

THE PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTIONS ACT, 1952

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THE PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTIONS ACT, 1952

ACT No. 31 OF 1952

[14th March, 1952.]

An Act to regulate certain matters relating to or connected with elections to the offices of President and Vice-President of India.

BE it enacted by Parliament as follows:—

PART I

PRELIMINARY

1. Short title.—This Act may be called the Presidential and Vice-Presidential Elections Act, 1952.

2. Definitions.— In this Act, unless the context otherwise requires,—

(a) “article” means an article of the Constitution;

(b) “election” means a Presidential election or Vice-Presidential election;

(c) “Election Commission” means the Election Commission appointed by the President under article 324;

(d) “Elector”, in relation to a Presidential election, means a member of the electoral college referred to in article 54, and in relation to a Vice-Presidential election, means ¹[a member of the electoral college referred to in article 66;]

(e) “prescribed” means prescribed by rules made under this Act;

(f) “Presidential election” means an election to fill the office of the President of India;

²[(ff) “public holiday” means any day which is a public holiday for the purposes of section 25 of the Negotiable Instruments Act, 1881 (26 of 1881);]

(g) “Returning Officer” includes an Assistant Returning Officer performing any function which he is ³[competent] to perform under sub-section (2) of section 3;

(h) “Vice-Presidential election” means an election to fill the office of the Vice-President of India.

PART II

CONDUCT OF PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTIONS

3. Returning Officer and his assistants.—(1) For the purposes of each election the Election Commission shall, in consultation with the Central Government, appoint a Returning Officer who shall have his office in New Delhi and may also appoint one or more Assistant Returning Officers.

(2) Subject to rules made under this Act, every Assistant Returning Officer shall be competent to perform all or any of the functions of the Returning Officer.

1. Subs. by Act 5 of 1974, s. 2, for “a member of either House of Parliament” (w.e.f. 23-3-1974).

2. Ins. by s. 2, *ibid.* (w.e.f. 23-3-1974).

3. Subs. by s. 2, *ibid.*, for “authorised” (w.e.f. 23-3-1974).

4. Appointment of dates for nominations, etc.—¹[(I) The Election Commission shall, by notification in the Official Gazette, appoint for every election—

(a) the last date for making nominations, which shall be the fourteenth day after the date of publication of the notification under this sub-section, or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(b) the date for the scrutiny of nominations, which shall be the day immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(c) the last date for the withdrawal of candidatures, which shall be the second day after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

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

(2) In the case of the first Presidential and Vice-Presidential elections, the notifications under sub-section (I) shall be issued as soon as may be after both Houses of Parliament have been constituted.

(3) In the case of an election to fill a vacancy caused by the expiration of the term of office of the President or Vice-President, the notification under sub-section (I) shall be issued on, or as soon as conveniently may be after, the sixtieth day before the expiration of the term of office of the outgoing President or Vice-President, as the case may be, and the dates shall be so appointed under the said sub-section that the election will be completed at such time as will enable the President or the Vice-President thereby elected to enter upon his office on the day following the expiration of the term of office of the outgoing President or Vice-President, as the case may be.

(4) In the case of an election to fill a vacancy in the office of President or Vice-President occurring by reason of his death, resignation or removal or otherwise, the notification under sub-section (I) shall be issued as soon as may be after the occurrence of such vacancy.

²**5. Public notice of election.**—On the issue of a notification under sub-section (I) of section 4, the Returning Officer for the election shall give public notice of the intended election in such form and in such 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.

5A. Nomination of candidates.—Any person may be nominated as a candidate for election to the office of President or Vice-President if he is qualified to be elected to that office under the Constitution.

5B. Presentation of nomination papers and requirements for a valid nomination.—(I) On or before the date appointed under clause (a) of sub-section (I) of section 4, each candidate shall, either in person or by any of his proposers or seconders, 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 public notice issued under section 5 a nomination paper completed in the prescribed form and subscribed by the candidate as assenting to the nomination, and

(a) in the case of Presidential election, also by at least ³[fifty electors] as proposers and at least ³[fifty electors] as seconders;

1. Subs. by Act 5 of 1974, s. 3, for sub-section (I) (w.e.f. 23-3-1974).

2. Subs. by s. 4, *ibid.*, for section 5 (w.e.f. 23-3-1974)

3. Subs. by Act 35 of 1997, s. 2, for “ten electors” (w.e.f. 5-6-1997).

(b) in the case of Vice-Presidential election, also by at least ¹[twenty electors] as proposers and at least ¹[twenty electors] as seconders:

Provided that no nomination paper shall be presented to the Returning Officer on a day which is a public holiday.

(2) Each nomination paper shall be accompanied by a certified copy of the entry relating to the candidate in the electoral roll for the Parliamentary constituency in which the candidate is registered as an elector.

(3) The Returning Officer shall not accept any nomination paper which is presented on any day before eleven O'clock in the forenoon and after three O'clock in the afternoon.

(4) Any nomination paper which is not received before three O'clock in the afternoon on the last date appointed under clause (a) of sub-section (1) of section 4 or to which the certified copy referred to in sub-section (2) of this section is not attached shall be rejected and a brief note relating to such rejection shall be recorded on the nomination paper itself.

(5) No elector shall subscribe, whether as proposer or as seconder, more than one nomination paper at the same election and, if he does, his signature shall be inoperative on any paper other than the one first delivered.

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

Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the Returning Officer.

5C. Deposit.—(1) A candidate shall not be deemed to be duly nominated for election unless he deposits or causes to be deposited a sum of ²[fifteen thousand rupees]:

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

(2) The 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 presentation of the nomination paper under sub-section (1) of section 5B, the candidate has either deposited or caused to be 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 or on his behalf in the Reserve Bank of India or in a Government Treasury.

5D. Notice of nominations and the time and place for their scrutiny.—On the presentation of a nomination paper, the Returning Officer shall—

(a) sign thereon a certificate stating the date and time of presentation of the nomination paper and enter thereon its serial number;

(b) inform the person or persons presenting the nomination paper of the date, time and place fixed for the scrutiny of nominations; and

(c) cause to be affixed in some conspicuous place in his office a copy of the nomination paper as certified and numbered under clause (a).

5E. Scrutiny of nominations.—(1) On the date fixed for the scrutiny of nominations under sub-section (1) of section 4, the candidates, one proposer or one seconder of each candidate and one other

1. Subs. by Act 35 of 1997, s. 2, for “five electors” (w.e.f. 5-6-1997).

2. Subs. by s. 3, *ibid.*, for “two thousand five hundred rupees” (w.e.f. 5-6-1997).

person duly authorised in writing by each candidate, but no other person, shall be entitled to be present at the time of scrutiny of nominations and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have not been rejected under sub-section (4) of section 5B.

(2) For the removal of doubts, it is hereby declared that it shall not be necessary to scrutinise on the date fixed for the scrutiny of nominations the nomination papers already rejected under sub-section (4) of section 5B.

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

(a) that, on the date fixed for the scrutiny of nominations, the candidate is not eligible for election as President or Vice-President, as the case may be, under the Constitution; or

(b) that any of the proposers or seconders is not qualified to subscribe a nomination paper under sub-section (1) of section 5B; or

(c) that the nomination paper is not subscribed by the required number of proposers or seconders; or

(d) that the signature of the candidate or any of the proposers or seconders is not genuine or has been obtained by fraud; or

(e) that there has been a failure to comply with any of the provisions of section 5B or section 5C.

(4) Nothing contained in clauses (b) to (e) of sub-section (3) shall be deemed to authorise the rejection 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.

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

(6) The Returning Officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of sub-section (1) of section 4 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:

Provided that in case an objection is raised by the Returning Officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the Returning Officer shall record his decision on the date to which the proceedings have been adjourned.

(7) 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.

(8) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).]

6. Withdrawal of candidature.—(1) Any candidate may withdraw his candidature by a notice in writing in the prescribed form subscribed by him and delivered before three O'clock in the afternoon on the date fixed under clause (c) of sub section (1) of section 4, to the Returning Officer either by such

candidate in person or ¹[by any one of his proposers or seconders] who has been authorised in this behalf in writing by such candidate.

(2) No person who has given notice of withdrawal of his candidature under sub-section (1) shall be allowed to cancel the notice.

²[(3) The Returning Officer shall, on being satisfied as to the genuineness of a notice of withdrawal and the identity of the person delivering it under sub-section (1), cause the notice to be affixed in some conspicuous place in his office.]

7. Death of candidate before poll.—If a candidate, whose nomination has been made and is found to be in order on scrutiny, dies after the time fixed for nomination 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 all proceedings with reference to the election shall be commenced a new 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:

Provided further that no person who has under sub-section (1) of section 6 given a notice of withdrawal of his candidature before the countermanding of the poll shall be ineligible for being nominated as a candidate for the election after such countermanding.

8. Procedure in contested and uncontested elections.—If after the expiry of the period within which candidatures may be withdrawn under sub-section (1) of section 6—

(a) there is only one candidate who has been validly nominated and has not withdrawn his candidature in the manner and within the time specified in that sub-section, the Returning Officer shall forthwith declare such candidate to be duly elected to the office of President or Vice-President, as the case may be;

(b) the number of candidates who have been duly nominated but have not so withdrawn their candidatures exceeds one, 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;

(c) there is no candidate who has been duly nominated and has not so withdrawn his candidature, the Returning Officer shall report the fact to the Election Commission and thereafter all the proceedings in relation to the election shall be commenced afresh and for that purpose the Election Commission shall cancel the notification issued under sub-section (1) of section 4 in respect of such election and issue another notification under that sub-section appointing the dates referred to in that sub-section for the purposes of such fresh election.

9. 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.

10. 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 and one representative of each candidate authorised in writing by the candidate, shall have a right to be present at the time of counting.

1. Subs. by Act 5 of 1974, s. 5, for certain words.

2. Subs. by s. 5, *ibid.*, for sub-section (3).

11. 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.

12. 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 Central Government and the Election Commission, and the Central Government shall cause to be published in the Official Gazette the declaration containing the name of the person elected to the office of President or Vice-President, as the case may be.

¹[PART III

DISPUTES REGARDING ELECTIONS

13. Definitions.—In this Part, unless the context otherwise requires,—

(a) “candidate” means a person who has been or claims to have been duly nominated as a candidate at an election;

(b) “costs” means all costs, charges and expenses of, or incidental to, a trial of an election petition;

(c) “returned candidate” means a candidate whose name has been published under section 12 as duly elected.

14. Authority to try election petitions.—(1) No election shall be called in question except by presenting an election petition to the authority specified in sub-section (2).

(2) The authority having jurisdiction to try an election petition shall be the Supreme Court.

(3) Every election petition shall be presented to such authority in accordance with the provisions of this Part and of the rules made by the Supreme Court under article 145.

14A. Presentation of petition.—(1) An election petition calling in question an election may be presented on one or more of the grounds specified in sub-section (1) of section 18 and section 19, to the Supreme Court by any candidate at such election or—

(i) in the case of Presidential election, by twenty or more electors joined together as petitioners;

(ii) in the case of Vice-Presidential election, by ten or more electors joined together as petitioners.

(2) Any such petition may be presented at any time after the date of publication of the declaration containing the name of the return candidate at the election under section 12, but not later than thirty days from the date of such publication.

15. Form of petitions, etc., and procedure.—Subject to the provisions of this Part, rules made [whether before or after the commencement of the Presidential and Vice-Presidential Elections (Amendment) Act, 1977(20 of 1977)] by the Supreme Court under Article 145 may regulate the form of election petitions, the manner in which they are to be presented, the persons who are to be made parties thereto, the procedure to be adopted in connection therewith and the circumstances in which petitions are to abate, or may be withdrawn, and in which new petitioners may be substituted, and may require security to be given for costs.

16. Relief that may be claimed by the petitioner.—A petitioner may claim either of the following declarations:—

(a) that the election of the returned candidate is void;

1. Subs. by Act 20 of 1977, s. 2, for Part III.

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

17. Orders of the Supreme Court.—(1) At the conclusion of the trial of the election petition, the Supreme Court 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.

(2) At the time of making an order under sub-section (1), the Supreme Court shall also make an order fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid.

18. Grounds for declaring the election of a returned candidate to be void.—(1) If the Supreme Court is of opinion,—

(a) that the offence of bribery or undue influence at the election has been committed by the returned candidate or by any person with the consent of the returned candidate; or

(b) that the result of the election has been materially affected—

(i) by the improper reception or refusal of a vote; under this Act; or

(ii) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made;

(iii) by reason of the fact that the nomination of any candidate (other than the successful candidate), who has not withdrawn his candidature, has been wrongly accepted; or

(c) that the nomination of any candidate has been wrongly rejected or the nomination of the successful candidate has been wrongly accepted;

the Supreme Court shall declare the election of the returned candidate to be void.

(2) For the purposes of this section, the offences of bribery and undue influence at an election have the same meaning as in Chapter IXA of the Indian Penal Code (45 of 1860).

19. Grounds for which a candidate other than the returned candidate may be declared to have been elected.—If any person who has lodged an election 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 Supreme Court is of opinion that in fact the petitioner or such other candidate received a majority of the valid votes, the Supreme Court 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:

Provided that the petitioner or such other candidate shall not be declared to be duly elected if it is proved 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.

20. Transmission of orders to the Central Government and its publication.—The Supreme Court shall, after announcing the orders made under section 17, send a copy thereof to the Central Government, and on receipt of such copy the Central Government shall forthwith cause the order to be published in the Official Gazette.]

PART IV

MISCELLANEOUS

¹[**20A. Return or forfeiture of candidate's deposit.**—(1) The deposit made under section 5C shall either be returned to the person making it or his legal representative or be forfeited to the Central Government in accordance with the provisions of this section.

(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 referred to in clause (b) of section 8, 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 the election where the poll has been taken, the candidate is not elected, and the number of valid votes polled by such candidate does not exceed one-sixth of the number of votes necessary to secure the return of a candidate at such election.]

21. 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 maintenance of a list of members of the electoral college referred to in article 54 with their addresses corrected up to date for the purposes of Presidential elections;

(b) the maintenance of a list of ²[members of the electoral college referred to in article 66] with their addresses corrected up to date for the purposes of Vice-Presidential elections;

(c) the powers and duties of a Returning Officer and the performance by any officer appointed to assist the Returning Officer of any function of the Returning Officer;

³[(cc) the form and manner in which public notice under section 5 shall be given by the Returning Officer.]

(d) the form and manner in which nominations may be made and the procedure to be followed in respect of the presentation of nomination papers;

(e) the scrutiny of nominations and, in particular, the manner in which such scrutiny shall be conducted and the conditions and circumstances under which any person may be present or may enter objections thereat;

(f) the publication of a list of valid nominations;

⁴[(g) the place and hours of polling, the manner in which votes are to be given both generally and in the case of illiterate voters or voters not conversant with the language in which ballot papers are printed or voter under physical or other disability and the procedure as to voting to be followed at elections;]

1. Ins. by Act 5 of 1974, s. 8 (w.e.f. 23-3-1974).

2. Subs. by s. 9, *ibid.*, for “members of both Houses of Parliament”.

3. Ins. by s. 9, *ibid.*

4. Subs. by s. 9, *ibid.*, for clause (g).

(h) the scrutiny and counting of votes including cases in which a re-count of the votes may be made before the declaration of the result of the election;

(i) 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;

(j) any other matter required to be prescribed by this Act.

¹[(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form, or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

22. Maintenance of secrecy of voting.—(1) Every officer, clerk 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.

23. Jurisdiction of civil courts barred.—Save as provided in Part III, 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.

1. Ins. by Act 5 of 1974, s. 9.