

**ABOUT  
ELECTIONS AND ELECTORS**

**LOK SABHA SECRETARIAT  
NEW DELHI**

*December, 1956*

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## P R E F A C E

**T**HIS pamphlet is intended to give basic information to Members on certain aspects of electoral matters. For detailed study they may refer to the original documents—the Electoral Law and the Rules made thereunder.

NEW DELHI;  
*December, 1956.*

M. N. KAUL,  
*Secretary.*

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**I**  
**ELECTION COMMISSION**  
**ITS SCOPE AND FUNCTIONS**

Under a Constitutional provision\* the entire electoral machinery in India has been centralised in an independent body called the Election Commission, consisting of the Chief Election Commissioner, as its Chairman, and such number of other Election Commissioners as the President may from time to time appoint.

The Election Commission has been made independent of executive control inasmuch as members of the Commission (and Regional Commissioners) shall not be removed by the President except on the recommendation of Chief Election Commissioner, and the Chief Election Commissioner "shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity".

The Election Commission has been vested with the following exclusive powers:

- (a) Superintendence, direction and control of the preparation of the electoral rolls for all elections to Parliament and to the Legislatures of every State; and of elections to the offices of President and Vice-President;
- (b) Conduct of all the above elections; and
- (c) Appointment of election tribunals for the decisions of doubts and disputes arising out of or in connection with election to Parliament and to the Legislatures of States.

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*Article 324, Constitution of India.*

The Election Commission has also an advisory function. The Constitution provides that the Commission will give its opinion to the President, and to the Governor, upon any question relating to disqualification of any member of either House of Parliament or a State Legislature, as the case may be.

II  
FIRST GENERAL ELECTIONS  
A STATISTICAL SUMMARY

Conducted on the basis of adult suffrage, the first general elections in India, under the new Constitution, were the biggest exercise of democratic franchise in history. Commencing on the 10th September, 1951, when the first notifications under Sections 15 and 17 of the Representation of the People Act, 1951, were issued in respect of Himachal Pradesh, the elections were concluded on the 4th June, 1952, when the election to the West Bengal Legislative Council was completed.

The total number of seats, for which elections were conducted, was 4,505 including 90 seats of the three Electoral Colleges of Kutch, Manipur and Tripura. Of the legislators numbering 4,415, 3,772 candidates were directly elected, 546 indirectly elected and 97 were nominated.

The total number of constituencies, including Council constituencies, was 3,293.

The following few election facts give an idea of the scale on which the first general elections were conducted:

- (i) In all, 5,155 nomination papers, in respect of 2,833 persons, were filed for elections to the Lok Sabha. For the State Assemblies, the nomination papers numbered 42,244 in respect of 23,287 candidates.
- (ii) For the 489 seats for the House of the People, the number of contesting candidates was 1,874. For the 3,283 seats for the twenty-two State Legislative Assemblies and 90 seats for the Electoral Colleges, the number of contesting candidates was 15,361 and 265 respectively.
- (iii) The total number of voters was 17,32,13,635, of which 8,86,12,171 cast their votes for elections to Parliament—the over-all percentage of voting being 51.15. The percentage of voting was generally high and the average throughout the country was more than fifty per cent; in Travancore-Cochin it reached as much as 80 per cent.

- (iv) A total of 1,32,560 polling stations, with 1,96,084 polling booths, were set up throughout the country.
- (v) The number of steel ballot boxes used was 24,73,850, in addition to 1,11,095 wooden ones. The total cost under this head exceeded Rs. 122 lakhs.
- (vi) For the six hundred million ballot papers, a total of 180 tons of paper was used, the cost amounting to about Rs. 11 lakhs.
- (vii) The overall expenditure incurred on the elections from 1948 till the completion of the elections in 1952 was in the neighbourhood of Rs. 104 crores. Of this, approximately Rs. 5 crores represent the share of the Government of India.

The total number of electoral offences reported during or in regard to the poll was 1,250. In view of the fact that 88.6 million voters actually cast their votes, this small figure indicates the law-abiding and peaceful manner in which the elections were conducted all over the country.

### III

#### ELECTION OF THE PRESIDENT AND THE VICE-PRESIDENT\*

No person is eligible for election as President or Vice-President of India unless he is otherwise qualified for election as a member of the Lok Sabha or Rajya Sabha, respectively and has completed the age of 35 years. The holding of any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments will however, disqualify the candidate for election. But a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State. Moreover, the President or the Vice-President of India cannot be a member of either House of Parliament or of a House of the Legislature of any State and shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President or Vice-President. All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be enquired into and decided by the Supreme Court of India whose decision is final. An election petition calling in question an election is required to be presented within 30 days from the date of publication of the declaration containing the name of the returned candidate.

The election for either of the two offices is completed before the expiry of the incumbent's term of office, which is for a period of five years. In case it falls vacant by reason of his death, resignation or removal or otherwise, a new election is held as soon as possible after the vacancy has occurred but not later than six months. The person, elected to fill the vacancy, holds office for a term of five years from the date of his election.

On the issue by the Election Commission of a Gazette notification for the intended Presidential or Vice-Presidential election, nomination on a prescribed form duly subscribed by the candidate himself as assenting to the nomination and by two electors

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\* Articles 54 to 71 of the Constitution of India.



as proposer and seconder is to be made not earlier than the eighth and not later than the fourteenth day after the publication of this notification.

After the expiry of the period within which candidatures may be withdrawn, the Returning Officer prepares a list of valid nominations which is subsequently published in the Gazette.

The President is elected by the members of an electoral college consisting of the elected members of both Houses of Parliament and of the Legislative Assemblies of the States. The election is by secret ballot and in accordance with the system of proportional representation by means of the single transferable vote. The election of the Vice-President is also indirect and under the same system but the members of State Legislatures have no part in it. The Vice-President is elected only by members of both Houses of Parliament assembled at a joint meeting.

IV  
LAW OF ELECTIONS IN INDIA  
SOME RECENT CHANGES

The Constitution of India contains some provisions relating to matters connected with elections. But the details of the law of elections were left to be laid down by subsequent legislation by Parliament. Hence, the major part of the Election laws is to be found in the two measures passed by the Parliament—the Representation of the People Acts 1950 and 1951 and the Rules made thereunder.

In the light of the experience gained by the Election Commission and the Government in the working of these Acts during and after the first General Elections, necessary amendments thereto, with a view to simplifying the electoral procedure and programme, have recently been made. Some of the important changes effected thereby are:—

*(In the case of the Representation of the People Act, 1950)*

1. Administrative machinery for the preparation and revision of the electoral rolls has been provided.
2. Separate rolls for parliamentary constituencies and for assembly constituencies, which led to unnecessary duplication of work and expenditure, have been dispensed with. Now the electoral roll of every parliamentary constituency shall consist of the electoral rolls of so much of the assembly constituencies or, as the case may be, electoral college constituencies as are comprised within that parliamentary constituency; and it shall not be necessary to prepare or revise separately the electoral roll for any parliamentary constituency.
3. Conditions for registration in any constituency have been simplified by relating "ordinary residence" to the "qualifying date" rather than to any "qualifying period".
4. With a view to avoiding any discrimination and also facilitating the administrative work, a uniform rule,

for purposes of registration of electors, has been made for all members of the armed forces.

5. In place of the electoral roll being 'prepared' every year, the amended measure provides for only annual revision with reference to the qualifying date.
6. Provision has also been made now for the inclusion of names in the electoral rolls. Except when an election has been announced in the constituency, the application for inclusion in the electoral roll will lie to the electoral registration officer. During the period when an election is in progress the application will lie only to the chief electoral officer of the State.

*(In the case of the Representation of the People Act, 1951)*

1. The period between the notification calling for an election and the commencement of polling has been reduced.
2. The procedure for presentation of nomination papers and the requirements of a valid nomination have been simplified.
3. The scrutiny of nomination papers has been made less technical. It is also required of a returning officer to prepare a list of validly nominated candidates immediately after the scrutiny is over.
4. The date of election of a candidate has now been defined as one of election result.
5. The section dealing with election petition has been revised so as to make a petition complete and self-contained.
6. The amended law provides for a one-member Election Tribunal and an appeal shall lie from every order made by a Tribunal to the High Court of the State in which the Tribunal is situated. The Election Commission has also been empowered to transfer election petitions from one tribunal to another.

V  
COMPOSITION OF VARIOUS LEGISLATURES IN  
INDIA

[Under the States Reorganisation Act, 1956, the Bihar and West Bengal (Transfer of Territories) Act, 1956, and the Constitution (Seventh Amendment) Act, 1956]

ALLOCATION OF SEATS

**Lok Sabha**

The number of seats allotted to each of the States and Union territories, according to the Third Schedule of the States Reorganisation Act, 1956, is as under:

1. Andhra Pradesh	..	43
2. Assam	..	12
3. Bihar*	..	55
4. Bombay	..	66
5. Kerala	..	18
6. Madhya Pradesh	..	36
7. Madras	..	41
8. Mysore	..	26
9. Orissa	..	20
10. Punjab	..	22
11. Rajasthan	..	22
12. Uttar Pradesh	..	86
13. West Bengal*	..	34
14. Jammu and Kashmir	..	6
15. Delhi	..	5
16. Himachal Pradesh	..	4
17. Manipur	..	2
18. Tripura	..	2
		—
TOTAL	..	500
		—

\* The seats allotted to Bihar and West Bengal have been subsequently changed with the passing of the Bihar and West Bengal (Transfer of Territories) Act, 1956 and are now 53 for Bihar and 36 for West Bengal.

Article 81 of the Constitution, as amended by the Constitution (Seventh Amendment) Act, 1956, provides that the Lok Sabha shall consist of:—

- (a) not more than 500 Members chosen by direct election from territorial constituencies in the States, and
- (b) not more than 20 Members to represent the Union territories, chosen in such manner as Parliament may by law provide.

### Rajya Sabha

According to the Constitution (Seventh Amendment) Act, the allocation of seats in the Rajya Sabha is as under:

1. Andhra Pradesh	..	18
2. Assam	..	7
3. Bihar	..	22
4. Bombay	..	27
5. Kerala	..	9
6. Madhya Pradesh	..	16
7. Madras	..	17
8. Mysore	..	12
9. Orissa	..	10
10. Punjab	..	11
11. Rajasthan	..	10
12. Uttar Pradesh	..	34
13. West Bengal	..	16
14. Jammu and Kashmir	..	4
15. Delhi	..	3
16. Himachal Pradesh	..	2
17. Manipur	..	1
18. Tripura	..	1
		<hr/>
	TOTAL	.. 220
		<hr/>

### Legislative Assemblies

Consequent to the passing of the States Reorganisation Act, 1956, the number of seats allotted to the various Legislative Assemblies is as under:

1. Andhra Pradesh	..	301
2. Assam	..	108

3. Bihar*	..	330
4. Bombay	..	396
5. Kerala	..	126
6. Madhya Pradesh	..	228
7. Madras	..	205
8. Mysore	..	208
9. Orissa	..	140
10. Punjab	..	154
11. Rajasthan	..	176
12. Uttar Pradesh	..	430
13. West Bengal*	..	238

### Legislative Councils

The allocation of seats in the Legislative Councils in States having a bicameral legislature will be as under:

Name of State	Total No. of seats including nominated members	Nominated members
Bihar	72	12
Bombay	72	12
Madhya Pradesh	72	12
Madras	48	8
Mysore	52	8
Punjab	40	8
Uttar Pradesh	72	12
West Bengal	51	9

\* The allocation made for Bihar and West Bengal was subsequently changed to 318 and 252 respectively under the Bihar and West Bengal (Transfer of Territories) Act, 1956.

**VI**  
**QUALIFICATIONS FOR MEMBERSHIP OF PARLIAMENT  
AND STATE LEGISLATURES**

**FOR MEMBERSHIP OF PARLIAMENT OR STATE LEGISLATURES**

**Constitutional Provisions**

Any person, male or female, who is a citizen of India and not less than thirty years in the case of a seat in the Rajya Sabha or a Legislative Council and not less than twenty-five years in the case of a seat in the Lok Sabha or a Legislative Assembly, and who possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament and is otherwise not disqualified, may be elected to Parliament or a State Legislature<sup>1</sup>.

**FOR MEMBERSHIP OF THE LOK SABHA**

**Statutory Provisions**

The additional qualifications laid down by Parliament for membership of the Lok Sabha<sup>2</sup> are:

- (a) a candidate must be an elector for any Parliamentary constituency;
- (b) a candidate for election to a seat reserved for the Scheduled Castes or Tribes (other than those in the autonomous districts of Assam) must, in addition, belong to those castes or tribes, as the case may be; in the case of a seat reserved for the autonomous districts of Assam, he must be a member of any of those Scheduled Tribes and be an elector for the specific constituency.

**FOR MEMBERSHIP OF THE RAJYA SABHA**

A candidate for election to the Rajya Sabha, as a representative of any State (other than the State of Jammu and Kashmir)

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<sup>1</sup>Articles 84 and 173, Constitution of India.

<sup>2</sup>Section 4, Representation of the People Act, 1951.

or Union territory must be an elector for a Parliamentary constituency in that State or territory.<sup>3</sup>

#### FOR MEMBERSHIP OF A LEGISLATIVE ASSEMBLY

A candidate for a seat in the Legislative Assembly of a State must be an elector for any Assembly constituency in that State. Where a seat is reserved for the Scheduled Castes or Tribes, he must, in addition, belong to those castes or tribes, as the case may be. In the case of a seat reserved for an autonomous district of Assam, a candidate shall not be qualified therefor unless 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.<sup>4</sup>

#### FOR MEMBERSHIP OF A LEGISLATIVE COUNCIL

For a seat in the Legislative Council of a State to be filled by election, a candidate must be an elector for any Assembly constituency in that State. A person shall not be qualified for a seat to be filled by nomination unless he is ordinarily resident in that State.<sup>5</sup>

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<sup>3</sup>Section 3, Representation of the People Act, 1951.

<sup>4</sup>Section 5, *ibid.*

<sup>5</sup>Section 6, *ibid.*



## VII

### DISQUALIFICATIONS FOR MEMBERSHIP OF PARLIAMENT AND STATE LEGISLATURES

Article 102 and 191 of the Constitution of India lay down the following disqualifications for membership of either House of Parliament and of the Legislative Assembly or Legislative Council of a State—

- (a) *In the case of Parliament:* If a person holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

*In the case of State Legislatures:* If he holds any office of profit under the Government of India or the Government of any State, other than an office declared by the Legislature of the State by law not to disqualify its holder;

- (b) If he is of unsound mind and stands so declared by a competent Court;
- (c) if he is an undischarged insolvent;
- (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under an acknowledgement of allegiance or adherence to a foreign State; and
- (e) if he is so disqualified by or under any law made by Parliament.

The Constitution further provides that a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

In addition, the statutory provisions relating to disqualifications for membership are Sections 7 to 9, 139 and 140 of the Representation of the People Act, 1951. The disqualifications under Section 140 refer to corrupt practices and those under Section 139 generally to electoral offences. The remaining Sections, in brief, provide that a person shall be disqualified for

membership of either House of Parliament or of the Legislative Assembly or Legislative Council of a State—

- (a) if he has been convicted of any offence or corrupt practice which has been declared by section 139 or section 140 to be an offence or practice entailing disqualifications for membership, unless a period of six years has elapsed or the Election Commission has removed the disqualification;
- (b) if he has been convicted by a Court in India of any offence and sentenced 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 he has failed to lodge an account of his election expenses within the time and in the manner required by or under this Act, unless three years have elapsed or the Election Commission has removed the disqualification;
- (d) if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, 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 appropriate Government.\*
- (e) if he is a director or managing agent of, or holds any office of profit under, any company or corporation other than a co-operative society in which the appropriate Government has not less than 25 per cent share;
- (f) if, having held any office under the Government of India or the Government of any State including an Indian State, he has been dismissed for corruption or disloyalty to the State, unless a period of five years has elapsed since his dismissal.

If a contract has been entered into by a public company\*\* of which the candidate is only a share-holder, he will not be disqualified. If the contract has been effected by a member on behalf of a Hindu undivided family, every member of that

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\* "Appropriate Government" means the Central Government in relation to any disqualification for being chosen as or for being a member of either House or Parliament, and the State Government in a similar case for being chosen as or for being a member of the Legislative Assembly or Legislative Council of a State.

\*\* "Public company" means a public company as defined in the Companies Act, 1956.

family will be disqualified. Where the share or interest in the contract devolves on a person by inheritance or succession or as a legatee, executor or administrator, the disqualification *vide* (d) above shall not 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.

## VIII NOMINATION PAPER

Immediately on the issue of a notification calling upon a constituency to elect a member or members (first notification), the Election Commission is required, by notification in the Official Gazette (second notification), to appoint<sup>6</sup>—

- (a) the last date for making nominations, *viz.* the 10th day after the date of the publication of the first notification;
- (b) the date for the scrutiny of nominations, *viz.*, the 3rd day after the last date *vide* (a) above;
- (c) the last date for the withdrawal of candidatures *viz.* the 3rd day after the date specified in (b) above;
- (d) the date or dates for taking poll — not earlier than the 20th day after the last date for the withdrawal of candidatures; and
- (e) the date before which the election is to be completed.

Any person, who is otherwise qualified to fill a seat, may be nominated as a candidate for that seat.

For valid presentation of a nomination paper, the following conditions have to be fulfilled<sup>7</sup>:—

- (i) The nomination paper, completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer, must be delivered, either by the candidate or his proposer, to the returning officer at a place specified in the notice issued by him, between 11 a.m. and 3 p.m., on or before the last date for filing nominations.
- (ii) In the case of a reserved seat, the nomination paper must contain a declaration by the candidate specifying the particular caste or tribe of which he is a member and the area in relation to which that caste

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<sup>6</sup>S. 30, *ibid.*

<sup>7</sup>S. 38, *ibid.*

or tribe is a Scheduled Caste, or as the case may be, a Scheduled Tribe of the State.

- (iii) In the case of dismissed Government servant, when a period of five years has not elapsed since the dismissal, the nomination paper must attach a certificate issued in the prescribed manner by the Election Commission to the effect that the candidate has not been dismissed for corruption or disloyalty to the State.
- (iv) The candidate must deposit or cause to be deposited certain sum specified differently in the case of an election from a parliamentary, assembly or council constituency or from an electoral college constituency.

On the presentation of a nomination paper, the returning officer is called upon to satisfy himself that the names and electoral roll numbers of the candidate and his proposer therein are in conformity with those entered in the electoral rolls. He may, however, permit any clerical or technical error to be corrected.

Where the candidate is an elector of a different constituency, he must produce before the returning officer a copy of the electoral roll of that constituency or of a certified copy of the relevant part thereof, if he has not filed the same along with the nomination paper.

Any candidate may be nominated by more than one nomination paper for election in the same constituency, but only one deposit is required of him.

### Scrutiny of Nomination Papers

The date fixed for scrutiny of nomination papers cannot be changed except in certain cases<sup>8</sup>. The returning officer is bound to give reasonable facility for examination of the nomination paper to a candidate who will be allowed to be present at the time and place of the scrutiny with his election agent, his one proposer as well as another person duly authorised in writing by him.

The grounds for rejection of a nomination paper may be—

- (a) that the candidate either is not qualified or is disqualified for being chosen to fill the seat under provisions and the law;

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<sup>8</sup>S. 36. *ibid.*

- (b) that there has been a failure to comply with any of the provisions regarding presentation of a nomination paper and the requirements for a valid nomination.
- (c) that the signature of the candidate or the proposer on the paper is not genuine.

The returning officer has no jurisdiction to reject a nomination paper on the ground of any technical defect which is not of a substantial character. On each nomination paper, he has to write his decision, and in the case of rejection, he shall, moreover, record a brief statement of his reasons for such rejection.

After the scrutiny is over, the returning officer has to immediately prepare a list of validly nominated candidates and affix it to his notice board.

#### Deposits

The amount of security required by law<sup>9</sup> to be deposited by a candidate along with the nomination paper varies as under:—

- (a) in the case of an election from a Parliamentary constituency, a sum of five hundred rupees;
- (b) in the case of election from an Assembly or Council constituency, a sum of two hundred and fifty rupees;

[Where the candidate is a member of Scheduled Caste or Scheduled Tribe, the sum required to be deposited is half of the amount specified in (a) and (b) above]

- (c) in the case of an election from an electoral college constituency, a sum of fifty rupees.

[Where a candidate has been nominated by more than one nomination paper for election in the same constituency, he is required to make only one deposit.]

#### Forfeiture and return of deposit

The amount deposited will be disposed of as follows<sup>10</sup>:—

- (1) When the nomination of a candidate is rejected or the candidate withdraws his candidature in the manner and within the time specified in section 37 (i), the amount deposited on his behalf will be returned to the person by whom it was deposited.

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<sup>9</sup>S. 34, *ibid.*

<sup>10</sup>S. 158, *ibid.*

- (2) When a candidate withdraws his candidature, the amount deposited will be returned in the like manner.
  - (3) In case the candidate, duly nominated and without having withdrawn his candidature, dies before the commencement of the poll, the amount deposited will be returned to his legal representative if the candidate himself had made the deposit. Otherwise, it will be returned to the person by whom it was made.
  - (4) In case a candidate is not elected, then
    - (i) if the number of votes polled by him does not exceed one-sixth of the total number of votes polled, or in the case of a constituency returning more than one member, one-sixth of the total polled divided by the number of members to be elected, the deposit will be forfeited to the Central Government or a State Government, as the case may be.
    - (ii) if the votes polled by the candidate exceed the number specified in (i) above, the deposit will be returned to the person who deposited it after the result of the election had been published in the Official Gazette.
- [For the purpose of (i) and (ii) above, the number of votes polled shall be deemed to be the number of ballot papers counted]

## IX ELECTION AGENT

A candidate at an election may appoint any one person, other than himself, to be his election agent. The candidate is required to give notice of such an appointment, in the prescribed manner<sup>11</sup>, to the returning officer.

If a person is for the time being disqualified for being a member of either House of Parliament or the House or either House of a State Legislature or for voting at elections, he shall not, so long as the disqualification subsists, be appointed as an election agent at any election<sup>12</sup>.

The candidate may, if he likes, revoke the appointment of his election agent. The revocation should be signed by the candidate and shall operate from the date on which it is lodged with the returning officer.

In the event of such a revocation or of the death of an election agent, whether that occurs before or during the election, or after the election but before the account of the candidate's election expenses has been lodged in accordance with the provisions of law (section 78), the candidate may appoint in the prescribed manner another person to be his election agent and, if so, notice of the appointment shall be given to the Returning Officer in the prescribed manner<sup>13</sup>.

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<sup>11</sup>S. 40, *ibid.*

<sup>12</sup>Ss. 41, and 145, *ibid.*

<sup>13</sup>S. 42, *ibid.*



## X ELECTION EXPENSES

### Account of election expenses and the maximum thereof

Every candidate, for election to the Lok Sabha and to the Legislative Assembly of a State, is under an obligation<sup>14</sup> to keep a separate and correct account of all expenditure incurred in connection with his election between the date of publication of the notification calling for the election and the date of declaration of the result thereof, both dates inclusive.

The account of election expenses shall contain the following particulars<sup>15</sup>:—(i) The date on which the expenditure was incurred or authorised; (ii) the nature of the expenditure; (iii) the amount of the expenditure; (iv) the date of payment along with the name and address of the payee; (v) the serial number of vouchers in case of amount paid, and of bills, if any, in case of amount outstanding; and (vi) the name and address of the person to whom the amount outstanding is payable.

A voucher shall be obtained for every item of expenditure unless from the nature of the case it is not practicable to obtain one.

The total of the expenditure incurred by a candidate in connection with an election in any constituency shall not exceed the maximum amount specified in respect of that constituency *vide* Rule 135 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956.

### Lodging of account with the Returning Officer

Within thirty days from the date of election of the returned candidate/candidates, every contesting candidate at an election shall lodge with the returning officer a true copy of the account of his election expenses. The returning officer shall, within

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<sup>14</sup>The Representation of the People Act, 1951, S. 77.

<sup>15</sup>Rule 131, the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956.

two days of the lodging of the account, cause a notice to be affixed to his notice board, specifying, *inter alia*, the time and place at which such account can be inspected<sup>16</sup>.

On receipt of a report regarding the lodging of the accounts of election expenses from the returning officer, the election Commission<sup>17</sup> shall notify in the Official Gazette the names of the contesting candidates who according to its decision have failed to lodge accounts of their election expenses within the specified time and the manner required under law and also inform every such candidate of the decision, which shall incur for the candidate disqualification for membership of Parliament or of a State Legislature for a period of five years, unless the Election Commission reconsiders its decision on a representation submitted in writing by the party concerned and removes this disqualification.

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<sup>16</sup>S. 78, the Representation of the People Act, 1951.

<sup>17</sup>Rule 134, the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956.

## XI CORRUPT PRACTICES

On the part of a candidate, his agent or any other person, the following comprise corrupt practices for the purposes of elections<sup>18</sup>:—

1. Bribery, that is to say, any gift, offer or promise of any gratification to any person, 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, or to retire from contest, at an election;
- (b) an elector to vote or refrain from voting at an election.

2. Undue influence, that is to say, any direct or indirect interference or attempt to interfere with the free exercise of any electoral right. The undue influence includes threat of social ostracism and excommunication or expulsion from any caste of community, or of divine displeasure or spiritual censure.

3. Systematic appeal to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious and national symbols.

4. False statement in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, or retirement from contest, of any candidate.

5. The hiring or procuring, whether on payment or other wise, of any vehicle or vessel for the conveyance of any elector to or from any polling station.

6. The incurring or authorising of expenditure in contravention of section 77.<sup>19</sup>

7. The obtaining or procuring or abetting or attempting to obtain or procure any assistance for furthering the prospects of a candidate's election from any person in the service of the Government and belonging to certain specified classes.

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<sup>18</sup>S. 123, the Representation of the People Act, 1951.

<sup>19</sup>*ibid.*

## XII ELECTORAL OFFENCES

The following constitute electoral offences<sup>20</sup>:

1. Convening or holding, or attending any public meeting within any polling area on the date or dates for taking poll;
2. Acting in a disorderly manner or instigating others to do so at a public meeting of a political character held in any constituency between the date of the issue of a notification calling upon the constituency to elect a member or members and the date on which such election is held;
3. Contravention of the provisions for the maintenance of secrecy of voting;
4. Any act (other than the giving of a vote), for the furtherance of the prospects of election of a candidate, by a returning officer, or an assistant returning officer, or a presiding or polling officer at an election, or any officer or clerk appointed by the returning officer or the presiding officer;
5. On the date or dates of polling, the committing of any of the following acts, in any public or private place, within a distance of one hundred yards of a polling station:—  
Canvassing for votes; soliciting the vote of any elector; persuading any elector not to vote for any particular candidate or not to vote at all at the election; or exhibiting any notice or sign (other than an official notice) relating to the election;
6. Disorderly conduct, including the use of any apparatus for amplifying or reproducing the human voice, within or near a polling station;
7. Misconduct and disobedience of lawful directions of the presiding officer at the polling station;

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<sup>20</sup>Ss. 126 to 136 *ibid.*

8. Illegal hiring or procuring of conveyance at elections;
9. Breaches of official duty by officers connected with the conducting or holding of elections;
10. Removal of ballot papers from polling stations.

Among other electoral offences may be mentioned the following:

- (i) fraudulently defacing or destroying any nomination paper, any ballot paper or the official mark thereon;
- (ii) fraudulently defacing or destroying or removing any list, notice or other document issued under the authority of a Returning Officer;
- (iii) without due authority supplying any ballot paper to any person or receiving one from any person or being in possession of any ballot paper; and
- (iv) tampering in any way with the ballot box.

### XIII ELECTION PETITION

An election to either House of Parliament or to the Legislature of a State can be called in question by filing an election petition before the Election Commission in accordance with the provisions of law.<sup>21</sup>

#### Grounds on which Election Petitions can be filed

The election petition must be based on any one or more of the following grounds:—

- (a) that on the date of his election, a returned candidate was not legally qualified to be chosen to fill the seat; or
- (b) that a returned candidate or his election agent committed or consented to the commitment of any corrupt practice; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
  - (i) by the improper acceptance of any nomination, or
  - (ii) by any corrupt practice committed in the interest of the returned candidate by a person other than the candidate or his election agent or a person acting with their consent, or
  - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
  - (iv) by any non-compliance with the provisions of the Constitution or of the Representation of People Act, 1951 or of any rules or orders made under this Act.

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<sup>21</sup>Ss. 80 to 84 *ibid*; and Art. 329 of the Constitution of India.

### Time of Filing Petition

The election petition must be filed within 45 days from the date of election of the returned candidate and in case of plural-member constituency with different dates of election, the later of those two dates, and delivered to the Secretary, Election Commission, or to such other officers as may be appointed in this behalf—

- (i) by the petitioner or a person authorised to this effect in writing by him; or
- (ii) by registered post as to reach the Election Commission before the last date of filing it.

### Parties to the Petition

The respondents to the petition shall be—

- (a) all the returned candidates, where the petitioner claims a declaration that the election of all or any of the returned candidates is void; all the contesting candidates, where he, in addition, claims a further declaration that he himself or any other candidate has been duly elected; and
- (b) any other candidate against whom allegations of any corrupt practice are made therein.

### Contents of Petition

The petitioner is required to state concisely in the petition, duly signed and verified by him in the manner laid down in the Code of Civil Procedure, 1908, the material facts on which he relies and set forth full particulars of any corrupt practice alleged by him, including a statement, as full as possible, of the names of the parties alleged to have committed such corrupt practice, giving the date and place of the commission of each such practice.

### Security

Security is required by law<sup>22</sup> to be deposited in the following cases:—

- (a) Rs. 1,000 either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission, by any person making an election petition:

<sup>22</sup>Ss. 97, 115 to 119, 119A and 121, the Representation of the People Act, 1951.

- (b) Such security, as the Tribunal may direct, by a person who applies to be joined as a respondent to an election petition;
- (c) Rs. 1,000 to be deposited within fourteen days from the date of commencement of the trial by a person who recriminates;
- (d) such further security as the Tribunal trying the election petition may direct a petitioner or a recriminating respondent to deposit;
- (e) Rs. 1,000 to be deposited by a person who gets himself substituted in place of a petitioner who is dead or who has been allowed to withdraw from the petition, or in place of a respondent who is dead or withdraws.
- (f) Rs. 500 in the manner as specified in (a) above, by a person who prefers an appeal against an order made by the Tribunal.

The Security or any portion thereof left out after payment of any costs awarded against the petitioner or respondent will be returned to the person concerned, and in case such a person is dead, then to his legal representative. The return will be made only on an application made in a period of six months from the publication in the Official Gazette of the order by the Tribunal on the election petition.



XIV  
ELECTION TRIBUNAL AND TRIAL OF ELECTION  
PETITIONS<sup>23</sup>

**Election Tribunal**

The Election Commission shall set up a one-member Election Tribunal consisting of a serving District Judge\* and refer the election petition to it for trial after causing a copy thereof to be published in the Official Gazette and served by post on each respondent.

The Tribunal will sit and try the petition at such place as may be appointed by the Election Commission; but in case it is essential to sit at any other place for any part of the trial, the Tribunal may do so, provided the place is situated in the State in which the election, which is the subject matter of the petition, has taken place.

Where more petitions than one are preferred in respect of the same election, the Election Commission shall refer all of them to the same Tribunal. The Tribunal, however, may try them separately or may consolidate all or some of them.

The Election Commission may, at any stage after notice to parties, and for reasons to be recorded, withdraw any petition pending before a Tribunal and transfer it for trial to another Tribunal; and upon such transfer, that Tribunal shall proceed with the trial from the stage at which it was withdrawn, but it may, if it thinks fit, recall and reexamine any of the witnesses already examined.

**Procedure for Trial**

The procedure applicable to the trial of an election petition is *as nearly as may be*, the procedure prescribed by the Code of Civil Procedure for the trial of suits. As far as the recording of evidence is concerned, the Tribunal may, unless some special cause is shown, make only a memorandum of the evidence of a

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<sup>23</sup>Ss. 86 to 90, 93, 99, 107, 116A and 116B, *ibid.*

\*If considered expedient, the Election Commission may appoint one who has been a Judge of a High Court.

witness, or refuse examination of any witness if it finds that the evidence is irrelevant or the reason for giving the evidence is to delay the proceedings.

Every election petition is to be tried as expeditiously as possible and endeavour made to conclude the trial within six months from the date of publication of the copy of the petition in the Official Gazette.

Within fourteen days from the date of commencement of the trial, any candidate may apply for being made a respondent provided he gives security of costs.

### **Decisions of the Tribunal**

On conclusion of the trial of an election petition, the Tribunal shall make an order—

- (i) dismissing the election petition; or
- (ii) declaring the election of all or any of the returned candidates to be void; or
- (iii) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

While finally disposing of the election petition, the Tribunal has to give a finding as to whether any corrupt practice has or has not been committed by, or with the consent of, any candidate or his agent at the election, in case a charge of any corrupt practice was made in the petition. Moreover, the Tribunal has to record the names of persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice. It has also to order as to who will pay the costs of the petition in case it thinks that the same may be awarded.

Every order of the Tribunal shall take effect as soon as it is pronounced by it. If by an order the election of a returned candidate is declared to be void, the acts and proceedings in which that returned candidate had hitherto participated as a member of Parliament or a State Legislature shall not be invalidated by reason of that order, nor shall the candidate be subjected to any liability or penalty on the ground of such participation.

### **Appeals**

An appeal may be lodged against an order of an Election Tribunal to the High Court of the State in which the Tribunal is situated. The appeal is to be preferred within a period of thirty days from the date of the order of the Tribunal, but the

High Court may entertain an appeal even after the expiry of this period if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the required period. On sufficient cause being shown, the High Court may stay operation of the order against which the appeal has been preferred.

Every appeal is to be decided as expeditiously as possible, preferably within three months from the date on which the memorandum of appeal is presented to the High Court. The decision of the High Court on appeal is final and conclusive.

## XV

### USEFUL HINTS FOR INTENDING CANDIDATES

An intending candidate should—

1. first of all select the constituency from which he intends to seek election;
2. make sure that his name is entered in an electoral roll; he should also secure a copy of the election roll or a certified copy of the entry bearing his name in order to meet possible objections at the time of the scrutiny;

If his name is not entered in the electoral roll, he is entitled to get his name so entered under Section 23 of the Representation of the People Act, 1950 (as amended by Act II of 1956) and Rule 26 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1956;

3. look out for the notification calling upon that constituency to elect a member or members;
4. make the necessary deposit into the Reserve Bank of India or a Government Treasury and file the receipt therefor with his nomination paper;

[One deposit is sufficient for more than one nomination paper for the *same* constituency, but separate deposits are necessary as the number of constituencies from which he seeks election.

The deposit can also be made in cash at the time of filing the nomination paper or papers.]

5. have the relevant declaration filled up and verified by a Magistrate in advance, in case the candidate belongs to a Scheduled Caste or Scheduled Tribe;

[Such a candidate has, however, the option of contesting a general seat.]

6. equip himself with proof of his age, especially when the age is near the legal minimum;

7. select his proposer or proposers, in case of more than one nomination paper, after making sure that they are registered in the electoral roll of the candidate's constituency and are not disqualified under section 16 of the Representation of the People Act, 1950;
8. see that the nomination paper is completed in the prescribed form as required under section 30 of the Representation of the People Act, 1951;  
 [The nomination paper must be signed by the candidate and his proposer and delivered to the returning officer at the place specified by him on or before the last date for filing nomination.]
9. make sure that the returning officer writes its serial number on the nomination paper and fills in and signs that part of the form which contains the certificate of delivery of the nomination paper;
10. ascertain from the returning officer the date, time and place fixed for the scrutiny of nomination papers;
11. select his election agent and inform the returning officer of it in the prescribed manner as required under section 40 of the Representation of the People Act, 1951;
12. study from time to time until the day of the scrutiny the notices given by the returning officer under section 35 of the Representation of the People Act 1951;
13. keep a separate and correct account of all expenditure incurred in connection with the election;
14. lodge with the returning officer a true copy of the account of his election expenses within 30 days from the date of election of a returned candidate; and
15. carefully note as to what constitutes the corrupt practices and electoral offences.