

Rep. by Act 50 of 1958, s. 24 sec 1 (Act 26/26)

THE REPRESENTATION OF THE PEOPLE
(AMENDMENT) ACT, 1958

NO. 58 OF 1958

[30th December, 1958]

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

Be it enacted by Parliament in the Ninth Year of the Republic of India as follows:—

PART I

PRELIMINARY

1. This Act may be called the Representation of the People (Amendment) Act, 1958. Short title.

PART II

AMENDMENTS OF THE REPRESENTATION OF THE PEOPLE ACT, 1950

2. In section 3 of the Representation of the People Act, 1950 (hereinafter referred to as the 1950-Act), for sub-section (1), the following sub-section shall be substituted, namely:— Amendment of section 3.

(d) The allocation of seats in the House of the People shall be as shown in the First Schedule."

3. Section 3A of the 1950-Act shall be omitted. Omission of section 3A.

4. For section 7 of the 1950-Act, the following section shall be substituted, namely:— Substitution of new section for section 7.

"7. The total number of seats in the Legislative Assembly of each State specified in the first column of the Second Schedule, to be filled by persons chosen by direct election, shall be the number specified in the second column thereof opposite to that State." Total number of seats in the Legislative Assemblies.

5. As from the 1st day of January, 1959, in section 14 of the 1950-Act, in clause (b), for the words, figure and letters "the 1st day of March", the words, figure and letters "the 1st day of January" shall be substituted. Amendment of section 14.

6. In section 17 of the 1950-Act, the words "in the same State" shall be omitted. Amendment of section 17.

Substitution
of new sec-
tion for sec-
tion 19.

7. For section 19 of the 1950-Act, the following section shall be substituted, namely:—

Conditions
of
registration.

“19. Subject to the foregoing provisions of this Part, every person who—

(a) is not less than twenty-one years of age on the qualifying date, and

(b) is ordinarily resident in a constituency,

shall be entitled to be registered in the electoral roll for that constituency.”

Amendment
of section 20.

8. In section 20 of the 1950-Act, for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) A person shall not be deemed to be ordinarily resident in a constituency on the ground only that he owns, or is in possession of, a dwelling house therein.

(1A) A person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein.

(1B) A member of Parliament or of the Legislature of a State shall not during the term of his office cease to be ordinarily resident in the constituency in the electoral roll of which he is registered as an elector at the time of his election as such member, by reason of his absence from that constituency in connection with his duties as such member.”

Substitution
of new sec-
tion for sec-
tion 22.

9. For section 22 of the 1950-Act, the following section shall be substituted, namely:—

Correction
of entries in
electoral
rolls.

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

(a) is erroneous or defective in any particular,

(b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency, or

(c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll,

the electoral registration officer shall, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry:

Provided that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him."

10. Section 24 of the 1950-Act shall be omitted.

Omission of section 24.

11. After section 30 of the 1950-Act, the following sections shall be inserted, namely:—

Insertion of new sections 31 and 32 after section 30.

"31. If any person makes in or in connection with—

Making of false declarations.

(a) a claim or an application for the inclusion in an electoral roll of his name, or

(b) an objection to the inclusion therein, or an application for the exclusion or deletion therefrom, of the name of any other person,

a statement or declaration in writing which is false and which he either knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

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

Breach of official duty in connection with the preparation, etc., of electoral rolls.

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

(3) No court shall take cognizance of any offence punishable under sub-section (1) unless there is a complaint made by order of, or under authority from, the Election Commission or the Chief Electoral Officer of the State concerned."

Amendment
of the First
Schedule.

12. In the First Schedule to the 1950-Act, the whole of Part I, the word and figures "Part II" and the words "as subsequently constituted" shall be omitted.

Amendment
of the Second
Schedule.

13. In the Second Schedule to the 1950-Act, the words, letters and figures "as constituted on the 1st November, 1956", the whole of column 2, and the words "As subsequently constituted or partially reconstituted" shall be omitted and column 3 shall be re-numbered as column 2.

PART III

AMENDMENTS OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

Amendment
of section 2.

14. In section 2 of the Representation of the People Act, 1951 (hereinafter referred to as the 1951-Act), in clause (d) of sub-section (1), the words "or in the electoral college of a Union territory" shall be omitted.

Amendment
of section 7.

15. In section 7 of the 1951-Act,—

(a) for clause (d), the following clause shall be substituted, namely:—

"(d) if there subsists a contract entered into in the course of his trade or business by him with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government";

(b) in clause (e), for the words "or managing agent of, or holds any office of profit under", the words "managing agent, manager or secretary of" shall be substituted.

Amendment
of section 8.

16. In section 8 of the 1951-Act,—

(a) in sub-section (1), clauses (c) and (d) shall be omitted;

(b) sub-section (2) shall be omitted.

Amendment
of section 9.

17. In section 9 of the 1951-Act,—

(a) clause (b) of sub-section (1) shall be omitted; and

(b) sub-section (2) shall be omitted.

Amendment
of section 34.

18. In section 34 of the 1951-Act, in sub-section (1),—

(a) the word "and" shall be added at the end of clause (a);

(b) the word "and" at the end of clause (b), and the whole of clause (c) shall be omitted.

19. In section 39 of the 1951-Act, in sub-section (2), for the word and figures "section 34", the words, brackets, letter and figures "clause (a) of sub-section (1) of section 34" shall be substituted.

Amendment of section 39.

20. In section 50 of the 1951-Act, for the word "candidate" wherever it occurs, the words "contesting candidate" shall be substituted.

Amendment of section 50.

21. In section 52 of the 1951-Act, in the second proviso, the words, brackets, figures and letter "or a notice of retirement from the contest under sub-section (2) of section 55A" shall be omitted.

Amendment of section 52.

22. Section 55A of the 1951-Act shall be omitted.

Omission of section 55A.

23. In section 56 of the 1951-Act, in the proviso, for the words "a constituency", the words "a parliamentary or assembly constituency" shall be substituted.

Amendment of section 56.

24. In section 60 of the 1951-Act, in clause (a),—

Amendment of section 60.

(a) sub-clause (ii) shall be omitted;

(b) in sub-clause (iv), the brackets and figures "(ii)" shall be omitted.

25. For section 61 of the 1951-Act, the following section shall be substituted, namely:—

Substitution of new section for section 61.

"61. With a view to preventing personation of electors provision may be made by rules made under this Act,—

Special procedure for preventing personation of electors.

(a) for the marking with indelible ink of the thumb or any other finger of every elector who applies for a ballot paper or ballot papers for the purpose of voting at a polling station before delivery of such paper or papers to him;

(b) for the production before the presiding officer or a polling officer of a polling station by every such elector as aforesaid of his identity card before the delivery of a ballot paper or ballot papers to him if under rules made in that behalf under the Representation of the People Act, 1950, electors of the constituency in which the polling station is situated have been supplied with identity cards with or without their respective photographs attached thereto; and

(c) for prohibiting the delivery of any ballot paper to any person for voting at a polling station if at the time

such person applies for such paper he has already such a mark on his thumb or any other finger or does not produce on demand his identity card before the presiding officer or a polling officer of the polling station."

Amendment of section 64. 26. In section 64 of the 1951-Act, for the word "candidate", the words "contesting candidate" shall be substituted.

Amendment of section 67A. 27. In section 67A of the 1951-Act, the word, figures and letter "i", section 55A" shall be omitted.

Amendment of section 90. 28. In section 90 of the 1951-Act, in sub-section (3), the following *Explanation* shall be inserted, namely:—

"*Explanation.*—An order of the Tribunal dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98."

Amendment of section 99. 29. In section 99 of the 1951-Act, in sub-clause (i) of clause (a) of sub-section (1), the words "by, or with the consent of, any candidate or his agent" shall be omitted.

Amendment of section 100. 30. In section 100 of the 1951-Act,—
(a) in sub-clause (ii) of clause (d) of sub-section (1), for the words "by a person other than that candidate or his election agent or a person acting with the consent of such candidate or election agent" the words "by an agent other than his election agent" shall be substituted; and

(b) in sub-section (2), clause (b) shall be omitted.

Amendment of section 116A. 31. In section 116A of the 1951-Act,—
(a) in sub-section (4), after the word and figures "section 107"; the words "and a copy of the stay order shall immediately be sent by the High Court to the Election Commission and the Speaker or Chairman, as the case may be, of the House of Parliament or of the State Legislature concerned" shall be inserted;

(b) after sub-section (5), the following sub-section shall be inserted, namely:—

"(6) As soon as an appeal is decided, the High Court shall intimate the substance of the decision to the Election Commission and the Speaker or Chairman, as the case may be, of the House of Parliament or of the State Legislature concerned, and as soon as may be thereafter, shall send to the Election Commission an authenticated copy of the decision, and upon its receipt, the Election Commission shall—

(a) forward copies thereof to the authorities to which copies of the order of the Tribunal were forwarded under section 106; and

(b) cause the decision to be published in the gazette or gazettes in which that order was published under the said section."

32. In section 117 of the 1951-Act, the words "the Secretary to" shall be omitted. Amendment of section 117.

33. In section 119A of the 1951-Act, the words "the Secretary to" shall be omitted. Amendment of section 119A.

34. In section 121 of the 1951-Act,— Amendment of section 121.
 (a) in sub-section (1), for the words and figures "within a period of six months from the publication of such order under section 106", the words "within a period of one year from the date of such order" shall be substituted;

(b) in sub-section (2), for the words "six months", the words "one year" shall be substituted.

35. In section 122 of the 1951-Act, in the proviso, for the words and figures "within a period of six months from the date of publication of such order under section 106", the words "within a period of one year from the date of such order" shall be substituted. Amendment of section 122.

36. In section 123 of the 1951-Act,— Amendment of section 123.
 (a) for clause (1), the following clause shall be substituted, namely:—

(1) "Bribery", that is to say,—

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

(a) a person to stand or not to stand as, or to withdraw 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;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person for standing or not standing as, or for withdrawing from being, a candidate; or

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

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

(b) in clause (2), after the words “any other person”, the words “with the consent of the candidate or his election agent” shall be inserted;

(c) in clause (3), after the words “any other person”, the words “with the consent of a candidate or his election agent” shall be inserted;

(d) in clause (4),—

(i) after the words “any other person”, the words “with the consent of a candidate or his election agent” shall be inserted;

(ii) the words “or retirement from contest,” shall be omitted;

(e) in clause (5), after the words “any other person”, the words “with the consent of a candidate or his election agent” shall be inserted;

(f) in clause (7),—

(i) after the words “any other person”, the words “with the consent of a candidate or his election agent” shall be inserted;

(ii) for sub-clause (f), the following sub-clause shall be substituted, namely:—

“(f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, desh-mukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and”.

37. In section 134 of the 1951-Act, in sub-section (3),—

Amendment
of section
134.

(a) the words "Electoral Registration Officers, Assistant Electoral Registration Officers,"

(b) the words "the preparation of an electoral roll," and

(c) the words and figures "or by or under the Representation of the People Act, 1950",

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shall be omitted.

38. In section 136 of the 1951-Act, in sub-section (3), the words and figures "or by or under the Representation of the People Act, 1950" shall be omitted.

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Amendment
of section
136.

39. For section 158 of the 1951-Act, the following section shall be substituted, namely:—

Substitution
of new sec-
tion for sec-
tion 158.

"158. (1) The deposit made under section 34 or under that section read with sub-section (2) of section 39 shall either be returned to the person making it or his legal representative or be forfeited to the appropriate authority in accordance with the provisions of this section.

Return or
forfeiture of
candidate's
deposit.

(2) Except in cases hereafter mentioned in this section, the deposit shall be returned as soon as practicable after the result of the election is declared.

(3) If the candidate is not shown in the list of contesting candidates, or if he dies before the commencement of the poll, the deposit shall be returned as soon as practicable after the publication of the list or after his death, as the case may be.

(4) Subject to the provisions of sub-section (3), the deposit shall be forfeited if at an election where a poll has been taken, the candidate is not elected and the number of valid votes polled by him does not exceed one-sixth of the total number of valid votes polled by all the candidates or in the case of election of more than one member at the election, one-sixth of the total number of valid votes so polled divided by the number of members to be elected:

Provided that where at an election held in accordance with the system of proportional representation by means of the single transferable vote, a candidate is not elected, the deposit made by him shall be forfeited if he does not get more than one-sixth of the number of votes prescribed in this behalf as sufficient to secure the return of a candidate.

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(5) Notwithstanding anything in sub-sections (2), (3) and (4),—

(a) if at a general election, the candidate is a contesting candidate in more than one parliamentary constituency or in more than one assembly constituency, not more than one of the deposits shall be returned, and the others shall be forfeited;

(b) if the candidate is a contesting candidate at an election in more than one council constituency or at an election in a council constituency and at an election by the members of the State Legislative Assembly to fill seats in the Legislative Council, not more than one of the deposits shall be returned, and the others shall be forfeited."