance or succession or as a legatee, executor or administrator, take effect until the expiration of six months after it has so devolved on him or of such longer period as the Election Commission may in any particular case allow;

(iii) a person shall not be disqualified under clause (d) by reason only—

(a) of his having a share or interest in a contract entered into between a public company as defined in section 2 of the Indian Companies Act, 1913 (VII of 1913), of which he is a shareholder but not a director or managing agent and the Government of India or the Government of any State, or

(b) of any licence, permit or authorisation having been issued in favour of a public company so defined of which he is a shareholder but not a director or managing agent.

* * * * *

(2) Where a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of clause (a) or clause (b) of sub-section (1), is at the date of the disqualification a member of Parliament or of the Legislature of a State, then, notwithstanding anything in the foregoing provisions of this section, such disqualification shall not take effect until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of * * *

(3) If any question is raised as to whether a person who, having held, any office referred to in clause (f) of sub-section (1), has been dismissed is disqualified under that clause for being chosen as a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State, the production of a certificate issued in the prescribed manner by the Election Commission to the effect that such person has not been dismissed for corruption or disloyalty to the State shall be conclusive proof that he is not disqualified under that clause.

CHAPTER IV

Qualification and disqualification for membership of electoral colleges

8. Qualification for membership of electoral colleges for certain Part C States.—A person shall not be qualified to be chosen as a member of an electoral college for any scheduled Part C State, unless he is an elector for any Council of States constituency in that State.

9. Disqualification for membership of electoral colleges for certain Part C States.—A person shall be disqualified for being chosen as a member of an electoral college for any scheduled Part C State if he is for the time being subject to any disqualification for membership of Parliament under any of the provisions of this Act.

PART III

NOTIFICATION OF GENERAL ELECTIONS

CHAPTER I

Parliament

The Council of States

10. Notification for election to the Council of States.—(1) For the purpose of constituting the Council of States under the Constitution in due time, the President shall,—

(a) after the names of the elected members of the Legislative Assemblies of Part A States and Part B States other than the State of Jammu and Kashmir first constituted under the Constitution have been notified under

section 66, call upon the elected members of each such Assembly, by a notification in the Gazette of India, to elect members in accordance with the provisions of this Act and of the rules and orders thereunder before such date as may be appointed in this behalf by the Election Commission and specified in such notification, and

(b) after the names of the members of the electoral colleges for the scheduled Part C States first constituted under Part IV-A of the Representation of the People Act, 1950 (XLIII of 1950), have been notified under section 66, by another notification call upon the members of the electoral college for each Part C State or group of such States concerned to elect a member or members in accordance with the provisions of this Act and of the rules and orders thereunder before such date as may be appointed in this behalf by the Election Commission and specified in such notification.

(2) For the purpose of filling the seats of members retiring on the expiration of their respective terms of office in every second year after the constitution of the Council of States, the President shall,—

(a) by a notification in the Gazette of India, call upon the elected members of the Legislative Assembly of each of the States referred to in sub-section (1) concerned to elect members in accordance with the provisions of this Act and of the rules and orders thereunder before such date as may be appointed in this behalf by the Election Commission and specified in such notification, and

(b) by another notification call upon the members of the electoral college for each of the Part C States and group of such States concerned and also the elected members of the Coorg Legislative Council, if necessary, to elect a member or members in accordance with the provisions of this Act and of the rules and orders thereunder before such date as may be appointed in this behalf by the Election Commission and specified in such notification;

Provided that the notifications under this sub-section shall be issued on such dates not being more than four months prior to the date on which the term of office of the retiring members would expire under section 153 as may be recommended in this behalf by the Election Commission.

11. Notification for constitution of electoral colleges for certain Part C States.—For the purpose of the first constitution and of each subsequent reconstitution of the electoral college for each scheduled Part C State under Part IV-A of the Representation of the People Act, 1950 (XLIII of 1950), the President shall by one or more notifications in the Gazette of India call upon all Council of States constituencies concerned to elect members in accordance with the provisions of this Act and of the rules and orders thereunder before such date or dates as may be appointed in his behalf by the Election Commission and specified in the notification or notifications:

Provided that every such notification calling upon the Council of States constituencies in any Part C State or group of such States shall be issued, as far as may be, at the same time when a notification calling upon the Parliamentary constituencies in such State or group of States to elect a member or members for the purpose of constituting the House of the People in due time or on the expiration of the duration of that House or on its dissolution, as the case may be, is issued.

The House of the People

12. General elections to the House of the People.—(1) A general election shall be held for the purpose of constituting the House of the People under the Constitution in due time.

(2) A general election shall also be held on the expiration of the duration of the House of the People or on its dissolution in order that a new House of the People may be constituted.

13. Notification for election to the House of the People.—For the purpose of constituting the House of the People under the Constitution in due time or on the expiration of the duration of the House of the People or on its dissolution, the President shall, by one or more notifications published in the Gazette of India on such date or dates as may be recommended by the Election Commission call upon all the Parliamentary constituencies to elect * * members in accordance with the provisions of this Act and of the rules and orders thereunder before such date or dates as may be appointed in this behalf by the Election Commission and specified in the notification or notifications:

Provided that for the purpose of constituting the House of the People on the expiration of its duration, no such notification shall be issued at any time earlier than four months prior to the date on which the duration of the House of the People would expire in the ordinary course of events.

CHAPTER II

State Legislatures

The State Legislative Assemblies

14. General Elections to Legislative Assemblies.—(1) A general election shall be held for the purpose of constituting the Legislative Assembly of each State under the Constitution in due time.

(2) A general election shall also be held on the expiration of the duration of an Assembly or on its dissolution in order that a new Assembly may be constituted.

15. Notification for election to State Legislative Assemblies.— For the purpose of constituting the Legislative Assembly of a State under the Constitution in due time or on the expiration of the duration of an Assembly or on its dissolution, the Governor or Rajpramukh, as the case may be, of the State shall, by one or more notifications published in the Official Gazette on such date or dates as may be recommended by the Election Commission, call upon all the Assembly constituencies to elect * * * members in accordance with the provisions of this Act and of the rules and orders thereunder before such date or dates as may be appointed in this behalf by the Election Commission and specified in the notification or notifications:

Provided that for the purpose of constituting the Legislative Assembly of a State on the expiration of its duration, no such notification shall be issued at any time earlier than four months prior to the date on which the duration of the Legislative Assembly of the State would expire in the ordinary course of events.

The State Legislative Councils

16. Notification for election to State Legislative Councils.—(1) For the purpose of constituting the Legislative Council of a State under the Constitution in due time, the Governor or Rajpramukh of the State, as the case may be, shall—

(a) by a notification in the Official Gazette call upon every local authorities' constituency, every graduates' constituency and every teachers' constituency to elect in accordance with the provisions of this Act and of the rules and orders thereunder a member or members before such date as may be appointed in this behalf by the Election Commission and specified in such notification, and

(b) after the names of the members of the Legislative Assembly of the State first constituted under the Constitution have been notified under section 66, call upon such members, by another notification in the Official Gazette, to elect members in accordance with the provisions of this Act and of the rules and orders thereunder before such date as may be appointed in this behalf by the Election Commission and specified in such notification.

(2) For the purpose of filling the seats of members retiring on the expiration of their respective terms of office in every second year after the constitution of the Legislative Council of a State, the Governor or Rajpramukh, as the case may be, shall—

(a) by a notification in the Official Gazette call upon every local authorities' constituency, every graduates' constituency and every teachers' constituency concerned to elect in accordance with the provisions of this Act and of the rules and orders thereunder a member or members before such date as may be appointed in this behalf by the Election Commission and specified in such notification, and

(b) by another notification in the Official Gazette call upon the members of the Legislative Assembly of the State to elect members in accordance with the provisions of this Act and of the rules and orders thereunder before such date as may be appointed in this behalf by the Election Commission and specified in such notification:

Provided that the notifications under this sub-section shall be issued on such dates not being more than four months prior to the date on which the term of office of the retiring members would expire under section 155, as may be recommended in this behalf by the Election Commission.

PART IV

ADMINISTRATIVE MACHINERY FOR THE CONDUCT OF ELECTIONS

17. Definition.—In this Part and in Part V, unless the context otherwise requires, "constituency" means a Council of States constituency or a Parliamentary constituency or an Assembly constituency or a Council constituency.

18. Returning Officer for each constituency.—For each constituency there shall be a Returning Officer who shall be such officer of Government as the Election Commission may, in consultation with the Government of the State in which the constituency is situated, designate or nominate:

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

19. Returning Officers at other elections.—The Returning Officer for an election (other than a primary election) to fill a seat or seats in the Council of States or for an election by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of the State shall be such officer of Government as the Election Commission may, in consultation with the Government of that State, designate or nominate.

20. Assistant Returning Officers.—(1) The Election Commission may appoint one or more persons to assist any Returning Officer in the performance of his functions:

Provided that every such person shall be an officer of Government.

(2) Every Assistant Returning Officer shall, subject to the control of the Returning Officer, be competent to perform all or any of the functions of the Returning Officer:

Provided that no Assistant Returning Officer shall perform any of the functions of the Returning Officer which relate to the acceptance of a nomination paper or to the scrutiny of nominations or to the counting of votes unless the Returning Officer is unavoidably prevented from performing the said function.

21. Returning Officer to include Assistant Returning Officers performing the functions of the Returning Officer.—References in this Act to the Returning Officer shall, unless the context otherwise requires, be deemed to include an Assistant Returning Officer performing any function which he is authorised to perform under sub-section (2) of section 20.

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

23. Provision of polling stations for constituencies.—The Returning Officer for each constituency shall, with the previous approval of the Election Commission, provide a sufficient number of polling stations for such constituency, and shall publish, in such manner as the Election Commission may direct, a list showing the polling stations so provided and the polling areas for which they have respectively been provided.

24. Appointment of presiding officers for polling stations.—(1) The Returning Officer shall appoint a presiding officer for each polling station and such polling officer or officers as he thinks necessary, but he shall not appoint any person who has been employed by or on behalf of, or has been otherwise working for a candidate in or about the election:

Provided that if a polling officer is absent from the polling station, the presiding officer may appoint any person who is present at the polling station other than a person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election, to be the polling officer during the absence of the former officer, and inform the Returning Officer accordingly.

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

(8) If the presiding officer, owing to illness or other unavoidable cause, is obliged to absent himself from the polling station, his functions shall be performed by such polling officer as has been previously authorised by the Returning Officer to perform such functions during any such absence.

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

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

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

27. Special provisions in the case of certain elections.—(1) The Returning Officer for an election (other than a primary election) to fill a seat or seats in the Council of States or for an election by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of the State shall, with the previous approval of the Election Commission, fix the place at which the poll will be taken for such election and shall notify the place so fixed in such manner as the Election Commission may direct.

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

PART V

CONDUCT OF ELECTIONS

CHAPTER I

Nomination of candidates

28. Appointment of dates for nominations, etc.—As soon as the notification calling upon a constituency to elect a member or members is issued under this Act, the appropriate authority in the case where such notification has been issued under the provisions of Part III, and the Election Commission in the case where such notification has been issued under the provisions of Part IX, shall, by notification in the Official Gazette, appoint—

- (a) the last date for making nominations, which shall be a date not later than the fourteenth day after the date of publication of the first mentioned notification nor earlier than the eighth day after the date of publication of the notification under this section;
- (b) the date for the scrutiny of nominations, which shall be a date not later than the seventh day after the last date for making nominations;
- (c) the last date for the withdrawal of candidatures, which shall be * * * the third day after the date for the scrutiny of nominations; and
- (d) the date or dates on which a poll shall, if necessary, be taken which or the first of which shall be a date not earlier than the thirtieth day after the last date for the withdrawal of candidatures.

29. Public notice of election.—On the issue of a notification under section 28... the Returning Officer for the constituency 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.

30. Nomination of candidates for election.—Any person may be nominated as a candidate for election to fill a seat in any constituency if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act.

31. Presentation of nomination paper and requirements for a valid nomination.—(1) On or before the date appointed under clause (a) of section 28 each candidate shall, either in person or by his proposer or seconder, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the Returning Officer at the place specified in this behalf in the notice issued under section 29 a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two persons referred to in sub-section (2) as proposer and seconder.

(2) Any person whose name is registered in the electoral roll of the constituency and who is not subject to any disqualification mentioned in section 16 of the Representation of the People Act, 1950 (XLIII of 1950) may subscribe as proposer or seconder as many nomination papers as there are vacancies to be filled but no more:

Provided that if the name of a person is entered more than once in the electoral roll of a constituency or is included in the electoral roll of two or more constituencies of the same class, such person shall not be entitled to subscribe as proposer or seconder more than one nomination paper for each vacancy to be filled in that constituency, or in not more than one of such constituencies of the same class.

(3) Every nomination paper delivered under sub-section (1) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed as his election agent for the election either himself or another person who is not disqualified under this Act for the appointment and who shall be named in the declaration, and by such other declarations, if any, as may be prescribed; and no candidate shall be deemed to be duly nominated unless such declaration is, or all such declarations are, delivered along with the nomination paper:

Provided that in a constituency where any seat is reserved for the scheduled castes or for the scheduled tribes, no candidate shall be deemed to be qualified to be chosen to fill that seat unless his nomination paper is accompanied by a declaration verified in the prescribed manner that the candidate is a member of the scheduled castes or of the scheduled tribes for which the seat has been so reserved and the declaration specifies the particular caste or tribe of which the candidate is a member and also the area in relation to which such caste or tribe is one of the scheduled castes or scheduled tribes, as the case may be:

Provided further that in a constituency where any seat is reserved for an autonomous district of Assam other than the constituency comprising the cantonment and municipality of Shillong, no candidate shall be deemed to be duly nominated for the seat so reserved unless the nomination paper is accompanied by a declaration verified in the prescribed manner that the candidate is a member of any of the scheduled tribes of that district and the declaration specifies the particular tribe of which the candidate is a member:

Provided also that where any person having held any office referred to in clause (f) of sub-section (1) of section 7 has been dismissed and the period of five years from the date of such dismissal has not expired, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.

(4) Any nomination paper which is not received before three o'clock in the afternoon on the last date appointed under clause (a) of section 23 shall be rejected.

(5) On the presentation of a nomination paper, the Returning Officer may require the person presenting the same to produce copies of the electoral rolls in which the names of the candidate and his proposer and seconder are included or of the relevant entries in such rolls, and shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that the Returning Officer may—

(a) permit any clerical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls; and

(b) where necessary, direct that any clerical or printing error in the said entries shall be overlooked.

(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper for election in the same constituency.

32. Deposits.—(1) A candidate shall not be deemed to be duly nominated unless he deposits in the case of an election to Parliament (other than a primary election) a sum of five hundred rupees, in the case of an election to the Legislature of a State a sum of two hundred and fifty rupees, and in the case of a primary election a sum of fifty rupees:

Provided that—

(a) where the candidate is a member of any of the scheduled castes or the scheduled tribes, the amount to be deposited by him shall be two hundred and fifty rupees in the case of an election to Parliament (other than a primary election), and one hundred and twenty-five rupees in the case of an election to the Legislature of a State;

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

(2) Any sum required to be deposited under sub-section (1) shall not be deemed to have been deposited under that sub-section unless at the time of delivery of the nomination paper under sub-section (1) of section 31 the candidate has either deposited that sum with the Returning Officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him in the Reserve Bank of India or in a Government Treasury.

33. Notice of nominations and the time and place for their scrutiny.—The Returning Officer shall, on receiving the nomination paper under sub-section (1) of section 31, inform the person or persons delivering the same of the date, time and place fixed for the scrutiny of nominations and shall enter on the nomination paper its serial number, and shall sign thereon a certificate stating

the date on which and the hour at which the nomination paper has been delivered to him; and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of the persons who have subscribed the nomination paper as proposer and seconder.

34. Scrutiny of nominations.—(1) On the date fixed for the scrutiny of nominations under section 28, the candidates, their election agents, one proposer and one seconder of each candidate, and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the Returning Officer may appoint; and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 31.

(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, refuse any nomination on any of the following grounds:—

- (a) that the candidate is not qualified to be chosen to fill the seat under the Constitution or this Act; or
- (b) that the candidate is disqualified for being chosen to fill the seat under the Constitution or this Act; or
- (c) that a proposer or seconder is disqualified from subscribing a nomination paper under sub-section (2) of section 31; or
- (d) that there has been any failure to comply with any of the provisions of section 31 or section 32; or
- (e) that the signature of the candidate or any proposer or seconder is not genuine or has been obtained by fraud.

(3) Nothing contained in clause (c), clause (d) or clause (e) of sub-section (2) shall be deemed to authorise the refusal of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

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

(5) The Returning Officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 28 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control.

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

(7) For the purposes of this section—

- (a) the production of any certified copy of an entry made in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe a nomination paper, as the case may be, unless it is proved that the candidate is disqualified under the Constitution or this Act, or that the proposer or seconder, as the case may be, is disqualified under sub-section (2) of section 31:

- (b) where a person has subscribed, whether as proposer or seconder, a larger number of nomination papers than there are vacancies to be filled, those of the papers so subscribed which have been first received, up to the number of vacancies to be filled, shall be deemed to be valid.

35. Withdrawal of candidature.—(1) Any candidate may withdraw his candidature by a notice in writing in the prescribed form subscribed by him and delivered to the Returning Officer either by such candidate in person or by his proposer or seconder before three o'clock in the afternoon on the day fixed under clause (c) of section 28:

Provided that if that day is a public holiday within the meaning of section 25 of the Negotiable Instruments Act, 1881 (XXVI of 1881) or has been notified by the appropriate authority as a day to be observed as a holiday in Government offices in the State, the notice of withdrawal of candidature shall be considered as having been delivered in due time if it is delivered before three o'clock in the afternoon on the next succeeding day which is neither such a public holiday nor a day so notified.

(2) No person who has given a notice of withdrawal of his candidature under sub-section (1) shall be allowed to cancel the notice or to be renominated as a candidate for the same election in the same constituency.

(3) The Returning Officer shall, on receiving a notice of withdrawal under sub-section (1), as soon as may be thereafter, cause a notice of the withdrawal to be affixed in some conspicuous place in his office.

36. Publication of nominations.—The Returning Officer shall, immediately after the expiry of the period within which candidatures may be withdrawn under sub-section (1) of section 35, prepare and publish a list of valid nominations in such manner as may be prescribed.

* * *

37. Nomination of candidates at other elections.—(1) Any person may be nominated as a candidate for election to fill a seat in the Council of States to be filled by election by the members of the Legislative Assembly of a State or by the members of the electoral college for a Part C State or group of such States or by the elected members of the Coorg Legislative Council, or a seat in the Legislative Council of a State to be filled by election by the members of the Legislative Assembly of that State, if he is qualified to be chosen to fill that seat under the Constitution and this Act.

(2) As soon as the notification calling upon the members of the Legislative Assembly of a State or the members of the electoral college for a Part C State or group of such States or the elected members of the Coorg Legislative Council to elect a member or members is issued under this Act, the appropriate authority in the case where such notification has been issued under section 10 or section 16, and the Election Commission in the case where such notification has been issued under section 146 or section 150, shall, by notification in the Official Gazette, appoint for such election—

- (a) the last date for making nominations which shall be a date not later than the fourteenth day after the date of publication of the first mentioned notification, nor earlier than the fifth day after the date of publication of the notification under this sub-section;
- (b) the date for the scrutiny of nominations which shall be a date not later than the seventh day after the last date for making nominations;

(c) the last date for the withdrawal of candidatures which shall be * * * the third day after the date for the scrutiny of nominations; and

(d) the date on which a poll shall, if necessary, be taken which shall be a date not earlier than the seventh day after the last date for the withdrawal of candidatures.

(3) On the issue of a notification under sub-section (2), the Returning Officer for the election 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.

(4) The provisions of sub-sections (1), (3), (4), (5) and (6) of section 31 and sections 32 to 36 shall apply in relation to nominations of candidates, deposits to be made on such nominations and withdrawal of candidatures at any such election as they apply in relation to nominations of candidates, deposits to be made on such nominations and withdrawal of candidatures at elections in any constituency other than a Council of States constituency:

Provided that any person who is a member of the Legislative Assembly of a State the members of which have been called upon to elect a member or members to the Council of States or to the Legislative Council of the State, as the case may be, or is a member of any electoral college or is an elected member of the Coorg Legislative Council, the members or the elected members of which have been called upon to elect a member or members to the Council of States, shall be qualified to subscribe as proposer or seconder as many nomination papers as there are vacancies to be filled, but no more:

Provided further that any references in the said provisions—

(a) to the electoral roll of the constituency shall be construed, in the case of an election by the members of the Legislative Assembly of a State, as references to the list of members of that Assembly maintained under sub-section (1) of section 151, and in the case of an election by the members of the electoral college for a Part C State or group of such States or by the elected members of the Coorg Legislative Council, as references to the list of members of such electoral college or to the list of elected members of the Coorg Legislative Council, as the case may be, maintained under sub-section (2) of that section;

(b) to section 28, to section 29 and to sub-section (2) of section 31 shall be construed as references to sub-section (2) of this section, to sub-section (3) of this section and to the first proviso to this sub-section respectively.

* * *

CHAPTER II

Candidates and their agents

38. Appointment of election agents.—(1) Every person nominated as a candidate at an election shall before the delivery of his nomination paper under sub-section (1) of section 31 or under that sub-section read with sub-section (4) of section 37, as the case may be, appoint in writing either himself or some one other person to be his election agent.

(2) When a candidate appoints some person other than himself to be his election agent he shall obtain in writing the acceptance by such person of the office of such election agent.

39. Disqualification for being an election agent.—No person shall be appointed an election agent who is disqualified from being an election agent under section 144.

40. Revocation of the appointment or death of an election agent.—(1) Any revocation of the appointment of an election agent, whether he be the candidate himself or not, shall be signed by the candidate, and shall operate from the date on which it is lodged with the Returning Officer.

(2) In the event of such a revocation or of the death of an election agent, whether that event occurs before or during the election, or after the election but before a return of the candidate's election expenses has been lodged in accordance with the provisions of section 75, the candidate shall appoint forthwith either himself or some other person to be his election agent in the manner provided in section 38, and shall give notice in writing of the appointment to the Returning Officer.

41. Effect of default in appointment of election agent under section 40.—(1) If the appointment of an election agent is revoked without a new appointment being made, the candidate himself shall be deemed to have been appointed or re-appointed, as the case may be, his election agent.

(2) If the election agent (not being the candidate himself) dies and a new appointment is not made on the day of the death or on the following day, the candidate shall be deemed to have appointed himself his election agent as from the time of the death.

42. Duty of the election agent to keep accounts.—Every election agent shall, for each election for which he is appointed election agent, keep separate and regular books of account, and shall enter therein such particulars of expenditure in connection with the election as may be prescribed.

43. Other functions of the election agents.—Every election agent shall perform such other functions in connection with each election for which he is appointed election agent as are required to be performed by or under this Act by such agent.

44. Appointment of polling agents.—A candidate who has been duly nominated under this Act and who has not withdrawn his candidature in the manner and within the time specified in sub-section (1) of section 35, or in that sub-section read with sub-section (4) of section 37, as the case may be, may, at least three days before the commencement of the poll, appoint in the prescribed manner one agent and two relief agents and no more to act as his polling agent at each polling station provided under section 28 or at the place fixed under sub-section (1) of section 27 for the poll, and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the Returning Officer and to such other officer, as may be prescribed.

45. Disqualification for being a polling agent.—No person shall be appointed a polling agent who is disqualified from being a polling agent under section 144.

46. Appointment of counting agents.—Any such candidate as is mentioned in section 44 may, before the commencement of the counting of votes, appoint in the prescribed manner one agent and no more to be present as his counting agent at the counting of votes, and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the Returning Officer.

47. Revocation of the appointment or death of a polling agent or counting agent.—(1) Any revocation of the appointment of a polling agent or counting agent shall be signed by the candidate, and shall operate from the date on which it is lodged with the Returning Officer.

(2) In the event of such revocation or of the death of a polling agent or counting agent before the close of the poll, the candidate may appoint in the prescribed manner another polling agent or counting agent, as the case may be, at any time before the poll is closed, and shall forthwith give notice of such appointment in the prescribed manner to the Returning Officer and to such other officer as may be prescribed.

48. Functions of polling agents and counting agents.—(1) A polling agent may perform such functions in connection with the poll as are authorised by or under this Act to be performed by a polling agent.

(2) A counting agent may perform such functions in connection with the counting of votes as are authorised by or under this Act to be performed by a counting agent.

49. Attendance of a candidate at polling stations, and performance by him of the functions of a polling agent or counting agent.—(1) At every election where a poll is taken, each candidate at such election shall have a right to be present at any polling station provided under section 23 for the taking of the poll or at the place fixed under sub-section (1) of section 27 for the poll.

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

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

CHAPTER III

General procedure at elections

51. Death of candidate before poll.—If a candidate who has been duly nominated under this Act dies after the date fixed for the scrutiny of nominations and a report of his death is received by the Returning Officer before the commencement of the poll, the Returning Officer shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the Election Commission and also to the appropriate authority and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election:

Provided that no further nomination shall be necessary in the case of a candidate whose nomination was valid at the time of the countermanding of the poll.

52. Procedure in contested and uncontested elections.—(1) If the number of candidates who were duly nominated and who have not withdrawn their candidatures, in the manner and within the time specified in sub-section (1) of section 35, or in that sub-section read with sub-section (4) of section 37, as the case may be, exceeds the number of seats to be filled, the Returning Officer shall forthwith publish in such form and manner as may be prescribed a list containing the names in alphabetical order and addresses of candidates as given in the nomination papers, together with such other particulars as may be prescribed, and a poll shall be taken.

(2) If the number of such candidates is equal to the number of seats to be filled, the Returning Officer shall forthwith declare all such candidates to be duly elected to fill those seats.

(3) If the number of such candidates is less than the number of seats to be filled, the Returning Officer shall forthwith declare all such candidates to be elected and the appropriate authority shall, by notification in the Official Gazette, call upon the constituency or the members of the State Legislative Assembly or electoral college concerned or the elected members of the Coorg Legislative Council, as the case may be, to elect a person or persons to fill the remaining seat or seats before such date as may be appointed in this behalf by the Election Commission and specified in the notification:

Provided that where the constituency or the members of the State Legislative Assembly or of the electoral college or the elected members of the Coorg Legislative Council having already been called upon under this sub-section, has or have failed to elect a person or the requisite number of persons, as the case may be, to fill the vacancy or vacancies, the appropriate authority shall not be bound to call again upon the constituency, or such members to elect a person or persons until such date as the Election Commission may specify in this behalf.

53. Special procedure at elections in constituencies where seats are reserved for scheduled castes or scheduled tribes.—(1) The provisions of this section shall apply in relation to any election in a constituency where the seats to be filled include one or more seats reserved for the scheduled castes or for the scheduled tribes (hereinafter referred to as "reserved seats").

(2) If the number of candidates qualified to be chosen to fill the reserved seats is equal to the number of such seats, all those candidates shall be forthwith declared to be elected to fill the reserved seats, and the procedure laid down in section 52 shall be followed for filling the remaining seat or seats.

(3) If the number of candidates qualified to be chosen to fill the reserved seats exceeds the number of such seats, but the total number of candidates is equal to the total number of seats to be filled, the Returning Officer shall first select by lot, to be drawn by him in such manner as he may determine, the candidates to be declared elected to the reserved seats out of the candidates qualified to be chosen to fill those seats and then declare the candidates so selected to be duly elected to fill the reserved seats and thereafter declare the remaining candidates to be duly elected to fill the remaining seats.

(4) If the number of candidates qualified to be chosen to fill the reserved seats exceeds the number of such seats, and the total number of candidates also exceeds the total number of seats to be filled, the procedure laid down in sub-section (1) of section 52 shall be followed; and after the poll has been taken, the Returning Officer shall first declare those who, being qualified to be chosen to fill the reserved seats, have secured the largest number of votes, to be duly elected to fill the reserved seats, and then declare such of the remaining candidates as have secured the largest number of votes to be duly elected to fill the remaining seats.

Illustration.—At an election in a constituency to fill four seats of which two are reserved there are six candidates A, B, C, D, E and F, and they secure votes in descending order, A securing the largest number, B, C and D are qualified to be chosen to fill the reserved seats, while A, E and F are not so qualified. The Returning Officer will first declare B and C duly elected to fill the two reserved seats, and then declare A and D (not A and E) to fill the remaining two seats.

(5) If the number of candidates qualified to be chosen to fill the reserved seats is less than the number of such seats,—

(a) all those candidates shall be forthwith declared to be duly elected to fill reserved seats;

- (b) the procedure laid down in section 52 shall be followed for filling the seats other than the reserved seats; and
- (c) the appropriate authority shall, by notification in the Official Gazette, call upon the constituency to elect a person or persons to fill the remaining reserved seat or seats before such date as may be appointed in this behalf by the Election Commission and specified in the notification:

Provided that where a constituency having been already so called upon has failed to elect a person or the requisite number of persons to fill the reserved seat or seats, the appropriate authority shall not be bound to call again upon the constituency to elect a person or persons to fill the vacancy or vacancies until such date as the Election Commission may specify in this behalf.

(6) In this section, references to candidates shall be construed as references to candidates who were duly nominated and who have not withdrawn their candidatures in the manner and within the time specified in sub-section (1) of section 35.

54. Eligibility of members of scheduled castes or scheduled tribes to hold seats not reserved for those castes or tribes.—For the avoidance of doubt it is hereby declared that a member of the scheduled castes or of the scheduled tribes shall not be disqualified to hold a seat not reserved for members of those castes or tribes, if he is otherwise qualified to hold such seat under the Constitution and this Act.

CHAPTER IV

The Poll

55. Fixing time for poll.—The appropriate authority shall fix the hours during which the poll will be taken; and the hours so fixed shall be published in such manner as may be prescribed:

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

56. Adjournment of poll in emergencies.—(1) If at an election the proceedings at any polling station provided under section 28 or at the place fixed under sub-section (1) of section 27 for the poll are interrupted or obstructed by any riot or open violence, or if at an election it is not possible to take the poll at any polling station or such place on account of any natural calamity, or any other sufficient cause, the presiding officer for such polling station or the Returning Officer presiding over such place, as the case may be, shall announce an adjournment of the poll to a date to be notified later, and where the poll is so adjourned by a presiding officer, he shall forthwith inform the Returning Officer concerned.

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

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

57. Fresh poll in the case of destruction etc. of ballot boxes.—(1) If at any election any ballot box or boxes is or are unlawfully taken out of the custody of the Returning Officer or of any presiding officer, or is or are in any way tampered with, or is or are either accidentally or intentionally destroyed or lost, the election to which such ballot box or boxes relate shall be void, but only in respect of the polling at the polling station or stations provided under section 28 or the place fixed under sub-section (1) of section 27 for the poll, as the case may be, at which such ballot box or boxes was or were used and no further.

(2) Whenever the polling at any polling station or stations or at the place fixed for the poll shall become void under sub-section (1), the Returning Officer shall, as soon as practicable after the act or event causing such voidance has come to his knowledge, report the matter to the appropriate authority and to the Election Commission and shall, with the previous approval of the Election Commission, appoint a day for the taking of a fresh poll in such or every such polling station or in such place fixed for the poll and fix the hours during which the poll will be taken, and shall not count the votes cast at such election until such fresh poll shall have been completed.

(3) In every such case as aforesaid the Returning Officer shall take a fresh poll in such or every such polling station or in such place fixed for the poll as aforesaid on the day so appointed by him, and shall notify the day so appointed and the hours of polling so fixed by him in such manner as the Election Commission may direct, and the provisions of this Act and of any rules or orders made thereunder shall apply to every such fresh poll as they apply to the original poll.

58. Manner of voting at elections.—At every election where a poll is taken votes shall be given by ballot in such manner as may be prescribed, and no votes shall be received by proxy.

59. Special procedure for voting by certain classes of persons.—Provision may be made by rules made under this Act for enabling any of the following persons to give his vote by postal ballot, and not in any other manner, at an election in a constituency where poll is taken, namely—

- (a) a member of the Armed Forces of the Union to whom the provisions of sub-section (8) of section 20 of the Representation of the People Act, 1950 (XLIII of 1950), apply;
- (b) a person holding any office in India declared by the President to be an office to which the provisions of sub-section (4) of that section apply;
- (c) a person who is employed under the Government of India in a post outside India;
- (d) the wife of any such person as is referred to in clauses (a), (b) and (c) to whom the provisions of sub-section (6) of the said section 20 apply; and
- (e) any person attending on official duty at a polling station in any constituency under the orders of, or authority from, the Returning Officer of such constituency.

60. Special procedure for preventing personation of electors.—Provision may also be made by rules made under this Act for the marking with indelible ink of the thumb or any other finger of every elector who applies for a ballot paper or ballot papers for the purpose of voting at a polling station before delivery of such paper or papers to him and for prohibiting the delivery of any ballot paper to any person for voting at a polling station if at the time such person applies for such paper he has already such a mark on his thumb or any other finger so as to prevent personation of electors.

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

(2) No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in section 16 of the Representation of the People Act, 1950 (XLIII of 1950).

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

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

(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police, or is subjected to preventive detention under any law for the time being in force.

62. Method of voting.—(1) In plural member constituencies other than Council constituencies every elector shall have as many votes as there are members to be elected, but no elector shall give more than one vote to any one candidate.

(2) If an elector gives more than one vote to any one candidate in contravention of the provisions of sub-section (1), then, at the time of counting of votes not more than one of the votes given by him to such candidate shall be taken into account and all the other votes given by him to such candidate shall be rejected as void.

CHAPTER V

Counting of Votes

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

64. Equality of votes.—If, after the counting of the votes is completed, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of those candidates to be declared elected, the Returning Officer shall forthwith decide between those candidates by lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

65. Declaration of results.—When the counting of the votes has been completed, the Returning Officer shall forthwith declare the result of the election in the manner provided by this Act or the rules made thereunder.

66. Report of the result.—As soon as may be after the result of an election has been declared, the Returning Officer shall report the result to the appropriate authority and the Election Commission and in the case of an election to a House of Parliament or of the Legislature of a State also to the Secretary of that House, and the appropriate authority shall cause to be published in the Official Gazette the declarations containing the names of the elected candidates.

CHAPTER VI

Multiple Elections

67. Vacation of seats when elected to both Houses of Parliament.—(1) Any person who is chosen a member of both the House of the People and the Council of States and who has not taken his seat in either House may, by notice in writing signed by him and delivered to the Secretary to the Election Commission within ten days from the date of publication in the Gazette of India of the declarations that he has been so chosen or, if such publications have been made on different dates, within ten days from the later of such dates, intimate in which of the Houses he wishes to serve, and thereupon, his seat in the House in which he does not wish to serve shall become vacant.

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

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

68. Vacation of seats by persons already members of one House on election to other House of Parliament.—(1) If a person who is already a member of the House of the People and has taken his seat in such House is chosen a member of the Council of States, his seat in the House of the People shall, on the publication in the Gazette of India of the declaration that he has been so chosen, become vacant.

(2) If a person who is already a member of the Council of States and has taken his seat in such Council is chosen a member of the House of the People, his seat in the Council of States shall, on the publication in the Gazette of India of the declaration that he has been so chosen, become vacant.

69. Election to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State.—If a person is elected to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State, then, unless within the prescribed time he resigns all but one of the seats, all the seats shall become vacant.

CHAPTER VII

Publication of election results and nominations

70. Publication of results of elections to the Council of States and of names of persons nominated by the President.—(1) After the elections held in pursuance of the notifications issued under sub-section (1) of section 10, there shall be notified by the appropriate authority in the Official Gazette the names of the members elected by the elected members of the Legislative Assemblies of the States and by the members of the electoral colleges for the various Part C States and group of such States at the said elections together with the names of the persons nominated by the President to the Council under sub-clause (a) of clause (1) of article 80 or under any other provisions.

(2) After the elections held in any year in pursuance of the notifications issued under sub-section (2) of section 10, there shall be notified by the appropriate authority in the Official Gazette the names of the members elected by the elected members of the Legislative Assemblies of the States and by the members of the electoral colleges for the various Part C States and group of such States including the elected members of the Coorg Legislative Council at the said elections together with the names of any persons nominated by the President to the Council under sub-clause (a) of clause (1) of article 80 or under any other provisions.

(3) The notification of names under sub-section (1) or sub-section (2) shall be in addition to the publication of the declarations under section 66 and shall be made as soon as may be after the last of the dates fixed for the completion of the elections under sub-section (1) or, as the case may be, sub-section (2) of section 10, and after the publication of the notification or notifications containing the names of persons nominated by the President to the Council under sub-clause (a) of clause (1) of article 80 or under any other provisions.

71. Publication of results of primary elections for the constitution or reconstitution of electoral colleges for certain Part C States.—After the elections held in pursuance of the notification or notifications issued under section 11 for the first constitution or any subsequent reconstitution of the electoral college for a scheduled Part C State, there shall be notified by the appropriate authority in the Official Gazette, as soon as may be after the date or the last of the dates fixed for the completion of the said elections, the names of the members elected for the various Council of States constituencies at the said elections and such notification shall be in addition to the publication of the declarations under section 66.

72. Publication of results of general elections to the House of the People and of names of persons nominated by the President.—After the elections held in pursuance of the notification or notifications issued under section 13 for the constitution of the House of the People in due time or on the expiration of its duration or on its dissolution, there shall be notified by the appropriate authority in the Official Gazette, as soon as may be after the date or the last of the dates fixed for the completion of the said elections, the names of the members elected for the various Parliamentary constituencies at the said elections together with the names of persons, if any, nominated by the President to that House under article 331 or under any other provisions, and such notification shall be in addition to the publication of the declarations under section 66.

73. Publication of results of general elections to the State Legislative Assemblies and of names of persons nominated to such Assemblies.—After the elections held in pursuance of the notification or notifications issued under section 15, for the constitution of the Legislative Assembly of a State in due time or on the expiration of its duration or on its dissolution, there shall be notified by the appropriate authority in the Official Gazette, as soon as may be after the date or the last of the dates fixed for the completion of the said elections, the names of the members elected for the various Assembly constituencies at the said elections together with the names of persons, if any, nominated by the Governor or Rajpramukh, as the case may be, of the State under article 333 or under any other provisions and such notification shall be in addition to the publication of the declarations under section 66.

74. Publication of results of elections to the State Legislative Councils and of names of persons nominated to such Councils.—(1) After the elections held in pursuance of the notifications issued under sub-section (1) of section 16, there shall be notified by the appropriate authority in the Official Gazette the names of the members elected for the various Council constituencies and by the members of the Legislative Assembly of the State at the said elections together with the names of the persons nominated by the Governor or Rajpramukh, as the case may be, of the State under sub-clause (e) of clause (3) of article 171.

(2) After the elections held in any year in pursuance of the notifications issued under sub-section (2) of section 16 there shall be notified by the appropriate authority in the Official Gazette the names of the members elected for the various Council constituencies and by the members of the Legislative Assembly of the State at the said elections together with the names of any persons nominated by the Governor or Rajpramukh, as the case may be, under sub-clause (e) of clause (3) of article 171.

(3) The notification of names under sub-section (1) or sub-section (2) shall be in addition to the publication of the declarations under section 66 and shall be made as soon as may be after the last of the dates fixed for the completion of the elections under sub-section (1), or as the case may be, sub-section (2) of section 16, and after the publication of the notification containing the names of persons nominated by the Governor or the Rajpramukh, as the case may be, under sub-clause (e) of clause (3) of article 171.

CHAPTER VIII

Election expenses

75. Return of election expenses.—(1) Within the prescribed time after every election there shall be lodged with the Returning Officer in respect of each person who has been nominated as a candidate, a return of the election expenses of that person signed * * by him and his election agent.

(2) Every such return shall be in such form and shall contain such particulars as may be prescribed, and shall be accompanied by declarations in the prescribed form by the candidate and his election agent made on oath or solemn affirmation before a magistrate.

(3) Notwithstanding anything in this section, where owing to absence from India a candidate is unable to sign the return of election expenses and to make the required declaration, the return shall be signed and lodged by the election agent only and shall be accompanied by a declaration by the election agent only, and the candidate shall, within fourteen days after his return to India, cause to be lodged with the Returning Officer a declaration made on oath or solemn affirmation before a magistrate in such form as may be prescribed.

76. Maximum election expenses, etc.—The maximum scales of election expenses at elections and the numbers and descriptions of persons who may be employed for payment in connection with election shall be such as may be prescribed.

77. Application of this Chapter to certain elections.—Except so far as may be prescribed, this Chapter shall not apply to an election (other than a primary election) to fill a seat or seats in the Council of States or to an election by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of that State.

PART VI

DISPUTES REGARDING ELECTIONS

CHAPTER I

Interpretation

78. Definitions.—In this Part and in Parts VII and VIII, unless the context otherwise requires,—

- (a) "agent" includes an election agent, a polling agent and a counting agent and any person who, on the trial of an election petition or of an offence with respect to any election, is held to have acted

as an agent in connection with the election with the knowledge or consent of the candidate;

- (b) "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate;
- (c) "costs" means all costs, charges and expenses of, or incidental to, a trial of an election petition;
- (d) "electoral right" means the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election;
- (e) "pleader" means any person entitled to appear and plead for another in a civil court and includes an advocate, a vakil and an attorney of a High Court;
- (f) "returned candidate" means a candidate whose name has been published under section 66 as duly elected.

CHAPTER II

Presentation of Election Petitions to Election Commission

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

80. Presentation of petitions.—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-sections (1) and (2) of section 99 and section 100 to the Election Commission by any candidate at such election or any elector in such form and within such time but not earlier than the date of publication of the name or names of the returned candidate or candidates at such election under section 66, as may be prescribed.

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

(2) An election petition shall be deemed to have been presented to the Election Commission when it is delivered to the Secretary to the Commission or to such other officer, as may be authorised by the Election Commission in this behalf—

- (a) by the person making the petition; or
- (b) by a person authorised in writing in this behalf by the person making the petition; or
- (c) by registered post.

81. Parties to the petition.—A petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated.

82. Contents of petition.—(1) An election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.

(2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice.

(3) The Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.

83. Relief that may be claimed by the petitioner.—A petitioner may claim any one of the following declarations:—

- (a) that the election of the returned candidate is void;
- (b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected;
- (c) that the election is wholly void.

84. Petition when to be dismissed.—If the provisions of section 80, section 82 or section 116 are not complied with, the Election Commission shall dismiss the petition:

Provided that if a person making the petition satisfies the Election Commission that sufficient cause existed for his failure to present the petition within the period prescribed therefor, the Election Commission may in its discretion condone such failure.

CHAPTER III

Trial of election petitions

85. Appointment of Election Tribunal.—(1) If the petition is not dismissed under section 84, the Election Commission shall appoint an Election Tribunal for the trial of the petition.

(2) For the purpose of constituting such Tribunals the Election Commission shall obtain from the High Court of each State (other than Jammu and Kashmir)—

- (a) a list of persons who are or have been district judges in the State and who are in the opinion of the High Court fit to be appointed as members of the Election Tribunals, and
- (b) a list of advocates of that High Court who have been in practice for a period of not less than ten years and who are in the opinion of the High Court fit to be appointed as such members,

and shall maintain the lists by making such alterations therein as the High Court may from time to time direct.

(3) Every Tribunal appointed under sub-section (1) shall consist of—

- (a) a Chairman who shall be either a person who is or has been a judge of a High Court, or a person selected by the Election Commission from the list maintained by it under clause (a) of sub-section (2); and
- (b) one other member selected by the Election Commission from either of the lists maintained by it under sub-section (2):

Provided that where the petition for the trial of which a Tribunal is to be appointed is in respect of an election to the Legislative Assembly or the Legislative Council of a State, no person who belongs to the judicial service of another State shall be selected for appointment as a member of the Tribunal except with the consent of the Government of the other State:

Provided further that nothing in this sub-section shall be deemed to prevent the appointment of a Chairman of the Tribunal before that of the other member.

(4) If during the course of the trial, any member of a Tribunal is for any reason unable to perform his functions or has to relinquish his membership, the Election Commission shall appoint another member in accordance with the provisions of sub-section (3), and upon his joining the Tribunal the trial shall be continued as if he had been on the Tribunal from the commencement of the trial:

Provided that the Tribunal may, if it thinks fit, recall and re-examine any of the witnesses already examined.

(5) References to the Tribunal in this Part shall, as respects any matter to be done before the commencement of the trial, be deemed to be references to the Chairman of the Tribunal.

(6) In this section, the expressions "district judge" and "judicial service" have the same meanings as in article 236.

86. Connected petitions to be referred to same Tribunal.—Where more petitions than one are presented in respect of the same election, the Election Commission shall refer all of them to the same Tribunal, which may, in its discretion, try them separately or in one or more groups.

87. Place of trial.—The trial shall be held at such place as the Election Commission may appoint:

Provided that a Tribunal may, in its discretion, sit for any part of the trial at any other place in the State in which the election to which the petition relates has taken place.

88. Attendance of law officers.—(1) The Tribunal may, in the case of an election petition in relation to a primary election or to an election to fill a seat in either House of Parliament, require the Attorney-General of India or the Advocate-General of the State in which the election has taken place or some person acting under the instructions of the Attorney-General or such Advocate-General, and in the case of an election petition in relation to an election to fill a seat in the House or either House of the Legislature of a State, require the Advocate-General of the State in which the election has taken place or some person acting under his instructions, to attend at the trial.

(2) The Attorney-General or the Advocate-General or the person acting under the instructions of the Attorney-General or the Advocate-General, as the case may be, shall, when so required, attend at the trial and shall take such part therein as the Tribunal may direct.

89. Procedure before the Tribunal.—(1) The Tribunal shall, as soon as may be, cause a copy of the petition together with a copy of the list of particulars referred to in sub-section (2) of section 82 to be served on each respondent and to be published in the Official Gazette, and at any time within fourteen days after such publication, any other candidate shall, subject to the provisions of section 118, be entitled to be joined as a respondent.

(2) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Act V of 1908), to the trial of suits:

Provided that it shall be sufficient for the Tribunal to make a memorandum of the substance of the evidence of any witness examined by the Tribunal and it shall not be necessary for the Tribunal to take down the evidence of any witness in writing at length unless the Tribunal is, on the application of any party or otherwise, satisfied that there is any special reason for so doing:

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

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

(4) Notwithstanding anything contained in section 84, the Tribunal may dismiss an election petition which does not comply with the provisions of section 80, section 82 or section 116.

90. Appearance before Tribunal.—Any appearance, application or act before the Tribunal may be made or done by the party in person or by a pleader duly appointed to act on his behalf:

Provided that it shall be open to the Tribunal to direct any party to appear in person whenever the Tribunal considers it necessary.

91. Powers of the Tribunal.—The Tribunal shall have the powers which are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters:—

- (a) discovery and inspection;
- (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses;
- (c) compelling the production of documents;
- (d) examining witnesses on oath;
- (e) granting adjournments;
- (f) reception of evidence taken on affidavit; and
- (g) issuing commissions for the examination of witnesses,

and may summon and examine *suo motu* any person whose evidence appears to it to be material; and shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

Explanation.—For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Tribunal shall be the limits of the State in which the election was held.

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

93. Secrecy of voting not to be infringed.—No witness or other person shall be required to state for whom he has voted at an election.

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

Provided that—

- (a) a witness who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the Tribunal; and

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

(2) When a certificate of indemnity has been granted to any witness, it may be pleaded by him in any court and shall be a full and complete defence to or upon any charge under Chapter IX-A of the Indian Penal Code (Act XLV of 1860) or Part VII of this Act arising out of the matter to which such certificate relates, but it shall not be deemed to relieve him from any disqualification in connection with an election imposed by this Act or any other law.

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

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

Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of the publication of the election petition under section 89, given notice to the Tribunal of his intention to do so and has also given the security and the further security referred to in sections 116 and 117 respectively.

(2) Every notice referred to in sub-section (1) shall be accompanied by the statement and list of particulars required by section 82 in the case of an election petition and shall be signed and verified in like manner.

97. Decision of the Tribunal.—At the conclusion of the trial of an election petition the Tribunal shall make an order—

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

98. Other orders to be made by the Tribunal.—(1) At the time of making an order under section 97 the Tribunal shall also make an order—

- (a) where any charge is made in the petition of any corrupt or illegal practice having been committed at the election, recording—
 - (i) a finding whether any corrupt or illegal practice has or has not been proved to have been committed by, or with the connivance of, any candidate or his agent at the election, and the nature of that corrupt or illegal practice; and
 - (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice and the nature of that practice, together with any such recommendations as the Tribunal may think proper to make for the exemption of any persons from any disqualifications which they may have incurred in this connection under sections 140 to 142; and

- (b) fixing the total amount of costs payable, and specifying the persons by and to whom costs shall be paid:

Provided that no person shall be named in the order under sub-clause (ii) of clause (a) unless—

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

(2) Any order as to costs under clause (b) of sub-section (1) may include a direction for the payment of costs to the law officer attending the trial in pursuance of any requisition of the Tribunal under section 88.

99. Grounds for declaring election to be void.—(1) If the Tribunal is of opinion—

- (a) that the election has not been a free election by reason that the corrupt practice of bribery or of undue influence has extensively prevailed at the election; or
- (b) that the election has not been a free election by reason that coercion or intimidation has been exercised or resorted to by any particular community, group or section on another community, group or section, to vote or not to vote in any particular way at the election; or
- (c) that * * * the result of the election has been materially affected by the improper acceptance or rejection of any nomination,

the Tribunal shall declare the election to be wholly void.

Explanation.—In clause (b) of this sub-section, the expression “coercion or intimidation” means any interference or attempt to interfere by whatever means with the free exercise of the right to vote or refrain from voting at an election, and includes a social or economic boycott of members of a community, group or section, or threat of such boycott, with intent to interfere with the free exercise of such right by those members.

(2) Subject to the provisions of sub-section (3), if the Tribunal is of opinion—

- (a) that the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt or illegal practice; or
- (b) that any corrupt practice specified in section 122 has been committed in the interests of a returned candidate; or
- (c) that the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election, or by any mistake in the use of any prescribed form,

the Tribunal shall declare the election of the returned candidate to be void.

(3) If in the opinion of the Tribunal, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice specified in section 122, but the Tribunal is satisfied—

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice

was committed contrary to the orders, and without the sanction or connivance, of the candidate or his election agent;

- (b) that all such corrupt practices were of a trivial and limited character or took the form of customary hospitality which did not affect the result of the election;
 - (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt or illegal practices at the election; and
 - (d) that in all other respects the election was free from any corrupt or illegal practice on the part of the candidate or any of his agents,
- then the Tribunal may decide that the election of the returned candidate is not void.

100. Grounds for which a candidate other than the returned candidate may be declared to have been elected.—If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Tribunal is of opinion—

- (a) that in fact the petitioner or such other candidate received a majority of the valid votes; or
 - (b) that but for the votes obtained by the returned candidate by corrupt or illegal practices the petitioner or such other candidate would have obtained a majority of the valid votes,
- the Tribunal shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

101. Procedure in case of an equality of votes.—If during the trial of an election petition it appears that there is an equality of votes between any candidates at the election and that the addition of a vote would entitle any of those candidates to be declared elected, then—

- (a) any decision made by the Returning Officer under the provisions of this Act shall, in so far as it determines the question between those candidates, be effective also for the purposes of the petition; and
- (b) in so far as that question is not determined by such a decision, the Tribunal shall decide between them by lot and proceed as if the one on whom the lot then falls had received an additional vote.

102. Supply of orders to the Election Commission and the transmission of the records of the case.—The Tribunal shall, after announcing the orders made under sections 87 and 98, send a copy thereof to the Election Commission and the records of the case to the District Judge of the district within which the place of trial appointed under section 87 is situate, or if such place is in a presidency-town, to the Chief Judge of the Court of Small Causes having jurisdiction there, as the case may be.

103. Difference of opinion among the members of the Tribunal.—(1) If during the trial of an election petition there is a difference of opinion among the members of the Tribunal on any matter, the opinion of the Chairman shall, subject to the opinion, if any, expressed by the High Court on such matter on a reference made to that Court under sub-section (2), prevail.

(2) If at the conclusion of the trial of an election petition there is a difference of opinion among the members of the Tribunal on any question regarding the orders to be made under section 97 or section 98, the Tribunal shall state

the question and refer it together with the opinion of each of its members, to the High Court for its opinion.

(3) The High Court shall, after giving the parties an opportunity of being heard, decide the question so referred for its opinion, and shall cause a copy of its opinion to be transmitted to the Tribunal; and the Tribunal shall, on receipt thereof, proceed to dispose of the election petition in conformity with the opinion of the High Court.

(4) Any opinion expressed by the High Court on an election petition referred to it by the Tribunal under this section shall be final and conclusive and shall be deemed to be the opinion of the Tribunal for the purposes of this Act.

(5) For the purposes of this section "the High Court" means—

- (a) where the election to which the election petition relates has taken place in a Part A State or a Part B State, the High Court of that State;
- (b) where such election has taken place in Ajmer, * * * the High Court at Allahabad;
- (c) where such election has taken place in Bhopal, the High Court of Madhya Bharat;
- (d) where such election has taken place in Bilaspur, Himachal Pradesh or Vindhya Pradesh, the court of the Judicial Commissioner of that State;
- (e) where such election has taken place in Coorg, the High Court at Madras;
- (f) where such election has taken place in Delhi, the High Court of Punjab;
- (g) where such election has taken place in Kutch, the High Court at Bombay; and
- (h) where such election has taken place in Manipur or Tripura, the High Court at Calcutta.

104. Orders of the Tribunal to be final.—Every order of the Tribunal made under this Act shall be final and no appeal shall lie therefrom to any authority or court.

105. Transmission of final order to the Election Commission etc. and its publication.—As soon as may be after the receipt of any order made by the Tribunal under section 97 or section 98, the Election Commission shall forward copies of the order to the appropriate authority and, in the case where such order relates to an election (other than a primary election) to a House of Parliament or to an election to the House or a House of the Legislature of a State, also to the Speaker or Chairman, as the case may be, of the House concerned, and shall cause the order to be published in the Gazette of India and in the Official Gazette of the State concerned.

106. Orders to take effect only on publication.—An order of the Tribunal under section 97 or section 98 shall not take effect until it is published in the Gazette of India under section 105.

CHAPTER IV

Withdrawal and abatement of election petitions

107. Withdrawal of petitions before appointment of Tribunal.—An election petition may be withdrawn only by leave of the Election Commission if an application for its withdrawal is made before any Tribunal has been appointed for the trial of such petition.

108. Withdrawal of petitions after appointment of Tribunal.—(1) Where an application for withdrawal of an election petition is made after a Tribunal has been appointed for the trial of such petition, the election petition may be withdrawn only by leave of the Tribunal.

(2) Where an application for withdrawal is made under sub-section (1), notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Official Gazette.

109. Procedure for withdrawal of petitions before the Election Commission or the Tribunal.—(1) If there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent of all the petitioners.

(2) No application for withdrawal shall be granted if in the opinion of the Election Commission or of the Tribunal, as the case may be, such application has been induced by any bargain or consideration which ought not to be allowed.

(3) If the application is granted—

- (a) the petitioner shall, where the application has been made to the Tribunal, be ordered to pay the costs of the respondents thereto, incurred or such portion thereof as the Tribunal may think fit;
- (b) notice of the withdrawal shall be published in the Official Gazette by the Election Commission or by the Tribunal, as the case may be;
- (c) a person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and upon compliance with the conditions of section 116 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Tribunal may think fit.

110. Report of withdrawal by the Tribunal to the Election Commission.—When an application for withdrawal is granted by the Tribunal and no person has been substituted as petitioner under clause (c) of sub-section (3) of section 109, in place of the party withdrawing, the Tribunal shall report the fact to the Election Commission.

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

112. Abatement of petition before appointment of Tribunal.—If an election petition abates under section 111 before a Tribunal has been appointed for the trial of the petition, notice of the abatement shall be published in the Official Gazette by the Election Commission.

113. Abatement of petition after appointment of Tribunal.—Where an election petition abates under section 111 after a Tribunal has been appointed for the trial of the petition, notice of the abatement shall be published in the Official Gazette by the Tribunal.

114. Substitution on death of petitioner.—After a notice of the abatement of an election petition is published under section 112 or section 113, any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and upon compliance with

the conditions of section 116 as to security shall be entitled to be so substituted and to continue the proceedings upon such terms as the Tribunal may think fit.

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

CHAPTER V

Costs and security for costs

116. Deposit of Security.—* * * The petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition.

117. Further security for costs.—During the course of the trial of an election petition the Tribunal may at any time call upon the petitioner to give such further security for costs as it may direct, and may, if he fails to do so, dismiss the petition.

118. Security for costs from a respondent.—No person shall be entitled to be joined as a respondent under sub-section (1) of section 89 unless he has given such security for costs as the Tribunal may direct.

119. Costs.—(1) Costs including pleaders' fees shall be in the discretion of the Tribunal.

(2) The Tribunal may allow interest on costs at a rate not exceeding six per cent. per annum, and such interest shall be added to the costs.

120. Payment of costs out of security deposits and return of such deposits.—If in any final order as to costs under the provisions of this Part there is a direction for payment of costs by any party to any person, such costs shall, if they have not been already paid, be paid in full, or so far as possible, out of the security deposit and the further security deposit, if any, made by such party under this Part, on an application made in writing in that behalf to the Election Commission by the person in whose favour the costs have been awarded within a period of six months from the publication of such final order under section 105, and if there is any balance left of any of the said security deposits after payment of such costs, such balance, or where no costs have been awarded or no application as aforesaid has been made within the said period of six months, the whole of the said security deposits may on an application made in that behalf in writing to the Election Commission by the person by whom the deposits have been made, or if such person dies after making such deposits, by the legal representatives of such person, be returned to the said person or to his legal representatives, as the case may be.

121. Execution of orders as to costs.—Any final order as to costs under the provisions of this Part may be produced before the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or

where such place is within a presidency town, before the Court of Small Causes having jurisdiction there, and such court shall execute the order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit:

Provided that where any such costs or any portion thereof may be recovered by an application made under section 120, no application shall lie under this section within a period of six months from the date of publication of such final order under section 105 unless it is for the recovery of the balance of any costs which has been left unrealised after an application has been made under section 120 owing to the insufficiency of the amount of the security deposits referred to in that section.

PART VII

CORRUPT AND ILLEGAL PRACTICES AND ELECTORAL OFFENCES

CHAPTER I

Corrupt Practices

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

(1) Bribery, that is to say, any gift, offer or promise by a candidate or his agent, or by any other person with the connivance of a candidate or his 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 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 his candidature; or
 - (ii) an elector for having voted or refrained from voting.

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 75.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his 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, his agent, or any elector, or any person in whom a candidate, his agent or an elector is interested, with * * injury of any kind; or
 - (ii) induces or attempts to induce a candidate, his agent 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, agent 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 procuring or abetting or attempting to procure by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, the application by a person for a ballot paper in the name of any other person, whether living or dead, or in a fictitious name, or by a person for a ballot paper in his own name when, by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote.

(4) The removal of a ballot paper from the polling station during polling hours by a candidate or his agent, or by any other person with the connivance of a candidate or his agent.

(5) The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his 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 hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the connivance of a candidate or his agent for the conveyance of any elector to or from any place for the purpose of recording his vote :

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to or from the polling station shall not be deemed to be a corrupt practice under this clause.

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

(7) The incurring or authorising by a candidate or his agent of expenditure, or the employment of any person by a candidate or his agent, in contravention of this Act or of any rule thereunder.

(8) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person.

Explanation.—In this clause, a person serving under the Government of any State shall include a patwari, chaukidar, dafedar, lambardar, zaildar, shanbagh, karnam, talati, talari, patil, village munsif, village headman or any other village officer, by whatever name he is called, employed in that State whether the office he holds is a whole-time office or not.

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

(1) Any act specified in clauses (1) to (8) of section 122, when done by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent.

(2) The application by a person at an election for a ballot paper in the name of any other person, whether living or dead, or in a fictitious name, or for a ballot paper in his own name when, by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote.

(3) 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 from being, a candidate; or
- (b) by any person whomsoever for himself or any other person for voting or refraining from voting, or for inducing or attempting to induce any elector to vote or refrain from voting, or any candidates to withdraw his candidature.

Explanation.—For the purposes of this clause the term “gratification” has the same meaning as it has for the purpose of clause (1) of section 122.

(4) The making of any return of election expenses which is false in any material particular, or the making of a declaration verifying any such return.

(5) The use of, or appeal to, religious and national symbols, such as, the national flag and the national emblem, for furtherance of the prospects of a candidate's election.

CHAPTER II

Illegal Practices

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

(1) The incurring or authorisation by any person other than a candidate or his agent of expenses on account of holding any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever, for the purpose of promoting or procuring the election of the candidate, unless he is authorised in writing so to do by the candidate.

(2) The hiring, using or letting, as a committee room or for the purpose of any meeting to which electors are admitted, of any building, room or other place where intoxicating liquor is sold to the public.

(3) The issuing of any circular, placard or poster having a reference to the election which does not bear on its face the name and address of the printer and publisher thereof.

CHAPTER III

Electoral Offences

125. Prohibition of election meetings on the election day and the day preceding such day.—(1) No person shall convene hold or attend any political meeting within any constituency on the date or dates on which poll is taken for an election in that constituency or on the day immediately preceding that date or the first of those dates.

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

126. Disturbances at election meetings.—(1) Any person who at a public meeting to which this section applies acts, or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, shall be punishable with fine which may extend to two hundred and fifty rupees.

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

(8) If any police officer reasonably suspects any person of committing an offence under sub-section (1), he may, if requested so to do by the chairman of the meeting, require that person to declare to him immediately his name and address and, if that person refuses or fails so to declare his name and address, or if the police officer reasonably suspects him of giving a false name or address, the police officer may arrest him without warrant.

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

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

128. Officers, etc. at elections not to act for candidates or to influence voting.—(1) No person who is a Returning Officer, or an Assistant Returning Officer, or a presiding or polling officer at an election, or an officer or clerk appointed by the Returning Officer or the presiding officer to perform any duty in connection with an election shall act as an agent of a candidate in the conduct or the management of the election.

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

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

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

129. Prohibition of canvassing in or near polling stations.—(1) No person shall, during the hours fixed for the poll at any polling station, commit any of the following acts within the polling station or in any public or private place within a distance of one hundred yards of the polling station, namely:—

- (a) canvassing for votes; or
- (b) soliciting the vote of any elector; or
- (c) persuading any elector not to vote for any particular candidate; or
- (d) persuading any elector not to vote at the election; or
- (e) exhibiting any notice or sign (other than an official notice) relating to the election.

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

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

130. Penalty for disorderly conduct in or near polling stations.—(1) No person shall, during the hours fixed for the poll at any polling station,—

- (a) use or operate within or at the entrance of the polling station, or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice, such as a megaphone or a loud speaker, or
- (b) shout, or otherwise act in a disorderly manner, within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof.

so as to cause annoyance to any person visiting the polling station for the poll, or so as to interfere with the work of the officers and other persons on duty at the polling station.

(2) Any person who contravenes, or wilfully aids or abets the contravention of, the provisions of sub-section (1) shall be punishable with imprisonment which may extend to three months or with fine or with both.

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

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

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

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

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

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

132. Penalty for illegal hiring or procuring of conveyances at elections.—If any person is guilty of any such corrupt practice as is specified in clause (6) of section 122 at or in connection with an election, he shall be punishable with fine which may extend to two hundred and fifty rupees.

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

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

(3) The persons to whom this section applies are the Electoral Registration Officers, Returning Officers, Assistant Returning Officers, presiding officers, polling officers and any other person appointed to perform any duty in connection with the preparation of an electoral roll, the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election; and the expression "official duty" shall for the purposes of this section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act or by or under the Representation of the People Act, 1950 (XLIII of 1950).

134. Removal of ballot papers from polling station to be an offence.—(1) Any person who at any election fraudulently takes, or attempts to take, a ballot paper out of a polling station, or wilfully aids or abets the doing of any such act, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.

(2) If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under sub-section (1), such officer may, before such person leaves the polling station, arrest or direct

a police officer to arrest such person and may search such person or cause him to be searched by a police officer:

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

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

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

135. Other offences and penalties therefor.—(1) A person shall be guilty of an electoral offence if at any election he—

(a) fraudulently defaces or fraudulently destroys any nomination paper; or

(b) fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper or any declaration of identity or official envelope used in connection with voting by postal ballot; or

(c) without due authority supplies any ballot paper to any person; or

(d) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or

(e) without due authority destroys, takes, opens or otherwise interferes with any ballot box or ballot papers then in use for the purposes of the election; or

(f) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such acts.

(2) Any person guilty of an electoral offence under this section shall—

(a) if he is a Returning Officer or an Assistant Returning Officer or a presiding officer at a polling station or any other officer or clerk employed on official duty in connection with the election, be punishable with imprisonment for a term which may extend to two years or with fine or with both;

(b) if he is any other person, be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(3) For the purposes of this section, a person shall be deemed to be on official duty if his duty is to take part in the conduct of an election or part of an election including the counting of votes or to be responsible after an election for the used ballot papers and other documents in connection with such election, but the expression "official duty" shall not include any duty imposed otherwise than by or under this Act or by or under the Representation of the People Act, 1950 (XVIII of 1950).

(4) An offence punishable under clause (b) of sub-section (2) shall be cognizable.

136. Special provision for complaint regarding certain offences.—No court shall take cognizance of any offence punishable under section 133 or under clause (a) of sub-section (2) of section 135 unless there is a complaint made by order of, or under authority from, the Election Commission or a Regional Commissioner appointed under clause (4) of article 324 or the Chief Electoral Officer of the State concerned.

137. Amendment of Act V of 1898.—In the Code of Criminal Procedure, 1898—

- (a) in section 196, after the word and figures “section 127”, the words, figures and letter “and section 171-F, so far as it relates to the offence of personation” shall be inserted;
- (b) in Schedule II—
 - (i) in the entry relating to section 171-I of the Indian Penal Code (Act XLV of 1860) from the paragraph in column 2, the words “and personation” shall be omitted;
 - (ii) after the paragraph in column 2 of the said entry as so amended, the following paragraph shall be inserted, namely:—
“Personation at an election.”;
 - (iii) in column 3, opposite the paragraph inserted by sub-clause (ii), the following paragraph shall be inserted, namely:—
“May arrest without warrant.”;
 - (iv) in columns 4, 5, 6, 7 and 8, opposite the paragraph inserted by sub-clause (ii), the word “Ditto” shall be inserted;
 - (v) in the entry relating to section 171-G of the Indian Penal Code, in column 3, for the word “Ditto” the words “shall not arrest without warrant” shall be substituted.

PART VIII
DISQUALIFICATIONS
CHAPTER I

Disqualifications for membership

138. Offences entailing disqualification.—(1) The following offences shall entail disqualification for membership of Parliament and of the Legislature of every State, namely:—

- (a) offences punishable with imprisonment under section 171E or section 171F of the Indian Penal Code (Act XLV of 1860), and
- (b) offences punishable under section 134 or clause (a) of sub-section (2) of section 135 of this Act.

(2) The period of such disqualification shall be six years from the date of the conviction for the offence.

139. Corrupt and illegal practices entailing disqualifications.—(1) The following corrupt or illegal practices relating to elections shall entail disqualification for membership of Parliament and of the Legislature of every State, namely:—

- (a) corrupt practices specified in section 122 or section 123 * * *,
and
- (b) illegal practices specified in section 124 * * * * .

(2) The period of such disqualification shall be six years in the case of a corrupt practice, and four years in the case of an illegal practice, counting from the date on which the finding of the Election Tribunal as to such practice takes effect under this Act.

CHAPTER II

Disqualification for voting

140. Disqualification arising out of conviction and corrupt practices.—If any person after the commencement of this Act—

- (a) is convicted of an offence punishable with imprisonment under section 171E or section 171F of the Indian Penal Code (Act XLV of 1860), or of

an offence punishable under section 134 or clause (a) of sub-section (2) of section 135 of this Act, or

(b) is, upon the trial of an election petition under Part VI * * found guilty of any corrupt practice,

he shall, for a period of six years from the date of the conviction or from the date on which such finding takes effect, be disqualified from voting at any election.

141. Disqualification arising out of illegal practices.—If, in relation to any election, * * * any person is, upon the trial of an election petition under Part VI * * , found guilty of any illegal practice, he shall be disqualified for voting at any election for a period of four years from the date on which such finding takes effect.

142. Disqualification arising out of failure to lodge return of election expenses.—If default is made in making the return of the election expenses of any person who has been nominated as a candidate at an election to which the provisions of Chapter VIII of Part V * * apply, or if such a return is found either upon the trial of an election petition under Part VI * * or by any court in a judicial proceeding, to be false in any material particular, the candidate and his election agent shall be disqualified for voting at any election for a period of five years from the date by which the return was required to be lodged.

143. Removal of disqualifications.—Any disqualification under this Chapter may be removed by the Election Commission for reasons to be recorded by it in writing.

CHAPTER III

Other Disqualifications

144. Disqualification for being an election agent or polling agent.—Any person who is for the time being disqualified under the foregoing provisions of this Part for being a member of either House of Parliament or the House or either House of the Legislature of a State or for voting at elections, shall, so long as the disqualification subsists, also be disqualified for being an election agent or a polling agent at any election.

145. Disqualification for holding certain offices.—Any person who—

(a) has been convicted of an offence punishable with imprisonment under section 171E or section 171F of the Indian Penal Code (Act XLV of 1860), or of an offence punishable under section 134 or clause (a) of sub-section (2) of section 135 of this Act, or

(b) has been disqualified from exercising any electoral right for a period of not less than five years on account of any corrupt practices in connection with an election,

shall be disqualified for six years from the date of such conviction or disqualification from—

(i) being appointed to, or acting in, any judicial office;

(ii) being elected to any office of any local authority when the appointment to such office is by election, or holding or exercising any such office to which no salary is attached;

(iii) being elected or sitting or voting as a member of any local authority; or

(iv) being appointed or acting as a trustee of a public trust:

Provided that any disqualification under this section may be removed by the Election Commission for reasons to be recorded by it in writing.

PART IX

BYE-ELECTIONS

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

147. Casual vacancies in the electoral colleges for certain Part C States.—When the seat of a member elected to the electoral college for a scheduled Part C State becomes vacant or is declared vacant or his election to such electoral college is declared void, the Election Commission shall, by a notification in the Gazette of India, call upon the Council of States constituency concerned to elect a person for the purpose of filling the vacancy so caused before such date as may be * * * specified in the notification, and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

148. Casual vacancies in the House of the People.—(1) When the seat of a member elected to the House of the People becomes vacant or is declared vacant or his election to the House of the People is declared void, the Election Commission shall, subject to the provisions of sub-section (2), by a notification in the Gazette of India, call upon the Parliamentary constituency concerned to elect a person for the purpose of filling the vacancy so caused before such date as may be * * * specified in the notification, and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

(2) If the vacancy so caused be a vacancy in a seat reserved in any such constituency for the scheduled castes or for any scheduled tribes, the notification issued under sub-section (1) shall specify that the person to fill that seat shall belong to the scheduled castes or to such scheduled tribes, as the case may be.

149. Casual vacancies in the State Legislative Assemblies.—(1) When the seat of a member elected to the Legislative Assembly of a State becomes vacant or is declared vacant or his election to the Legislative Assembly is declared void, the Election Commission shall, subject to the provisions of sub-section (2), by a notification in the Official Gazette, call upon the Assembly constituency concerned to elect a person for the purpose of filling the vacancy so caused before such date as may be * * * specified in the notification, and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

(2) If the vacancy so caused be a vacancy in a seat reserved in any such constituency for the scheduled castes or for any scheduled tribes, the notification issued under sub-section (1) shall specify that the person to fill that seat shall belong to the scheduled castes or to such scheduled tribes, as the case may be.

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

PART X

MISCELLANEOUS

151. List of members of the State Legislative Assemblies and electoral colleges and of elected members of the Coorg Legislative Council to be maintained by the Returning Officers concerned.—(1) The Returning Officer for an election by the members of the Legislative Assembly of a State to fill a seat () or seats in the Council of States or in the Legislative Council of the State shall, for the purposes of such election, maintain at his office in the prescribed manner and form a list of members of that Legislative Assembly.

(2) The Returning Officer for an election by the members of the electoral college for a Part C State or group of such States or by the elected members of the Coorg Legislative Council to fill a seat or seats in the Council of States shall, for the purposes of such election, maintain at his office in the prescribed manner and form a list of members of that electoral college or a list of elected members of the Coorg Legislative Council, as the case may be.

(3) Copies of the lists referred to in sub-sections (1) and (2) shall be made available for sale.

152. Extension of time for completion of election.—(1) It shall be competent for the Election Commission for reasons which it considers sufficient to extend the time appointed by such Commission under the provisions of sub-section (1) or sub-section (2) of section 10, or section 11, or section 13 or section 15 or sub-section (1) or sub-section (2) of section 16 or under any of the provisions of Part IX for the completion of any election.

(2) When the time for the completion of any election is so extended, the President or the Governor or Rajpramukh of the State or the Election Commission, as the case may be, shall by notification in the Official Gazette make the necessary amendments in the notification issued in respect of such election under any of the provisions referred to in sub-section (1).

153. Term of office of members of the Council of States.—(1) The term of office of a member elected to fill the seat in the Council of States to be filled by the representative of the States of Ajmer and Coorg and of a member elected to fill the seat in that Council to be filled by the representative of the States of Manipur and Tripura, other than a member chosen to fill a casual vacancy in either of those seats, shall be two years.

(2) Subject as aforesaid, the term of office of a member of the Council of States, other than a member chosen to fill a casual vacancy, shall be six years, but upon the first constitution of the Council of States the President shall, after consultation with the Election Commission, make by order such provision as

he thinks fit for curtailing the term of office of some of the members then chosen in order that, as nearly as may be, one-third of the members holding seats of each class shall retire in every second year thereafter.

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

154. Commencement of term of office of members of the Council of States.—

(1) The term of office of a member of the Council of States whose name is required to be notified in the Official Gazette under section 70 shall begin on the date of such notification.

(2) The term of office of a member of the Council of States whose name is not required to be notified under section 70 shall begin on the date of publication in the Official Gazette of the declaration containing the name of such person as elected under section 66 or of the notification issued under sub-clause (a) of clause (1) of article 80 or under any other provision announcing the nomination of such person to the Council of States, as the case may be.

155. Term of office of members of State Legislative Councils.—(1) The term of office of a member of the Legislative Council of a State, other than a member chosen to fill a casual vacancy, shall be six years, but upon the first constitution of the Council the Governor or the Rajpramukh, as the case may be,

() shall, after consultation with the Election Commission, make by order such provision as he thinks fit for curtailing the term of office of some of the members then chosen in order that, as nearly as may be, one-third of the members holding seats of each class shall retire in every second year thereafter.

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

156. Commencement of the term of office of members of the Legislative Councils.—(1) The term of office of a member of the Legislative Council of a State whose name is required to be notified in the Official Gazette under section 74 shall begin on the date of such notification.

(2) The term of office of a member of the Legislative Council of a State whose name is not required to be notified under section 74 shall begin on the date of publication in the Official Gazette of the declaration containing the name of such person as elected under section 66 or of the notification issued under sub-clause (e) of clause (3) of article 171, announcing the nomination of such person to the Council, as the case may be.

157. Return or forfeiture of deposits.—(1) If a candidate by whom the deposit referred to in section 32 or in that section read with sub-section (4) of section 37 has been made withdraws his candidature in the manner and within the time specified in sub-section (1) of section 35 or in that sub-section read with the said sub-section (4), or if the nomination of any such candidate is rejected, the deposit shall be returned to him; and if a candidate dies before the commencement of the poll, the deposit made by him shall be returned to his legal representatives.

(2) If a candidate nominated under section 30 by whom a deposit has been made under section 32 is not elected, and the number of votes polled by him does not exceed one-eighth of the total number of votes polled or, in the case

of a constituency returning more than one member, one eighth of the total number of votes polled divided by the total number of members to be elected, the deposit shall be forfeited to the appropriate authority.

(3) For the purpose of sub-section (2), the number of votes polled shall be deemed to be the number of ballot papers, other than rejected ballot papers, counted.

(4) The deposit made by a candidate under section 32 or under that section read with sub-section (4) of section 37 shall, where it is not forfeited under sub-section (2), be returned to him after the publication of the result of the election in the Official Gazette:

Provided that if a candidate is duly nominated at a general election in more than one Parliamentary constituency or Council of States constituency or Assembly constituency, not more than one of the deposits made by him shall be returned, and the remainder shall be forfeited to the appropriate authority:

Provided further that if a candidate is duly nominated at an election in more than one Council constituency or at an election in a Council constituency and an election by the members of the State Legislative Assembly to fill seats in the State Legislative Council, not more than one of the deposits made by him shall be returned, and the remainder shall be forfeited to the State Government.

158. Staff of every local authority to be made available for election work.—Every local authority in a State shall, when so requested by the Election Commission or a Regional Commissioner appointed under clause (4) of article 324 or the Chief Electoral Officer of the State, make available to any Returning Officer such staff as may be necessary for the performance of any duties in connection with an election.

159. Requisitioning of premises, vehicles, etc. for election purposes.—(1) If it appears to the State Government that in connection with an election held within the State—

(a) any premises are needed or are likely to be needed for the purpose of being used as a polling station or for the storage of ballot boxes after a poll has been taken, or

(b) any vehicle, vessel or animal is needed or is likely to be needed for the purpose of transport of ballot boxes to or from any polling station, or transport of members of the police force for maintaining order during the conduct of such election, or transport of any officer or other person for performance of any duties in connection with such election,

that Government may by order in writing requisition such premises, or such vehicle, vessel or animal, as the case may be, and may make such further orders as may appear to it to be necessary or expedient in connection with the requisitioning.

(2) The requisition shall be effected by an order in writing addressed to the person deemed by the State Government to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.

(3) Whenever any property is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in that sub-section.

(4) In this section—

- (a) "premises" means any land, building or part of a building and includes a hut, shed or other structure or any part thereof;
- (b) "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise.

160. Payment of compensation.—(1) Whenever in pursuance of section 159 the State Government requisitions any premises, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely:—

- (i) the rent payable in respect of the premises or if no rent is so payable, the rent payable for similar premises in the locality;
- (ii) if in consequence of the requisition of the premises the person interested is compelled, to change his residence or place of business, the reasonable expenses (if any) incidental to such change:

Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the State Government for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the State Government may determine:

Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred by the State Government to an arbitrator appointed in this behalf by that Government for determination, and shall be determined in accordance with the decision of such arbitrator.

Explanation.—In this sub-section, the expression 'person interested' means the person who was in actual possession of the premises requisitioned under section 159 immediately before its requisition, or where no person was in such actual possession, the owner of such premises.

(2) Whenever in pursuance of section 159 the State Government requisitions any vehicle, vessel or animal, there shall be paid to the owner thereof compensation the amount of which shall be determined by the State Government on the basis of the fares or rates prevailing in the locality for the hire of such vehicle, vessel or animal:

Provided that where the owner of such vehicle, vessel or animal being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the State Government for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the State Government may determine:

Provided further that where immediately before the requisitioning the vehicle or vessel was by virtue of a hire purchase agreement in the possession of a person other than the owner, the amount determined under this section as the total compensation payable in respect of the requisition shall be apportioned between that person and the owner in such manner as they may agree upon, and in default of agreement, in such manner as an arbitrator appointed by the State Government in this behalf may decide

161. Power to obtain information.—The State Government may, with a view to requisitioning any property under section 159 or determining the compensation payable under section 160, by order, require any person to furnish

to such authority as may be specified in the order such information in his possession relating to such property as may be so specified.

162. Powers of entry into and inspection of premises etc.—(1) Any person authorised in this behalf by the State Government may enter into any premises and inspect such premises and any vehicle, vessel or animal therein for the purpose of determining whether, and if so in what manner, an order under section 159 should be made in relation to such premises, vehicle, vessel or animal or with a view to securing compliance with any order made under that section.

(2) In this section, the expressions "premises" and "vehicle" have the same meanings as in section 159.

163. Eviction from requisitioned premises.—(1) Any person remaining in possession of any requisitioned premises in contravention of any order made under section 159 may be summarily evicted from the premises by any officer empowered by the State Government in this behalf.

(2) Any officer so empowered may, after giving to any woman not appearing in public reasonable warning and facility to withdraw, remove or open any lock or bolt or break open any door of any building or do any other act necessary for effecting such eviction.

164. Release of premises from requisition.—(1) When any premises requisitioned under section 159 is to be released from requisition, the possession thereof shall be delivered to the person from whom possession was taken at the time when the premises was requisitioned, or if there were no such person, to the person deemed by the State Government to be the owner of such premises, and such delivery of possession shall be a full discharge of the State Government from all liabilities in respect of such delivery, but shall not prejudice any rights in respect of the premises which any other person may be entitled by due process of law to enforce against the person to whom possession of the premises is so delivered.

(2) Where the person to whom possession of any premises requisitioned under section 159 is to be given under sub-section (1) cannot be found or is not readily ascertainable or has no agent or any other person empowered to accept delivery on his behalf, the State Government shall cause a notice declaring that such premises are released from requisition to be affixed on some conspicuous part of such premises and publish the notice in the Official Gazette.

(3) When a notice referred to in sub-section (2) is published in the Official Gazette, the premises specified in such notice shall cease to be subject to requisition on and from the date of such publication and be deemed to have been delivered to the person entitled to possession thereof; and the State Government shall not be liable for any compensation or other claim in respect of such premises for any period after the said date.

165. Delegation of functions of the State Government with regard to Requisitioning.—The State Government may, by notification in the Official Gazette, direct that any powers conferred or any duty imposed on that Government by any of the provisions of sections 159 to 164 shall, under such conditions, if any, as may be specified in the direction, be exercised or discharged by such officer or class of officers as may be so specified.

166. Penalty for contravention of any order regarding requisitioning.—If any person contravenes any order made under section 159 or section 161, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

PART XI

GENERAL

167. Power to make rules.—(1) The Central Government may, after consulting the Election Commission, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the duties of presiding officers and polling officers at polling stations;
- (b) the checking of voters by reference to the electoral roll;
- (c) the manner in which votes are to be given both generally and in the case of illiterate voters or voters under physical or other disability;
- (d) the procedure to be followed in respect of the tender of vote by a person representing himself to be an elector after another person has voted as such elector;
- (e) the procedure as to voting to be followed at elections held in accordance with the system of proportional representation by means of the single transferable vote;
- (f) the scrutiny and counting of votes including cases in which a recount of the votes may be made before the declaration of the result of the election;
- (g) the safe custody of ballot boxes, ballot papers and other election papers, the period for which such papers shall be preserved and the inspection and production of such papers;
- (h) any other matter required to be prescribed by this Act.

168. Jurisdiction of civil courts barred.—No civil court shall have jurisdiction to question the legality of any action taken or of any decision given by the Returning Officer or by any other person appointed under this Act in connection with an election.

169. Repeal of Act XXXIX of 1920.—The Indian Elections Offences and Inquiries Act, 1920, is hereby repealed:

Provided that such repeal shall not affect any inquiry in respect of an election to fill any casual vacancy referred to in clause (1) or clause (2) of article 388 by an Election Tribunal appointed for that purpose by the Election Commission, and the provisions of the said Act shall apply in relation to such election and inquiry notwithstanding such repeal subject to any order made by the President under the said clause (1) or clause (2), as the case may be.

PARLIAMENT OF INDIA

Report of the Select Committee on the Representation of the
People (No. 2) Bill, 1950.

(As amended by Select Committee)