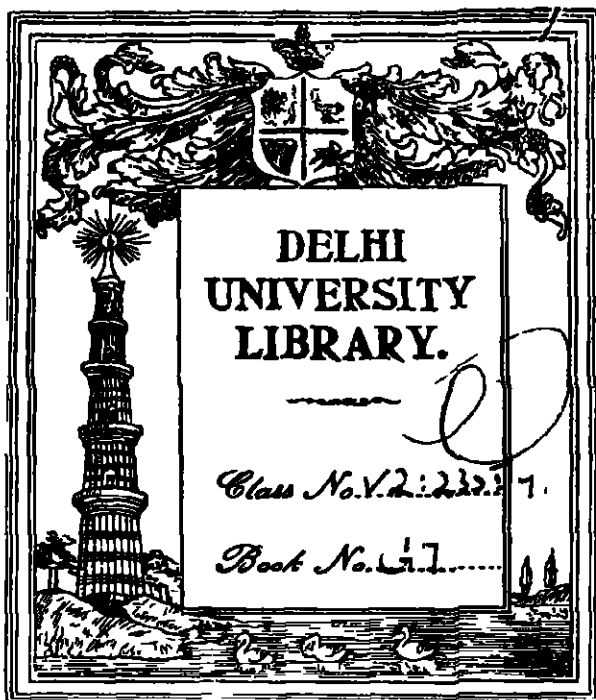




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MANUAL
OF
THE LAW OF ELECTIONS
IN BRITISH INDIA

BY

N. G. NADKARNI, B. A., LL. B.
of Middle Temple, Barrister-at-Law,
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of the High Court of
Judicature at
Bombay

WITH A
FOREWORD

BY

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existence; fundamental principles, no doubt, remain the same; but as always, many are the rules and changes made in the light of decisions and experience of the past. It is possible that those interested be they candidates or election agents, know the fundamental principles, but a knowledge of the details is hardly to be expected; they have neither the leisure nor the patience to study them from their rather scattered sources. Attempt has therefore been made to bring together these rules and some picked decisions. Speaking about a careful study and knowledge of the rules, it is necessary to point out that this is far more important than a general knowledge of the fundamental principles because the ignorance of the rules, more often than not, proves itself to be the fatal pitfall in the way of a candidate. The unsuccessful candidate who thus becomes a victim very often and fondly hopes to displace his successful rival by filing an election petition. He will prove himself to be an optimist, as he will find it to his cost if he tries the experiment. For, as it is well-known, election petitions are more easily filed than won and should therefore, rather be avoided than courted. It is hoped that this handbook will greatly facilitate the work of all as an up-to-date book for ready reference.

The author is greatly indebted to Hammond's "The Indian Candidate and Returning Officer" to which admirable work and to Rogers on Elections the author has constantly turned.

The author gratefully thanks S. G. Velinker, Esq., B.A., LL.B., Barrister-at-Law, for the valuable suggestions made by him from time to time, and the kindly interest he has evinced in this book and S. V. Gupte, Esq., B.A., LL.B., Advocate (O.S.) for his valuable assistance.

56, Esplanade Road,
Bombay,
27th January, 1937.

N. G. NADKARNI.

FOREWORD



(By S. G. Velinker, Esq., B.A., LL.B., Barrister-at-Law)

The merit of Mr. N. G. Nadkarni's "Manual of the Law of Elections in British India", does not consist either in its unpretentiousness or its moderate price. As far as I am aware, it is the first book on the subject of the Law of Elections in British India under the Government of India Act, 1935, although there are well-known works on election cases in India and Burma by Sir Laurie Hammond and Jagat Narain, and on that account also will I hope be welcomed by the public.

The author has been closely associated with me in all the important election cases in the Bombay Presidency and having thus acquired an intimate and practical knowledge of the law of elections, has utilised it in this manual with great discrimination and ability. This in my opinion, is not as easy a task to perform as the compilation of election cases decided by various tribunals, as it requires considerable original thinking out and I am glad to be able to state that the author has performed the task with conspicuous brevity and lucidity.

The author has divided the subject into twelve appropriate chapters dealing with every aspect of the law and procedure of elections, as it stands at present. Having regard to the fact that the law of elections and more particularly the rules made under the Government of India Act, 1935, differ in many important particulars from their predecessors, a close and careful study of both was necessary. The author has set down the result of this study and research, concisely in this manual. I am sure that the author's labour will not only facilitate the work of the Advocate but also of the lay reader, be he a polling officer or returning officer or candidate or Petitioner or Respondent

in an election petition. A noteworthy feature of the book is its endeavour to be precise and concise.

Another feature of the book which has struck me apart from its letter-press and its inviting general get-up, is, that it sets out a form of an election petition and its necessary accompaniments, which will conform with the requirements of the rules. Strange as it may seem, disregard of one such rule as to the verification of the election petition and the particulars annexed thereto, has, in my experience very recently, resulted in the petition being rejected *in limine*.

The author has referred in his preface to the danger of failing to comply with the rules framed under the Act. I wholly endorse his remarks on the subject and would draw the attention of electors, candidates and their agents to those remarks.

The case law has been considered and brought down to date omitting of course, reference to cases which in consequence of the change in the law have become obsolete or of no value.

The author has dealt with the new special provisions as regards the primary elections in territorial constituencies in which seats are reserved for members of the scheduled castes and those applicable to elections in the special constituencies in the Bombay Presidency and to elections to the Legislative Council by members of the Legislative Assembly.

The chapters on Agents and Election Expenses, decision of doubts and disputes as to the validity of an election, Corrupt Practices and Agency and disqualification due to corrupt practices and election offences, are in brief a *multum in parvo* of all that is worth knowing on those subjects. Here brevity and not prolixity is the commendable keynote.

References to the cases cited have been carefully checked and verified. The index which I consider the most important part of any law publication has been compiled with care and cross references where necessary have been given.

The book in short might in my opinion have been more appropriately named "Where to find your Election Law", but I will not quarrel with the title bestowed on it by the author.

I congratulate the author for the labour and care he has devoted to the compilation of this manual and wish it all the success which it deserves not only on account of its intrinsic worth but also of the moderate price which he has put on it.

S. G. VELINKER.

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ERRATA

Page 39 line 4 read "Order 1936" for "Order 1916".

Page 43 line 11 read "1 O'M. & H." for "10 M. & H."

CHAPTER I

INTRODUCTORY

There are five sources for Indian Election Law and Procedure.

- (1) Government of India Act, 1935.
 - (2) Orders in Council passed by His Majesty in Council in exercise of the powers conferred by certain Sections of the Government of India Act, 1935.
 - (3) Rules framed by the different provincial governments in respect of preparation, revision and publication of electoral rolls and the Rules for the conduct of elections in the exercise of powers conferred by the Government of India Act, 1935 and the Orders in Council above referred to.
 - (4) Indian case law.
 - (5) English case law.
1. Government of India Act, 1935 (25 and 26 Geo. V. ch. 42) provides for the constitution of the Federal and Provincial Legislatures.

Section 18 of the Act provides:

- (1) There shall be a Federal Legislature which shall consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as, Council of State and the House of Assembly (in this Act referred to as the "Federal Assembly").
- (2) The Council of State shall consist of one hundred and fifty-six representatives of British India

and not more than one hundred and four representatives of the Indian States, and the Federal Assembly shall consist of two hundred and fifty representatives of British India and not more than one hundred and twenty-five representatives of the Indian States.

- (3) The said representatives shall be chosen in accordance with the provisions in that behalf contained in the First Schedule to this Act.
- (4) The Council of State shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in the said First Schedule.
- (5) Every Federal Assembly, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

The First Schedule to the Act provides for the composition of the Federal Legislature. Part I of the Schedule deals with the Representatives of British India and general qualifications for membership of the two Chambers. The tables of seats give the allocation of seats to the different Provinces and the distribution of seats to different provinces for the purpose of triennial elections to the Council of State owing to the retirement of one third of the members every third year referred to in sub-section (4) of Section 18 of the Act. Part II of the Schedule deals with the representatives of Indian States and the table of seats allocating the seats to different groups of Indian States. As the establishment of the Federation of India and the accession of Indian States is not yet completed no specific rules have yet been made as regards the conduct of elections to the Federal Legislature.

Section 60 of the Act provides for the constitution of Provincial Legislatures and states:

- (1) There shall for every Province be a Provincial Legislature which shall consist of His Majesty, represented by the Governor, and—
 - (a) in the Provinces of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam, two Chambers;
 - (b) in other Provinces, one Chamber.
- (2) Where there are two Chambers of a Provincial Legislature, they shall be known respectively as the Legislative Council and the Legislative Assembly, and where there is only one Chamber, the Chamber shall be known as the Legislative Assembly.

Section 61 of the Act deals with the composition of the Chambers of Provincial Legislatures and provides that the composition of the Chamber or Chambers of the Legislature of a Province shall be such as is specified in relation to that Province in the Fifth Schedule to the Act and that every Legislative Assembly of every Province, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said five years shall operate as a dissolution of the Assembly. Every Legislative Council shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provision in that behalf made in relation to the Province under the said Fifth Schedule.

Para. 1 of the Fifth Schedule gives the general qualification for membership of a Provincial Legislature. The tables of seats appended to the Schedule give the allocation of seats to the Provincial Chambers. The Schedule further provides in respect of Legislative Assemblies for (1) division of the Province into territorial constituencies (2) manner of reservation of reserved seats for members of the Scheduled castes (3) the distribution of seats to be filled by women

in territorial constituencies (4) application of the Sixth Schedule, which contains provision as to franchise, to territorial constituencies (5) special constituencies (6) qualification to hold a seat. With regard to Legislative Councils the Schedule explains the tables of seats appended thereto and provides for (1) division of the province into territorial constituencies and distribution of seats therein (2) disqualification of voters in the Mahomedan, European and Indian Christian constituencies to vote at an election in a constituency to fill a general seat (3) prescription of qualification entitling to vote in territorial constituencies at elections and of the qualifications to be possessed by members of the Council (4) term of office of members of the Council.

Paragraph 20 of the Schedule lays down: In so far as provision with respect to any matter is not made by the Act or by His Majesty in Council or, after the constitution of the Provincial Legislature, by Act of that Legislature (where the matter is one with respect to which that Legislature is competent to make laws), the Governor, exercising his individual judgement, may make rules for carrying into effect the foregoing provisions of this Schedule and securing the due constitution of the Provincial Legislature and in particular, but without prejudice to the generality of the foregoing words, with respect to:

- (i) The notification of vacancies, including casual vacancies, and the proceedings to be taken for filling vacancies;
- (ii) the nomination of candidates;
- (iii) the conduct of elections, including the application to elections of the principle of proportional representation by means of the single transferable vote, and the rules to regulate elections where certain of the seats to be filled are reserved for members of the scheduled classes, or in the case of Bombay for Marathas, or where certain of the seats allotted to any community must be held by a woman or by a specified type of landholder;

- (iv) the expenses of candidates at elections;
- (v) corrupt practices and other offences at or in connection with elections;
- (vi) the decision of doubts and disputes arising out of or in connection with elections; and
- (vii) the manner in which the rules are to be carried into effect.

This paragraph is extremely important as the various rules framed by the different provinces for the conduct of elections are made in the exercise of the rule-making power conferred by this paragraph and the different Orders in Council to which a reference will be made hereafter.

The Sixth Schedule to the Act makes provisions as to franchise in respect of the Provincial Legislative Assemblies. Part I of the Schedule deals with general provisions as to franchise and Parts II to XII deal with specific provisions as to franchise in the different provinces. Some of the specific provisions in respect of some provinces have been modified or amended by the Government of India (Provincial Legislative Assemblies) Order, 1936. A reference to this Order in Council and the sixth Schedule will enable the reader to understand the nature of the franchise in each Province.

Three other Sections of the Government of India Act, 1935 have a great bearing on the law of elections. In the nature of things the Act could not be expected to provide for all the complicated machinery of elections, therefore Section 291 of the Act provides:

In so far as the provision with respect to the matters hereinafter mentioned is not made by this Act, His Majesty in Council may from time to time make provision with respect to those matters or any of them, that is to say:

- (a) the delimitation of territorial constituencies for the purpose of elections under this Act;

- (b) the qualifications entitling person to vote in territorial or other constituencies at such elections, and the preparation of electoral rolls;
- (c) the qualifications for being elected at such elections as a member of a legislative body;
- (d) the filling of casual vacancies in any such body;
- (e) the conduct of elections under this Act and the methods of voting thereat;
- (f) the expenses of candidates at such elections;
- (g) corrupt practices and other offences at or in connection with such elections;
- (h) the decision of doubts and disputes arising out of, or in connection with, such elections;
- (i) matters ancillary to any such matter as aforesaid.

Section 308 clause 4 empowers His Majesty in Council to make in the provisions of the Act any amendment with regard to the following matters:

- (a) Any amendment of the provisions relating to the size or composition of the Chambers of the Federal Legislature, or to the method of choosing or the qualifications of members of that Legislature, not being an amendment which *would vary the proportion between the number of seats in the Council of State and the number of seats in the Federal Assembly, or would vary, either as regards the Council of State or the Federal Assembly, the proportion between the number of seats allotted to British India and the number of seats allotted to Indian States;*
- (b) any amendment of the provisions relating to the number of Chambers in a Provincial Legislature or the size or composition of the Chamber, or of either Chamber, of a Provincial Legislature, or to the method of choosing or the

qualifications of members of a Provincial Legislature;

- (c) any amendment providing that, in the case of women, literacy shall be substituted for any higher educational standard for the time being required as a qualification for the franchise, or providing that women, if duly qualified, shall be entered on electoral rolls without any application being made for the purpose by them or on their behalf; and
- (d) any other amendment of the provisions relating to the qualifications entitling persons to be registered as voters for the purposes of elections.

By Section 309 of the Act any power conferred by the Act on His Majesty in Council is exercisable only by an Order in Council. In exercise of the powers conferred on His Majesty in Council by Section 291, 308, and the First, Fifth, and the Sixth Schedules the five following Orders in Council bearing on elections have been passed upto now.

- (1) *The Government of India (Scheduled castes) Order 1936* dated 30th April, 1936 declaring what shall be the Scheduled castes in the different provinces.
- (2) *The Government of India (Provincial Legislative Assemblies) Order 1936* dated 30th April, 1936 which gives the different constituencies in the different provinces, their extent and the number of seats assigned to each of them and general provisions applicable to such constituencies.
- (3) *The Government of India (Provincial Legislative Councils Order) 1936* dated 30th April, 1936, which gives the different constituencies in the different provinces, their extent and the number of seats allotted to them, the general and ordinary qualification to be included in the

electoral roll in the different provinces, and the qualifications of candidates.

- (4) The Government of India (Provincial Elections) (Corrupt Practices and Election Petition) Order 1936 dated 3rd July, 1936 which makes provisions as to appointment of election agents, lodging of the return of election expenses, decision of doubts and disputes as to the validity of an election and disqualification for corrupt practices. Schedule I to this Order gives the various corrupt practices and Schedule II gives the period of disqualification for membership of Provincial Legislatures due to different offences or corrupt practices at different kinds of elections.
- (5) The Government of India (Commencement and Transitory Provisions) Order 1936 of 3rd July, 1936 which amongst other things fixes the date of coming into operation of certain provision of the Government of India Act, 1935 for the purpose of enabling members of all Provincial Legislatures to be duly chosen in time for those Legislatures to be ready to meet by the commencement of Part III of the Government of India Act, 1935. Provisions of Part III and XII of, and of the Fifth and the Sixth Schedule (so far as those provisions are not already in force) come into force on the date of the making of this Order, and any Orders in Council or rules made under the Act with respect to Provincial Legislatures whether before or after the making of this Order, shall come or as the case may be, be deemed to have come, into operation at the date of making of the Orders or rules in question, and shall authorise or, as the case may be deemed to have authorised the giving of any notice or direction and the taking of any other step, given or taken in anticipa-

tion of the making or coming into force of the orders or rules in question.

The rules made in the different provinces in respect of elections to the two Provincial Chambers fall into two sets. First of all there are electoral rules of each Chamber for the preparation, revision and publication of electoral rolls and secondly the rules for the conduct of elections to each Chamber. These rules will be dealt with at greater extent in the succeeding chapters.

Since the first general election held under the Government of India Act, 1919 a good deal of case law has come into existence and the reported cases will furnish the best guide as to election law. Mr. Jagat Narain's Reports of Indian Election Petitions is an excellent collection of the decisions in election Petitions and references in this book are to the four volumes of the reports published upto now.

In the **Lahore Case** (Jagat Narain I.E.P. Vol. I p. 43) it is stated:

"It may be true that Indian Election Law is based on English Election Statutes, but it differs from English Law widely in numerous particulars and should be regarded as a separate **corpus**, the Indian Legislatures having adopted some and discarded others of the English Election provisions. It seems to us that the Indian Legislature intended to make their statutory provisions complete in themselves, and there is nothing whatever to indicate that there was any intention that the Indian Courts should administer English Common Law provisions. This is quite a different thing to saying and this is certainly a proposition for which there is authority that in default of any provision in the Statute Law, the Indian Courts may fall back on the principles of English Common Law."

In default of any provisions in the Statute Law, the Indian Courts may fall back on the principles of English Common Law, because they are considered to represent the principles of justice, equity, and good conscience, upon

which the law as a whole has to be administered. But these principles can be utilised only when no Statutory provision exists in Indian Law.

The provisions contained in the electoral rules of the different provinces are more or less in substance the same but the scheme of the rules and the numbering differs in each province. In the chapters dealing with the electoral rules a table indicating the rules in each province on the subject, is given for ready reference. The scheme adopted in this work is the scheme of the Bombay electoral rules.

CHAPTER II

CONSTITUENCIES, FRANCHISE & ELECTORAL ROLL

Provincial Legislative Assembly

The Provinces of Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-Western Frontier Province, Orissa, and Sind have each a Provincial Legislative Assembly. Each province is divided into different constituencies. A reference to Schedule 2 to 13 of the Government of India (Provincial Legislative Assemblies) Order 1936 dated 30th April, 1936 will give the name of each constituency in each province, its extent and the number of seats allotted to it.

The sixth Schedule to the Government of India Act deals with provisions as to franchise. Part I of the Schedule applies generally to all provinces. Parts II to XII of the Schedule deals with the franchise in each province. Residence in the constituency for periods varying in the different provinces is a requirement essential for a person to be qualified to be included on the electoral roll of a territorial constituency. The other qualifications can be classified under the following heads and vary in each province:

- (1) qualifications dependent on taxation;
- (2) qualifications dependent on property etc.;
- (3) qualification by reason of guardianship;
- (4) qualification by reason of literacy;
- (5) qualification by reason of service in His Majesty's forces;
- (6) additional qualifications for women;
- (7) educational qualification;
- (8) special qualifications for Scheduled castes;

(9) special provision as to Shipkars in the Hill Patis of Kumaun in the United Provinces.

With regard to the requirement as to residence in the case of special constituencies provision has been made by Government of India (Provincial Legislative Assemblies) Order 1936. It is not possible to deal in detail with the franchise in each province within the small compass of this work. A reference to the appropriate part dealing with the province in the Sixth Schedule to the Act and the Order in Council will give the necessary information as to the franchise in each province.

The maintenance of electoral rolls for territorial constituencies is provided for by Part I of the Sixth Schedule to the Act. Some of the important provisions of the Schedule with regard to this subject are given below:

1. There shall be an electoral roll for every territorial constituency and no person who is not, and, except as expressly provided by this Schedule, every person who is, for the time being included in the electoral roll for any such constituency shall be entitled to vote in that constituency.
2. Electoral rolls for the territorial constituencies shall be made up and from time to time in whole or in part revised by reference to such date, in this Schedule referred to as "the prescribed date," as may be directed in each case by the Governor, exercising his individual judgment.
3. No person shall be included in the electoral roll for any territorial constituency unless he has attained the age of twenty-one years and is either—
 - (a) a British subject; or
 - (b) the Ruler or a subject of a Federated State;
 - or
 - (c) if and so far it is so prescribed with respect to any Province, and subject to any pres-

cribed conditions, the Ruler or a subject of any other Indian State.

4. No person shall be included in the electoral roll for, or vote at any election in, any territorial constituency if he is of unsound mind and stands so declared by a competent Court.
5. No person shall be included in the electoral roll for a Sikh constituency, a Mahomedan constituency, an Anglo-Indian constituency, a European constituency or an Indian Christian constituency unless he is a Sikh, a Mahomedan, an Anglo-Indian, or an Indian Christian, as the case may be.
6. No person who is or is entitled to be included in the electoral roll for any Sikh constituency, Mahomedan constituency, Anglo-Indian constituency, European constituency or Indian Christian constituency in any Province shall be included in the electoral roll for a general constituency in that Province.

Provided that this paragraph shall not apply in relation to the general seats reserved for women in Assam and Orissa or the constituencies for the election of persons to fill those seats.

7. No person shall in any Province vote at a general election in more than one territorial constituency, and in each Province such provisions, if any, as may be prescribed in relation to that Province shall have effect for the purpose of preventing persons being included in the electoral roll for more than one territorial constituency in that Province:

Provided that, in any Province in which territorial constituencies have been specially formed for the purpose of electing women members, nothing in this paragraph or in any such provisions shall prevent a person from being included in the electoral roll for, and voting at a general election in, one territorial constituency so formed and also one territorial constituency not so formed.

If a person votes in more than one constituency in contravention of this paragraph his votes in each of the constituency will be void.

8. No person shall be included in the electoral roll for, or vote at elections in, a territorial constituency if he is for the time being disqualified from voting under the provisions of any such Order in Council, Act of the Provincial Legislature or rules made by the Governor as may be made or passed under this Act with respect to corrupt practices and other offences in connection with elections, and the name of any person who becomes so disqualified shall forthwith be struck off all the electoral rolls for territorial constituencies in which it may be included.
9. No person shall vote at any election in any territorial constituency, if he is for the time being undergoing a sentence of transportation, penal servitude, or imprisonment.
10. The following provisions shall have effect with respect to enfranchisement of women in respect of the qualifications of their husbands.
 - (a) a woman who, at the date of the death of her husband, is included in an electoral roll for a territorial constituency by virtue of his qualifications shall, notwithstanding anything in the subsequent provisions of this Schedule, continue to be on the roll for that constituency unless she remarries or becomes disqualified under the foregoing provisions of this Schedule for inclusion in that roll;
 - (b) not more than one woman shall at any one time appear in the electoral rolls for the territorial constituencies in a Province in respect of the qualifications of any particular man and any question which of several women is to be selected for inclusion shall be determined in the prescribed manner:

Provided that, if a woman who is entitled by virtue of sub-paragraph (a) of this paragraph to remain on the roll of a territorial constituency changes her place of residence, then, if she so desires, she may, on any subsequent revision of the roll, be transferred to the roll of such other territorial constituency as may be appropriate.

11. For the purposes of this Schedule any property owned, held, or occupied or payment made by, or assessment made on, a person as a trustee, guardian, administrator or receiver or in any other fiduciary capacity, shall, except as otherwise expressly provided in this Schedule, be left out of account.

The maintenance of electoral rolls for special constituencies, that is, constituencies which are not territorial constituencies is provided for by Part I of the Government of India (Provincial Legislative Assemblies) Order 1936. The important provisions of this order bearing on the subject are given below:—

Special Constituencies

3. There shall be an electoral roll for every special constituency and no person who is not, and, except as expressly provided by the Fifth Schedule to the Act and this Order, every person who is, for the time being included in the electoral roll for any such constituency shall be entitled to vote in that constituency.

4. The electoral rolls for the special constituencies shall be made up, and from time to time in whole or in part revised, by reference to such date, in this Order referred to as "prescribed date," as may be directed in each case by the Governor, exercising his individual judgment.

5. Subject to any express provisions of this Order, no person shall be included in the electoral roll for any special constituency unless he has attained the age of twenty-one years and is either: —

- (a) a British subject; or
- (b) the Ruler or a subject of a Federated State; or

- (c) if and so far as it is so prescribed with respect to any Province, and subject to any prescribed conditions, the Ruler or a subject of any other Indian State.

6. No person shall be included in the electoral roll for, or vote at any election in, a special constituency if he is of unsound mind and stands so declared by a competent Court.

7. No person shall be included in the electoral roll for, or vote at any election in, a special constituency if he is for the time being disqualified from voting under the provisions of any such Order in Council, Act of the Provincial Legislature or rules as may be made or passed under the Act with respect to corrupt practices and other offences in connection with elections, and the name of any person who becomes so disqualified shall forthwith be struck off all the electoral rolls for special constituencies in which it may be included.

8. No person shall vote at an election in a special constituency if he is for the time being undergoing a sentence of transportation, penal servitude or imprisonment.

9. For the purposes of the provisions of this Order relating to the qualifications for inclusion in electoral rolls for special constituencies, any property owned, held or occupied or payment made by, or assessment made on, a person as a trustee, guardian, administrator or receiver, or in any other fiduciary capacity, shall, subject as hereinafter provided, be left out of account:

Provided that, except in the United Provinces, a person shall be qualified to be included in the electoral roll for a land-holders' constituency if he—

- (a) is on the prescribed date the guardian of a minor who under this Order would have been entitled to be included in that roll if he were of full age and satisfied the relevant requirements of this Order as to residence; and
- (b) would himself have been entitled to be included in that roll, if the property of the minor were his own property.

10. For the purposes of the said provisions, where property is owned, held or occupied or payments are made jointly by, or assessments are made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether any qualification exists, and if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and, in the case of any other joint family, the member thereof authorised in that behalf by the family:

Provided that in the case of Bengal this paragraph shall not apply where members of a joint family have separate accommodation and separate messing, and in the case of the Punjab it shall not apply where the respective shares of the members of a joint family are specified in land records or municipal or cantonment records or a decree of a civil court.

11. Subject to the provisions of the last preceding paragraph, where any property is owned, held or occupied, or payments are made, jointly by, or assessments are made jointly on, more than one person, any reference in the provisions of this Order relating to special constituencies to any property, payment or assessment shall be construed as a reference to each person's share of that property, payment or assessment.

12. Where under the provisions of this Order any qualification for being included in an electoral roll for a special constituency depends upon the owning or holding of land in a specified area, or the being assessed or the making of payments in respect of land in a specified area, two or more parcels of land in that area owned or held by a person, and assessments made on or payments made by a person in respect of two or more parcels of land in that area, may be aggregated for the purpose of determining whether the qualification exists, but without prejudice, and subject, to any express provision in this Order with respect to such aggregation.

13. A person shall not be qualified to be included in the electoral roll for any labour constituency if he is subject to Indian military law.

21—(1) In all constituencies the electoral rolls shall be prepared by such authority as the Governor exercising his individual judgment shall appoint:

Provided that in the preparation of such rolls the authority so appointed may, subject to any prescribed restrictions, employ such persons as he thinks fit.

. (2) In all constituencies and at all elections the Returning Officer shall be a person in the service of the Crown in India.

26. Anything which under the provisions of the Act, or of this Order, is required or authorised to be done by, to or before the Governor of a Province in connection with the preparation of electoral rolls or the holding of elections, or otherwise for the purpose of constituting the Legislative Assembly of the Province in due time (whether or not the Governor is to act in his discretion or to exercise his individual judgment) shall, before the commencement of Part III of the Act, be done by, to or before the Governor in Council or, in the case of Sind or Orissa, the Governor.

In exercise of the powers conferred by paragraph 20 of the Fifth Schedule to the Government of India Act, 1935 read with paragraph 26 of Part I of the Government of India (Provincial Legislative Assemblies) Order 1936 the various Provincial Governments have made rules for preparation, revision and the publication of electoral rolls. It will be seen that paragraph 21 of Part I of the Order in Council, which is given above, empowers the Governor of a Province exercising his individual judgment to appoint the authority for preparing electoral rolls in all constituencies. The authority so appointed is known in the rules as the "Registering Authority". The general scheme of these rules is as follows:

In each of the territorial constituencies the Registering Authority shall cause the electoral roll of the constituency

to be prepared and when the Registering Authority is not the Returning Officer, he shall submit the roll to the Returning Officer in time to allow its publication, on the appointed date. The elector's name, his father's name and surname if any, his residence and the nature of his qualifications shall be entered in the electoral roll. If the elector is a woman, her husband's name and surname if any, shall be entered instead of her father's name. In the case of any Christian elector except an Indian Christian elector if the surname is entered the father's name may not be entered if he so desires. Electoral roll shall be prepared in a municipal, cantonment or notified area alphabetically and separately for the area under each polling station or such sub-division of such area as the Collector may direct and alphabetically and separately for each village or part of a village not included in the area. In territorial constituencies where a seat is reserved for members of the Scheduled Castes, the names of the electors who are members of the Scheduled castes shall be shown separately. No person shall be included as an elector in the electoral roll of more than one territorial constituency. Where a person is entitled to have his name included in more than one constituency his name shall be included in the roll of the constituency in which he ordinarily resides. This will not prevent a person from being included in the roll of a territorial constituency specially formed for the purpose of electing women members and also in the roll of any other territorial constituency not so formed for which such person is qualified to be an elector. No Ruler or subject of an Indian State shall be deemed to be disqualified to be an elector if otherwise qualified, by reason of the fact that he is not a British subject. But a Ruler or a subject of an Indian State other than a Federated State shall not be deemed to be qualified for being an elector after the expiry of a period of five years from the date of the commencement of Part III of the Government of India Act, 1935. If a person has more than one wife who would be qualified to be included in the roll in respect of the qualification of her husband, the wife to be selected for inclusion shall be the wife to whom he

was first married. The rules further provide for (1) application for enrolment, (2) officer to whom and the form in which applications are to be made, (3) proof of educational qualification, (4) proof of literacy qualification, (5) proof of taxation qualification, (6) requisition by Collector of any municipal, notified area or cantonment record from the person in charge of such record, (7) language in which the rolls are to be prepared, (8) place of publication of the electoral roll, (9) claims and objections to being included in the roll, (10) Revision authorities, their powers and procedure, (11) finality of the orders passed by the Revising Authority, (12) publication of amended electoral roll and list of additions, (13) publication of preliminary electoral roll before final publication, (14) amendment of electoral rolls, (15) conclusiveness of the final electoral roll, (16) duration of the electoral roll, (17) preparation of the electoral rolls of the special constituencies, (18) safe custody, preservation, inspection and production of electoral rolls and other papers connected therewith, (19) Returning Officers in the territorial and special constituencies, (20) forms of application for registration in the electoral roll and of the notice for application for registration, (21) list of qualifying examination in the case of educational qualification and the authorities competent to grant certificates and (22) forms.

Any detailed instructions with regard to registration of voters is beyond the scope of this work and candidates and election agents will do well to master the rules of their province in respect of the preparation, revision and publication of electoral rolls.

PROVINCIAL LEGISLATIVE COUNCIL

The Provinces of Madras, Bombay, Bengal, the United Provinces, Bihar, and Assam have each a Provincial Legislative Council. The table of seats annexed to the Fifth Schedule to the Government of India Act, 1935 gives the allocation of seats in the Legislative Councils of the Provinces. Paragraph 15 of the Schedule provides for the division of each province into territorial constituencies for the

purpose of electing persons to fill the general seats, Moham-
medan seats, European seats and the Indian Christian seats,
if any. Such division of each province into territorial consti-
tuencies is made by the Government of India (Provincial
Legislative Councils) Order 1936 dated 30th April, 1936. A
reference to the Schedule to the said Order will give names
of the constituencies in each province, their extent and
the number of seats therein.

Paragraph 17 of the Fifth Schedule to the Government
of India Act, 1935 provides that the qualifications entitling
a person to vote in territorial constituencies at elections of
members of a Provincial Legislative Council shall be such
as may be prescribed. These qualifications have been
prescribed by the Government of India (Provincial Legis-
lative Councils) Order 1936. Parts II to VII of the said
Order deal with the franchise in each province.

The Order in Council further provides that there shall
be an electoral roll for every territorial constituency in a
province. Paragraphs 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15 and 23
have an important bearing on the subject of electoral rolls
and are given below for ready reference:

4. There shall be an electoral roll for every territorial
constituency, and no person who is not, and except as ex-
pressly provided by the Fifth Schedule to the Act and this
Order, every person who is, for the time being included
in the electoral roll for any such constituency shall be en-
titled to vote in that constituency.

5. The electoral rolls for the territorial constituencies shall
be made up and from time to time in whole or in part re-
vised by reference to such date, in this Order referred to
as "the prescribed date," as may be directed in each case
by the Governor, exercising his individual judgment.

6. No person shall be included in the electoral roll for any
territorial constituencies unless he has attained the age
of twenty-one years and is either—

- (a) a British subject; or
- (b) the Ruler or a subject of a Federated State; or

- (c) if and so far as it is so prescribed with respect to any Province, and subject to any prescribed conditions, the Ruler or a subject of any other Indian State.

7. No person shall be included in the electoral roll for, or vote at any election in, any territorial constituency if he is of unsound mind and stands so declared by a competent Court.

8. No person shall be included in the electoral roll for a Mohammaden constituency, a European constituency, or an Indian Christian constituency, unless he is a Mohammaden, a European, or an Indian Christian, as the case may be.

9. No person who is or is entitled to be included in the electoral roll for any Mohammaden constituency, European constituency, or Indian Christian constituency in any Province shall be included in the electoral roll for a general constituency in that Province.

11.—(1) No person shall in any Province—

- (a) at the first elections held for the purpose of constituting the Legislative Council of that Province; or
- (b) at the elections held in every third year thereafter to fill the seats of members retiring on the expiration of their respective terms of office,

vote in more than one territorial constituency, and if any person votes in more than one territorial constituency in contravention of the provisions of this paragraph, his votes in all those constituencies shall be void.

- (2) In each Province such provisions, if any, as may be prescribed shall have effect for the purpose of preventing persons being included in the electoral roll for more than one territorial constituency,

- (3) No person shall at any election vote more than once in the same territorial constituency and, if he does so, all his votes in that constituency shall be void

12 No person shall be included in the electoral roll for, or vote at any election in, a territorial constituency if he is for the time being disqualified from voting under the provisions of any such Order in Council, Act of the Provincial Legislature or rules made by the Governor as may be made or passed under the Act with respect to corrupt practices and other offences in connection with elections, and the name of any person who becomes so disqualified shall forthwith be struck off all the electoral rolls for territorial constituencies in which it may be included

13 No person shall vote at an election in a territorial constituency if he is for the time being undergoing a sentence of transportation, penal servitude or imprisonment

14 The following provisions shall have effect with respect to the enfranchisement of women in respect of the qualifications of their husbands —

- (a) a woman who, at the date of the death of her husband, is included in an electoral roll for a territorial constituency by virtue of his qualifications shall notwithstanding anything in the subsequent provisions of this Order, continue to be on the roll for that constituency unless she marries or becomes disqualified under the foregoing provisions of this Order for inclusion in that roll,
- (b) not more than one woman shall, at any one time, appear on the electoral rolls for the territorial constituencies of a Province in respect of the qualifications of any particular man, and any question which of several women is to be selected for inclusion shall be determined in the prescribed manner

Provided that, if a woman, who is entitled by virtue of sub-paragraph (a) of this paragraph to remain on the roll of a territorial constituency, changes her place of residence,

then if she so desires, she may, on any subsequent revision of the roll, be transferred to the roll of such other territorial constituency as may be appropriate.

15. For the purposes of this Order any property owned, held or occupied, or payment made by, or assessment made on, person as a trustee, guardian, administrator or receiver, or in any other fiduciary capacity, shall, except as otherwise expressly provided in this Order, be left out of account.

23. Anything which under the provisions of the Act, or of this Order, is required or authorised to be done by, to or before the Governor of a Province in connection with the preparation of electoral rolls or the holding of elections, or otherwise for the purpose of constituting the Legislative Council of the Province in due time (whether or not the Governor is to act in his discretion or to exercise his individual judgment) shall, before the commencement of Part III of the Act, be done by, to or before the Governor in Council.

In exercise of the powers conferred by paragraph 20 of the Fifth Schedule to the Government of India Act, 1935 read with paragraph 23 of the Part I of the Government of India (Provincial Legislative Councils) Order 1936 to which a reference has already been made, the various provincial governments have framed rules for the preparation, revision and publication of electoral rolls. The main scheme of these rules is the same as that of the Legislative Assembly rules. The Collector or the corresponding officer is the Registering Authority for each of the territorial constituencies or part of such constituency included within his jurisdiction.

The rules of both Provincial Legislative Assemblies and Provincial Legislative Councils provide that the electoral roll of any constituency as finally published, and as amended and supplemented by the list of amendments and additions, if any, shall be conclusive evidence for the purpose of determining whether any person is an elector in such constituency. The Presiding Officer at an election has no authority to inquire into the capacity of any voter on the

electoral roll, who applies for a ballot paper. The electoral roll is conclusive on the Presiding Officer and he is not entitled to refuse to issue a ballot paper to an elector whose name is on the roll even though such elector is wrongly on the roll or prohibited from the voting by statutory disabilities. The Presiding Officer is in no way concerned with persons who are disqualified for voting owing to statutory disabilities and if such persons are on the electoral roll their votes must, if tendered, be accepted. The English Law on the subject is the same (vide Fraser 3rd Ed. p. 50; Parker's "Election Agent" 3rd Ed. p. 308). Similarly under the rules framed for the conduct of elections by the different provinces the Returning Officer has no authority to reject a ballot paper tendered by a person on the electoral roll except on the ground (a) that the number of votes recorded thereon exceeds the number of seats to be filled, (b) that no vote is recorded thereon, (c) that it is void for uncertainty, and (d) that it bears any mark by which the elector can be identified.

Under the rules framed by the different provinces for the conduct of elections the nomination paper nominating a candidate has to be subscribed by two persons as proposer and seconder who are electors in the constituency. The conclusiveness of the electoral roll as regards the Returning Officer at the time of nomination for the purpose of determining whether a nomination is valid or not or an election Court of inquiry will have to be considered. The matter has come under judicial decision. In the "**North Bhagalpur**" case (Jagat Narain I.E.P. Vol. I p. 16) the Commissioners held that they were precluded under the rules then in force, from inquiring into the question of the respondent's possession of the necessary qualifications as voter. The author submits that in view of the definite wording of the present rule the position is even stronger. If an Election Inquiry Commission cannot inquire into a question of qualification, **a fortiori** a returning officer cannot do so at the time of nomination. But the position would seem to be different with regard to any Statutory disability. In the **Purnea** case (Jagat Narain I.E.P. Vol. I p. 54) the Commissioners held:

"It would seem that under the Election rules with which we are concerned, as in England, the right of a voter, if on the register, to vote, propose or second cannot be challenged on any ground other than that of personal disability or want of status: and that except as to cases coming within these grounds the register is conclusive not only on the returning officer but also upon an Election Court on Scrutiny."

In the **C. P. Commerce and Industry Case** (Jagat Narain I.E.P. Vol. III p. 112) the Commissioners held that the electoral roll as revised in accordance with the order of the Revising Authority was binding on the election Commissioners, and they could not go behind it in respect of the qualifications of voters. The Commissioners also held that the case of a Statutory prohibition or of a disability arising at common law was different and any such disability could be proved in spite of the entry in the register.

In the **Rawalpindi and Lahore Divisions Case** (Jagat Narain I. E. P. Vol. II p. 149) the Commissioners held that the electoral roll was final as regards the voters except that if a voter was on the roll of more than one general constituency he could vote only in one of them and even though his name appeared on the roll, he was not entitled to vote if he was subject to any Statutory disqualification such as minority, etc.

In **Golaghat Case** (Jagat Narain I. E. P. Vol. II p. 83) where the question was whether a candidate was disqualified on account of age the Commissioners held that the register was not conclusive on the question and that the question could be inquired into both by the returning officer at the time of nomination and also by the Commissioners. The position therefore seems to be that though the electoral roll is conclusive as regards the voter and no inquiry can be made as regards his qualifications for being included in the roll an inquiry into his Statutory disqualifications can be made both by Returning Officer at the time of the nomination and by the Commissioners in an election inquiry if the question arises. The Returning Officer under the present

rules, as will be seen later, can refuse any nomination on the ground that the candidate is not qualified or disqualified for election under the provisions of the Government of India Act or any Order in Council or an Act of the Provincial Legislature and also on the ground that the proposer or seconder is subject to any disabilities for being included in the electoral roll of the constituency or for being entitled to vote, under the Government of India Act, 1935 or any Order in Council or an Act of the Provincial Legislature. It is to be noted that a distinction is made between a disability for being included on the roll and a disability for being entitled to vote. These Statutory disabilities have been already referred to in the foregoing portion of this chapter. Other Statutory disabilities arising out of the commission of certain offences or corrupt practices at or in connection with elections are dealt with in Chapter XI, post.

CHAPTER III

THE CANDIDATE AND QUALIFICATION FOR MEMBERSHIP OF PROVINCIAL LEGISLATURES.

General qualifications for membership:—

Paragraph I of the Fifth Schedule to the Government of India Act, 1935 lays down:

“A person shall not be qualified to be chosen to fill a seat in a Provincial Legislature unless he—

- (a) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Federation or, if it is so prescribed with respect to any province, the Ruler or a subject of any prescribed Indian State; and
- (b) is, in the case of a seat in a Legislative Assembly, not less than twenty-five years of age, and in the case of a seat in the Legislative Council, not less than thirty years of age; and
- (c) possesses such, if any, of the other qualifications specified in, or prescribed under, this Schedule as may be appropriate in his case.

The electoral rules of most provinces prescribe that no Ruler or subject of an Indian State by reason only of the fact that he is not a British Subject be deemed to be disqualified for being chosen to fill a seat in a territorial constituency for which he is otherwise qualified, provided that a Ruler or a subject of an Indian State other than a Federated State shall not be deemed to be so qualified after the expiry of a period of five years from the date of the commencement of Part III of the Government of India Act, 1935.

The other qualifications in the case of a Legislative Assembly are to be found in paragraph 12 of the Fifth Schedule:

"A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a Province unless:—

- (a) in the case of a seat to be filled by a woman, by a European, by an Indian Christian, by a representative of the backward areas or backward tribes, by a representative of commerce, industry, mining and planting, by a representative of universities or by a representative of labour, he possesses such qualifications as may be prescribed; and
- (b) in the case of any other seat, he is entitled to vote in the choice of a member to fill that seat or any other seat of a similar class in that Province.

The usual qualifications prescribed in the different provinces by the Government of India (Legislative Assemblies) Order 1936 in the case of special classes such as women, Europeans, etc., enumerated in clause (a) of paragraph 12 is that the person must belong to that class and also be entitled to vote in the choice of a member to fill a seat of that class. Therefore the qualification to be entitled to vote in the choice of a member to fill the seat or any other seat of a similar class in the province is absolutely essential for a candidate.

In the case of a Legislative Council the other qualifications of a candidate are prescribed by paragraph 16 of Part I of the Government of India (Provincial Legislative Councils) Order 1936, which is in these terms:

- 1. The provisions of this paragraph shall have effect with respect to the qualifications to be possessed by members of the Legislative Council of a Province.
- 2. A person shall not be qualified to be chosen to fill a seat which is filled by an election in a territorial constituency unless he is entitled to vote in the choice of a member to fill that seat or any other seat of the same description in the same Council.

3. A person shall not be qualified to be chosen to fill a seat to be filled by a person elected by the members of the Legislative Assembly of a Province unless he is entitled to vote in the choice of a member to fill some seat in the Legislative Council of that Province.
4. A person shall be qualified to be chosen to fill a seat which is to be filled by a person chosen by the Governor in his discretion if he is resident in the Province and is not disqualified to hold a seat by any of the provisions of the Act.

The fact that one of two constituencies is an urban, and the other a rural, constituency shall not prevent them being deemed to be constituencies of same communal description, if they are both general constituencies, or constituencies assigned to a specified community, and the expression "Seat of the same communal description" shall be construed accordingly, (Vide Cl. 2 paragraph 2 *ibid.*)

In the United Kingdom certain persons are incapable of being nominated as candidates by reason of their holding certain offices or positions. There is no such restriction in India. Apparently it is considered that executive instructions will be sufficient.

Candidates will do well to bear in mind the excellent advice given by Hammond in "The Indian candidate and Returning Officer" at p. 34:—

- (i) Choose your election agent carefully: see that he knows the rules and regulations: audit frequently his accounts.
- (ii) Issue printed instructions to all your agents and canvassers, telling them clearly what they may not do. A presentation copy of Schedule IV of the rules (now a copy of the corrupt practices Order 1936) and Chapter IX A of the Indian Penal Code to each person helping you in your election may save you trouble. The cost of printing such notice or purchasing any book-let on the subject should be shown in

your election expenses. Any such notice should bear the name of the printer and the publisher.

- (iii) Should any official be so ill-advised as to offer you his personal support, decline it with thanks, and beg him to restrain any display of enthusiasm.
- (iv) While erring on the side of generosity in expenditure, see that all such expenditure is legal.
- (v) When writing an election address or preparing a speech consider how it will sound when read out in open Court six months later.
- (vi) Remember that you and your agents are probably being watched: that it is possible traps may be set, as for example if you are offered the loan of a motor car to bring up voters to the poll, on condition you will pay for petrol and new tyres. Always bear in mind the possibility of an election petition.
- (vii) Do not promise too much. To announce your intention of removing the Chowkidari tax, or of supplying water free of charge, lays you open to exposure by your rival. He and his election agent, you may be sure, will welcome any opportunity to prove to the electors that you are trying to fool them.
- (viii) Instruct all your agents to give every assistance during the election to the registering or revising officer, the presiding officer at the poll and the returning officer when counting votes.
- (ix) Do as much canvassing as you can yourself, and when so doing inquire carefully regarding the conduct of your agents. If any of them is found to have been imprudent do not hesitate to disavow him and his actions publicly.

CHAPTER IV

NOMINATIONS, SCRUTINY, DEPOSITS AND WITHDRAWALS

	Assembly.	Council.
Bombay Rules	5-18	5-18
Madras "	32-49	12-29
Bengal "	4- 8	4- 8
U. P. "	4- 7	4- 7
Bihar "	27-36	13-21
C. P. "	14-23, and	26-29
Sind "	5-18	

Fixing of dates for nominations, etc.:—

The Governor, acting in his discretion, shall fix for each territorial constituency,

- (a) a date not later than the prescribed number of days after the date, of the notification calling upon the constituency to elect a member, for the nomination of candidates and the scrutiny
- (b) a further date or date on which a poll, shall if necessary, be taken.

The date so fixed shall be notified in the constituency in such manner as the Governor, exercising his individual judgment, thinks fit.

Nominations:—Each candidate shall on the date fixed for the nomination of candidates and the scrutiny of nominations and between the prescribed hours in each province on that date, either in person or by his proposer or seconder, deliver to the Returning Officer or to such other person as may be authorised in this behalf by the Governor, a nomination paper completed in the prescribed form and subscribed by the candidate

himself as assenting to the nomination and by two persons as proposer and seconder who are electors in the constituency. Any nomination paper which is not received on the date and between the hours above mentioned shall be rejected. Nomination papers in the prescribed form shall be supplied by the Collector to any elector asking for the same.

The form of the nomination paper usually prescribes that it should be delivered to the Returning Officer or other person authorised to receive it, at his office between the hours prescribed, in order to be valid. It was held in the **Akola South Case** (Jagat Narain I.E.P. Vol. 2 p. 1) that the delivery of the nomination paper to the Returning Officer at his residence during the prescribed hours was a sufficient compliance with the rules, when it was found that the particular Officer was in the habit of doing his work at his residence after a certain time in the day; see also **Agra District:** (Jagat Narain I. E. P. Vol. IV. p. 4).

The date of the declaration of the candidate assenting to the nomination need not be in his handwriting (vide **Aligarh North and Agra Jagat Narain I. E. P. Vol. 2 p. 7**). The omission to record the date of the declaration in the nomination paper is a mere technical irregularity and does not vitiate the nomination paper (vide **Calcutta South Case Jagat Narain I.E.P. Vol. II p. 113**). In **Midnapore South:** (Jagat Narain I. E. P. Vol. II p. 113), it was held that the omission to fill the candidate's number on the electoral roll in the nomination paper was not a vital defect, so as to make the nomination invalid.

There is nothing in law to prevent different sets of electors nominating the same candidate in separate nomination papers. In fact it is wise to take this precaution to guard against the danger of a faulty nomination paper. Further it affords the candidate the opportunity of showing that he has the support of all classes or of people from various parts of the constituency. (Vide **C. P. Commerce and Industry Jagat Narain I. E. P. Vol. III p. 112**).

The nomination paper should specify the sub-division of the constituency to which the nomination is made. In the **Raipur North** case (Jagat Narain I.E.P. Vol. II p. 146), the Commissioners held that such an omission was highly material and that the nomination paper was rightly rejected on that ground. But *contra* see **Bhandara District**: (Jagat Narain I. E. P. Vol. IV p. 22).

Care should be taken in filling up the entries in the nomination paper to see that the description of the candidate, the proposer, and the seconder, is precisely the same as that given in the electoral roll. In an election for a general constituency a candidate may be registered on the electoral roll of a constituency in the Province other than that for which he stands as candidate. In such a case the necessary information should be obtained and verified by production of certified copy of the entry in the electoral roll. The usual form of the nomination paper prescribed by the rules is given in the Appendix.

The object to be kept in view in filling up the nomination paper is "that a person who sees the nomination paper may be able to decide whether the candidate is properly nominated or assented to by the enrolled burgesses and to determine this by a mere comparison of the nomination paper and the burgess roll without any further and laborious inquiry." **Moorhouse vs. Linney**, 15, Q. B. D., 1885; (**Aligarh District West**, Jagat Narain I. E. P. Vol. II p. 4). No inaccurate description of any person should hinder the operation of the law, with respect to that person provided the description be such as to be commonly understood. It is the misleading of the electorate that is to be avoided (**Aligarh District West, Supra**). In **Raipur North** case (Jagat Narain I. E. P. Vol. II p. 146) it was held that if a candidate is misdescribed in the electoral roll but there is no doubt as to his identity his nomination paper ought not to be rejected. But a discrepancy in the father's name of a person cannot be considered a case of mere misdescription (**Vide Samastipur**, Jagat Narain I. E. P. Vol. II p. 172).

The absence of the father's name of the seconder in the electoral roll does not vitiate a nomination by such seconder **Bhandara District**; Jagat Narain I. E. P. Vol. IV p. 22; see also **Betul District**, *ibid.* p. 32.

In the **Rawalpindi and Lahore Case** (Jagat Narain Vol. II p. 149) it was held that the rules do not insist on any verbal correspondence between the entries in the electoral roll and those in the nomination paper and a nomination paper cannot be rejected on the ground of merely trivial irregularities: See also **Azamgarh**, Jagat Narain I. E. P. Vol. IV p. 18.

Persons eligible for nomination :—

A person may be nominated as a candidate for election to fill a seat in any territorial constituency, if he is qualified to be chosen to fill that seat under the Act or any Order or rule made thereunder or an Act of the Provincial Legislature.

For the purposes of this rule most of the provinces prescribe that no Ruler or subject of an Indian State shall by reason only of the fact that he is not a British subject be deemed to be disqualified for being chosen to fill a seat in a territorial constituency for which he is otherwise qualified provided that a Ruler or subject of an Indian State other than a Federated State shall not be deemed to be so qualified after the expiry of a period of five years from the commencement of Part III of the Government of India Act, 1935.

Nomination is one of the earliest stages of election and none of the grounds of ineligibility for nomination should exist on the date of nomination: (Jagat Narain I.E.P. Vol. II p. 31 and 123).

The Statutory qualifications and disqualifications for being a candidate have already been referred to in Chapter III, and further disqualifications entailed on account of corrupt practices will be dealt with in Chapter XI.

There is a well-established distinction between a candidate disqualified *ab initio* and a candidate who is subse-

quently found incapable of election. In the former case it is not necessary that the electors should have had notice of such disqualification, and all votes cast in favour of such a candidate should be deemed to have been cast away: **Bengal National Chamber of Commerce**, Jagat Narain I. E. P. Vol. II p. 43.

Proposer and Seconder :—Any person who is an elector in the constituency who is not subject to any disability for being included in the electoral roll of the constituency or for being entitled to vote under the Government of India Act, 1935 or any Order in Council or rule made thereunder or an Act of the Provincial Legislature may subscribe, as proposer or seconder, as many nomination papers as there are seats to be filled in the constituency but no more.

A candidate should take good care to inquire whether his would-be proposers or seconders have signed any other nomination papers before getting them to subscribe his nomination paper. It is safer to have as proposer and seconder persons who have not subscribed any other nomination paper and the attention of such persons should be drawn to the importance of the rule and to the effect of a violation of it on the nomination.

Under the rules as will be seen later, where a person has subscribed, whether as proposer or seconder, a larger number of nomination papers than there are seats to be filled, those of the papers so subscribed which have been first received upto the number of seats to be filled, shall be deemed to be valid. The rest will be invalid.

Appointment of election agent :—A nomination paper delivered or if more than one nomination paper are delivered by or on behalf of a candidate, one of such nomination papers, shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed or does thereby appoint as his election agent for the election either himself, or some other person who is not disqualified under the provisions of Part IV

of the Corrupt Practices Order 1936 from being a member of a Provincial Legislature or from voting at elections and who shall be named in the declaration and no candidate shall be deemed to be duly nominated unless such declaration is delivered along with the nomination paper or one of the nomination papers, as the case may be.

The form of nomination paper contains a printed declaration as to the appointment of an election agent. A candidate may subscribe such declaration on the form and name his election agent. There is nothing in the rule to prevent a separate declaration of appointment of an election agent accompanying the nomination paper. The declaration of appointment of an election agent is not a power of attorney and does not require a stamp (vide Jagat Narain I.E.P. Vol. II p. 149 & Vol. I p. 31). Nor is it necessary that such declaration should be attested or made before an attesting officer (Jagat Narain I.E.P. Vol. I p. 13).

Only one election agent can be appointed by a candidate and the appointment of more than one election agent invalidates the nomination (Jagat Narain I.E.P. Vol. I p. 9).

The election agent need not be qualified to be a candidate nor need he be an elector of the constituency (Jagat Narain I.E.P. Vol. I p. 54). All that is needed is that he is not a person disqualified by the Government of India (Corrupt Practices) Order 1936 from being a member of a Provincial Legislature or from voting at elections under provisions of Part IV of that Order. The appointment of such a disqualified person as an election agent will invalidate the nomination. What the disqualifications are will be dealt with in a later chapter.

When such a declaration is deposited with the Returning Officer as required by the rules, the fact that it is returned to the depositor does not affect the validity of the deposit (vide Jagat Narain I.E.P. Vol. I p. 31). The consent of the election agent to his appointment is not necessary to the validity of a nomination: "**Bareilly City**," Jagat Narain I.E.P. Vol. II p. 17.

Hammond in "The Indian Candidate and Returning Officer" says:—

"This statutory appointment has long been recognised in England. The object of it is two-fold; first, to allocate responsibility; second, to control expenditure. As long as 1696 the Election Act (7 & 8 Will. III C. 4) mentioned 'the excessive and exorbitant expenses contrary to the laws and in violation of the freedom due to the election of representatives for the Commons of England in Parliament, to the great scandal of the Kingdom, dishonourable and may be destructive to the constitution of Parliaments. Various attempts were made to curtail expenditure. Eventually an independent third person was appointed under the title of 'election auditor' through whose hands all moneys spent on elections were to pass and who had to publish accounts of all such expenditure.

It was soon found that mere publication and audit did not either curtail expenditure or remove malpractices. The auditor could not prevent the candidate from spending money; his powers were restricted to incurring such expenditure as the candidate authorized, and to publish such amounts as the latter thought fit to divulge. The next stage was, therefore, the appointment of one or more persons as 'expenses agents'. They alone could make payments and were expected to know what expenses were legal, illegal or corrupt, and were with the candidate personally liable. Each general election and also several municipal elections resulted in petitions which disclosed further malpractices, and hence eventually was evolved the present system now transplanted in part to India by which one and only one expert in the law of election is to be nominated by the candidate to manage all his business before, during and after the election so far as it may relate to the conduct of the election or the return of the candidate. The candidate may prefer to be his own election agent, and if so must declare himself as such. This appointment is in fact the king-pin of the electoral machinery, and in connection with its duties there have been many judicial pronouncements."

The law imposes many duties on the election agent and in this connection it is important to consider the provisions of Part II of the Government of India (Corrupt Practices) Order 1916 which are given below:—

1. Every person nominated as a candidate at an election shall at the prescribed time and in the prescribed manner appoint either himself or some one other person to be his election agent.

2. No person shall be appointed an election agent who is disqualified from being an election agent under the subsequent provisions of this Order.

3.—1. Any revocation of the appointment of an election agent, whether he be the candidate himself or not, shall be signed by the candidate, and shall operate from the date on which it is lodged with the returning officer.

2. In the event of such a revocation or of the death of an election agent, whether that event occurs before or during the election, or after the election but before a return of the candidate's election expenses has been lodged in accordance with the provisions of the next but one succeeding paragraph, the candidate shall appoint forthwith either himself or some other person to be his election agent, and shall give notice in writing of the appointment to the returning officer.

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

5.—1. Within the prescribed time after every election there shall be lodged with the returning officer in respect of each person who has been nominated as a candidate a return of the election expenses of that person signed both by him and his election agent.

2. Every such return shall be in such form and shall contain such particulars as may be prescribed, and shall be accompanied by declarations in the prescribed form by the candidate and his election agent made on oath before a magistrate.
3. Notwithstanding anything in this paragraph, where a candidate is owing to absence from India unable to sign the return of election expenses and to make the required declaration, the return shall be signed and lodged by the election agent only and shall be accompanied by a declaration by the election agent only, and the candidate shall within fourteen days after his return to India cause to be lodged with the returning officer a declaration made on oath before a magistrate in such form as may be prescribed.

6. In each province provision shall be made, by an Act of the Provincial Legislature or by rules, fixing the maximum scales of election expenses at elections and the numbers and descriptions of persons who may be employed for payment in connection with elections:

Provided that no provision need be so made in any province with respect to any election held before the expiration of two years from the commencement of Part III of the Act.

7. Except so far as may be prescribed, this Part of this Order does not apply to an election by the members of a Provincial Legislative Assembly to fill seats in the Provincial Legislative Council.

It will be seen later on that under the rules every election agent must enter in the books of account kept under paragraph 4 of Part II of the Corrupt Practices Order the particulars of all expenditure of which a return has to be made under the rules whether such expenditure is incurred by the candidate or the election agent or by any person under the direction of the candidate or the election agent. The return of election expenses must be signed both by the candidate and the election agent.

Section 171 of the Indian Penal Code lays down: "Whoever being required by any law for the time being in force or any rule having the force of law to keep account of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees."

In view of the duties and liabilities of an election agent under the law, election agents will do well to bear in mind the advice given by Cave J. in "*Stepney*" (1892) reported in "*Day's Election Cases* 99."

"He ought to keep a cash book, in which everything should be set down in chronological order, so that it can be told by looking at the cash book exactly when such sum was spent, how it was spent, and to whom it was given. He would be well advised also if he had an order book with counterfoils, which should be numbered consecutively, and wrote down every order upon the form and upon the counterfoils, so that by an inspection of the book one could at once see that all the counterfoils were there, and everything that had been ordered had been put down in its place, and on the counterfoil that belonged to it. Lastly, he would be wise to have a receipt book made up in a similar form, and to take a receipt from persons to whom he pays any money, upon one of these forms, using them also again consecutively and in chronological order. When a man has got those documents he can come with confidence before an election tribunal and say: 'Those books represent everything I have ordered, everything I have spent, everything I have paid'."

Hammond in "*The Indian Candidate and Returning Officer*" at p. 61 says:

"The main duty of an election agent, and indeed of the candidate is to prevent corrupt practices, to control and account for all expenditure. The other duties of an election agent may be summarized as follows:

1. To authorize and make at recognized offices for himself and his sub-agents, such payments as can legally be made.

2. To appoint and instruct every sub-agent and polling agent, every clerk and messenger, on reasonable rates of pay, and to inform the returning officer and the public of the appointment of sub-agents.
3. To control both paid and voluntary assistance, and to see that the rules for elections are strictly observed.
4. To arrange for committee rooms and public meetings.
5. To check the register of voters, to see that the description of voters is accurate, and to arrange a satisfactory method of identification.
6. To arrange for canvassing, and later on for facilities to enable voters to get to the poll.
7. By his polling agents to give voters every assistance at the poll; to challenge any cases where he has bona fide reason to believe there is personation.
8. To keep careful and regular accounts and submit the same with vouchers to the returning officer at the time of the return of expenses of the candidate.
9. To arrange for the drafting and issue of election addresses and electioneering literature including such replies as may seem necessary to any address or literature issued by an opponent.
10. If unhappily necessary to maintain or defend an election petition.

Though a candidate under the rules can appoint himself as his election agent authorities are all agreed that it is not wise to do so. Parker's 'Election Agent and Returning Officer' (3rd. ed. p. 4) has the following remarks:

"If the candidate name himself as his own election agent he retains complete control over the expenditure and proceedings of the election, and will only have himself to blame for any error on the part of the election agent. But, as by naming himself, he adds to the liabilities of the candidate, already sufficiently numerous, the liabilities peculiar to the

election agent, and thereby renders himself subject not only to the provisions of the Act which apply to the candidate but also to those which apply to the election agent. Moreover if a candidate undertakes to regulate the expenditure himself, and some of the money given out by him is corruptly expended, it is much less easy for him to prove that such expenditure was without his knowledge and against his consent than if he had appointed a separate election agent, the election judges may find themselves compelled to report that he was cognizant of the corruption in question ('Cashel,' 10 M. & H. 288) and he deprives himself of one of the grounds on which his election may be saved and incapacities avoided."

Similar remarks may be found in Rogers on Elections Vol. II (20th Ed. p. 123).

Hammond in "The Indian Candidate and Returning Officer" at p. 54 says:

"There is good reason for this unanimity of opinion and there is every reason to believe that in this matter India will in due course follow the procedure in England, and that the candidate who appoints an election agent and is thus freed from all numerous petty details, will have a marked advantage over the candidate who tries to combine the duties of candidate and agent. It is obvious that the candidate should have time to visit his constituents, address meetings and grant interviews. He will find that the maintenance of the record of expenses, his own and his sub-agents', the correspondence involved in a contested election, and the arrangements for the electoral campaign will demand so much of his time as to leave him little leisure for the more important work of educating the electorate."

It will be seen that paragraph 3 of Part II of the Corrupt Practices Order contemplates the revocation of the appointment of an election agent. But in order that there may be a valid revocation of the appointment of an election agent it is necessary that there should have been a valid appointment. "Ballia District" (Jagat Narain I.E.P. Vol. I, p. 9).

If the initial appointment is of a person disqualified from being an election agent under the provisions of the Corrupt Practices Order then no revocation can cure the defect and the nomination will be rendered invalid.

Returning Officer to enter serial number etc. on nomination paper

The Returning Officer or the person authorised to receive nominations, shall, on receiving a nomination paper, enter in the nomination paper its serial number, and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him.

Deposit on nomination—(1) At or before the time of the delivery of a nomination paper, each candidate shall deposit or cause to be deposited with the Returning Officer or person authorised to receive nominations a sum of two hundred rupees in the case of a Legislative Assembly and rupees five hundred in the case of a Legislative Council in cash or in Government securities of equal value at the market rate of the day: Provided that in a constituency in which a seat is reserved for the backward tribes, the sum to be deposited by or on behalf of a candidate who is a member of the backward tribe shall be rupees fifty. No candidate shall be deemed to be duly nominated unless the deposit referred to above has been made.

(2) If a candidate by whom or on whose behalf the deposit referred to above has been made withdraws his candidature in the manner and within the time specified in the rules or if the nomination of any such candidate is refused, the deposit shall be returned to the person by whom it was made; and if any candidate dies before the commencement of the poll, any such deposit, if made by him, shall be returned to his legal representative, or if not made by the candidate, shall be returned to the person by whom it was made.

(3) If a candidate by whom or on whose behalf such deposit has been made, is not elected and the number of votes polled by him does not exceed in the case of a constituency returning one or two members, one eighth of the total number of votes polled or, in the case of a constituency returning more than two members, one-eighth of the total number of votes polled divided by the number of members to be elected, the deposit shall be forfeited to His Majesty for the purposes of the Government of the Province: Provided that in a constituency in which a seat is reserved for the backward tribes, the deposit made by or on behalf of a candidate who is a member of a backward tribe shall not be forfeited unless the number of votes polled by such candidate does not exceed one half of the fraction prescribed above of the total number of votes polled.

(4) For the purposes of the sub-rule (3) the total number of votes polled shall be deemed to be the total number of ballot papers, other than rejected ballot papers, counted.

(5) The deposit made in respect of a candidate shall if it is not forfeited under sub-rule (3) be returned to the candidate or to the person who has made the deposit on his behalf, as the case may be after the publication of the result of the election in the Gazette: Provided that if a candidate is duly nominated at a general election in more than one constituency, not more than one of the deposits made by him or on his behalf shall be returned and the remainder shall be forfeited to His Majesty for the purposes of the Government of the Province.

(6) Nothing in this rule shall apply to a candidate elected at a primary election held for the purpose of electing candidates for seats reserved for members of the Scheduled castes.

The word "Cash" is not to be confined to coins only. The word includes other forms of ready money such as

ncy notes also (**Rawalpindi**; Jagat Narain I.E.P. Vol. II p. 149).

Rules in respect of primary elections will be dealt with in Chapter V.

Scrutiny of nominations

At the time of the scrutiny of nominations the candidates, their election agents, proposers and seconders, and one other person duly authorised in writing by each candidate, but no other person, may attend at the headquarters office of the Returning Officer or at such other place as he may appoint and the Returning Officer or other person authorised to receive nomination under the rules shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner prescribed by the rules.

Facility for the examination of the nomination papers is necessary in order to enable candidates and their agents to raise objections if any to the nominations of rival candidates.

Disposal of objections and rejection of nominations

1. On the date appointed by the Governor acting in his discretion for the nomination of candidates and the scrutiny of the nominations and directly after the expiry of the time within which nomination papers may be delivered, the Returning Officer shall examine the nomination papers and decide all objections which may be made to any nomination, and may either on such objection or on his own motion, after such summary inquiry if any, as he thinks necessary, refuse any nomination on any of the following grounds:—

(i) that the candidate is not qualified or is disqualified for election under the provisions of the Government of India Act, 1935 or of any Order in Council or rule made thereunder or an Act of the Provincial Legislature;

(ii) that a proposer or seconder is not qualified for subscribing a nomination paper;

(iii) that there has been any failure to comply with any of the provision of the rules in respect of the completion and delivery of the nomination paper, the declaration of the appointment of an election agent, and the deposit to be made on nomination;

(iv) that the candidate or his proposer or seconder as the case may be, is not identical with the person whose number or name on the electoral roll is given in the nomination paper as the number and name of the candidate, proposer or seconder, as the case may be; and

(v) that the signature of the candidate or of the proposer or seconder is not genuine or has been obtained by fraud.

2. For the purposes of rule (1):—

(a) the production of any certified copy of an entry made in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe a nomination paper as a proposer or seconder, as the case may be, unless it is proved that the candidate is disqualified under the provisions of the Government of India Act, 1935 or any Order in Council or rule made thereunder or an Act of the Provincial Legislature or as the case may be, that the proposer or seconder is subject to any disabilities for being included in the electoral roll of the constituency or for being entitled to vote under the Government of India Act, 1935 or any Order in Council or rule made thereunder or an Act of the Provincial Legislature; and

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

3. Nothing contained in clauses (ii), (iii) and (iv) of the sub-rule (1) shall be deemed to authorize the

In some provinces the notice of withdrawal of candidature must also be signed by the proposer or seconder of one of his nomination papers.

Preparation of lists of valid nominations

On completion of the scrutiny of nominations and after the expiry of the period within which the candidature may be withdrawn, the Returning Officer shall forthwith prepare a list of valid nominations and cause it to be affixed in some conspicuous place in his office.

Death of a candidate before poll

If a candidate who has been duly nominated dies after the scrutiny of nominations and before the commencement of the poll, the Returning Officer or the person authorised to receive nominations under the rules, shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the Governor and all proceedings with reference to the elections shall be commenced anew, in all respects, as if for a new election:

Provided that no fresh nomination shall be necessary in the case of a candidate who stood validly nominated at the time of the countermanding of the poll.

As the rule provides that all proceedings with reference to the election shall be commenced anew in all respects, *as if for a new election, it would seem that a candidate who had withdrawn his candidature at the previous election can put in his nomination at such an election.*

Procedure after nominations

The procedure at elections for the Legislative Council and subject to the provisions of paragraph 16 of Part I of the Government of India (Provincial Legislative Assemblies) Order 1936 at elections for the Legislative Assembly, is as follows:—

- (1) If the number of candidates who are duly nominated and who have not withdrawn their candidature in the

manner and within the time prescribed by the rules, is equal to the number of seats to be filled, the Returning Officer shall declare all such candidates to be duly elected.

- (2) If the number of such candidates is less than the number of seats to be filled, the Returning Officer shall declare all such candidates, if any, to be elected to fill as many of those seats as possible and the Governor exercising his individual judgment, shall by notification in the Gazette call upon the constituency to elect a person or persons, as the case may be to fill the remaining seat or seats within such time as may be specified in the notification:

Provided that where a constituency having already been called upon under this sub-rule has failed to elect a person or the requisite number of persons, as the case may be, to fill the seat or seats, the Governor, exercising his individual judgment, shall not be bound again to call upon the constituency to elect a person or persons until such time as, exercising his individual judgment he may think fit.

- (3) If the number of such candidates exceeds that of the seats to be filled, the Returning Officer shall forthwith publish in the Gazette and in such other manner as the Governor may direct and in such places in the constituency as the Returning Officer may consider necessary, the names of the candidates as given in the nomination papers, in alphabetical order together with the symbol, if any, assigned to each candidate and a poll shall be taken. In such case the Returning Officer shall forthwith arrange for the printing and supply to the Collector, if such officer is not himself the Returning Officer, of a sufficient number of ballot papers in the prescribed form.
- (4) Votes shall be given by ballot in the manner provided therefor in the rules and save as, otherwise provided

in the rules in person; provided no votes shall be received by proxy.

- (5) Votes shall be counted by, or under the supervision of the Returning Officer and each candidate, the election agent and one representative of each candidate authorised in writing by the candidate shall have a right to be present at the time of counting.

In some of the provinces provision is made for voting by post in certain constituencies such as the University constituency. These rules for postal voting are similar to the rules for voting in the European constituency of the Legislative Council which, see *post*.

CHAPTER IV A

The Poll

					Assembly.	Council.
Bombay Rules	..	..	..	..	19-42	19-43
Madras	..	..	..	..	51-73	31-53
Bengal	..	..	..	..	23-43	9-28
U. P.	..	..		15-35 and 43-64		8-28
Bihar	..	..	..	..	37-59	22-31
C. P.	..	..	..	..	31-52 & 114.	

PART I

If the number of validly nominated candidates exceeds the number of seats to be filled, a poll has to be taken. As a general rule, voting must be personal and by ballot and not by proxy. But in some provinces like Bihar the voting for the Legislative Council is not personal voting but postal voting. The rules for postal voting are similar to those contained in Part III in respect of the European constituency of the Legislative Council. The following are the general rules for personal voting.

I The Governor, acting in his discretion, shall fix the hour at which the poll shall commence and the hour at which it shall close on the date or dates fixed for the poll.

Hours of commencement and close of poll.

The hours so fixed shall be published by notification in the Gazette and in such other manner as the Governor, exercising his individual judgment, may direct.

II (1) The Collector shall select for each constituency as many polling stations as he thinks necessary, and shall publish, in such manner as the Governor may direct, a list showing the polling stations so selected and the polling areas for which they have respectively been selected.

(2) The Collector shall appoint a presiding officer for each polling station and such other persons (hereinafter

referred to as polling officers) to assist the presiding officer as he thinks necessary:

Provided that if a polling officer is absent from a polling station, the presiding officer may appoint any person who is present at the polling station to be a polling officer during the absence of the former officer, and inform the Collector accordingly.

(3) The same polling stations and presiding officers may be appointed in respect of elections held simultaneously.

(4) Each polling officer may, if so directed by the presiding officer, perform all or any of the duties assigned to a presiding officer under these rules.

(5) If the presiding officer, owing to illness or other unavoidable cause, is obliged to absent himself from a polling station, his duties shall be performed by one of the polling officers, who shall be duly authorised in this behalf by the Collector.

III. (1) The presiding officer shall keep order at the polling station, shall see that the election is fairly conducted, shall regulate the number of electors to be admitted at one time, and shall exclude all other persons except—

- (a) the polling officers, the candidates, and one agent of each candidate (hereinafter referred to as the polling agent) appointed in writing by the candidate, and authorised in this behalf by the Returning Officer,
- (b) the police officers or other public servants on duty, and
- (c) such other persons as the presiding officer may from time to time admit for the purpose of identifying electors.

(2) The presiding officer shall close the polling station at the hour fixed in that behalf, so as to prevent the admission thereto of any elector after that hour.

IV If any person misconducts himself at a polling station or fails to obey the lawful orders of the presiding officer or the polling officer performing the duties of the presiding officer, he may immediately, by order of the presiding officer or such polling officer, be removed from the polling station by any police officer or by any other person authorised in writing by the presiding officer, or such polling officer, to remove him; and the person so removed shall not, unless with the permission of the presiding officer or such polling officer, be allowed again to enter the polling station during the day:

Provided that this power shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such polling station.

V No ballot paper shall be issued after the closing hour but any elector who has received his ballot paper before that hour shall be allowed a reasonable opportunity to record his vote.

VI Each polling station shall be furnished with such number of compartments, in which electors can record their votes screened from observation, as the Collector thinks necessary.

VII The Collector shall provide at each polling station materials sufficient for the purpose of enabling electors to mark the ballot papers, as many ballot boxes as may be necessary, and copies of the electoral roll or of such part thereof as contains the names of the electors entitled to vote at such polling station.

VIII Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, immediately before the commencement of the poll, shall show the ballot box empty to such persons

as may be present in such polling station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers and keep it so locked and sealed.

IX Before the polling station is open for the recording of votes, the presiding officer shall read to such persons as may be present the provisions of section 14 of the Indian Election Offences and Inquiries Act, 1920, and shall explain the substance thereof in the vernacular of the district.

X Immediately before a ballot paper is delivered to an elector, the number, name and description of the elector, as stated in the electoral roll shall be called out, and the number of the elector shall be entered on the counterfoil, and a mark shall be placed in a copy of the electoral roll against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received. On the counterfoil shall be entered the name of the constituency and the name or distinctive number of the polling station and the signature or thumb impression of the elector.

XI The elector shall, on receiving the ballot paper, forthwith proceed to one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and shall put his ballot paper, so folded up, into the ballot box. Every elector shall vote without undue delay and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

XII The presiding officer shall give such assistance as may be required to any elector who is unable to vote in the manner prescribed.

XIII At any time before a ballot paper is delivered to an elector, the presiding officer or polling officer may, of his own accord, if he has reason to doubt the identity of the elector or his right to vote at such polling station, and shall, if so required by a candidate or polling agent, put to the elector the following questions:—

(1) Are you the person enrolled as follows (reading the whole entry from the roll)? and

(2) Have you already voted at the present election in this constituency?

and at a general election—

(3) Have you already voted at this election for the Bombay Legislative Assembly* in any other territorial constituency except one women's constituency in any other women's constituency or in more than one other territorial constituency?

and the elector shall not be supplied with a ballot paper if he refuses to answer any one of the questions and unless he answers the first question in the affirmative, the second question in the negative, and, at a general election, the third question also in the negative.

In the case of a Legislative Council election the questions to be asked are:—

(1) Are you the person enrolled as follows (reading the whole entry from the roll)? and

(2) Have you already voted at the present election in this constituency?

and at the first election held under the Act or the election held every third year under the Act.

(3) Have you already voted at this election for the Council in any other territorial constituency?

and the elector shall not be supplied with a ballot paper if he refuses to answer any one of the questions and unless he

answers the first question in the affirmative, the second question in the negative, and at the first election held under the Act or in pursuance of an Order made under paragraph eighteen of the Fifth Schedule to the Act the third question also in the negative. Misdescription in the electoral roll will not disentitle a person to vote if there is no doubt as to his identity (Raipur North Jagat Narain I. E. P. Vol. II p. 146).

XIV (1) The ballot paper shall be in the prescribed Form of ballot form. In the case of the Indian Christian paper. tian constituencies, no symbols shall be assigned to the candidates and the ballot paper shall be in the prescribed form.

(2) The ballot papers shall be serially numbered, the serial number being printed on the counterfoil and on the back of the ballot paper.

XV If the person representing himself to be a particular elector named on the electoral roll applies for a ballot paper after Tendered votes. another person has voted as such elector, the applicant shall, after duly answering such questions as the presiding officer may ask, be entitled to mark a ballot paper in the same manner as any other elector. Such ballot paper (hereinafter referred to as a tendered ballot paper) shall, instead of being placed in the ballot box, be given to the presiding officer and endorsed by him with the name of the elector and his number on the electoral roll and the name of electoral area to which the electoral roll relates, and shall be set aside in a separate packet and shall not be counted by the Returning Officer. The name of the elector and his number on the electoral roll and the name or distinctive number of the polling station to which the electoral roll relates shall be entered in a list in the prescribed form, which shall bear the heading "Tendered Votes List." The person tendering such ballot paper shall sign his name and address thereon or, if he is unable to write, affix his thumb impression against the entry in that list.

XVI If any polling agent declares and undertakes to prove that any person by applying for Challenged votes. a ballot paper has committed the offence of personation, the presiding officer may require such person to enter in the list of challenged votes (which shall be in the prescribed form) his name and address, or, if he is unable to write, to affix his thumb impression thereto and may further require such person to produce evidence of identification. If such person, on being questioned in the manner provided in rule XII answers the first question in the affirmative and the other questions in the negative, he shall be allowed to vote after he has been informed of the penalty for personation. The presiding officer shall make a note of the circumstances and of his decision on the list of challenged votes:

Provided that a deposit of prescribed sum may be demanded for each such challenge which shall be forfeited if, on enquiry, the challenge is found to be frivolous and not made in good faith.

XVII An elector who has inadvertently dealt with Spoilt ballot his ballot paper in such a manner that papers. it cannot conveniently be used as a ballot paper may, on delivering it to the presiding officer and satisfying him of the inadvertence, obtain another ballot paper in place of spoilt ballot paper, and the latter shall, together with its counterfoil, be marked as cancelled by the presiding officer.

XVIII (1) A presiding officer, polling officer or polling agent who is on duty at a polling station at which he is not entitled to vote, Voting by officers on duty at polling stations. shall, if he is certified by the Collector to be entitled to vote at the election for the constituency in connection with which he is employed or for any other constituency, be allowed to record his vote at that polling station. The name of the polling station at which he would otherwise have been entitled to vote shall be entered in the counterfoil of the ballot paper together with his number in the electoral roll for that constituency, in which that polling

station is situated. A certificate issued under his rule shall be in the prescribed form.

(2) Such ballot paper shall be placed in an envelope and sealed by the presiding officer and returned with the certificate referred to in sub-rule (1) to the Collector who has granted the same and such Collector shall cause such ballot paper to be delivered to the Returning Officer for inclusion among the valid ballot papers.

XIX The presiding officer of each polling station, as soon as practicable after the close of the poll, shall, in the presence of any candidates or polling agents who may be present, make up into separate parcels and seal with his own seal and the seal of such candidates or agents as may desire to affix their seal.

(1) each ballot box in use at each polling station unopened but with the key attached;

(2) the unused ballot papers;

(3) the tendered ballot papers;

(4) the spoilt ballot papers;

(5) the marked copy of the electoral roll;

(6) the counterfoils of the ballot papers;

(7) the tendered votes list; and

(8) the list of challenged votes;

and shall after endorsing on each packet a description of its contents deliver such packets to the Returning Officer, or to the Collector for submission to the Returning Officer where the Collector is not the Returning Officer.

XX The packets shall be accompanied by a statement in the prescribed form made by the presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt and tendered ballot papers, and ballot papers dealt with under rule XVIII.

Statement to be sent to Returning Officer with ballot papers.

XXI Notwithstanding anything contained in the foregoing rules, the Returning Officer may, for sufficient cause and with the previous consent of the Governor in his discretion postpone the date or extend the period fixed for polling. In emergencies such as disturbance of the public peace or the intervention of floods, the presiding officer may, with the previous approval of the Returning Officer, close the poll and announce an adjournment of the poll to a subsequent day. The Returning Officer shall immediately report the circumstances to the Governor.

The subsequent date to which polling is postponed or adjourned shall be notified in the constituency in such manner as the Returning Officer thinks fit.

XXII Where any power is to be exercised or any duty is to be performed by the Collector under any of the provisions of this Part, such power shall respectively be exercised or such duty shall respectively be performed, in the case of a constituency comprising more than one district, by the Collector of each of the districts concerned in respect of that part of the constituency which is included within his jurisdiction.

PART II

Voting in Anglo-Indian and European constituencies of the Assembly.

Bombay Rules	..	..	..	41-42
Madras ..	..	..	..	75-83
Bengal ..	..	..	..	54-87
U. P. ..	..	..	..	91-93
Bihar ..	..	..	..	69-78
C. P. ..	..	..	..	62-69
Sind ..	..	..	..	39-40

In certain provinces the voting in European constituencies is not personal voting but postal voting as in Bihar.

For the postal voting rules see:—

Bihar Rules	..	..	..	69-78
C. P. „	..	..	..	62-69
U. P. „	..	..	..	91-93
Madras „	..	..	..	75-83

I In the City European constituency and in the City Anglo-Indian constituency—

Voting in European and Anglo-Indian (city) constituencies.

- (a) no symbols shall be assigned to the candidates;
- (b) the Collector shall supply the presiding officer with one ballot box;
- (c) the ballot box shall be kept beside the presiding officer; the elector shall mark his ballot paper in the voting partition and shall then place his ballot paper in the ballot box in the presence of the presiding officer;
- (d) the ballot paper shall be in the prescribed form; the number of the ballot paper shall be printed on the counterfoil and on the back of the ballot paper;
- (e) the elector shall record his vote by making a cross against the name of the candidate for whom he desires to vote and shall then place the ballot paper in the ballot box;
- (f) an elector voting on a tendered ballot paper shall record his vote in the manner above described and shall deliver the ballot paper to the presiding officer;
- (g) save as herein provided, the provisions of Part I shall, so far as may be, be applicable to voting in the aforesaid constituencies.

II In the Presidency European and the Presidency
Anglo-Indian constituencies—

Voting in Euro-
pean and Anglo-
Indian (Presiden-
cy) constituencies.

- (a) no symbols shall be assigned to the candidates;
- (b) the ballot paper shall be in the prescribed form; the number of the ballot paper shall be printed on the counterfoil and on the back of the ballot paper;
- (c) the Returning Officer shall send ballot papers to the Collector of each district in which there are electors for the said constituencies;
- (d) no ballot boxes shall be supplied to Mamlatdars or Mahalkaris;
- (e) the Collector to whom such ballot papers are sent shall as soon as possible distribute to Mamlatdars and Mahalkaris within the district a sufficient number of ballot papers for the electors within their respective jurisdiction;
- (f) on the day fixed for polling, the polling shall take place at the office of the Collector and elsewhere at the office of the Mamlatdar or Mahalkari between the hours fixed;
- (g) an elector shall be entitled to vote only at the office of the Mamlatdar or Mahalkari within whose jurisdiction the village or the area on the electoral roll for which his name has been entered is situate, provided that he shall be entitled to vote only at the office of the Collector, if the village or the area on the electoral roll for which his name has been entered is situate within the jurisdiction of the Mamlatdar of the taluka in which the headquarters of the district is situate;

Provided that an elector who wishes to vote at an office other than the office of the Collector, Mamlatdar or Mahalkari, as the case may be, at which he is entitled to vote, shall,

if he is certified by the Collector to be entitled to vote at the election in the constituency and to be residing at the time in a village or area in the taluka within which the first mentioned office is situate, be allowed to vote at that office;

- (h) each elector desirous of recording his vote shall fill up and sign the counterfoil of the ballot paper in the presence of the attesting officer who shall thereupon attest the elector's signature. The attesting officer shall after verifying that the counterfoil of the ballot paper has been duly filled in by the elector tear off the ballot paper and give it to the elector. A mark shall be placed in a copy of the electoral roll against the number of the elector to denote that he has received a ballot paper but without showing the particular ballot paper which he has received;
- (i) the elector shall then proceed to the voting partition for the purpose of recording his vote and there shall place a cross against the name of the candidate for whom he wishes to vote. He shall then place the ballot paper in an envelope, close the same and deliver it to the attesting officer;
- (j) the attesting officer shall, as soon as possible, after the conclusion of the polling, despatch all the envelopes so delivered to him to the Returning Officer by registered post in a packet securely sealed so as to reach the headquarters office of the Returning Officer before the date appointed for the counting of votes. He shall in like manner send to the Returning Officer in a separate packet securely sealed all the counterfoils of the ballot papers issued by him and shall also enclose a statement in the prescribed form;
- (k) the provisions of rules II and XVI of Part I shall not apply;

- (1) save as herein provided the provisions of Part I shall, so far as may be, be applied to voting in the aforesaid constituencies and the powers conferred on the presiding officers and polling officers under the said part shall, so far as may be required for the purposes of voting in the aforesaid constituencies be performed by the attesting officer.

Explanation—For the purposes of this rule an attesting officer shall be—

(1) at the headquarters of the district, the Collector or such officer as the Governor may authorise in this behalf, and

(2) elsewhere the Mamlatdar or Mahalkari or such other officer as the Governor may authorise in this behalf.

PART III

Voting in European constituency of the Council.

Bombay Rules	..	..	..	41-43
Madras	„	..	..	55-63
Bengal	„	..	..	39-54
U. P.	„	..	..	36-39
Bihar	„	..	..	22-31

I (1) The Returning Officer shall despatch a ballot paper with counterfoil attached, to each elector by registered post to the address shown in the electoral roll not later than the prescribed number of clear days before the date fixed for the counting of votes. The portion of the counterfoil of the ballot paper to be filled up by the Returning Officer shall be filled up by him before it is despatched to an elector.

(2) The ballot paper shall be in the prescribed form.

(3) No election shall be invalidated by reason that an elector has not received his ballot paper provided that a ballot paper has been issued to him in accordance with these rules.

II (1) The elector shall sign the counterfoil of the ballot paper in the presence of a Gazetted Revenue or Judicial Officer or of a Magistrate or Justice of the Peace who shall sign the certificate on the counterfoil.

(2) The elector shall place a cross against the name of the candidate for whom he wishes to vote.

(3) If an elector is incapacitated, from blindness or other physical cause, from voting in the manner prescribed in sub-rules (1) and (2) it shall be competent for him to make his declaration and to record his vote by the hand of any officer referred to in sub-rule (1). Such officer shall certify on the counterfoil of the ballot paper the elector's incapacity and the fact that he was requested by the elector to sign the declaration and to mark the ballot paper for him and that the declaration was so signed and the ballot paper was so marked by him in the presence of the elector.

(4) The elector then shall tear off the counterfoil of the ballot paper, and shall after putting the ballot paper in an envelope, close the same and attach the counterfoil thereto. He shall then put the said envelope with the counterfoil attached to it in another envelope and shall after closing it send it by registered post so as to reach the headquarters office of the Returning Officer before the day appointed for the counting of votes. If the ballot paper is not received by the Returning Officer before the day appointed for the counting of votes, it shall be rejected.

(5) The Returning Officer shall, on receipt of the envelope sent under sub-rule (4), open the same and examine the counterfoil of the ballot paper. If the counterfoil has not been duly filled in by the elector or has not been properly attested, the Returning Officer may reject the ballot paper. In that case he shall endorse the word "rejected" both on the counterfoil and on the envelope containing the ballot paper and shall put the said envelope and the counterfoil in separate packets. If the counterfoil of the ballot paper has been fully filled in and attested, the Returning Officer shall detach the counterfoil and shall place the

counterfoil and the envelope containing the ballot paper in separate packets.

(6) The envelopes containing ballot papers shall not be opened until the commencement of the counting of votes.

(7) Should an original ballot paper be lost, mislaid, spoiled, destroyed or otherwise rendered useless, the elector to whom it was issued, shall, on application in writing addressed to the Returning Officer stating the circumstances, be supplied with a second ballot paper signed and numbered by the Returning Officer and marked "duplicate," which in the absence of the original ballot paper bearing the same number, shall be treated as if it were the original.

PART IV

Scrutiny, counting of votes and declaration of results.

			Assembly	Council
Bombay Rules	..	..	43-48	44-49
Madras	..	..	84-96	64-76
Bengal	..	..	44-50	29-35
U. P.	..	..	36-42	29-35
			65-71	
			75-78	
			94-96	39-41
Bihar	..	..	60-68	32-36
			79-85	
C. P.	..	..	53-60	
			67-68	
Sind	..	..	41-46	

I The Returning Officer shall, as soon as may be practicable after the close of the poll, give notice in writing to all candidates and election agents of the date, time and place fixed by the Governor, acting in his discretion, for the counting of votes.

II (1) No person shall be allowed to be present at the counting of votes except the Returning Officer and such persons as he may appoint to assist him in counting the votes, the candidates, the election agents of the candidates

and one representative of each candidate authorised in writing by the candidate in this behalf.

(2) No person shall be appointed to assist in counting the votes who has been employed by or on behalf of any candidate for any purpose whatsoever connected with the election.

III On the day and at the time appointed under rule I the Returning Officer shall, before he commences to count the votes, read the provisions of section 14 of the Indian Election Offences and Inquiries Act, 1920, to such persons as may be present, and shall then proceed as follows:—

- (a) the ballot box or boxes relating to each polling station or the envelopes containing the ballot papers, as the case may be, shall be opened one after another, and the Returning Officer shall take out the ballot papers therefrom, count them or cause them to be counted, and record the number thereof in a statement. Such statement shall not be shown to any candidate or agent;
- (b) the Returning Officer shall then mix together all the ballot papers so taken out and distribute them in convenient bundles to the persons appointed to assist in counting the votes;
- (c) when the ballot papers have been so distributed, but not before, the Returning Officer shall allow the candidates and their agents reasonable opportunity to inspect, without handling the ballot papers, and shall on every ballot paper which is wholly or partially rejected endorse the word "rejected." If any candidate or agent present questions the correctness of the rejection, he shall also record, on the ballot paper, the grounds for the rejection. No can-

didate or agent shall be allowed to see the serial number on the back of any ballot paper;

- (d) the Returning Officer shall, as far as practicable, proceed continuously with the counting of the votes, and shall, during any necessary intervals during which the counting has to be suspended, place the ballot papers, packets, and other documents relating to the election under his own seal and the seals of such candidates or agents as may desire to affix them, and shall cause adequate precautions to be taken for their safe custody;
- (e) when the counting of the votes has been completed, the Returning Officer shall, subject to the provisions of paragraph sixteen of Part I of the Assembly Order, forthwith declare the candidate or candidates, as the case may be, to whom the largest number of votes has been given, to be elected;
- (f) the Returning Officer shall without delay report the result of the election to the Government in the Department concerned and the name or names of the candidate or candidates elected shall be published in the Gazette.

In the Legislative Assembly when seats are reserved for the scheduled castes, Government of India (Provincial Legislative Assemblies) Order 1936, paragraph 16 of Part I provides:—

(1) The provisions of this paragraph shall apply in relation to any election in a constituency where the seats to be filled include a seat or seats reserved for members of the Scheduled castes, or a seat reserved for a Maratha, a representative of backward tribes or areas, or, in the case of the Bengal Anglo-Indian constituency, a woman.

(2) If the number of candidates qualified to be chosen to fill a seat or seats so reserved is equal to the number of

seats so reserved, all those candidates shall be declared to be elected to fill the reserved seat or reserved seats and a poll shall only be taken, if necessary, for filling any seat or seats not filled under this sub-paragraph.

(3) If the number of candidates qualified to be chosen to fill a seat or seats so reserved, is greater than the number of seats so reserved, then, when the counting of votes has been completed, the Returning Officer shall first declare that one or those of the qualified candidates to whom the largest number of votes has been given to be elected to fill the reserved seat or seats.

(4) If the number of candidates qualified to be chosen to fill a seat or seats so reserved is less than the number of seats so reserved all those candidates, if any, shall be declared to be elected to fill the seats so reserved and the Governor exercising his individual judgment, shall by notification in the Gazette call the constituency to elect a person or persons, as the case may be, within such time as may be specified in the notification.

Provided that where a constituency having been already so called upon has failed to elect a person, or the requisite number of persons, as the case may be, to fill a vacancy or vacancies, the Governor shall not be bound again to call upon the constituency to elect a person or persons until such time as, exercising his individual judgment he may think fit.

If when a poll has been taken at an election, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be given by the Returning Officer to the candidate or as the case may be candidates, selected by lot drawn in the presence of the Returning Officer in such manner as he may determine.

IV (1) A ballot paper shall be rejected if,

Grounds of rejection of ballot paper.	(a) the number of votes recorded thereon exceeds the number of seats to be filled;
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- (b) no vote is recorded thereon;
- (c) it is void for uncertainty;
- (d) it bears any mark by which the elector can be identified.

(2) The decision of the Returning Officer as to the validity of a ballot paper shall be final, subject only to reversal on an election petition claiming the seat.

Secrecy of the ballot is violated if the voter's number in the electoral roll is marked on the back of the ballot paper, and the ballot paper must be rejected (**Champaran North**; Jagat Narain I. E. P. Vol. II 64). Similarly putting of the thumb impression of the voter on the ballot paper amounts to violation of the secrecy of ballot (**Madura**; Jagat Narain I. E. P. Vol. II p. 109).

V The Returning Officer shall not open the sealed packets of the tendered votes, the
 Verification. marked copy of the electoral roll, or the counterfoil of the ballot papers. He shall verify the statement submitted by the presiding officer under rule XIX of Part I by comparing it with the number of counted ballot papers and rejected ballot papers, the spoilt ballot papers and the ballot papers dealt with under Rule XVIII of Part I, the unused ballot papers in his possession and the tendered votes list, shall then reclose and reseal each packet which has been opened by him and shall record on each packet a description of its contents and the date of the election to which it refers.

VI The Returning Officer shall then prepare and certify a return setting forth:—

- Return. •
- (1) the result of the verification referred to in rule V,
 - (2) the names of the candidates for whom valid votes have been given,
 - (3) the number of valid votes given for each candidate,

- (4) the name of the candidate elected,—
- (5) the number of votes declared invalid, and
- (6) the number of tendered votes given,

and shall permit any candidate or his election agent or representative duly authorised under rule 44 to take a copy or an extract from such return.

PART V

Disposal of Ballot papers.

		Assembly.	Council.
Bombay Rules		49-51	50-52
Madras	„ ..	94-96	74-76
Bengal	„ ..	51-53	36-38
U. P.	„ 42, 71, 78, 90, 96, 135, 136, 35,	41, 63, 64	
Bihar	„ 68, 85, 117, 119	73, 89, 90	
C. P.	„ ..	108	

I The Returning Officer shall, after reporting the result, retain in his custody the packets and return referred to in rules V and VI of Part IV, and all other documents relating to the election.

II While in the custody of the Returning Officer the packets of ballot papers whether counted, rejected or tendered, of the counter-foils thereof, and of the marked copy of the electoral roll, shall not be opened and their contents shall not be inspected or produced except under the order of a competent court or of Commissioners appointed to hold an inquiry in respect of an election, but all other documents relating to the election shall be open to public inspection, subject to such conditions as the Governor may prescribe and to the payment of the prescribed fee; and any person, on compliance with such conditions and on payment of the prescribed fee, shall be entitled to obtain a copy or copies thereof or of any part thereof.

III The packets referred to in rule II shall be retained for a period of one year, and shall thereafter be destroyed, subject to any directions to the contrary made by the Governor, exercising his individual judgment, or by a competent court or by the Commissioners appointed to hold an inquiry in respect of an election.

PART VI

General Provisions as to elections to the Assembly.

Bombay Rules	..	..	120-127	
Madras	„	..	8- 11	
Bengal	„	..	120-126	
U. P.	„	..	130-138	
Bihar	„	..	7- 10	117-120
C. P.	„	..	3	108-117
Sind	„	..	71- 76	

I Any person who is elected to more than one seat in the Assembly shall, by notice in writing signed by him and delivered to the Secretary of the Assembly within seven days from the date of the publication in the Gazette of the declaration that he has been so elected or, if such publications have been made on different dates, within seven days from the latest of such dates, as the case may be, resign all but one of the seats. In default of such resignation all the seats of such person in the Assembly shall become vacant.

II (1) When the seat of a member becomes vacant by reason of his death or of his election being declared void or under rules made under sub-section (1) of section 68 of the Act or by virtue of the provisions of sub-section (2) or sub-section (3) of the said section or under the provisions of any Act of the Provincial Legislature or of any Order or other rule made under the Act, or when the

seat of a member is declared vacant under the provisions of sub-section (4) of the said section, the Governor, acting in his discretion, shall, subject to the provisions of sub-rules (2) and (3) by a notification in the Gazette, call upon the constituency concerned to elect a member for the purpose of filling the seat within such time as may be specified in that notification.

(2) If the seat to be filled is a seat in the Railway Unions constituency or the Trade Unions of Seamen and Dockworkers constituency, the Governor, acting in his discretion, shall, first by a notification in the Gazette, call upon the constituency to choose at a primary election under these rules an electoral college in accordance with the provisions of the Assembly Order within such time as may be specified in that notification and then, by another notification in the Gazette, call upon the constituency to elect a member for the purpose of filling the seat within such time as may be specified in that notification.

(3) If the seat to be filled is a seat reserved in a general constituency for members of the scheduled castes, the Governor, acting in his discretion, shall, first by notification in the Gazette call upon members of the scheduled castes who are electors in that constituency to elect at a primary election under these rules four candidates for the said seat within such time as may be specified in that notification, and shall thereafter by another notification in the Gazette, call upon the constituency to elect a member for the purpose of filling the seat within such time as may be specified in that notification:

Provided that where the election of all the candidates elected at a primary election in a constituency held in pursuance of a notification issued under this sub-rule is declared void at an election inquiry, the Governor, acting in his discretion, shall again by a notification in the Gazette call upon members of the scheduled castes who are electors in the constituency to elect at a fresh primary election under these rules four candidates for the said seat within such time as may be specified

in that notification and shall thereafter by another notification in the Gazette call upon the constituency to elect a member for the purpose of filling the seat within such time as may be specified in that notification.

III (1) On the expiration of the duration of an Assembly or on its dissolution a general election shall be held in order that a new Assembly may be constituted.

(2) On such expiration or dissolution, the Governor, acting in his discretion.—

- (a) shall, by a notification in the Gazette call upon the Railway Unions constituency and the Trade Unions of Seamen and Dockworkers constituency to choose at a primary election under these rules an electoral college in accordance with the provisions of the Assembly Order within such time as may be specified in that notification;
- (b) shall, by a notification in the Gazette, call upon members of the scheduled castes who are electors in the constituencies in which a seat is reserved for members of those castes to elect at a primary election under these rules four candidates for each seat so reserved within such time as may be specified in that notification; and
- (c) shall thereafter by another notification in the Gazette, call upon all constituencies to elect members in accordance with these rules within such time as may be specified in that notification:

Provided that, if the Governor, acting in his discretion, thinks fit, the notifications referred to in clauses (a) and (b) may be issued at any time not being more than three months prior to the date on which the duration of the Assembly would expire in the ordinary course of events:

Provided also that where the election of all the candidates elected at a primary election in a constituency held in pursuance of a notification under clause (b) of sub-rule (1) is declared void at an election inquiry, the Governor, acting in his discretion, shall again by a notification in the Gazette call upon members of the scheduled castes who are electors in the constituency to elect at a fresh primary election under these rules four candidates for each of the reserved seats within such time as may be specified in that notification and shall thereafter by another notification in the Gazette call upon the constituency to elect members in accordance with these rules within such time as may be specified in that notification.

IV For the first general election to be held under the Constitution of the first Assembly. Act for the purpose of the constitution of the Assembly, the Governor in Council may issue any of the notifications referred to in rule III at such time as he thinks fit.

V As soon as may be, after the expiration of the time fixed for the election of members at any Publication of result of general election and by-election. general election or at a by-election, the name or names of the members elected at such election, shall be notified in the Gazette.

VI (1) Save as otherwise provided in these rules the Custody, preservation and inspection of election papers. papers mentioned in the first column of the statement hereto annexed shall be kept by the officers mentioned in the second column for the period specified in the third column thereof.

(2) The said papers shall be open to inspection by the public, subject to such conditions as the Governor may prescribe and to the payment of the prescribed fee; and any person, on compliance with such conditions and on payment of the prescribed fee, shall be entitled to obtain a copy or copies thereof or of any part thereof.

Statement.

Description of document or record. 1	By whom kept. 2	Period for which kept. 3
1. Nomination papers ..	The Returning Officer of the constituency concerned ..	One year.
2. Declarations of appointment of agents and cancellations thereof ..	Do. ..	Do.
3. Withdrawals of candidates	Do. ..	Do.
4. Papers mentioned in rules 47 and 48 ..	Do. ..	Do.
5. Returns of election expenses lodged by candidates .	The Returning Officer with whom they are lodged ..	Do.
6. Election petitions, the findings thereon of Commissioners, District Magistrates, the Registrar of Trade Unions or Authorised Officers, as the case may be, and the evidence recorded ..	The Secretary to the Government of Bombay in the Department concerned ..	Five years.

VII If a question arises for the decision of a Returning or presiding officer under these rules whether an entry in an electoral roll relates to a particular person, the Returning Officer or presiding officer, as the case may be, may, for reasons to be recorded in writing, decide that the entry does or does not relate to the said person, notwithstanding any clerical or printing errors therein.

Power of Returning or presiding officer to overlook printing or clerical errors in electoral rolls

VIII If any difficulty arises as to the holding of any election under these rules, the Governor, exercising his individual judgment, may do anything not inconsistent with these rules which appears to him to be necessary for the proper holding of the election.

PART VII

General Provisions as to elections to the Council.

Bombay Rules	..	..	..	..	..	..	67-73
Madras	„	..	..	..	..	..	8-11
Bengal	„	..	..	..	..	..	83-90
U. P.	„	..	..	..	..	..	60-66
Bihar	„	..	..	..	..	..	7-10 and 89-91

I Any person who is elected to more than one seat in the Council shall, by notice in writing signed by him and delivered to the Secretary of the Council within seven days from the date of the publication in the Gazette of the declarations that he has been so elected or, if such publications have been made on different dates, within seven days from the latest of such dates, as the case may be, resign all but one of the seats. In default of such resignation all the seats of such person in the Council shall become vacant.

II When the seat of a member becomes vacant by reason of his death or of his election being declared void or of the expiration of the term of his office or under rules made under sub-section (1) of section 68 of the Act or by virtue of the provisions of sub-section (2) or sub-section (3) of the said section or under the provisions of any Act of the Provincial Legislature or of any order or other rule made under the Act, or when the seat of a member is declared vacant under the provisions of sub-section (4) of the said section, the Governor, acting in his discretion, shall, by a notification in

the Gazette, call upon the constituency concerned to elect a member for the purpose of filling the seat within such time as may be specified in that notification:

Provided that when the seat of a member is about to become vacant by virtue of an order made under paragraph eighteen of the Fifth Schedule to the Act, the Governor acting in his discretion shall issue a notification under this rule so that the election may be completed before the seat becomes vacant.

III For the first election to be held under the Act for the purpose of the constitution of the Council, the Governor in Council shall, by a notification in the Gazette, call upon all constituencies to elect members in accordance with these rules within such time as may be specified in that notification.

IV As soon as may be, after the expiration of the time fixed for the election of members at the first election held under the Act, or at a by-election, the names of the members elected at such election shall be notified in the Gazette.

V (1) Save as otherwise provided in these rules, the papers mentioned in the first column of the statement hereto annexed shall be kept by the officers mentioned in the second column for the period specified in the third column thereof.

(2) The said papers shall be open to inspection by the public, subject to such conditions as the Governor may prescribe and to the payment of the prescribed fee; and any person, on compliance with such conditions and on payment of the prescribed fee, shall be entitled to obtain a copy or copies thereof or of any part thereof.

Statement

Description of document or record. 1	By whom kept. 2	Period for which kept. 3
1. Nomination papers ..	The Returning Officer of the constituency concerned ..	One year.
2. Declarations of appointment of agents and cancellations thereof ..	Do. ..	Do.
3. Withdrawals of candidates ..	Do. ..	Do.
4. Papers mentioned in rules 48 and 49 ..	Do. ..	Do.
5. Returns of election expenses lodged by candidates ..	The Returning Officer with whom they are lodged ..	Do.
6. Election petitions, the findings of the Commissioners thereon, and the evidence recorded ..	The Secretary to the Government of Bombay in the Department concerned ..	Three years.

VI If a question arises for the decision of a Returning or presiding officer under these rules whether an entry in an electoral roll relates to a particular person, the Returning Officer or presiding officer, as the case may be, may, for reasons to be recorded in writing, decide that the entry does or does not relate to the said person, notwithstanding any clerical or printing errors therein.

VII If any difficulty arises as to the holding of any election under these rules, the Governor, exercising his individual judgment, may do anything not inconsistent with these rules which appears to him to be necessary for the proper holding of the election.

CHAPTER V

Primary elections in territorial constituencies in which seats are reserved for members of the scheduled castes and decision of doubts and disputes as to validity of such elections.

Bombay Rules	..	..	..	..	..	..	55-82
Madras	"	..	..	..	..	..	12-31
Bengal	"	..	..	..	..	..	9-15
U. P.	"	..	..	..	..	..	8-14; 104-117
Bihar	"	..	..	..	..	..	12-26; 91-104
C. P.	"	..	..	..	..	..	4-13; 77-92

In the case of the Legislative Assembly paragraph seven of the Fifth Schedule to the Government of India Act, 1935 provides:—

In a Province in which any general seats are reserved for members of the scheduled castes, all members of those castes who are entitled to vote in a constituency in which any seat is so reserved shall be entitled to take part in a primary election held for the purpose of electing **four candidates for each seat so reserved**, and no member of those castes not elected, as a candidate at such an election shall be qualified to hold—

- (a) a seat so reserved in the constituency;
- (b) if it is so prescribed as respects that Province, any seat in that constituency.

It will therefore be seen that in the case of seats reserved for the scheduled castes the scheme of the Act is that there should be a primary election to select four candidates for each seat so reserved who will have to contest the final election to the seat. Government of India (Scheduled Castes) Order, 1936 dated 30th April, 1936, specifies the various scheduled castes in the different Provinces.

Paragraph 14 of Part I of the Government of India (Provincial Legislative Assemblies) Order 1936 provides:

(1) For avoidance of doubts, it is hereby declared that a primary election held for the purpose of electing candidates for a seat reserved for members of the scheduled castes may be proceeded with notwithstanding that less than four candidates stand at that primary election, and that the remainder of the election may be proceeded with notwithstanding, that by reason of a deficiency of candidates at the primary election or by reason of the withdrawal or death of candidates elected thereat, there are or remain less than four duly elected scheduled castes candidates for the seat.

(2) At a poll at any such primary election no voter shall have more than one vote.

(3) Save as expressly provided in this Order with respect to Bengal, a member of the scheduled castes shall not be disqualified to hold a seat not reserved for members of the scheduled castes by reason that he has not been elected at a primary election as a candidate for a seat so reserved.

The special provision with respect to Bengal referred to above is contained in paragraph 2 of Part IV of the Order which provides:

"In a constituency in which a seat is reserved for a member of the scheduled castes, no member of those castes shall be qualified to be chosen to fill any seat in the constituency unless he was selected as a candidate for the reserved seat or seats at a primary election of candidate therefor: Provided that this paragraph shall not apply in relation to a bye-election at which no reserved seat is to be filled."

In Bombay Presidency and in Bengal primary elections are prescribed in case of certain labour constituencies. The special provisions in respect of such elections, are dealt with in part III of Chapter VI.

The following are the general rules applicable to primary elections in territorial constituencies in which seats are reserved for the scheduled castes.

I For the purposes of these rules—

(1) "primary election" means an election held for the purpose of electing candidates who shall be qualified to be chosen to fill a reserved seat.

(2) "reserved seat" means a seat reserved in a general constituency for members of the scheduled castes under the Assembly Order.

(3) "District Magistrate" means in the case of a Bombay City constituency the Chief Presidency Magistrate and elsewhere the Magistrate of the district in which the constituency is situate.

II Save as provided in these rules, general rules made in that behalf shall, so far as may be, be applicable to nominations, scrutiny of nominations, withdrawals, voting and counting of votes, declaration of results, disposal of ballot papers and agents in primary elections.

III Any person who is a member of the scheduled castes may be nominated as a candidate for a primary election in a constituency if he is qualified to be chosen to fill a reserved seat under the Act or any Order or rule made thereunder or an Act of the Provincial Legislature.

IV (1) For the purposes of a primary election the Governor, acting in his discretion, shall fix for each constituency in which there is a reserved seat,

- (a) a date, not later than the prescribed number of days after the date of the notification calling upon the members of the scheduled castes who are electors in that constituency to elect four candidates for the reserved seat, for the nomination of candidates and the scrutiny of nominations;
- (b) a further date or dates on which a poll shall, if necessary, be taken.

(2) The dates so fixed shall be notified in the constituency in such manner as the Governor, exercising his individual judgment, thinks fit.

(3) The form in which nominations shall be delivered shall be in the prescribed form.

V The proposer and seconder of a candidate shall both be members of the scheduled castes.

VI (1) At or before the time of the delivery of a nomination paper, each candidate shall deposit on nomination at primary elections. the Returning Officer or such other person as may be authorised in this behalf by the Governor the sum of fifty rupees in cash or in Government securities of equal value at the market rate of the day; and no candidate shall be deemed to be duly nominated unless such deposit has been made.

(2) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made, withdraws his candidature in the prescribed manner and within the prescribed time, or if the nomination of any such candidate is refused, the deposit shall be returned to the person by whom it was made; and, if any candidate dies before the commencement of the poll at the final election, any such deposit, if made by him, shall be returned to his legal representative, or, if not made by the candidate, shall be returned to the person by whom it was made.

(3) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made, is not elected at the primary election and the number of votes polled by him at such election does not exceed one-fourth of the total number of votes polled by the candidate who has secured the lowest number of votes amongst the successful candidates at such election, the deposit shall be forfeited to His Majesty for the purposes of the Government of the Province.

(4) For the purposes of sub-rule (3) the total number of votes polled shall be deemed to be the total number of ballot papers, other than rejected ballot papers, counted.

VII (1) The deposit made in respect of a candidate who is not elected at a primary election shall, if it is not forfeited under sub-rule (3) of rule VI, be returned to the candidate or to the person who has made the deposit on his behalf, as the case may be, as soon as may be after the publication of the result of the primary election in the Gazette

Provided that if a candidate is duly nominated at a primary election in more than one constituency, not more than one of the deposits made by him or on his behalf shall be returned and the remainder shall be forfeited to His Majesty for the purposes of the Government of the Province

(2) The deposit made in respect of a candidate elected at a primary election, but not elected at the final election, shall be returned to the candidate or to the person who has made the deposit on his behalf, as the case may be, as soon as may be after publication of the result of the final election in the Gazette

Provided that if a candidate is duly nominated at the final election in more than one constituency, not more than one of the deposits made by him or on his behalf shall be returned and the remainder shall be forfeited to His Majesty for the purposes of the Government of the Province

VIII (1) If at a primary election the number of candidates who are duly nominated and who have not withdrawn their candidature in the prescribed manner and within the prescribed time exceeds four, the Returning Officer shall forthwith publish in the Gazette and in such manner as the Governor may direct and in such places in the constituency as the Returning Officer may consider necessary, the names of the candidates as given in the nomination papers in alphabetical order together with symbol assigned to each candidate and a poll shall be taken,

(2) If the number of such candidates does not exceed four, the Returning Officer shall declare all such candidates to be duly elected as candidates for the seat.

IX The ballot paper in the case of a primary election shall be in the prescribed form. The Form of ballot paper; identity of ballot papers shall be serially numbered, the serial number being printed on the counterfoil and on the back of the ballot paper. At any time before a ballot paper is delivered to an elector, the presiding officer or polling officer may, of his own accord, if he has reason to doubt the identity of the elector or his right to vote at such polling station and shall, if so required by a candidate or polling agent, put to the elector the following questions:—

(1) Are you the person enrolled as follows (reading the whole entry from the roll)? and

(2) Have you already voted at the present primary election in this constituency?
and at a general election—

(3) Have you already voted at this primary election in any other general constituency in which there is a reserved seat?

and the elector shall not be supplied with a ballot paper if he refuses to answer any one of the questions and unless he answers the first question in the affirmative, the second question in the negative, and, at a general election the third question also in the negative.

X (1) A ballot paper shall be rejected if—

Grounds for re- (a) the number of votes recorded
jection of ballot thereon exceeds one;
paper.

(b) no vote is recorded thereon;

(c) more than one mark are placed against the name of any of the candidates;

(d) it is void for uncertainty;

(e) it bears any mark by which the elector can be identified.

(2) The decision of the Returning Officer as to the validity of a ballot paper shall be final, subject only to reversal on an election petition under these rules.

XI (1) While in the custody of the Returning Officer, the packets of ballot papers whether counted, rejected or tendered, of the counterfoils thereof, and of the marked copy of the electoral roll, relating to a primary election shall not be opened and their contents shall not be inspected or produced except under the order of a competent Court or of the District Magistrate or any person authorised to hold an inquiry under this Part, but all other documents shall be open to public inspection subject to such conditions as the Governor may prescribe and to the payment of the prescribed fee and any person, on compliance with such conditions and on payment of the prescribed fee, shall be entitled to obtain a copy or copies thereof or of any part thereof.

(2) The said papers shall be retained for a period of one year and shall thereafter be destroyed, subject to any directions to the contrary made by the Governor, exercising his individual judgment, or by a competent Court or by the District Magistrate or the person authorised to hold an inquiry under these rules.

XII (1) At a primary election where a poll is taken, votes shall be given by ballot in the manner provided therefor in these rules and in person; provided that no votes shall be received by proxy.

(2) The Returning Officer shall prepare a list showing the candidates who have been duly elected at the primary election and indicating thereon the symbol assigned to each such candidate and cause the list so prepared to be affixed in some conspicuous place in his office. The symbols assigned to the elected candidates for the final election shall be the same symbols as those assigned to them in respect of the primary election under sub-rule (1) of rule VIII.

XIII (1) All persons declared elected at a primary election as candidates for a reserved seat shall, subject to the provisions of these rules be deemed to have been validly nominated as candidates for election both to the reserved seat as well as to any non-reserved seat in the constituency and the election to such reserved and non-reserved seats shall be determined in accordance with the general provisions made in respect of elections:

Provided that the rule as to withdrawal of candidature shall not apply to a candidate elected at a primary election under these rules.

(2) If a member of the scheduled castes who has been duly elected at a primary election as a candidate for a reserved seat dies after the primary election and before the commencement of the poll for the final election, the Returning Officer or the person authorised under the rules shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the Governor and all proceedings with reference to the primary election shall be commenced anew in all respects, as if for a new election; provided that no fresh nominations shall be necessary in the case of a candidate who stood validly nominated at the time of the countermanding of the poll:

Provided that this sub-rule shall not apply to any case where the number of candidates for the reserved seat after the death of such candidate is at least one.

(3) The election agent appointed for a primary election by a candidate who is afterwards elected at such primary election as a candidate for a reserved seat shall be deemed to be the election agent of such candidate for the final election held in that constituency for filling such seat.

XIV The return of election expenses in respect of a person who has been nominated as a candidate at a primary election shall be in the prescribed form and shall contain the prescribed particulars. Such return shall be lodged with the Return-

ing Officer within thirty-five days from the date of the publication of the result of a primary election and the general provisions in respect of the return of election expenses shall, so far as may be, apply to such return and lodging thereof:

Provided that in the case of a candidate who was elected at a primary election, such return shall be lodged along with the return in respect of the said candidate at the final election.

XV If a person is elected at a primary election in more than one constituency in which a seat is reserved for the scheduled castes then unless within two days from the declaration of the result of the election by the Returning Officer or where such declarations have been made on different dates unless within two days of the latest of such dates he resigns all but one of the seats by a notice in writing delivered to each of the Returning Officers concerned all his seats shall become vacant.

XVI No primary election shall be called in question except by an election petition presented in accordance with the provisions of these rules.

XVII An election petition against an elected candidate or candidates may be presented to the District Magistrate by any candidate or elector for a primary election within two days from the date on which the result of the primary election is declared by the Returning Officer.

XVIII (1) An election petition shall be presented to the District Magistrate by the person making the petition or by a person authorised in writing in this behalf by the person making the petition or by registered post.

(2) When the last day of the period for the presentation of an election petition under this rule is a public holiday within the meaning of section 25 of the Negotiable Instruments Act, 1881, or has been notified by the Governor as a

day to be observed as a holiday in Government offices, the petition shall be considered as having been received in due time, if it is presented on the next succeeding day which is neither such a public holiday nor a day so notified

XIX (1) The petition shall contain a statement in concise form of the material facts on which the petitioner relies and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1903, for the verification of pleadings

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

(3) The petitioner may, if he so desires, in addition to calling in question the election of the elected candidate or candidates, claim a declaration that he himself or any other candidate has been duly elected, in which case he shall join as respondents to his petition all other candidates who were nominated at the primary election

XX At the time of the presentation of the petition, the petitioner shall deposit with it the sum of two hundred and fifty rupees in cash or in Government securities of equal value at the market rate of the day as security for the costs of the same

XXI All inquiries regarding election petitions presented under rule XVII shall be held by the District Magistrate or any other officer authorised by him in this behalf hereinafter referred to as the "authorised officer" and shall be completed within a period of ten clear days after the expiry of the last date on which an election petition may be filed under rule XVII, provided that the Governor may in any particular case extend such period

XXII (1) If the provisions of rules XVII to XX are not complied with, the District Magistrate or the authorised officer, as the case may be, shall dismiss the petition.

(2) If the petition is not dismissed under sub-rule (1), the District Magistrate or the authorised officer, as the case may be, shall cause a notice of the petition to be served on each respondent and shall after giving notice to the respondents, hold a summary inquiry at such place and on such dates as may be fixed by him.

(3) Subject to the other provisions of these rules, every election petition shall be inquired into, as nearly as may be, in accordance with the procedure applicable under the Code of Criminal Procedure, 1898, to summary trials and in recording evidence, the District Magistrate or the authorised officer shall follow the procedure laid down in the said Code for summary trials in appealable cases.

(4) If more than one petition are presented in respect of a primary election in a constituency, the District Magistrate or the authorised officer, as the case may be, may, at his discretion, inquire into the petitions either separately or in one or more groups, as he thinks fit.

(5) Where at an enquiry into an election petition under this Part it is claimed that any candidate other than the respondent has been duly elected the respondent or any other party may give evidence to prove that the election of such candidate would have been void if he had been a duly elected candidate and a petition had been presented complaining of his election. Any such party to the election petition may also give evidence to prove that the election of the respondent is void.

XXIII (1) An election petition may be withdrawn by leave of the District Magistrate or the authorised officer, as the case may be. If there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

(2) When an application for withdrawal is received the District Magistrate or the authorised officer shall give notice thereof to all other parties to the petition fixing a date for the hearing of the application

(3) No application for withdrawal shall be granted if in the opinion of the District Magistrate or the authorised officer, as the case may be, such application has been induced by any bargain or consideration which ought not to be allowed

(4) If the application for withdrawal of a petition is granted, the petitioner shall be ordered to pay the costs of the respondent theretofore incurred or such portion thereof as the District Magistrate or the authorised officer, as the case may be, may think fit

XXIV An election petition shall abate on the death
 Abatement of of a sole petitioner or the survivor of
 petition several petitioners

XXV (1) If in the opinion of the District Magistrate or
 Grounds for dec- the authorised officer, as the case may
 laring election void be,—

- (a) the election of any elected candidate has been procured or induced or the result of the primary election has been materially affected by any corrupt practice, or
- (b) any corrupt practice specified in Part I of the First Schedule to the Corrupt Practices Order has been committed in the interests of an elected candidate, or
- (c) the result of the primary election has been materially affected by the improper acceptance or rejection of any nomination or by reason of the fact that any person nominated was not qualified or was disqualified for election, or by the improper reception or refusal of a vote or by the reception of any vote which is void or by any non-compliance with the provisions of the Act or of any Order or rule made thereunder or of any Act of Provincial Legis-

lature or by any mistake in the use of any prescribed form; or

- (d) the primary election has not been a free election by reason of the large number of cases in which bribery or undue influence has been exercised or committed,

the election of the elected candidate shall be void.

(2) If the District Magistrate or the authorised officer, as the case may be, is satisfied that the elected candidate has been guilty by an agent other than his election agent of any corrupt practice specified in Part I of the First Schedule to the Corrupt Practices Order, but is further satisfied that—

- (a) no corrupt practice was committed at the primary election by the candidate or his election agent, and the corrupt practices mentioned in the report were committed contrary to the orders, and without the sanction or connivance, of the candidate or his election agent;
- (b) the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the primary election;
- (c) the corrupt practices mentioned in the report were of a trivial and limited character or took the form of customary hospitality which did not affect the result of the primary election; and
- (d) in all other respects the primary election was free from any corrupt practice on the part of the candidate or any of his agents,

then the District Magistrate or the authorised officer, as the case may be, may find that the election of the candidate is not void.

(3) If a person votes more than once at the same primary election, all his votes shall be deemed for the purposes of this rule to be void.

XXVI (1) At the conclusion of the inquiry, the District Magistrate or the authorised officer, as the case may be, shall deliver judgment in writing and his decision shall be final and shall not be liable to be questioned in any Court or otherwise.

(2) In the judgment delivered under sub-rule (1) the District Magistrate or the authorised officer shall declare whether or not the election of the candidate or candidates whose election has been called in question is void. If the District Magistrate or the authorised officer declares the election of such candidate or candidates to be void, he shall declare such candidate or candidates, if any, not being a candidate or candidates whose election he holds to be void, to have been duly elected as may have received the largest number of votes next in order in the place of those whose election has been declared void. He shall calculate in such manner as he thinks fit the total amount of costs payable and shall order by what persons and to whom the costs shall be paid.

(3) The District Magistrate or the authorised officer shall on delivery of the judgment under sub-rule (1) forthwith forward one copy of the judgment to the Governor and another copy to the Returning Officer.

(4) The Returning Officer on receipt of the copy of the judgment shall amend the list prepared by him under sub-rule (2) of rule XII and cause the amended list to be published in such manner and at such places in the constituency as he may consider necessary and shall without delay send a copy of the amended list to the Government of in the department concerned. The name or names of the elected candidate or candidates included in the list so amended shall be published in the Gazette:

Provided that where the District Magistrate or the authorised officer declares that the elections of all the elected candidates are void and no other party to the petition is entitled to be declared elected, then the Returning Officer shall bring the fact to the notice of the Governor and a fresh

primary election shall be held in accordance with these rules.

XXVII Where any charge is made in an election petition of any corrupt practice, the District Magistrate or the authorised officer shall record in his judgment—

Finding as to corrupt practices and persons guilty thereof.

- (a) a finding whether a corrupt practice has or has not been proved to have been committed by any candidate or his agent or with the connivance of any candidate or his agent and the nature of that corrupt practice; and
- (b) the names of all persons, if any, who have been proved at the inquiry to have been guilty of any corrupt practice and the nature of that practice with any such recommendations as the District Magistrate or the authorised officer may think proper to make for the exemption of any persons from any disqualifications which they may have incurred in this connection under paragraphs two to five of Part IV of the Corrupt Practices Order:

Provided that no person shall be so named in the judgment unless he has been given a reasonable opportunity of showing cause why his name should not be so recorded.

XXVIII Any order made by the District Magistrate or the authorised officer regarding the execution of orders as to costs. costs under these rules may be produced before the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or, where such place is within the local limits of the ordinary original civil jurisdiction of the High Court, before the court of the Presidency Small Causes, and such court shall execute such order or cause it to be executed in the same manner and by the same procedure, as if it were a decree for the payment of money made by itself in a suit.

CHAPTER VI

Special provisions applicable to elections in Special constituencies in Bombay Presidency.

PART I

Commerce and Industry constituencies.

Elections in Commerce and Industry Constituencies.	In the Commerce and Industry Constituencies—
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- (a) (i) where a nominee of a firm, corporation or Hindu joint family is a candidate for election, any other nominee of the same firm, corporation or Hindu joint family shall not be entitled to subscribe either as proposer or seconder the nomination paper of such candidate;
- (ii) where a nominee of a firm, corporation or Hindu joint family has subscribed as proposer or seconder a nomination paper, any other nominee of the said firm, corporation or Hindu joint family shall not subscribe as proposer or seconder the same nomination paper or any other nomination paper;
- (b) no symbols shall be assigned to the candidates;
- (c) the Collector shall supply the presiding officer with one ballot box;
- (d) the ballot box shall be kept beside the presiding officer, the elector shall mark his ballot paper in the voting partition and shall then place his ballot paper in the ballot box in the presence of the presiding officer;
- (e) the ballot paper shall be in the prescribed form; the number of the ballot paper shall be printed

on the counterfoil and on the back of the ballot paper;

- (f) the elector shall record his vote by making a cross or crosses against the name of the candidate or candidates for whom he desires to vote and shall then place the ballot paper in the ballot box;
- (g) an elector voting on a tendered ballot paper shall record his vote in the manner above described and shall deliver the ballot paper to the presiding officer;
- (h) save as herein provided, the general provisions made in that behalf shall, so far as may be, be applicable to nominations, scrutiny of nominations, deposits, withdrawals, voting, scrutiny and counting of votes, declaration of results, disposal of ballot papers, agents and election expenses and all other matters in connection with an election in the Commerce and Industry constituencies.

PART II

Landholders' Constituencies

In the Landholders' constituencies—

- (a) no symbols shall be assigned to the candidates;
- (b) the Collector shall supply the presiding officer with one ballot box;
- (c) the ballot box shall be kept beside the presiding officer, the elector shall mark his ballot paper in the voting partition, and shall then place his ballot paper in the ballot box in the presence of the presiding officer;
- (d) the ballot paper shall be in Form B-2; the number of the ballot paper shall be printed on

Elections in Landholders' constituencies.

the counterfoil and on the back of the ballot paper;

- (e) the elector shall record his vote by making a cross against the name of the candidate for whom he desires to vote and shall then place the ballot paper in the ballot box;
- (f) an elector voting on a tendered ballot paper shall record his vote in the manner above described and shall deliver the ballot paper to the presiding officer;
- (g) save as herein provided, the general provisions made in that behalf shall, so far as may be, be applicable to nominations, scrutiny of nominations, deposits, withdrawals, voting, scrutiny and counting of votes, declaration of results, disposal of ballot papers, agents and election expenses and all other matters in connection with an election in the Landholders' constituencies.

PART III

Labour Constituencies

I For the purposes of this Part—

- Definitions.**
- (a) "delegate" means a person elected by an electoral unit at a primary election;
 - (b) "electoral unit" means a unit formed under rule II for the purpose of electing a delegate;
 - (c) "labour constituency" means a trade union constituency or a non-union labour constituency;
 - (d) "primary election" means an election held to choose an electoral college under the Assembly Order;
 - (e) "Registrar" means the person appointed for the time being as the Registrar of Trade Unions under the Indian Trade Unions Act, 1926;

(f) "trade union constituencies" means the Bombay City and Suburban Textile Unions constituency, the Ahmedabad Textile Unions constituency, the Railway Unions constituency, and the Trade Unions of Seamen and Dock-workers constituency;

(g) "non-union labour constituency" means the Sholapur City (Textile Labour) constituency.

II For the purpose of a primary election the Railway Unions constituency and the Trade Unions of Seamen and Dock-workers constituency shall be divided into as many electoral units as there are constituent trade unions in the constituency and each constituent trade union shall form one electoral unit:

Division of certain trade union constituencies into electoral units for the purpose of primary election.

Provided that if the number of members of any constituent trade union entitled to vote is less than 200, the Registrar may, with the consent in writing of such trade union, combine the said union with any other constituent trade union in the constituency to form one electoral unit.

III The Registrar shall be the Returning Officer for each electoral unit for the purpose of a primary election:

Returning officers for electoral units.

Provided that the Registrar may, if he thinks it necessary, appoint for any electoral unit some other person being a person in the service of the Crown in India to be the Returning Officer for such unit. Such person, when so appointed, shall, subject to the control of the Registrar, perform all the duties of the Returning Officer for an electoral unit under these rules.

IV For the purpose of a primary election, so much of the electoral roll for the electoral roll of a constituency as each electoral unit relates to a constituent trade union in the constituency forming an electoral unit or to a combination of constituent trade unions in the constituency forming

an electoral unit under rule II shall be deemed to be the electoral roll of that unit

V The Registrar shall, before the seventh day from the date of a notification calling upon the number of delegates the trade union constituency or constituencies, as the case may be, to choose an electoral college at a primary election, determine the number of delegates to be elected, at the primary election by each electoral unit on the basis of one person for every complete two hundred persons included in the electoral roll of the electoral unit and notify the same to the constituent trade unions concerned. The decision of the Registrar shall be final and shall not be liable to be questioned in any Court or otherwise

VI Any person may be nominated as a candidate for a primary election in an electoral unit, if he is included in the electoral roll for that electoral unit

VII (1) For the purposes of a primary election in the constituency or the primary election of Railway Unions, Trade Unions of Seamen and Dockworkers, the Governor, acting in his discretion, shall fix for each electoral unit,—

(a) a date not later than the fourteenth day after the date of the notification calling upon the constituency to choose at a primary election an electoral college, for the nomination of candidates and the scrutiny of nominations,

(b) a further date or dates on which a poll shall, if necessary, be taken

(2) The dates so fixed shall be notified in such manner as the Governor, exercising his individual judgment, thinks fit

VIII (1) The nomination paper shall be in the prescribed form and shall be supplied by the Returning Officer of an electoral unit to any elector asking for the same,

Nominations, scrutiny and with draws in connection with election of delegates

(2) any person who is included in the electoral roll of an electoral unit and who is not disqualified for voting under the Act or any Order or rule made thereunder or an Act of the Provincial Legislature may subscribe as proposer or seconder as many nomination papers as there are delegates to be elected but no more,

(3) in a summary inquiry held by a Returning Officer for the scrutiny of nominations and disposal of objections to nominations in a primary election the production of any certified copy of an entry made in the electoral roll of any electoral unit shall be conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe a nomination paper as a proposer or seconder, as the case may be, unless it is proved that the candidate is disqualified under the provisions of the Act or any Order or rule made thereunder or an Act of the Provincial Legislature or, as the case may be that the proposer or seconder, is not qualified under sub-rule (2),

(4) save as herein provided the provisions of the general rules in that behalf shall, so far as may be, apply to nominations, scrutiny of nominations and withdrawals in connection with an election of delegates by an electoral unit provided, however, that for the purpose of this rule any reference to the Returning Officer in the said rules shall be deemed to be a reference to the Returning Officer for the electoral unit

IX (1) If at an election of delegates by an electoral unit, the number of candidates who are
 Procedure at pri-
 mary election duly nominated and who have not withdrawn their candidature in the prescribed manner and within the prescribed time, exceeds the number of delegates to be elected by the electoral unit the Returning Officer for the electoral unit shall forthwith publish in the Gazette and in such other manner as the Governor may direct and in such places as the Returning Officer may consider necessary, the names of the candidates as given in the nomination paper in alphabetical order together with the symbols assigned to each candidate and a poll shall be taken

(2) If the number of such candidates is equal to the number of delegates to be so elected, the Returning Officer for the electoral unit shall declare all such candidates to be duly elected as delegates

(3) If the number of such candidates is less than the number of delegates to be so elected, the Returning Officer for the electoral unit shall declare all such candidates, if any, to be elected as delegates and the Governor, exercising his individual judgment, shall by a notification in the Gazette call upon the electoral unit to elect a delegate or delegates, as the case may be, within such time as may be specified in the notification

Provided that where an electoral unit having been already called upon under this sub-rule has failed to elect a delegate or the requisite number of delegates, as the case may be, to fill up the deficiency in the number of delegates to be elected by it, the Governor, exercising his individual judgment, shall not be bound again to call upon the electoral unit to elect a delegate or delegates to fill up the said deficiency until such time as, exercising his individual judgment, he may think fit

X At an election of delegates by an electoral unit—

- | | |
|----------------------------|--|
| Voting at primary election | <p>(a) the Returning Officer for each electoral unit shall select for that unit as many polling stations as he thinks necessary and shall publish in such manner as the Registrar may direct a list showing the polling stations so selected and the polling areas for which they have respectively been selected,</p> |
| | <p>(b) each polling station shall be furnished with one or more compartments in which electors can record their votes screened from observation,</p> |
| | <p>(c) the Returning Officer for the electoral unit shall provide at each polling station one ballot box for each of the candidates and shall cause to be affixed to such ballot box the name</p> |

and symbol of the candidate. Such ballot boxes shall be kept within the screened compartment;

- (d) before the commencement of the poll there shall be affixed in a conspicuous place, outside and inside each polling station, a notice in English and in such vernacular language or languages as the Returning Officer of the electoral unit may decide showing the name and symbol of each candidate;
- (e) votes shall be given by ballot in the manner provided in this rule and in person. No votes shall be received by proxy;
- (f) the ballot paper shall be in the prescribed form. The names and symbols of the candidates shall not be printed on the ballot paper;
- (g) the ballot paper shall be stamped with the official mark before it is delivered to the elector. The Returning Officer for the electoral unit shall provide at each polling station instruments for stamping the official mark on ballot papers;
- (h) the elector shall, on receiving the ballot paper, forthwith proceed to the compartment and shall put the ballot paper in the ballot box allotted to the candidate for whom he wishes to vote;
- (i) not more than one elector shall be allowed to be in a compartment at a time;
- (j) the questions to be put in case of doubt as to the identity of an elector or his right to vote at a particular polling station shall be as follows:—
 - (1) Are you the person enrolled as follows
(reading the whole entry from the roll)?
and

(2) Have you already voted at the present primary election in this constituency?
and at a general election—

(3) Have you already voted at this election in any other labour constituency?
and the elector shall not be supplied with a ballot paper if he refuses to answer any one of the questions and unless he answers the first question in the affirmative, the second question in the negative, and, at a general election, the third question also in the negative;

(k) if the person representing himself to be a particular elector named in the electoral roll applies for a ballot paper after another person has voted as such elector the applicant shall, after duly answering such questions as the presiding officer may ask, be entitled to receive a ballot paper in the same manner as any other elector. The elector shall not put the ballot paper (hereinafter referred to as a tendered ballot paper) in a ballot box but he shall write on the ballot paper the name of the candidate for whom he wishes to vote and shall deliver it to the presiding officer who shall endorse thereon the name of the elector, his number on the electoral roll and the name of the electoral unit to which the roll relates. A tendered ballot paper shall be set aside in a separate packet and shall not be counted by the Returning Officer of the electoral unit. The name of the elector and his number on the electoral roll and the name or distinctive number of the polling station to which the electoral roll relates shall be entered in a list in the prescribed form, which shall bear the heading "Tendered Votes List." The person tendering such ballot paper shall sign his name and address thereon or, if he is un-

able to write, affix his thumb impression against the entry in that list;

- (l) a person who is on duty at a polling station at which he is not entitled to vote shall not be allowed to record his vote at that polling station;
- (m) the Returning Officer shall exercise all the powers conferred and shall perform all the duties imposed on the Collector in the case of election to territorial constituencies;
- (n) save as herein provided, the general provisions made in that behalf shall, so far as may be, be applicable to voting at a primary election.

- XI (1) (a) Votes shall be counted by or under the supervision of the Returning Officer for the electoral unit;
- Scrutiny and counting of votes; declaration of the results of primary elections.
- (b) all the ballot boxes allotted to a particular candidate shall be separated from those allotted to any other candidate and shall be numbered and placed together, and the counting of all the ballot papers contained in the ballot boxes allotted to the same candidate shall be completed in the manner hereinafter prescribed before the counting of the ballot papers contained in the ballot boxes allotted to any other candidate is commenced. The order of counting as between the candidates shall be the order in which their names are published under rule IX, and in case of dispute about the order the decision of the Returning Officer of the electoral unit shall be final;
 - (c) each ballot box shall be opened separately, and the ballot papers contained therein shall be taken out and distributed in convenient

bundles to the persons appointed to assist in counting the votes;

- (d) after the ballot papers contained in one ballot box have been examined and counted, the Returning Officer for the electoral unit shall record the number thereof in a statement. The number of valid and rejected ballot papers shall be recorded separately, and the statement shall not be shown to any candidate, agent or representative. The next ballot box shall then be opened, and the ballot papers contained therein shall be dealt with in the same manner, and so on, until the ballot papers contained in all the ballot boxes of all the candidates have been counted and their number recorded;
- (e) a ballot paper shall be rejected if—
 - (i) it does not bear the official mark;
 - (ii) it bears any mark by which the elector can be identified;
- (f) When the counting of votes has been completed the Returning Officer for the electoral unit shall forthwith declare the candidates to whom the largest number of votes has been given to be elected;
- (g) the Returning Officer for each electoral unit shall as soon as may be, after the declaration of the result of the election held in that electoral unit forward to the Registrar a list of the names of the delegates elected;
- (h) the ballot papers taken out from the ballot boxes allotted to each candidate, shall be made up into separate parcels which shall be sealed with the seal of the Returning Officer for the electoral unit and of such candidates or agents as may desire to affix their seal and the Returning Officer of the electoral unit shall

endorse thereon in his own hand and under his own signature the name of the candidate.

(2) Save as herein provided the general provisions made in that behalf, shall, so far as may be, be applicable to the scrutiny and counting of votes and declaration of results at an election of delegates by an electoral unit.

XII (1) The Returning Officer for each electoral unit shall send the packets of documents relating to a primary election to the Registrar. The packets of documents and their contents shall not be inspected or produced except under the order of a competent Court or of the Registrar or of any person authorised to hold an inquiry into a primary election under these rules but all other documents shall be open to public inspection, subject to such conditions as the Governor may prescribe and to the payment of the prescribed fee; and any person, on compliance with such conditions and on payment of the prescribed fee, shall be entitled to obtain a copy or copies thereof or of any part thereof.

Custody, production and inspection of primary election papers and their destruction.

(2) The said papers shall be retained for a period of *one year and shall thereafter be destroyed, subject to any directions to the contrary made by the Governor, exercising his individual judgment, or by a competent Court or by the Registrar or by a person authorised to hold an inquiry into a primary election under this Part.*

XIII (1) No primary election shall be called in question except by an election petition presented in accordance with the provisions of this rule.

Election petition.

(2) An election petition against the election of a delegate may be presented to the Registrar by any candidate or elector within four days from the date on which the result of the primary election is declared by the Returning Officer for the electoral unit concerned under clause (f) of rule XI. The petition shall contain a statement in concise form of the material facts on which the petitioner relies and

shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings

(3) If the provisions of sub-rule (2) are not complied with the petition shall be dismissed

(4) If the petition is not dismissed under sub-rule (3) the Registrar or any other officer authorised by him in this behalf (hereinafter referred to as the "authorised officer") shall, after giving notice to the parties and after giving them reasonable opportunity to represent their case, hold a summary inquiry into the the petition in such manner, at such place and on such date as he thinks fit

(5) The petition shall be disposed of within six days from the expiry of the period within which it may be presented under sub-rule (2) or within such further period as may be sanctioned by the Governor in this behalf

(6) If the Registrar or the authorised officer finds that the election of any delegate or delegates is void on any of the grounds mentioned in paragraph seven of Part III of the Corrupt Practices Order, he shall declare such delegate or delegates, if any, not being a delegate or delegates whose election he holds to be void, to have been duly elected as may have received the largest number of votes next in order in the place of those whose election has been declared void. The decision of the Registrar or of the authorised officer, as the case may be, shall be final and shall not be liable to be questioned in any Court or otherwise

(7) The Registrar shall forthwith send a copy of his decision to the Governor. If the inquiry is held by the authorised officer a copy of his decision shall, as soon as may be, be sent both to the Registrar and the Governor

(8) The Registrar shall amend the list of delegates elected by the electoral unit in accordance with the orders passed by him or the authorized officer under sub-rule (6)

Provided that if the number of delegates elected by an electoral unit is less than the numbers of dele-

gates which such unit is entitled to elect, the Registrar shall immediately bring the fact to the notice of the Governor to enable the Governor, exercising his individual judgment, to take necessary action for the purpose of holding a fresh primary election in the electoral unit to make up the deficiency.

XIV (1) The Registrar shall, as soon as possible after all election petitions, if any, relating to a primary election are decided, prepare a list of the names of all the delegates declared duly elected at such primary election in all the electoral units arranged alphabetically. The list shall be in English and shall show the name of the delegate, his or her father's name and surname, if any, his address and the name of the electoral unit by which the delegate was elected. It shall be published at the office of the Returning Officer and at the office of each constituent trade union and also at such place or places as the Returning Officer may direct. A copy of the list shall at the same time be forwarded to the Secretary to the Government of Bombay in the department concerned for publication in the Gazette. The list so published shall be final and conclusive and shall not be questioned in any Court or otherwise. The list shall be deemed to be the electoral roll for the constituency for the purpose of the final election in the constituency.

(2) The delegates whose names are included in the list published under sub-rule (1) shall form the electoral college for that constituency for the purpose of electing persons to fill the seat or seats in that constituency and each such delegate shall be a member of such electoral college.

XV The provisions of Part II of the Corrupt Practices and Election agents and return of expenses. Order shall apply to a primary election in a trade union constituency subject to the following exceptions, adaptations and modifications, namely:—

(1) the provisions of paragraphs one to four shall not apply;

(2) a person who is nominated as a candidate at a primary election in a trade union constituency may not lodge his return of the election expenses in respect of such election; provided, however, that if such person is nominated as a candidate for the final election in that constituency he shall show in his return of election expenses for the final election all the expenses incurred by him in respect of the primary election.

XVI (1) The Governor acting in his discretion shall
 Nomination of candidates in labour constituencies. fix for each labour constituency—
 (a) a date, not later than the fourteenth day after the date of the notification calling upon the constituency to elect a member for the nomination of candidates and the scrutiny of nominations;

(b) a further date or dates on which a poll shall, if necessary, be taken.

(2) The dates so fixed shall be notified in the constituency in such manner as the Governor, exercising his individual judgment, thinks fit.

(3) Nomination paper in the prescribed form shall be supplied by the Returning Officer or such other officer as may be authorised in this behalf to any elector asking for the same.

XVII (1) If the candidate is a member, honorary member or official of a recognised trade union operating within the Province and is not entitled to vote in the choice of a member to fill any labour seat, the nomination paper shall be accompanied by a certificate to the effect that the candidate is a member of the recognised trade union and is not in arrear with his subscription thereto or that he is an honorary member or official of such union, as the case may be, and such certificate shall be signed by the President or Chairman or Secretary of such union and sealed with its common seal.

(2) The production of any certificate referred to in sub-rule (1) or of a certified copy of an entry made in the list of members or of officials of a recognised trade union shall be conclusive evidence of the right of any person named in such certificate or entry to stand for election in a labour constituency unless it is proved that the person is disqualified under the provisions of the Act or any Order or rule made thereunder or an Act of the Provincial Legislature.

XVIII If a candidate is in the opinion of the Returning Officer or the person authorised a genuine manual worker, the deposit required to be made by him at or before the time of the delivery of the nomination paper shall be the sum of fifty rupees in cash or in Government securities of equal value at the market rate of the day.

XIX In the case of the Railway Unions constituency and the Trade Unions of Seamen and Dock-workers constituency—
 Certain provisions in case of Railway Unions and Seamen and Dock-workers constituencies.

- (a) any person whose name is included in the list of delegates prepared under sub-rule (1) of rule XIV and who is not disqualified for voting under the Act or any Order or rule made thereunder or an Act of the Provincial Legislature may subscribe as proposer or seconder as many nomination papers as there are seats to be filled but no more;
- (b) ballot papers shall not be supplied to the Collector;
- (c) the Returning Officer shall perform the same duties as are to be performed by the Collector in the case of territorial constituencies.

XX At any time before a ballot paper is delivered to an elector, the presiding or polling officer may of his own accord, if he has reason to doubt the identity of the elector or his right to

vote, and shall, if so required by a candidate or polling agent, put to the elector the following questions:—

(1) Are you the person enrolled as follows (reading the whole entry from the roll)?

(2) Have you already voted at the present election in this constituency?
and at a general election

(3) Have you already voted in any other labour constituency? and the elector shall not be supplied with a ballot paper if he refuses to answer any one of the questions and unless he answers the first question in the affirmative, the second question in the negative and, at a general election, the third question also in the negative.

XXI Save as herein provided, the general provisions made in that behalf, shall, so far as Application of general provisions. may be, be applicable to nominations, scrutiny of nominations, deposits, withdrawals, voting, scrutiny and counting of votes, declarations of the results of voting, disposal of ballot papers, agents and election expenses and all other matters in connection with elections for the purpose of a final election in the Railway Unions constituency or the Trade Unions of Seamen and Dockworkers constituency and for an election in any other labour constituency.

See Bengal Legislative Assembly rules 16-22.

PART IV

University Constituency

I (1) The Returning Officer shall despatch a ballot Despatch and paper with counterfoil attached, to Form of ballot each elector by registered post to the papers. address shown in the electoral roll not later than fourteen clear days before the date fixed for the counting of votes. The portion of the counterfoil of the ballot paper to be filled up by the Returning Officer shall be filled up by him before it is despatched to an elector.

(2) The ballot paper shall be in the prescribed form.

(3) No election shall be invalidated by reason that an elector has not received his ballot paper provided that a ballot paper has been issued to him in accordance with these rules.

II (1) The elector shall sign the counterfoil of the ballot paper in the presence of a Gazetted Revenue or Judicial Officer or of a Magistrate or Justice of the Peace who shall sign the certificate on the counterfoil.

Voting.

(2) The elector shall place a cross against the name of the candidate for whom he wishes to vote.

(3) If an elector is incapacitated, from blindness or other physical cause, from voting in the manner prescribed in sub-rules (1) and (2) it shall be competent for him to make his declaration and to record his vote by the hand of any officer referred to in sub-rule (1). Such officer shall certify on the counterfoil of the ballot paper the elector's incapacity and the fact that he was requested by the elector to sign the declaration and to mark the ballot paper for him and that the declaration was so signed and the ballot paper was so marked by him in the presence of the elector.

(4) The elector shall then tear off the counterfoil of the ballot paper and shall, after putting the ballot paper in an envelope, close the same and attach the counterfoil thereto. He shall then put the said envelope with the counterfoil attached to it in another envelope and shall after closing it send it by registered post so as to reach the headquarters office of the Returning Officer before the day appointed for the counting of votes. If the ballot paper is not received by the Returning Officer before the day appointed for the counting of votes, it shall be rejected.

(5) The Returning Officer shall, on receipt of the envelope sent under sub-rule (4), open the same and examine the counterfoil of the ballot paper. If the counterfoil has not been duly filled in by the elector or has not been properly attested, the Returning Officer may reject the ballot paper. In that case he shall endorse the word "reject-

ed" both on the counterfoil and on the envelope containing the ballot paper and shall put the said envelope and the counterfoil in separate packets. If the counterfoil of the ballot paper has been duly filled in and attested, the Returning Officer shall detach the counterfoil and shall place the counterfoil and the envelope containing the ballot paper in separate packets.

(6) The envelope containing ballot papers shall not be opened until the commencement of the counting of votes.

(7) Should an original ballot paper be lost, mislaid, spoiled, destroyed or otherwise rendered useless, the elector to whom it was issued, shall, on application in writing addressed to the Returning Officer stating the circumstances, be supplied with a second ballot paper signed and numbered by the Returning Officer and marked "duplicate," which, in the absence of the original ballot paper bearing the same number, shall be treated as if it were the original.

III Save as herein provided, the general provisions made in that behalf, shall, so far as Application of general provisions. may be, be applicable to nominations, scrutiny of nominations, deposits, withdrawals, scrutiny and counting of votes, declaration of results, disposal of ballot papers, agents and election expenses and all other matters in connection with an election in the University Constituency.

CHAPTER VII

CONDUCT OF ELECTIONS TO THE LEGISLATIVE COUNCIL BY MEMBERS OF THE LEGISLATIVE ASSEMBLY.

A reference to the table of seats appended to the Fifth Schedule to the Government of India Act, 1935, will show that in the Provinces of Bengal and Bihar there are 27 and 12 seats respectively to be filled in the Legislative Council by Members of the Legislative Assembly. The following are the rules for the conduct of such elections:

BIHAR RULES 39—73

39. The rules in this part shall apply to elections by members of the Bihar Legislative Assembly to fill seats in the Legislative Council.

40. In this part—

“Returning Officer” means the person nominated as Returning Officer for the purpose of the election under paragraph 20 of Part 1 of the Order in Council and includes in relation to any particular function assigned to the Returning Officer, any person under the Returning Officer’s control who has been authorised by the Governor to perform that function;

“continuing candidate” means a candidate not elected and not excluded from the poll at any given time;

“first preference” means the figure 1 placed opposite the name of any candidate; “second preference” means the figure 2 similarly placed, and and so on;

“exhausted paper” means a ballot paper on which no further preference has been recorded for a continuing candidate, or on which the name of the candidate next in order of preference, whether continuing or not is marked—

- (a) by the same figure as the name of some other candidate, or
- (b) by a figure not following consecutively on some other figure on the ballot paper, or
- (c) by two or more figures:

Provided that the failure of a voter to mark every preference correctly on his ballot paper shall not invalidate the whole of his preferences, and the ballot paper shall only be deemed to be exhausted when the wrongly marked preference is reached;

"unexhausted paper" means a ballot paper on which a further valid preference is recorded for a continuing candidate;

"original vote" in regard to any candidate means a vote derived from a ballot paper on which a first preference is recorded for such candidate;

"transferred vote" in regard to any candidate means a vote the value or part of the value of which is credited to such candidate and which is derived from a ballot paper on which a second or subsequent preference is recorded for such candidate;

"surplus" means the number by which the value of the votes of any candidate original or transferred exceeds the quota as defined in rule 64.

NOMINATION OF CANDIDATES

41. (1) The Governor shall appoint—

- (a) a date, not later than the fourteenth day after the date of publication of the notification calling upon the Bihar Legislative Assembly to elect a member or members for the nomination of candidates and the scrutiny of nominations; and
- (b) a further date on which a poll shall, if necessary, be taken.

(2) The dates appointed under sub-rule (1) shall be notified in such manner as the Governor may direct.

42. Any person may be nominated as a candidate for a seat to be filled by a person elected by the members of the Bihar Legislative Assembly if he is not disqualified from being chosen to fill that seat under the Act or any Order or rule made thereunder or an Act of the Provincial Legislature.

43. On or before the date appointed for the nomination of candidates under rule 41, the Returning Officer shall obtain from the Secretary to the Bihar Legislative Assembly a certified list containing the names, which shall be serially numbered, and the postal addresses of all the members of the said Assembly.

44. (1) Between the hours of eleven o'clock and noon on the date appointed for the nomination of candidates, or between the hours of eleven o'clock and three o'clock on any earlier date, each candidate shall, either in person or by his proposer and seconder, deliver to the Returning Officer a nomination paper completed in Form VII and subscribed by the candidate himself as assenting to the nomination and by two qualified persons as proposer and seconder.

(2) Any member of the Legislative Assembly shall be qualified to subscribe, as proposer or seconder, as many nomination papers as there are vacancies to be filled, but no more.

(3) The nomination paper, or the first of two or more nomination papers, delivered by a candidate who is not a member of the Legislative Assembly, shall be accompanied by a certified copy of the entry containing his name in the electoral roll of the constituency of the Legislative Council in which he is entitled to vote.

(4) Any nomination paper which is not received before the hour of noon on the date appointed under rule 41 for the nomination of candidates shall be rejected.

(5) The Returning Officer shall, on receiving a nomination paper under sub-rule (1), inform the person deli-

vering the same of the hour and place fixed by him under sub-rule (1) of rule 46 for the scrutiny of nominations, and shall enter in the nomination paper its serial number, and shall sign thereon a certificate stating date on which and the hour at which the nomination paper has been delivered to him; and shall as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions, similar to those contained in the nomination paper, both of the candidate and the persons who have subscribed the nomination paper as proposer and seconder.

(6) Any candidate may withdraw his candidature by notice in writing subscribed by himself and his proposer or seconder (or, if he has delivered more than one nomination paper, by the proposer or seconder who has subscribed one of his valid nomination papers) as assenting to the withdrawal, and delivered by the candidate in person or by the subscribing proposer or seconder to the Returning Officer before three o'clock on the afternoon of the date succeeding that appointed for the nomination of candidates:

Provided that, if the date succeeding that appointed for the nomination of candidates is a public holiday within the meaning of section 25 of the Negotiable Instruments Act, 1881, or has been notified by the Governor as a day to be observed as a holiday in the office of the Returning Officer the notice of withdrawal shall be deemed to have been delivered in due time if it is delivered before three o'clock of the afternoon of the next succeeding day which is neither such a public holiday or a day so notified.

(7) The Returning Officer shall, on receiving the notice of withdrawal under sub-rule (6), as soon as may be, cause a notice of the withdrawal to be affixed in some conspicuous place in his office.

(8) A candidate who has withdrawn his candidature under sub-rule (6) shall not be allowed to cancel the withdrawal or be renominated as a candidate for the same election.

DEPOSIT ON NOMINATION

45. Before the hour of noon on the date appointed for the nomination of candidates under rule 41, each candidate shall deposit or cause to be deposited with the Returning Officer a sum of five hundred rupees in cash or Government Promissory Notes of equal value at the market rate of the day; and no candidate shall be deemed to be duly nominated unless such deposit has been made.

(2) The deposit made in respect of a candidate who withdraws his candidature in the manner and within the time specified in sub-rule (6) of rule 44, or whose nomination is refused, shall be returned to the person by whom it was made.

(3) The deposit made in respect of a candidate who dies before the date appointed for the poll shall, if made by him, be returned to his legal representative, or, if not made by the candidate, be returned to the person by whom it was made.

(4) (a) The deposit made in respect of a candidate who is not elected shall be forfeited to the Government if the number of votes polled by him does not exceed—

one-eighth the total number of votes polled at an election in which only one seat is to be filled, or

one-twentieth of the total number of votes polled at an election in which more seats than one are to be filled:

Provided that, at the general election held for the purpose of constituting the Legislative Council under the Act such deposit shall only be forfeited if the number of votes polled by the candidates does not exceed one-sixtieth of the total number of votes polled.

(b) For the purpose of this sub-rule, the total number of votes polled shall be deemed to be num-

ber of ballot papers, other than rejected ballot papers, counted, and the number of votes polled by a candidate shall be deemed to be the number of valid votes polled by him as first preferences.

(5) Every deposit which is not disposed of under the foregoing provisions of this rule shall be returned to the person by whom it was made as soon as may be after the publication of the result of the election in the **Bihar Gazette**:

Provided that, if at the general election or at any triennial election a candidate is duly nominated in one or more territorial constituencies also, not more than one of the deposits made by him or on his behalf shall be returned, and the remainder shall be forfeited to the Government.

SCRUTINY OF NOMINATIONS

46. (1) In the afternoon of the date appointed for the nomination of candidates under rule 41, the candidate, one proposer and one seconder of each candidate, and one other person duly authorised in writing by each candidate, but no other person may attend at such time and place as the Returning Officer may fix in this behalf, and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in rule 44.

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

- (i) that the candidate is disqualified for being chosen to fill the seat under the Act or any Order or rule made thereunder or an Act of the Provincial Legislature; or

- (ii) that the proposer or the seconder is not a member of the Legislative Assembly; or
- (iii) that there has been any failure to comply with any provisions of rule 44 or rule 45; or
- (iv) that the candidate is not the person whose electoral number is given in the nomination paper as the number of such candidate or, as the case may be, that he is not a member of the Legislative Assembly; or
- (v) that the signature of the candidate or of any proposer or seconder is not genuine or has been obtained by fraud.

(3) for the purposes of this rule—

- (i) a certified extract from the electoral roll of any constituency of the Legislative Council or the certified list of members of the Legislative Assembly referred to in rule 43 shall be conclusive evidence that any person named therein is qualified to be chosen to fill the seat, unless it is proved that he is otherwise disqualified from being so chosen under any provisions of the Act or any Order or rule made thereunder or an Act of the Provincial Legislature; or
 - (ii) where a person has subscribed, whether as proposer or seconder, a larger number of nomination papers than there are seats to be filled, those of the papers so subscribed which have been received first, upto the number of seats to be filled, shall be deemed to be valid in this respect.
- (4) (a) Nothing contained in clause (ii), clause (iii), clause (iv) or clause (v) of sub-rule (2) shall be deemed to authorise the refusal of the nomination paper 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.

- (b) Nothing contained in clause (ii) or clause (iv) of sub-rule (2) shall be deemed to authorise the refusal of the nomination paper of any candidate if, notwithstanding any clerical error or misnomer or inaccurate description of any person or place in the electoral roll or in the entries made in the nomination paper, the identity of the candidate or of his proposer or seconder is established to the satisfaction of the Returning Officer.

(5) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and if the nomination paper is rejected or accepted after objection has been taken to its validity, shall record in writing a brief statement of his reasons for such rejection or acceptance.

(6) The scrutiny of nominations shall be completed on the day on which it was commenced, and no adjournment of the proceedings shall be allowed.

GENERAL PROCEDURE AFTER SCRUTINY OF NOMINATIONS

47. On completion of the scrutiny of nominations, and after the expiry of the period within which candidature may be withdrawn under sub-rule 6 of rule 44, the Returning Officer shall forthwith prepare a list of duly nominated candidates and cause it to be affixed in some conspicuous place in his office.

48. (1) If the number of duly nominated candidates is greater than the number of seats to be filled, the Returning Officer shall forthwith publish in the Bihar Gazette, and in such other manner as the Governor may direct, the names of the candidates as given in the nomination papers in alphabetical order, and a poll shall be taken.

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

(3) If the number of such candidates is less than the number of seats to be filled, the Returning Officer shall report the fact to the Governor, who shall thereupon appoint a date, not later than fourteenth day after the date appointed under clause (a) of rule 41, for the nomination of additional candidates:

Provided that, if after the scrutiny of the further nominations, if any, made on the date appointed under this sub-rule, the number of duly nominated candidates is still less than the number of seats to be filled, the Returning Officer shall declare all such candidates to be duly elected to fill as many of those seats as possible, and the Governor shall not be bound to call upon the Legislative Assembly to elect a member or members to fill the remaining seat or seats until such time as he thinks fit.

49. Immediately upon the declaration of the result of any election, whether or not a poll has been taken, the Returning Officer shall report such result to the Secretary of the Council and shall publish the name or names of the *elected candidate or candidates in the Bihar Gazette.*

50. If at an election where a poll has to be taken a duly nominated candidate dies before the date appointed for the poll, the Returning Officer shall, upon being satisfied of the fact of the death of such candidate, countermand the poll and report the fact to the Governor, and all the proceedings with reference to the election shall be commenced a new in all respects as if for a new election:

Provided that no fresh nomination shall be necessary in respect of a candidate who stood nominated at the time of the countermanding of the poll.

VOTING

51. At every election at which a poll is taken the votes shall be given by ballot in the manner provided therefor in these rules, and no votes shall be received by proxy.

52. Not less than fifteen days before the date appointed for the poll under rule 41, the Returning Officer shall send by registered post a declaration paper and a ballot paper (hereinafter referred to collectively as voting papers) to each member of the Bihar Legislative Assembly to the address given in the list referred to in rule 43.

53. (1) The declaration paper shall be in Form VIII and the ballot paper in Form IX. To each elector shall be issued the voting paper whose serial number corresponds to the number which the elector bears in the list referred to in rule 43. The same serial number shall be entered on the face of the declaration paper and on the back of the ballot paper.

(2) Before the voting papers are issued to an elector, the Returning Officer shall have the names of the elector entered on the declaration paper and shall place his initials against the name of the elector in the list referred to in rule 43.

54. With the voting papers the Returning Officer shall enclose an envelope addressed to himself in Form IV, a smaller envelope with the number of the ballot paper entered on its face, and a letter in Form V. The Returning Officer shall have the number of the ballot paper entered at the left hand bottom corner of the envelope.

55. (1) Each elector shall have one vote only. Upon receipt of his voting papers he shall, if he desires to vote in the election first sign the declaration in the presence of an Attesting Officer who shall attest his signature, and thereafter record his vote on the ballot paper in the following manner namely:—

- (a) he shall place the figure 1 in the square opposite the name of the candidate for whom he desires to vote: and

- (b) he may in addition place the figure 2, or the figures 2 and 3, or the figures 2, 3 and 4, and so on, in the squares opposite the names of any or all of the other candidates in the order of his preference.

(2) Any Gazetted Officer of the Government may attest a declaration made under this rule.

56. After recording his vote, the voter shall enclose his ballot paper in the smaller envelope, fasten up the smaller envelope and enclose it with the declaration paper in the larger envelope, which he shall send by post to the Returning Officer so as to reach him not later than 5 o'clock in the afternoon of the date appointed for the poll under rule 41. Envelopes received after that hour shall be rejected:

Provided that, the voter may at his option, instead of sending the envelope to the Returning Officer by post, deposit it in a ballot box which shall be provided for the purpose at the office of the Returning Officer up to the hour of five o'clock in the afternoon of the aforesaid date.

57. A voter who has not received his voting papers, or who has lost them, or whose voting papers before their despatch to the Returning Officer have been inadvertently dealt with in such manner that they cannot be conveniently used as such, may, on making a declaration to that effect, obtain from the Returning Officer new voting papers. In every case where new voting papers are issued under this rule, a distinctive mark shall be placed against the elector's name in the list of members of the Legislative Assembly, to denote that new papers have been issued in place of those not received, lost or spoilt, as the case may be.

58. No election shall be invalidated by reason that voting papers duly sent to an elector under these rules have not been received by him

COUNTING OF VOTES

59. (1) The Governor shall appoint a date, which shall be as soon as practicable after the poll, for the counting of

votes, and the votes shall be counted on that date at such time and place as the Returning Officer may appoint.

(2) The Returning Officer shall give notice in writing to all candidates of the date, time and place appointed for counting of votes under sub-rule (1).

60. Votes shall be counted by or under the supervision of the Returning Officer, and each candidate and one representative authorised in writing by each candidate shall have a right to be present at the time of counting. No other person shall be allowed to be present except such persons as the Returning Officer may appoint to assist in counting of the votes, and no person shall be appointed to assist in counting of the votes who has been employed by or on behalf of a candidate for any purpose whatsoever connected with the election.

61. On the day and at the time appointed under sub-rule (1) of rule 59 the Returning Officer shall, before he commences to count the votes, read the provisions of section 14 of the Indian Election Offences and Inquiries Act, 1920, to such persons as may be present, and shall then proceed as follows:—

- (a) The envelopes in Form IV received from voters by the Returning Officer, except those rejected under rule 56, shall first be arranged serially according to the numbers entered on them and shall then be opened by the Returning Officer or in his presence.
- (b) The Returning Officer shall next ascertain or cause to be ascertained whether the numbers on the declaration papers and the smaller envelopes containing the ballot papers are correct. If the Returning Officer is satisfied on this point and if the declaration and the attestation appear to be otherwise regular, he shall file the declaration papers and put the closed envelopes containing the ballot papers in a separate heap. If he is not satisfied that a

declaration paper is the one sent out by him to the voter concerned, or if the declaration or attestation is otherwise not in order, the Returning Officer shall endorse the word "rejected" on the back of the declaration paper and shall keep it with the connected ballot paper in a separate bundle.

- (c) The envelopes containing the ballot papers, except those rejected under rule 56 and clause (b) of this rule, shall then be opened, the papers examined and the votes counted in the manner prescribed in rules 62 to 71 inclusive.
 - (d) The Returning Officer shall allow such of the *candidates and duly authorised representatives* of the candidates as may be present reasonable opportunity to inspect without handling the ballot papers. No candidate or representative shall be allowed to see the serial number on the back of the ballot paper.
 - (e) The Returning Officer shall on every ballot paper which is rejected endorse the word "rejected." If any candidate or representative present questions the correctness of the rejection, the Returning Officer shall also record on the ballot paper the grounds for the rejection.
 - (f) The Returning Officer shall, as far as practicable, proceed continuously with the counting of votes; and shall, during any necessary intervals during which the counting has to be suspended, place the ballot papers, declarations and other documents relating to the election under his own seal and the seals of such candidates or representatives as may desire to affix their seals, and shall cause adequate precautions to be taken for their custody.
62. (1) A ballot paper shall be rejected if—

- (a) it has not been issued by the Returning Officer;
or
- (b) it is void for uncertainty; or
- (c) it bears any mark by which the voter can be identified; or
- (d) the figure 1 is not marked thereon; or
- (e) the figure 1 is marked thereon opposite the names of more candidates than one; or
- (f) the figure 1 and some other figure are marked thereon opposite the name of the same candidate; or
- (g) there has been any failure to comply with any of the provisions of rule 56.

(2) The decision of the Returning Officer as to the validity of a ballot paper shall be final, subject only to reversal on an election petition claiming the seat.

63. In carrying out the provisions of the rules hereinafter following, the Returning Officer shall—

- (a) assign to each valid ballot paper a value of one hundred;
- (b) disregard all fractions; and
- (c) ignore all preferences recorded for candidates already elected or excluded from the poll.

64. (1) The Returning Officer shall separate the valid ballot papers into parcels according to the first preferences recorded for each candidate, and shall count the number of papers in each parcel.

(2) He shall then divide the total value of the paper in all the parcels by a number exceeding by one the number of seats to be filled, and the result increased by one shall be sufficient to secure the return of a candidate (hereinafter called the quota).

(3) If at any time a number of candidates equal to the number of seats to be filled have obtained the quota, such candidates shall be treated as elected, and no further steps shall be taken to count the votes.

65. (1) Any candidate the value of whose parcel, on the first preferences being counted, is equal to or greater than the quota, shall be treated as elected.

(2) If the value of the papers in any such parcel is equal to the quota, the papers shall be set aside as finally dealt with.

(3) If the value of the papers in any such parcel is greater than the quota, the surplus shall be transferred to continuing candidates indicated on the ballot papers as next in order of the voters' preference, in the manner prescribed in rule 66.

66. (1) If and whenever as the result of any operation prescribed by these rules a candidate has a surplus, that surplus shall be transferred in accordance with the provisions of this rule.

(2) If more than one candidate has a surplus, the largest surplus shall be dealt with first and others in order of magnitude; Provided that, every surplus arising out of the first count of votes shall be dealt with before those arising on the second count, and so on.

(3) When two or more surpluses are equal, the Returning Officer shall decide, as hereinafter provided in rule 71, which shall be first dealt with.

(4) (a) If the surplus of any candidate to be transferred arises from the original voter only, the Returning Officer shall examine all papers in the parcel belonging to the candidate whose surplus is to be transferred, and divide the unexhausted papers into sub-parcels according to the next preferences recorded thereon. He shall also mark a separate sub-parcel of the exhausted papers.

- (b) He shall ascertain the value of the papers in each sub-parcel and of all the unexhausted papers.
 - (c) if the value of the unexhausted papers is equal to or less than the surplus, he shall transfer all the unexhausted papers at the value at which they were received by the candidate whose surplus is being transferred.
 - (d) If the value of the unexhausted papers is greater than the surplus, he shall transfer the sub-parcels of unexhausted papers, and the value at which each paper shall be transferred shall be ascertained by dividing the surplus by the total number of unexhausted papers.
- (5) If the surplus of any candidate to be transferred arises from transferred as well as original votes, the Returning Officer shall examine all the papers in the sub-parcel last transferred to the candidate, and divide the unexhausted papers into sub-parcels according to the next preferences recorded thereon. He shall thereupon deal with the sub-parcels in the same manner as is provided in the case of sub-parcels referred to in clause (4).
- (6) The papers transferred to each candidate shall be added in the form of a sub-parcel to the papers already belonging to the candidate.
- (7) All papers in the parcel or sub-parcel of an elected candidate not transferred under this rule shall be set aside as finally dealt with.

67. (1) If after all the surpluses have been transferred in accordance with the provisions of rule 66 the number of candidates who have obtained the quota is less than the number of seats to be filled, the Returning Officer shall exclude from the poll the candidate lowest on the poll and shall distribute his unexhausted papers among the continuing candidates according to the next preferences recorded thereon. Any exhausted papers shall be set aside as finally dealt with.

(2) The papers containing the original votes of an excluded candidate shall first be transferred, the transfer value of each paper being one hundred.

(3) The papers containing the transferred votes of an excluded candidate shall then be transferred in the order of the transfers in which and at the value of which he obtained them.

(4) Each of such transfer shall be deemed to be a separate transfer.

(5) The process directed by this rule shall be repeated on the successive exclusions one after another of the candidates lowest on the poll until the last vacancy is filled either by the election of the candidate with the quota or as hereinafter provided.

68. If as a result of a transfer of papers under these rules the value of the votes obtained by a candidate is equal to or greater than the quota, the transfer then proceeding shall be completed, but no further papers shall be transferred to him.

69. (1) If after the completion of any transfer under these rules the value of the votes of any candidate is equal to or greater than the quota, he shall be treated as elected.

(2) If the value of the votes of any such candidate is equal to the quota, the whole of the papers on which such votes are recorded shall be set aside as finally dealt with.

(3) If the value of the votes of any such candidate is greater than the quota, the surplus shall thereupon be distributed in the manner hereinbefore provided, before the exclusion of any other candidate.

70. (1) When the number of continuing candidates is reduced to the number of vacancies remaining unfilled, the continuing candidates shall be treated as elected.

(2) When only one vacancy remains unfilled and the value of the votes of some one continuing candidate exceeds the total value of all the votes of the other continuing candi-

dates, together with any surplus not transferred, that candidate shall be treated as elected.

(3) When only one vacancy remains unfilled and there are two continuing candidates and those two candidates have each the same value of votes and no surplus remains capable of transfer, one candidate shall be excluded under rule 71, and the other shall be treated as elected.

71. If, when there is more than one surplus to distribute, two or more surpluses are equal, or if at any time it becomes necessary to exclude a candidate and two or more candidates have the same value of votes and are lowest on the poll, regard shall be had to the original votes of each candidate, and the candidate for whom the fewest original votes are recorded shall have his surplus first distributed, or shall be first excluded, as the case may be. If the value of their original votes are equal, the Returning Officer shall decide by lot which candidate shall have his surplus distributed or be excluded.

72. When the counting of the votes has been completed, the Returning Officer shall forthwith declare the name or names of the duly elected candidate or candidates, and shall then—

(1) prepare and certify a return in Form VI setting forth—

- (i) the names of the candidates;
- (ii) the number of valid votes polled by each candidate as first preferences;
- (iii) the name or names of the candidates elected; and
- (iv) the number of rejected ballot papers;

(2) permit any candidate or representative present to take a copy of or an extract from such return; and

(3) seal up in separate packets—

- (i) the counted ballot papers;

- (ii) the rejected declaration papers and the connected ballot papers;
- (iii) the ballot papers rejected at the count;
- (iv) the file of declaration papers; and
- (v) the marked list of the members of the Legislative Assembly.

73. Prior to their destruction under rule 89, the packet of ballot papers whether counted or rejected, the declaration papers and the rejected declaration papers and connected ballot papers shall remain unopened and their contents shall not be inspected or produced except under the orders of a competent court or of Commissioners appointed to hold an inquiry in respect of an election.

BENGAL RULES 55-82

55. Save as expressly provided in these rules the provisions of Part II to IV of these rules shall not apply in the case of an election to fill a seat or seats to be filled by a person or persons elected by the members of the Bengal Legislative Assembly but in such case the provisions of this Part shall apply.

Special rules to be applicable in the case of an election by the members of the Bengal Legislative Assembly to fill seats in the Bengal Legislative Council.

56. In this Part, unless there is anything repugnant in the subject or context:—

Definitions.

(1) the expression "continuing candidate" means any candidate not elected and not excluded from the poll;

(2) the expression "first preference" means the figure "1"; the expression "second preference" means the figure "2"; and the expression "third preference" means the figure "3" set opposite the name of any candidate, and so on;

(3) the expression "transferable paper" means a ballot paper on which a second or subsequent preference is recorded for a continuing candidate;

(4) the expression "non-transferable paper" means a ballot paper on which no second or subsequent preference is recorded for a continuing candidate;

Provided that a paper shall be deemed to be a non-transferable paper in any case in which—

(a) the names of two or more candidates (whether continuing or not) are marked with the same figure, and are next in order of preference; or

(b) the name of the candidate next in order of preference (whether continuing or not) is marked—

(i) by a figure not following consecutively after some other figure on the ballot paper; or

(ii) by two or more figures;

(5) the expression "original vote" in regard to any candidate means a vote derived from a ballot paper on which a first preference is recorded for that candidate;

(6) the expression "transferred vote" in regard to any candidate means a vote derived from a ballot paper on which a second or subsequent preference is recorded for that candidate;

(7) the expression "surplus" means the number of votes by which the total number of the votes, original and transferred, credited to any candidate, exceeds the quota as defined in sub-rule (3) of rule 78.

57. (1) The Returning Officer for every election by the members of the Bengal Legislative Assembly to fill a seat or seats in the Bengal Legislative Council shall be the person nominated under paragraph 20 of Part I of the Order by the Governor in his discretion.

Returning Officer and his substitutes at an election by the members of the Bengal Legislative Assembly.

(2) The Governor shall in his discretion, not later than the date of the notification calling upon the members of the Bengal Legislative Assembly to elect a member or

members, appoint persons who may, subject to the control of the Returning Officer for such election, perform all or any of the functions of the Returning Officer at any such election.

Provided that no such person shall perform under this sub-rule any of the functions of the Returning Officer which relate to the acceptance of a nomination paper or to the scrutiny of the nomination or to the counting of votes unless the Returning Officer is unavoidably prevented from performing the same.

(3) Reference to the Returning Officer in this Part of the rules or in relation to an election by the members of the Bengal Legislative Assembly to fill a seat or seats in the Bengal Legislative Council shall, unless a contrary intention appears, be deemed to include any person when performing any duty or function which he is authorised to perform under sub-rule (2).

58. (1) The Returning Officer shall maintain a list of members of the Bengal Legislative Assembly together with their addresses corrected up-to-date, at his office.

List of members of the Bengal Legislative Assembly to be maintained by the Returning Officer

(2) Immediately after the issue of the notification calling upon the members of the Bengal Legislative Assembly to elect a member or members to fill seats in the Bengal Legislative Council, the Returning Officer shall forward a copy of the list referred to in sub-rule (1) to each member of the Bengal Legislative Assembly. Provision may be made for the sale of copies of such lists to the public.

59. (1) Any person may be nominated as a candidate for election to fill a seat to be filled by a person to be elected by the members of the Bengal Legislative Assembly if he is qualified to be chosen to fill that seat under the Act or any Order or rule made thereunder or an Act of the Provincial Legislature.

Nomination of candidates at election by the members of the Bengal Legislative Assembly.

(2) The Governor shall at his discretion, under sub paragraph (1) of paragraph 17 of Part I of the Order, fix

for the election by the members of the Bengal Legislative Assembly to fill a seat or seats in the Bengal Legislative Council—

- (a) a date, not later than the fourteenth day after the date of the notification calling upon the members of the Bengal Legislative Assembly to elect a member or members, on or before which nominations are to be made;
- (b) a further date, not later than the third day after the first mentioned date, for the scrutiny of nominations;
- (c) a further date, not later than the day succeeding the date fixed for the scrutiny of nominations, on or before which candidatures may be withdrawn; and
- (d) a further date on which a poll shall, if necessary, be taken and votes shall be counted;

and the dates so fixed shall be published by notification in the Gazette by the Governor exercising his individual judgment.

(3) On or before the date fixed under clause (a) of sub-rule (2), each candidate shall, either in person or by his proposer or seconder, or by a person authorised in writing by him, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon, deliver to the Returning Officer or to such other person as may be appointed in this behalf under sub-rule (2) of rule 57, a nomination paper completed in the form specified in Schedule I and subscribed by the candidate himself as assenting to the nomination and by two persons referred to in sub-rule (4) as proposer and seconder.

(4) Any person who is at the time a member of the Bengal Legislative Assembly shall be qualified to subscribe, as proposer or seconder, as many nomination papers as there are vacancies to be filled, but no more.

(5) Every nomination paper delivered under sub-rule (3) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed or does thereby appoint as his election agent for the election either himself or some one other person who is not disqualified under the Act or any Order or rule made thereunder or an Act of the Provincial Legislature for the appointment and who shall be named in the declaration; and no candidate shall be deemed to be duly nominated unless such declaration is delivered along with the nomination paper.

(6) Any nomination paper which is not received before three o'clock in the afternoon on the date fixed under clause (a) of sub-rule (2) shall be rejected.

(7) On the presentation of a nomination paper, the Returning Officer may require the person presenting the same to produce a copy of the electoral roll in which the name of the candidate is included or of the necessary entry in such roll, or a copy of the Gazette containing the names of persons elected to the Bengal Legislative Assembly, in which the names of the candidate, his proposer and seconder are included or of the necessary entries in such roll or Gazette and shall satisfy himself that the names and numbers on the electoral roll or that the names in the Gazette, of the candidate, and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral roll or in the Gazette. Where necessary he shall direct that the former be amended so as to be in accordance with the latter.

It shall be also competent for the Returning Officer to alter or amend any entry in the nomination paper presented to him with a view to ensuring accurate and adequate publication under sub-rule (8) of names of candidates and of persons who have subscribed the nomination paper as proposer and seconder.

(8) The Returning Officer or other person authorised shall, on receiving a nomination paper under sub-rule

(3) inform the person or persons delivering the same of the date, time and place fixed for the scrutiny of nominations, and shall enter in the nomination paper its serial number and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him and the person by whom it was so delivered, and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions, similar to those contained in the nomination paper, both of the candidate and of the persons who have subscribed the nomination paper as proposer and seconder;

(9) Any candidate may withdraw his candidature by notice in form II annexed to these rules subscribed by him and assented to by the proposer and seconder and delivered to the Returning Officer or other person authorised either by such candidate in person or by his proposer or seconder or by a person authorised in writing by the candidate before three o'clock in the afternoon on the date fixed under clause (c) of sub-rule (2), and a candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to be re-nominated as a candidate for the same election:

Provided that if the last day for the delivery of notice of withdrawal of candidature under this sub-rule is a public holiday within the meaning of section 25 of the Negotiable Instruments Act, 1881, or has been notified by the Governor as a day to be observed as a holiday in Government offices, the notice of withdrawal of candidature shall be construed as having been delivered in due time if it is delivered on the next succeeding day which is neither a such public holiday nor a day so notified.

(10) The Returning Officer or other person authorised shall on receiving a notice of withdrawal under sub-rule (9), as soon as may be, cause a notice of the withdrawal to be fixed in some conspicuous place in his office.

60. (1) At the time of delivery of a nomination paper under sub-rule (3) of rule 59, each candidate shall enclose with the nomination paper a Government treasury receipt (chalan) showing that a deposit of five hundred rupees has been made by him in the treasury; and no candidate shall be deemed to be duly nominated unless such deposit has been made and treasury receipt has been enclosed with the nomination paper.

(2) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made withdraws his candidature in the manner and within the time specified in sub-rule (9) of rule 59, or if the nomination of any such candidate is refused, the deposit shall be returned to the person by whom it was made; and, if any candidate dies before the commencement of the poll, any such deposit, if made by him shall be returned to his legal representative or, if not made by the candidate, shall be returned to the person by whom it was made.

(3) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made is not elected and the number of votes polled by him does not exceed one-eighth of the total number of votes polled at an election in which only one seat is to be filled, or one-twentieth of the total number of votes polled, at an election in which more seats than one are to be filled, the deposit shall be forfeited to the Government:

Provided that at the general election held for the purpose of constituting the Bengal Legislative Council under the Act, such deposit shall only be forfeited if the number of votes polled by the candidate does not exceed one-sixtieth of the total number of votes polled.

(4) For the purposes of sub-rule (3), the total number of votes polled shall be deemed to be the number of ballot papers, other than rejected ballot papers, counted, and the number of votes polled by a candidate shall be deemed

Legislature, or that the proposer or seconder is disqualified under sub-rule (4) of rule 59; and

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

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

(d) The Returning Officer shall not refuse any nomination paper on the ground of a slight technical defect such as the wrong spelling of a name.

- (3) (a) 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.

- (b) The scrutiny shall be completed on the day fixed in this behalf under clause (b) of sub-rule (2) of rule 59 and no adjournment of the proceedings shall be allowed.

(4) On completion of the scrutiny of nominations and after expiry of the period within which candidatures may be withdrawn, under sub-rule (9) of rule 59, the Returning Officer shall forthwith prepare a list of valid nominations and cause it to be affixed in some conspicuous place in his office.

62. If a candidate who has been duly nominated under these rules dies after the date fixed for the scrutiny of nominations and before the commencement of the poll, the Returning Officer or other authorised person referred to in sub-rule (3) of rule 57 shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the Governor, and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election:

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

63. (1) If the number of candidates who are duly nominated and who have not withdrawn their candidature in the manner and within the time specified in sub-rule (9) of rule 59 exceeds that of the seats to be filled, the Returning Officer shall forthwith publish in the Gazette, and in such other manner, as the Governor may direct, and in such places as the Returning Officer may consider necessary, a list in form III annexed to these rules containing the names in alphabetical order and addresses of the candidates as given in the nomination papers, and a poll shall be taken.

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

(3) If the number of such candidates is less than the number of seats to be filled, the Returning Officer shall declare all such candidates, if any, to be elected to fill the seats and the Governor exercising his individual judgment shall, by a notification in the Gazette, call upon the members of the Bengal Legislative Assembly to elect a person or persons as the case may be, within such time as may be fixed by him in his discretion and specified in the notification.

Provided that where the members of the Bengal Legislative Assembly having already been called upon under this sub-rule have failed to elect a person or the requisite number of persons as the case may be, to fill the vacancy or vacancies, the Governor shall not be bound to call again upon such members to elect a person or persons until such time, if any, as he thinks fit.

(4) At an election by the members of the Bengal Legislative Assembly to fill seats in the Bengal Legislative Council where a poll is taken votes shall be given by ballot in the manner provided in this Part and no votes shall be received by proxy:

Provided that at an election by the members of the Bengal Legislative Assembly to fill a casual vacancy in a seat in the Bengal Legislative Council or at an election held in pursuance of a notification issued under sub-rule (3) to fill only one seat in the Bengal Legislative Council, the provisions of rules 73, 74 and 75 shall not be applicable and the provisions of rule 18 shall be substituted therefor and shall *mutatis mutandis* apply to every such election, and the ballot paper at any such election shall be in form IV annexed to these rules instead of being in form XIV annexed to these rules and the provisions of rules 78 and 79 shall not be applicable and the provisions of rules 31, 32 and 33 shall be substituted therefor and shall *mutatis mutandis* apply to every such election.

(5) A casual vacancy in a seat held by a member who was elected under this Part by the members of the Bengal Legislative Assembly shall be filled under this Part by a person of the same community as the member by whom the seat was held.

64. The Governor shall fix the time and place at which the poll shall be taken on the date fixed for the poll under clause (d) of sub-rule (2) of rule 59 and the time and place so fixed shall be published either by notification in the

Fixing of the time and place for the poll.

Gazette by the Governor exercising his individual judgment or in such other manner as the Governor may direct.

65. (1) As soon as may be after the expiry of the period within which candidatures may be withdrawn under sub-rule (9) of rule 59, the Returning Officer shall by notice in writing invite each member of the Bengal Legislative Assembly to meet, at the place and at the time fixed for the poll under rule 64 for the purpose of the election under this Part.

Notice inviting members of the Assembly to meet at the time and place fixed for the poll and appointment of polling officers to assist the Returning Officer.

(2) Notice under sub-rule (1) shall, if possible, be served personally and in default of personal service shall be served by registered post, provided that in the case of necessity the notice may be served by telegram.

(3) A member of the Bengal Legislative Assembly who attends a place fixed for the poll in pursuance of a notice issued under sub-rule (1) for the purpose of election under this Part may draw travelling and halting allowances at such rates and subject to such conditions as are applicable to members when summoned to attend meeting of the Legislature.

(4) The Returning Officer shall preside over the election and also shall appoint such other persons (hereinafter referred to as Polling Officers) to assist him as he thinks necessary.

66. The Returning Officer shall provide at the place fixed for the poll materials sufficient for the purpose of enabling electors to mark the ballot papers, and as many ballot boxes as may be necessary. He shall also provide a sufficient number of copies of the list of members of the Bengal Legislative Assembly entitled to vote for the use of the members.

Articles to be provided at the place fixed for the poll.

67. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The Returning Officer, immediately before the commencement of the poll, shall show each ballot box to be used at the poll to such persons as may be present at the place fixed for the poll so that they may see that it is empty, and he shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal and shall keep it so locked and sealed.

Ballot box to be locked up and sealed before commencement of poll.

68. The Returning Officer shall exclude from the place fixed for the poll all other persons except the polling officers, the candidates, and the members of the Bengal Legislative Assembly:

Persons who may be present at the place fixed for the poll.

Provided that if a candidate is unable to be present at the time fixed for the poll, the Returning Officer may admit either his election agent or one representative of such candidate authorised in writing by such candidate.

69. At the time fixed for the poll under rule 64 the Returning Officer with the help of the polling officers shall deliver to each member of the Bengal Legislative Assembly present (hereinafter referred to as "elector") a ballot paper which shall contain the names of the candidates arranged alphabetically and shall be in the form set out in form XIV annexed to these rules.

Delivery of ballot papers to the members of the Assembly for the recording of votes.

70. Immediately before a ballot paper is delivered to an elector, a mark shall be placed in the list of members against the name of the elector to denote that he has received a ballot paper. No other mark or writing shall be put against the name in such list.

Procedure before delivery of ballot papers to electors.

71. An elector who has inadvertently dealt with his ballot paper in such a manner that it cannot conveniently be used as a ballot paper may, on delivering it to the Returning Officer and satisfying him of the inadvertence, obtain another ballot paper in place of the spoilt ballot paper, and the latter shall, together with its counterfoil, be marked as cancelled by the Returning Officer.

Supply of duplicate ballot paper when ballot paper is spoilt through inadvertence.

72. (1) After the Returning Officer has satisfied himself that ballot papers have been delivered to all the electors present and after the expiry of such further time as the Returning Officer may, as a measure of grace, allow for delivery of such papers to any late comers, the Returning Officer shall call on the electors present to proceed to record their votes into the places provided therefor.

Procedure before the recording of votes.

(2) No ballot paper shall be delivered to any elector after the time allowed by the Returning Officer under sub-rule (1).

(3) The Returning Officer may at any time explain to the electors when so requested by them, the instructions contained on the back of the ballot papers for the recording of votes.

73. Every elector shall then proceed under the direction of the Returning Officer to a place screened from observation and shall record his vote in accordance with the instructions set out on the back of the ballot paper. He shall then, before quitting such place, fold up his ballot paper so as to conceal his vote, and shall proceed to the ballot box provided and put the ballot paper so folded up into the ballot box. Each elector shall quit the place at which the ballot box is situated as soon as he has put his ballot paper into the ballot box.

Manner of recording votes.

74. (1) Every elector shall have as many preferences as there are candidates to be elected, but no ballot paper shall be considered invalid solely on the ground that all such preferences are not marked.

Votes and preferences to be exercised by the electors

(2) An elector in giving his vote—

(a) shall place on his ballot paper the figure 1 in the space opposite the name of the candidate whom he chooses for his first preference, and

(b) may, in addition, place on his ballot paper the figure 2 or the figures 2 and 3, or 2, 3 and 4, and so on, in the spaces opposite the names of other candidates in the order of his preference.

75. A ballot paper shall be invalid on which—

Ground for declaring ballot papers invalid

(a) the figure 1 is not marked, or
(b) the figure 1 is set opposite the name of more than one candidate, or is so placed as to render it doubtful to which candidate it is intended to apply, or

(c) the figure 1 and some other figure are set opposite the name of the same candidate, or

(d) any mark is made by which the elector may afterwards be identified.

76. After the Returning Officer is satisfied that each elector present has had sufficient time to record his vote and to place the ballot paper in the allotted box he shall declare the polling closed after which no ballot paper shall be placed in any ballot box, and shall immediately proceed to count the votes

Counting of votes by the Returning Officer

If from any unavoidable cause the Returning Officer is unable to proceed immediately with the counting of votes, he shall with the previous consent of the Governor in his discretion postpone the counting to some other time and date appointed by the Governor in his discretion and shall

give notice thereof in such manner as he thinks fit to the candidates and election agents.

77. (1) No person, except the Returning Officer, such persons as he may appoint to assist him in counting the votes, the candidates and either the election agent of each candidate, or one representative of each candidate authorised in writing by the candidate, shall be allowed to be present at the counting of votes.

Persons who may be present at the counting of votes.

(2) No person shall be appointed to assist in counting the votes, who has been employed by or on behalf of any candidate for any purpose whatsoever connected with the election.

78. (1) Before he begins to count the votes the Returning Officer shall first read out the provisions of section 14 of the Indian Election Offences and Inquiries Act, 1920 to such persons as may be present and shall then open the ballot boxes, and, after scrutiny, separate the ballot papers which he deems valid from those which he rejects, endorsing on the latter the word "rejected" and the ground of rejection, and after rejecting any that are invalid, shall arrange the remainder in parcels according to the first preferences recorded for each candidate.

Procedure to be followed at the counting of votes and in declaring candidates elected.

(2) The Returning Officer shall then count the number of papers in each parcel, and credit each candidate with one vote in respect of each valid paper on which a first preference has been recorded for him, and he shall ascertain the total number of valid papers.

(3) The Returning Officer shall then divide the total number of valid papers by a number of vacancies to be filled, and the result increased by one, disregarding any fractional remainder, shall be the number of votes sufficient to secure the return of a candidate (hereinafter called the "quota").

(4) If at any time the number of votes credited to a candidate is equal to or greater than the quota, the candidate shall be declared elected.

(5) (a) If at any time the number of votes credited to a candidate is greater than the quota, the surplus shall be transferred in accordance with the provisions of this sub-rule to the continuing candidates indicated on the ballot papers in the parcel of the elected candidate, as being next in order of the voters' preference.

(b) (i) If the votes credited to an elected candidate consist of original votes only, the Returning Officer shall examine all the papers in the parcel of the elected candidate whose surplus is to be transferred, and shall arrange the transferable papers in sub-parcels according to the next preferences recorded thereon.

(ii) If the votes credited to an elected candidate consist of original and transferred votes, or of transferred votes only, the Returning Officer shall examine the papers contained in the sub-parcel last received by the elected candidate and shall arrange the transferable papers therein in further sub-parcels according to the next preferences recorded thereon.

(iii) In either case the Returning Officer shall make a separate sub-parcel of the non-transferable papers and shall ascertain the number of papers in each sub-parcel of transferable papers and in the sub-parcel of non-transferable papers.

(c) If the total number of papers in the sub-parcels of transferable paper is equal to or less than the surplus, the Returning Officer shall transfer each sub-parcel of transferable papers to

the continuing candidate indicated thereon as the voters' next preference.

(d) (i) If the total number of transferable papers in greater than the surplus, the Returning Officer shall transfer from each sub-parcel the number of papers which bears the same proportion to the number of papers in the sub-parcel as the surplus bears to the total number of transferable papers.

(ii) The number of parcels to be transferred from each sub-parcel shall be ascertained by multiplying the number of papers in the sub-parcel by the surplus and dividing the result by the total number of transferable papers. A note shall be made of the fractional parts, if any, of each number so ascertained.

(iii) If, owing to the existence of such fractional parts, the number of papers to be transferred is less than the surplus, so many of these fractional parts taken in the order of their magnitude, beginning with the largest, as are necessary to make the total number of papers to be transferred equal to the surplus, shall be reckoned as of the value of unity, and the remaining fractional parts shall be ignored.

If two or more fractional parts are of equal magnitude that fractional part shall be deemed to be the larger which arises from the larger sub-parcel, and if the sub-parcels in question are equal in size, preference shall be given to the candidate who obtained the larger number of original votes.

If the original votes are equal, the Returning Officer shall decide by lot in whose favour the vote shall be given, in such manner as he thinks fit.

(iv) The particular papers to be transferred from each sub-parcel shall be those last filed in the sub-parcel.

- (v) Each paper transferred shall be marked in such a manner as to indicate the candidate from and to whom the transfer is made.
- (e) (i) If more than one candidate has a surplus, the largest surplus shall be first dealt with.
- (ii) If two or more candidates have each the same surplus, regard shall be had to the number of original votes obtained by each candidate, and the surplus of the candidate credited with the largest number of original votes shall be first dealt with, and, if the numbers of the original votes are equal, the Returning Officer shall decide which surplus he will first deal with.
- (iii) The Returning Officer need not transfer the surplus of an elected candidate when that surplus, together with any other surplus not transferred, does not exceed the difference between the totals of the votes credited to the two continuing candidates lowest on the poll.
- (6) (a) If at any time no candidate has a surplus (or when under the preceding sub-rule any existing surplus need not be transferred) and one or more vacancies remain unfilled, the Returning Officer shall exclude from the poll the candidate credited with the lowest number of votes, and shall examine all the papers of that candidate, and shall arrange the transferable papers in sub-parcels according to the next preferences recorded thereon for continuing candidates, and shall transfer each sub-parcel to the candidate for whom that preference is recorded.
- (b) If the total of the votes of the two or more candidates lowest on the poll, together with any surplus votes not transferred, is less than the votes credited to the next highest candidate, the Returning Officer may in one operation

exclude those candidates from the poll and transfer their votes in accordance with the preceding sub-rule.

- (c) If, when a candidate has to be excluded under this sub-rule, two or more candidates have each the same number of votes and are lowest on the poll, regard shall be had to the number of original votes credited to each of those candidates, and the candidates with the fewest original votes shall be excluded, and, where the numbers of the original votes are equal, regard shall be had to the total number of votes credited to those candidates at the first transfer at which they had an unequal number of votes and the candidate with the lowest number of votes at that transfer shall be excluded, and where the numbers of votes credited to those candidates were equal at all transfers, the *Returning Officer* shall decide which shall be excluded.
- (7) (a) Whenever any transfer is made under any of the preceding sub-rules, each sub-parcel of papers transferred shall be added to the parcel, if any, of papers of the candidate to whom the transfer is made, and that candidate shall be credited with one vote in respect of each paper transferred. Such papers as are not transferred shall be set aside as finally dealt with, and the votes given thereon shall thenceforth not be taken into account.
- (b) If after any transfer a candidate has a surplus, that surplus shall be dealt with in accordance and subject to the provisions contained in sub-rule (6) before any other candidate is excluded.
- (8) (a) When the number of continuing candidates is reduced to the number of vacancies remaining unfilled, the continuing candidates shall be declared elected.

- (b) When only one vacancy remains unfilled, and the votes of some one continuing candidate exceed the total of all the votes of the other continuing candidates, together with any surplus not transferred, that candidates shall be declared elected.
- (c) When the last vacancies can be filled under this sub-rule, no further transfer of votes need be made.

79. Any candidate, or in his absence his election agent or duly authorised representative, may, at any time during the counting of the votes, either before the commencement or after the completion of any transfer of votes (whether surplus or otherwise), request the Returning Officer to re-examine and recount the papers of all or any candidates (not being papers set aside at any previous transfer as finally dealt with), and the Returning Officer shall forthwith re-examine and recount the same accordingly. The Returning Officer may also at his discretion recount votes either once or more often in any case in which he is not satisfied as to the accuracy of any previous count:

Provided that nothing herein shall make it obligatory on the Returning Officer to recount the same votes more than once.

80. Upon the completion of the counting the Returning Officer shall prepare and certify a return in form X annexed to these rules setting forth:—

Return by the
Returning Officer.

- (i) the names of the candidates for whom valid votes have been given:
- (ii) the number of valid votes given to each candidate:
- (iii) the number of votes declared invalid and rejected;
- (iv) the names of the persons declared elected; and shall permit any candidate or his election

agent or duly authorized representative to take a copy of, or an extract from, the return.

The Returning Officer shall also seal up in separate packets the counted and rejected ballot papers and record on each such packet a description of its contents and the date of the election by the members of the Bengal Legislative Assembly to which it refers.

81. The Returning Officer shall without delay report the result of the election to the Secretary to the Bengal Legislative Council or to such officer as the Governor may direct, and the declaration containing the name or names of the candidate or candidates elected shall be published in the Gazette.

Reporting of the result of the election and publication of the names of elected candidates.

82. (1) The Returning Officer shall, after reporting the result of the election under rule 81, forward the return to the Secretary to the Government of Bengal in the Reforms Department and forward all other papers relating to the election to the Commissioner of the Presidency Division for custody.

Custody, etc., of the return and the papers relating to the election.

(2) The papers relating to election mentioned in sub-rule (1) except the packets of ballot papers and their counterfoils shall be retained for a period of three years unless their retention for a longer period is otherwise ordered by a competent authority. The public shall have a right to inspect such papers and to get attested copies thereof on payment of the fees laid down in the Bengal Records Manual, 1917.

(3) The provisions of rules 37 and 38 shall apply to packets of ballot papers and of the counterfoils thereof and to copies of returns forwarded by the Returning Officer under sub-rule (1).

CHAPTER VIII

AGENTS AND ELECTION EXPENSES

	Assembly.	Council.
Bombay Rules	.. 52- 54	53-55
Madras „	.. 97-102	77-82
Bengal „	.. 3- 10	3-10
U. P. „	.. 97-103	42-47
Bihar „	.. 86- 90	74-77
C. P. „	.. 73- 76	—
Sind „	.. 50- 52	—

I No person who is for the time being disqualified under the provisions of Part IV of the Corrupt Practices Order from being a member of a Provincial Legislature, or from voting at elections, shall so long as the disqualification exists, be employed by or on behalf of a candidate as an agent in connection with any election, including a primary election held under these rules.

II (1) Within thirty-five days from the date of the publication of the result of an election under clause (f) of rule III of Part IV there shall be lodged with the Returning Officer in respect of each person who has been nominated as a candidate for the election a return of the election expenses of such person containing the particulars prescribed and signed both by the candidate and by his election agent. The return shall be in the prescribed form.

(2) Every such return shall contain a statement of all payments made by the candidate or by his election agent or by any person on behalf of the candidate or in his interests

for expenses incurred on account of, or in respect of, the conduct and management of the election, and further, a statement of all unpaid claims in respect of such expenses of which he or his election agent is aware.

(3) The return shall be accompanied by declarations by the candidate and his election agent which shall be as set out in the prescribed form.

(4) The declaration under sub-paragraph (3) of paragraph five of Part II of the Corrupt Practices Order to be lodged by a candidate who is absent from India shall be in the prescribed form.

(5) When any return and the declaration made in respect thereof have been lodged with the Returning Officer, the Returning Officer shall, as soon as may be, cause a notice of the date on which the return and declarations in question have been lodged, and of the time and place at which they can be inspected, to be affixed in some conspicuous place in his office and to be published in the Gazette, and any person shall, on payment of the prescribed fee, be entitled to inspect any such return or declaration and on payment of the fee specified in the said Schedule to obtain a copy or copies there of or any part thereof.

(6) (i) A record showing—

- (a) the names of the candidates,
- (b) the name of the election agent of each candidate,
- (c) the date of each election,
- (d) the name of each constituency in which an election has been held,
- (e) the date on which the return of election expenses of each candidate was lodged with the Returning Officer, and
- (f) the amount of election expenses of each candidate.

shall be prepared and maintained by the Secretary to the Government in the Department concerned or such other officer as the Governor may direct, as soon as possible, after the completion of every election.

- (ii) The Returning Officer of every constituency in which an election is held shall supply a return containing the necessary materials for the preparation of the record.
- (iii) The Record shall be open to inspection by the public, subject to such conditions as the Governor may prescribe and to the payment of the prescribed fee; and any person, on compliance with such conditions and on payment of the prescribed fee, shall be entitled to obtain a copy or copies thereof of any part thereof.
- (iv) The record in respect of each election shall be maintained for prescribed number of years from the date of the election.
- (v) Separate records shall be maintained for general elections and bye-elections.

III Every election agent shall enter in the books of account kept under paragraph four of Part II of the Corrupt Practices Order the particulars of all expenditure of the nature referred to in rule II, whether such expenditure is incurred by the candidate or by the election agent or by any person under the direction of the candidate or the election agent.

Election agent to keep a separate and regular account of expenses.

Part II of the Government of India (Corrupt Practices) Order 1936 dated 3rd July, 1936 deals with election agents and expenses.

Paragraph 4 of the Order provides:

“Every election agent shall, for each election for which he is appointed election agent, keep separate and regular books of account, and shall enter therein such particulars.

of expenditure in connection with the election as may be prescribed." The particulars of the expenditure are specified in Rule II above.

All expenses great or small incurred in connection with the election ought to be entered in the return of election expenses, and the explanation that certain things were taken from the candidate's house or shop will not be taken as satisfactory. If men in the service of the candidate are placed on election work their salaries for the period should be shown in the election expenses. (*Amritsar City, Jagat Narain, I. E. P. Vol. II, p. 10*).

Section 171—I of the Indian Penal Code provides:—

"Whoever being required by law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees."

Paragraph 5 of the Order provides:—

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

(2) Every such return shall be in such form and shall contain such particulars as may be prescribed and shall be accompanied by a declaration in the prescribed form by the candidate and his election agent made on oath before a Magistrate.

(3) Notwithstanding anything in this paragraph, where a candidate is owing to absence from India unable to sign the return of election expenses and to make the required declaration, the return shall be signed and lodged by the election agent only and shall be accompanied by a declaration by the election agent only, and the candidate shall within fourteen days after his return to India cause to be lodged with the Returning Officer a declaration made

on oath before a Magistrate in such form as may be prescribed

The rules of the different Provinces provide for the form of the return and the declaration to be made by the candidate and election agent and also the declaration to be made by the candidate under clause (3) of paragraph 5 when he is absent from India. A careful perusal of the form will give the candidate an idea as to the nature of the accounts he should keep. The advice given by Cave J in the **Stepney case** (1892) (vide chapter IV) should be borne in mind. In view of the classification of the expenses in the prescribed form of the return of expenses, it would simplify matters if in addition to the cash book mentioned by Cave, J, a ledger is also maintained in which the expenses are posted under the different heads. This will expedite the making of the return which will as will be seen later, give the returned candidate a great advantage over his adversaries.

Paragraph 6 of the Order provides —

“In each Province provision shall be made, by an Act of the Provincial Legislature or by Rules, fixing the maximum scales of election expenses at elections and the numbers and description of persons who may be employed for payment in connection with elections. Provided that no provision need be so made in any Province with regard to any election held before the expiration of two years from the commencement of Part III of the Act” (**Government of India Act, 1935**). None of the Provinces except Madras, and United Provinces have yet fixed the maximum scale of expenses. But it may however be assumed that as soon as full and reliable statistics are available restrictions on election expenditure will be imposed in other Provinces.

Mr Hammon in “Indian candidate and Returning Officer” has the following remarks —

“It is not only the restriction of expenditure or the avoidance of illegal expenditure that makes the question of election expenses so important. The declaration regarding them has to be lodged within 35 days from the date of

the publication of the result of the election in the Gazette. This return is open to inspection by the public and the other side will no doubt take copies. Rules provide that a petition against any returned candidate will be time barred unless presented to the Governor within fourteen days from the date on which the return and the declaration are received by the Return Officer.

The wise candidate will appreciate therefore the advantage of an early and accurate return in proper form of his expenditure. The sooner he gets it in, the greater the difficulty for his opponent, who will have not only to file his own return of expenses but also to prepare his statement of charges setting forth full particulars of any corrupt practice if he wishes to file an election petition. It is in fact a mistake to wait the five weeks giving time to the other side to collect evidence or make inquiries in interested quarters with a view to proving that the statement ultimately submitted is incomplete or incorrect. All sorts of extravagant stories regarding bribery and corruption are spread during and after an election. A prompt return of election expenses is the best, and generally the final means of refutation. Hence the essential need for a careful record of all expenditure, carried forward and totalled from day to day. The election agent should therefore in placing any orders for stationery, printing or posting, for hire of any committee rooms etc, insist that the bill be submitted at once. It will be noticed that Schedule III (now part K of the form) allows a separate list of unpaid sums. In this can be included any disputed items. The travelling expenses of the election agent, sub-agents, and the personal expenses of the candidate should be written up daily."

For the purposes of election inquiries a "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election, and a candidate who with the election in prospect has held himself out as a prospective candidate, shall be deemed to have been a candidate as from the time he began so to hold himself out.

The next consideration therefore is as to the date from which the liability to record all expenditure begins. In **Borough of Norwich** (1886: 4 O' M. & H. 85) before the candidate consented to stand two meetings costing £319 were held and it was contended that the expenditure so incurred should have been included in the return of election expenses. Cave J. drew a distinction between expenses of getting a candidate and the expenses of promoting his election after you have got him. Denman J. added:

"I think that the Court must in every case consider (not by reference only to the definition of 'candidate') whether the payment in question is a payment which is made in respect of such election upon these words our decision must turn. Now, according to any view, these expenses for the meeting were really not in substance expenses incurred in the conduct or management of that election. They were expenses incurred in order to induce, a particular person to become a candidate, and the two things are, in my judgment, totally distinct. I think therefore that until the respondent had consented to become a candidate, the payment was not a payment on his behalf."

In another case **Kensington** (1886: 4 O'M. & H. p. 94) it was held that expenditure on checking the list of registered electors was not an expense on account of election. The position therefore would seem to be that expenses incurred on account of an 'expected election' and yet forming no part of the necessary preparations for 'conduct or management' of the election need not be entered in the return. On the other hand all expenses for the purpose of the election must be included in the return such as cost of meetings held to support a particular candidate. But the cost of meetings held to educate the electorate or to awake public opinion in favour of a policy which the eventual candidate subsequently adopts need not be included in the return. **Haggerton**: 5 O' M. & H. 70. All expenses which may be regarded as antecedent to the commencement of the election campaign may be properly excluded from the return. The matter to be considered is not the period of time at which.

the expense was incurred but the purpose for which it was incurred. (Vide **Borough of Great Yarmouth** 1906; 5 O'M. & H. 190 and **East Dorset** 1910: 5 O'M. & H. 40). If the expense was incurred on account of or in respect of, the conduct and management of the election then it must be included in the return.

The next point to be considered is, what is the effect of a default in making a return and of the lodging of a false return of election expenses. Paragraph 5 of Part IV of the Corrupt Practices Order provides that, if default is made in making the return of election expenses of any person who has been nominated as a candidate at an election to which Part II of the Order applies, or if such a return is found, either by Commissioners holding an inquiry into the election, or by any Court in a judicial proceeding, to be false in any material particular, the candidate and his election agent shall be disqualified for voting at any election for a period of five years from the date by which a return was required to be lodged. Further by clause 4 of Part II of the First Schedule to the Corrupt Practices Order the making of any return of election expenses which is false in any material particular, or the making of a declaration verifying any such return, has been made a corrupt practice and will avoid the election of a returned candidate and disqualify such a candidate for a period of six years from the date of the report of the tribunal holding the inquiry, from membership of the Provincial Legislatures *under the second schedule of the Corrupt Practices Order.*

CHAPTER IX

DECISION OF DOUBTS AND DISPUTES AS TO THE VALIDITY OF AN ELECTION

Part III of the Corrupt Practices Order 1936 makes provision in respect of decision of doubts and disputes as to the validity of elections. Before considering the rules framed by the different Provinces in this behalf it will be necessary to consider the provisions contained in this part of the Corrupt Practices Order. The following are the provisions bearing on the subject.

PART III

Decision of Doubts and Disputes as to the validity of an Election and Disqualifications for Corrupt Practices.

I. In this Part of this Order and in the First Schedule to this Order, except where it is otherwise expressly provided or the context otherwise requires—

“Agent” includes an election agent and any person who on the trial of an election petition is held by Commissioners to have acted as an agent in connection with the election with the knowledge or consent of the candidate;

“candidate” means a person who has been or claims to have been duly nominated as a candidate at any election, and a candidate who, with the election in prospect, has held himself out as prospective candidate, shall be deemed to have been a candidate as from the time when he began so to hold himself out;

“electoral right” means the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election;

"returned candidate" means a candidate whose name has been published in the prescribed manner as duly elected;

"corrupt practice," in relation to an election by the members of a Provincial Legislative Assembly to fill seats in the Provincial Legislative Council, means one of the practices specified in Parts I and II of the First Schedule to this Order, and in relation to any other election, means one of the practices specified in Parts I, II and III of that Schedule.

2. No election shall be called in question except by an election petition presented in accordance with the provisions of this Part of this Order.

3.—(1) An election petition against any returned candidate may be presented to the Governor—

- (a) by any candidate or elector on any ground;
- (b) by an officer empowered in that behalf by the Governor, exercising his individual judgment, on the ground that the election has not been a free election by reason of the large number of cases in which undue influence or bribery has been exercised or committed.

In this paragraph, "elector," in relation to a commerce and industry, mining or planting constituency, includes all the persons included in the electoral roll as the nominees of any body, notwithstanding that only one of them is entitled to vote.

(2) A petitioner may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself has been duly elected, but such a declaration shall only be claimed on one or other of the following grounds—

- (a) that in fact the petitioner received a majority of the valid votes; or
- (b) that but for votes obtained for the returned candidate by corrupt practices, the petitioner

would have obtained a majority of the valid votes

4.—(1) Unless the Governor, exercising his individual judgment, dismisses a petition for non-compliance with the prescribed requirements, he shall, exercising his individual judgment, appoint as Commissioners for the trial of the petition three persons who are or have been, or are eligible to be appointed, judges of a High Court, and shall appoint one of them to be the President

Provided that nothing in this sub-paragraph shall be deemed to prevent the appointment of the President of a Commission before the other Commissioners are appointed

(2) Subject to the provisions of this paragraph, all applications and proceedings in connection with the petition shall be dealt with by and carried on by or before, the Commissioners

(3) Where in respect of an election in a constituency more petitions than one are presented the Governor shall refer all those petitions to the same Commissioners who may at their discretion inquire into the petitions either separately or in one or more groups, as they think fit

(4) If the services of any Commissioner are not available for the purposes of the inquiry or if during the course of the inquiry any Commissioner is unable to continue to attend thereat, the Governor, exercising his individual judgment shall appoint another Commissioner and the inquiry shall recommence before the Commission as so reconstituted

Provided that the Commissioners may direct that any evidence already recorded shall remain upon record, and in that case it shall not be necessary to re-examine those witnesses who have already been examined and discharged

(5) References to the Commissioners in this Part of this Order shall, as respects any matter to be done before the commencement of the inquiry be deemed to be references to the President

5. When at any inquiry into an election petition the Commissioners so order, the Advocate-General of the Province, or some person acting under his instructions, shall attend and shall take such part therein as the Commissioners may direct.

6. Subject to the provisions of this Part of this Order, Acts of the Provincial Legislature and Rules may regulate the form of election petitions, the time and 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, may require security to be given for costs and may authorise the Governor, exercising his individual judgment, to dismiss petitions for non-compliance with the prescribed requirements.

7.—(1) Subject to the provisions of this paragraph, if in the opinion of the Commissioners—

- (a) the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt practice; or
- (b) any corrupt practice specified in Part I of the First Schedule to this Order has been committed in the interests of a returned candidate; or
- (c) the result of the election has been materially affected by the improper acceptance or rejection of any nomination, or by reason of the fact that any person nominated was not qualified or was disqualified for election, or by the improper reception or refusal of a vote, or by the reception of any vote which is void, or by any non-compliance with the provisions of the Act or of this Order, or of any Act of the Provincial Legislature or Rules relating to the

election, or by any **mistake** in the use of any prescribed form; or

- (d) the election has not been a free election by reason of the large number of cases in which bribery or undue influences has been exercised or committed,

the election of the returned candidate shall be void.

(2) If the Commissioners report that a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice specified in Part I of the First Schedule to this Order, but further report that the candidate has satisfied them that—

- (a) no corrupt practice was committed at the election by the candidate or his election agent, and the corrupt practices mentioned in the report were committed contrary to the orders, and without the sanction or connivance, of the candidate or his election agent;
- (b) the candidate and his election agent took all *reasonable means for preventing the commission* of corrupt practices at the election;
- (c) the corrupt practices mentioned in the report were of a trivial and limited character or took the form of customary hospitality which did not affect the result of the election; and
- (d) in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the Commissioners may find that the election of the candidate is not void.

(3) If a person (not being entitled so to do) votes more than once at the same election, all his votes shall be deemed for the purposes of this paragraph to be void.

8.—(1) At the conclusion of the inquiry the Commissioners shall report whether the returned candidate, or any

person who has lodged a petition and claimed a seat, has been duly elected and in so reporting shall have regard to the provisions of the last preceding paragraph.

(2) The report shall further include a recommendation by the Commisisoners as to the total amount of costs which are payable and the persons by and to whom the cost should be paid, and any such recommendation may include a recommendation for the payment of costs to the Advocate-General of the Province or a person acting under his instructions attending the trial in pursuance of an order of the Commissioners.

(3) The report shall be signed by all the Commissioners and the Commissioners shall forthwith forward their report to the Governor, who on receipt thereof shall issue orders in accordance with the report and publish the report in the Government Gazette of the Province, and the orders of the Governor shall be final.

9. If either in their report or upon any other matter there is a difference of opinion among the Commissioners, the opinion of the majority shall prevail and their report shall be expressed in terms of the views of the majority.

10. Where any charge is made in an election petition of any corrupt practice, the Commissioners shall record in their report—

- (a) a finding whether a corrupt practice has or has not been proved to have been committed by any candidate or his agent, or with the connivance of any candidate or his agent, and the nature of that corrupt practice; and
- (b) the names of all persons, if any, who have been proved at the inquiry to have been guilty of any corrupt practice and the nature of that practice with any such recommendations as the Commissioners may think proper to make for the exemption of any persons from any disqualifications which they may have incurred in

this connection under paragraphs two to five of Part IV of this Order

Provided that no person shall be so named in the report unless he has been given a reasonable opportunity of showing cause why his name should not be so recorded

The following rules have been framed by the different Provinces with regard to election inquiries

				Assembly	Council
Bombay Rules	.	..	..	109-119	56-66
Bengal	"	..	..	11- 36	11-36
U P	"	..	..	118-129	48-59
Bihar	"	..	..	105-116	78-88
C P	"	..	..	93-107	—
Sind	"	..	..	60- 70	—

I. Unless there is anything repugnant in the subject or context:—

Definitions

(1) "Commissioners" means Commissioners appointed under paragraph four of Part III of the Corrupt Practices Order

(2) "Election" means an election to fill a seat or seats in the Assembly or the Council and does not include a primary election.

(3) "President" means the President of the Commission appointed under paragraph four of Part III of the Corrupt Practices Order

No election can be called in question except by a petition presented to the Governor. When an election petition is presented to the Governor, unless he dismisses the petition for non-compliance with the prescribed requirements, he shall appoint as Commissioners for trial of the petition three persons who are or have been, or are eligible to be appointed judges of the High Court, and shall appoint one of them President. The president may be appointed before the other

Commissioners are appointed All applications and proceedings in connection with the election must be carried on before the Commissioners and shall be dealt with by them. Clause 3 of Section 220 of the Government of India Act 1935 lays down the qualifications for eligibility to be appointed a High Court Judge A person shall not be qualified for appointment as a judge of a High Court unless (a) is a Barrister of England or Northern Ireland, of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing, or (b) is a member of the Indian Civil Service of at least ten years standing, who has for at least three years served as or exercised the powers of, a District Judge, or (c) has for at least five years held a judicial office in British India not inferior to that of a Subordinate Judge, or Judge of the Small Causes Court, or (d) for at least ten years been a pleader of any High Court, or two or more such Courts in succession When a Commission has been appointed by the Governor, the presumption is that it has been duly appointed **Bengal National Chamber of Commerce**, Jagat Narain, IEP Vol II 43

Where in respect of an election in a constituency, more petitions than one are presented, the Governor shall refer all of them to the same Commissioners, who may in their discretion inquire into them separately or in one or more groups as they think fit If the services of any Commissioner are not available for the purposes of the inquiry or if during the course of the inquiry, any Commissioner is unable to continue to attend thereat, the Governor shall appoint another commissioner and the inquiry shall recommence before the Commission as so reconstituted Provided the Commissioners may direct that the evidence already recorded to remain on the record and in that case it will not be necessary to re-examine the witnesses who have been already examined and discharged

"Election" in these rules means a final election and not a primary election The rules as to the decision of doubts and disputes regarding primary elections have been separately dealt with in Chapter V in case of primary elections

in territorial constituencies in which seats are reserved for the scheduled castes, and in Part III of Chapter VI in case of *primary elections in certain Labour constituencies*. Such election petitions are presented to the District Magistrate or the Corresponding Officer in the District in the former case, and to the Registrar of Trade Unions in the latter case. The tribunal that tries these petitions is the District Magistrate or the Registrar respectively or a person authorised to try the petition by these two officers.

II. An Election petition against any returned candidate may be presented to the Governor under Part III of the Corrupt Practices Order —

Presentation of
election petition

- (a) by any candidate or elector within fourteen days from the publication in the Gazette of the notice of the date on which the return of election expenses of the returned candidate and the declarations made in respect thereof were lodged with the Returning Officer, or
- (b) within thirty days from such publication by an Officer referred to in clause (b) of sub-paragraph (1) of paragraph three of Part III of the Corrupt Practices Order —or
- (c) on the ground that the returned candidate or his agent or any other person acting with the connivance of the candidate or his agent has been guilty of the offence of bribery, undue influence or personation as defined in Chapter IX-A of the Indian Penal Code, in respect of the election, by any candidate, or elector within fourteen days from the date on which such returned candidate or his agent or other person is convicted of such offence

(2) An election petition shall be deemed to have been presented to the Governor when it is delivered to the Governor or any Officer appointed by him in this behalf—

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

(3) When the last day of the period for the presentation of an election petition under this rule is a public holiday within the meaning of Section 25 of the Negotiable Instruments Act, 1881, or has been notified by the Governor as a day to be observed as a holiday in Government offices, the petition shall be considered as having been received in due time if it is presented on the next succeeding day which is neither such a public holiday or a day so notified.

Under the rules the persons who can present an election against a returned candidate are (1) Persons who can present petition. any candidate (2) any elector and (3) an officer empowered in that behalf by the Governor. The elector presenting a petition must be an elector in the particular constituency to which the election relates (*Midnapore South*, Jagat Narain, Vol. II, p. 113). *The term elector in relation to a commerce and industry, mining or planting constituency, includes all the persons included in the electoral roll as nominees of any body, notwithstanding that only one of them is entitled to vote.* A candidate whose nomination paper is rejected and withdraws his deposit afterwards is all the same a candidate and is entitled to file an election petition. *Midnapore South*, Jagat Narain, I.E.P. Vol. II, p. 113.

An election petition against a returned candidate may be presented by a candidate or an elector on any ground and by the Officer specially empowered in that behalf by the Governor on the ground that the election has not been a free election by reason of the large number of cases in which undue influence or bribery has been exercised or committed. The main grounds on which candidates and electors can present petitions are:

(1) The election of the returned candidate has been procured or induced or the result of the election has been materially affected by any corrupt practice.

(2) Any corrupt practice specified in Part I of the First Schedule of the Corrupt Practices Order has been committed in the interests of the returned candidate.

(3) The result of the election is materially affected by the improper acceptance or rejection of any nomination.

(4) The result of the election is materially affected by reason of the fact that any person nominated was not qualified or was disqualified for election.

(5) The result of the election has been materially affected by the reception of any vote which is void or by the improper reception or refusal of a vote.

(6) The result of the election has been materially affected by any non-compliance with the provisions of the Government of India Act or the Corrupt Practices Order, or of any Act of the Provincial Legislature or Rules relating to election or by any mistake in the use of any prescribed form.

(7) By a candidate on the ground that he received in fact a majority of the valid votes or that but for the votes obtained for the returned candidate by Corrupt Practices the Petitioner would have obtained a majority of votes.

(8) That the returned candidate or his agent or any other person acting with the connivance of the candidate or his agent has been convicted of the offence of bribery, undue influence or personation under Chapter IX-A of the Indian Penal Code in respect of the election.

(9) General bribery and use of undue influence which made the election not a free election.

A candidate or an elector must present a petition on the ground that the returned candidate or his agent or any other person with the connivance of the candidate or his agent has been guilty of the offence of bribery, undue in-

Time within which petition to be presented.

fluence or personation as defined by Chapter IX-A of the Indian Penal Code in respect of the election, within fourteen days from the date on which such returned candidate, his agent or the other person was convicted of such offence. In all other cases a candidate or an elector must present the petition within fourteen days from the publication in the Gazette of the notice of the date on which the return of the election expenses of the returned candidate was lodged.

A petition by an officer specially empowered in that behalf by the Governor on the ground that the election has not been a free election by reason of the large number of cases in which undue influence and bribery has been exercised or committed must be presented within thirty days of the publication in the Gazette of the notice referred to above.

The petition may be presented to the Governor or to the Officer appointed by the Governor in that behalf, by the petitioner delivering it in person or by a person authorised in writing by the petitioner in this behalf or by registered post.

III (1) The petition shall contain a statement in concise form of the material facts on which the petitioner relies, and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure 1908, for verification of pleadings.

Contents of the petition.

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

(3) The Commissioners may, upon such terms as to cost or otherwise as they may direct, at any time, allow the particulars included in the said list to be amended or order

such further and better particulars in regard to any matter refered to therein to be furnished as may in their opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.

A petition in the following form will meet the requirements of the rule.

To

His Excellency.....

Governor of.....

A **Petitioner**

vs.

B	..	} Respondents.
C	..	
D	..	

*In the matter of the election to (Legislative
Assembly or Council) from (Constienency)
The humble petition of A abovenamed
Petitioner.*

1. Your petitioner is a person who voted (or is an elector and had a right to vote as the case may be) at the above election (or was a candidate at the above election or claims to have had a right to be returned at the above election as case may be).

2. Respondents abovenamed were also candidates at the above election.

3. The said election was held on..... day of A.D. and (here state the number of votes polled by each candidate if necessary) and the

Returning Officer has returned the said candidate as being duly elected.

4. Your petitioner submits that the election of the Returned candidate ought to be declared void in that the Returned candidate (or his agent) has been guilty in connection with the said election of corrupt practices namely (1) Bribery within the meaning of clause 1 Part I of the First Schedule to the Corrupt Practices Order, (2) Undue influence within the meaning of clause 2 of the same part of the same Schedule, (3) Personation within the meaning of clause 3 of the same part of the same Schedule, etc. (here state all the grounds on which the petitioner relies). Lists setting forth particulars of the said corrupt practices are hereto annexed and marked lists Nos. 1 to 3.

5. Your petitioner states that the said election of the Returned candidate has been procured or induced or that the result of the said election generally has been materially affected by the said corrupt practices or some of them.

6. Your petitioner craves leave to add to or amend the said particulars on inspection of the voting papers or for any other sufficient reason if so advised.

7. Your petitioner has deposited the sum of Rupees One thousand in the Government Treasury at..... a receipt for which payment is hereto annexed.

Your petitioner therefore most respectfully prays:—

- (a) That commissioners be appointed for the trial of this petition.
- (b) That it may be declared that the returned candidate was not duly elected or returned,
- (c) That the election of the returned candidate be declared void,
- (d) That it may be declared that your Petitioner has been duly elected a member of (Legislature) from (Constituency),

(e) That the respondents or any one or more of them be ordered to pay the Petitioner's cost of this Petition,

(f) That the petitioner may be granted such further or other reliefs as the circumstances require.

And your petitioner as in duty bound will ever pray.

(Signed) A.....,

Petitioner.

(Verification)

I, A of residing at

do solemnly declare that what is stated in paragraphs of the above petition is true to my own knowledge and that what is stated in the remaining paragraphs is stated on information and belief and that I believe the same to be true.

this day of }
1936. }

Before me,

The verification in the petition should state what portion of the petition is true to the petitioner's own knowledge and what portion is stated on information and belief. Similarly the list setting forth particulars of corrupt practices alleged in the petition and annexed to the petition should also be verified in the like manner. The rules give power to the Commissioners to allow the particulars included in the list to be amended or to order such further and better particulars in regard to matters referred to therein. There is a difference of opinion among the various Election Tribu-

nals in India as to whether fresh instances of a corrupt practice can be added by way of amendment. In the **Lahore case** (Jagat Narain, I. E. P. Vol. I, p. 43) the Commissioners held that the word "particulars" being nowhere defined, a wide discretion was left to them what are sufficient particulars with reference to each particular case. Where particulars are given, which in the opinion of the Court are enough to save the petition from being rejected for want of particulars the Court has power to allow amendment in the sense of amplification of particulars. The object of particulars is to prevent the opposite party from being taken by surprise, and if the particulars are not sufficiently specific, the remedy of the other side is to call for further and better particulars. Where no particulars are given the petition will be rejected. Amendment is a wider term than mere amplification and amendment would ordinarily be allowed provided that no new substantive charge is added thereby. In **Amritsar City case** (Jagat Narain, I. E. P. Vol. II, p. 10) the Commissioners held that the petitioner could be allowed or required to give further and better details with regard to the instances referred to in the list of particulars but he could not be permitted so to amend his petition as to introduce fresh instances of corrupt practices. In **Bombay City**, (Jagat Narain, I. E. P. Vol. II, p. 48) the Commissioners held that the addition of further instances of the same charge (in this case personation) alleged in the petition, did not constitute the making of a further charge of corrupt practices but that it only gave further instances of the commission of the same charge of the particular corrupt practice and amounted in fact to an amendment of the particulars of the corrupt practice originally alleged. But in **Rohtak North West** (Jagat Narain, I.E.P. Vol. II, p. 159) it was held that amendment of petition so as to introduce fresh charges of the particular corrupt practice alleged was not permissible. In the **Rangpur East case** (Jagat Narain, I. E. P. Vol. III, p. 235) it was held that fresh instances of corrupt practices could not be admitted by way of amendment of the particulars given in the petition and the Commissioners being of opinion that the particulars given in the petition were so

vague that calling for further and better particulars would amount to introduction of fresh instances, refused to admit such further and better particulars. In a recent case, **Nasiruddin vs. Haji Mahomed** (1936), I.L.R. 63, Cal. 825, an election petition under the Calcutta Municipal Act, McNair J, held that the charge of personation having been made in the petition and no prejudice or embarrassment being shown to the defence, evidence relating to another instance of personation was admissible.

In the **Wigan case** (1881), 4 O' M. & H. 3; Mr. Justice Bowen referring to the object of the particulars said:

"The object is, that parties who come here to try an election petition and defend the seat, shall not have matters sprung upon them in such a way as to embarrass them in the answer they give, and it is clear it would embarrass the sitting member very much if he were to have cases of bribery or cases of treating sprung upon him at the last moment. Particulars, therefore, are ordered before the trial and particulars are ordered, of course, to be given to the extent to which they can be given, that is to say, so far as the knowledge and information of the persons upon whom the order is made enables them to comply with the order. In this case full particulars have been given. A number of names have been given of persons who are supposed to have been treated or bribed at particular places, and at the end of the list of names comes this, that persons are supposed to have been bribed whose names are at present unknown; and the persons who are presenting the election petition may really be bona fide ignorant of the names of the persons who were receiving bribes or being treated at that particular place; and they ought not to be prevented from going into those cases simply because they cannot give the names of the persons with respect to whom the criminal act is supposed to have been committed. What they are bound to do is to tell the most they can at the time these particulars are given; and, at all events before the trial to tell as much as they can to prevent surprise or expense. But it is said that the order for particulars has been drawn up by the

Court in a form that the petitioners are to be precluded at the trial of the petition from going into any case of which the aforesaid particulars have not been delivered . . .

I should be perfectly prepared to take broader ground and say that a judge sitting here to try an election petition can at any moment receive any evidence, provided he takes care that there is no surprise upon the sitting member by its being tendered "

Having regard to the rule, if the original petition was accompanied by a full and satisfactory list of particulars, it is submitted, that Indian Election Courts ought to exercise similar discretion and allow the list of particulars of the corrupt practice to be amended by addition of fresh instances and allow evidence of such fresh instances to be led at the trial

IV The petitioner may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself has been duly elected, in which case he shall join as respondents to his petition all other candidates who were nominated at the election

The usual respondent in an election petition is the returned candidate whose election is called into question. It is not necessary to join the other candidates who were nominated at the election unless the petitioner in addition to calling in question the election of the returned candidate also claims a declaration that he himself has been duly elected in which case he must join as respondents all other candidates who were nominated at the election, **Bombay City, Jagat Narain, I E P Vol II, p 48** There is no provision in Indian Election Law for making the Returning Officer a party to a petition and the Returning Officer cannot be made a respondent to the petition **Rohtak; Jagat Narain, I E P Vol I, p 57, Bengal National Chamber of Commerce; Jagat Narain, I E P Vol II, p 43**

A Petitioner cannot be allowed to add as a respondent to the original petition any person after the expiry of the

period of limitation mentioned in Rule II. **Bombay City**, Jagat Narain, I. E. P. Vol. II, p. 48.

A seat can only be claimed by a petition. A respondent cannot claim the seat by a written statement in answer to a petition or by his recriminatory petition; **Sholapur District** Jagat Narain, I. E. P. Vol. III, p. 193.

In **Bombay City**, Supra, the petitioner claimed the seat but failed to join all the candidates. An application by the petitioner to add the remaining candidates as parties was refused on the ground of limitation. It was contended for the returned candidate that the petition could not be sustained and ought to be dismissed because of the failure of the petitioner to join all the candidates as respondents. The Commissioners held that the claim by the petitioner for the seat was separate and distinct from that portion of the petition which called in question the election of the returned candidate and as the returned candidate alone need be joined where there is no claim to the seat, the petition was good in so far as it called in question the election of the returned candidate.

The same view was taken in the **Dacca case**, Jagat Narain, I. E. P. Vol. III, p. 175 and in **Agra District**, Jagat Narain, I. E. P. Vol. IV, p. 4. In the latter case the Commissioners observed;

“The rule confers a separate and distinct right on the petitioner which he may or may not avail himself of. It enables him, if he so desires, in addition to the calling in question the election of the returned candidate to claim a declaration that he or any other candidate has been duly elected. This is a right which is in terms expressed in addition to the right of challenging and we have no difficulty in holding that a claim of this nature is separable from claim calling an election in question.”

But in **Sahranpur District**, Jagat Narain, I. E. P. Vol. I, p. 66, the Commissioners held, that where the petitioner claimed the seat for himself, it was obligatory on him to join as respondents to the petition all other candidates who

were nominated at the election and that a failure to do so rendered the petition liable to be dismissed. It is submitted that the view taken in the Bombay, Dacca and Agra cases is the better view and the two reliefs claimed ought to be considered separate and distinct from each other.

The petitioner can abandon at the hearing his claim to the seat but he cannot withdraw that portion of the petition which claims the seat by way of amendment of the petition because, as will be seen later on, the rights of the constituency will be affected by their not having the opportunity of substituting another petitioner as regards the claim to the seat see **Aldridge vs Hurst** (1876), 1 C. P. D. 410 and **Agra District supra**.

V At the time of the presentation of the petition, the petitioner shall, except where the petition is presented under clause (b) of sub-paragraph (1) of paragraph three of Part III of the Corrupt Practices Order, deposit with it a sum of one thousand rupees in cash or in Government securities of equal value at the market rate of the day as security for the costs of the same.

Deposit of security

The petitioner should take good care that the deposit referred to in the rule is made at the time of the presentation of the petition. It is wise to mention the fact of such deposit in the petition and a receipt from the Government Treasury where the deposit is made should be annexed to the petition. Non-compliance with this rule may entail dismissal of the petition by the Governor.

The officer specially empowered to present a petition on the ground that the election has not been a free election by reason of the large number of cases in which undue influence or bribery has been exercised or committed need not make the deposit mentioned in the rule.

VI (1) If the provisions of rule II, III, or V are not complied with the Governor, exercising his individual judgment, shall dismiss the petition:

Petition when to be dismissed

(2) If the petition is not dismissed under sub-rule (1), the President shall, as soon as may be, cause a copy of the petition to be served on each respondent and to be published in the Gazette, and may call on the petitioner to execute a bond in such amount and with such sureties as he may require for the payment of any further costs. At any time within fourteen days after such publication, any other candidate shall be entitled to be joined as a respondent on giving security in a like amount and procuring the execution of a like bond:

Provided that the execution of such a bond by the petitioner shall not be required in any case where the petition has been presented under clause (b) of sub-paragraph (1) of paragraph three of Part III of the Corrupt Practices Order.

The Commissioners have no power to allow a candidate to be joined as a respondent after the expiry of the period of limitation of fourteen days after the publication of the petition in the Gazette; **Sahranpore District, Jagat Narain, I. E. P. Vol. I, p. 66.**

VII Subject to the provisions of Part III of the Corrupt Practices Order and the other provisions of these rules every election petition shall be inquired into by the Commissioners, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits:

Inquiry by Commissioners.

Provided that it shall only be necessary for the Commissioners to make a memorandum of the substance of the evidence of any witness examined by them.

All applications and proceedings in connection with an election petition shall be dealt with by, and carried on by or before the Commissioners appointed to try the petition.

When at an inquiry into an election petition the Commissioners think that the Advocate-General of the Province or some person acting under his instructions should attend,

they may make such an order. On such order being made the Advocate-General or the person acting under his instructions, shall attend and take such part in the proceedings as the Commissioners may direct.

In a recent case of a petition under the Calcutta Municipal Act, **Nasiruddin Ahmed vs. Haji Mahomed** (1936), I. L. R. 63, Cal. 825 (828), the Calcutta High Court held that the trial of an election petition is not governed by rules applicable to a criminal case, per McNair J.

The Election Offences and Inquiries Act (39 of 1920) makes provision for the conduct of inquiries. Following are the provisions of the Act in this behalf.

Section 5 Commissioners appointed to hold an inquiry shall have the powers which are vested in a Court under the Code of Civil Procedure 1908 when trying a suit in respect of the following matters:—

Power of Commissioners.

- (a) Discovery and inspection.
- (b) Enforcing the attendance of witnesses, and requiring the deposit of their expenses.
- (c) Compelling the production of documents.
- (d) Examining witnesses on oath,
- (e) granting adjournments,
- (f) reception of evidence taken on affidavit, and
- (g) issuing of commissions for the examination of witnesses,

and may summon and examine *suo motu* any person whose evidence appears to them to be material; and shall be deemed to be a Civil Court within the meaning of S. 480 and 482 of the Criminal Procedure Code.

Explanation:—For the purpose of enforcing the attendance of witnesses, the Local limits of the Commissioners' jurisdiction shall be the limits of the Province in which the election was held.

The inquiry in an election petition is to be conducted as nearly as possible according to the provisions of the Civil Procedure Code. The petitioner is not entitled to an adjournment without showing sufficient cause as provided by the Code of Civil Procedure. **Gurgaon-Cum-Hissar** (Jagat Narain, I E P Vol II, p 85)

Section 6 The provisions of the Indian Evidence Act, 1872, shall subject to the provisions of this Act, be deemed to apply in all inquiries respects to an inquiry

Section 7 Notwithstanding anything in any enactment to the contrary no document shall be inadmissible in evidence on the ground that it is not duly stamped or registered

Section 8 (1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in an inquiry upon the ground that the answer to such question will criminate or may tend directly or indirectly to criminate him, or that it will expose or tend directly or indirectly to expose him to a penalty or forfeiture of any kind

Provided that —

- (1) No person who has voted at an election shall be required to state for whom he has voted, and
- (11) a witness who, in the opinion of the Commissioners has answered truly all question which he has been required by them to answer, shall be entitled to receive a certificate of indemnity, and such certificate may be pleaded by such person in any Court and shall be deemed to be a full and complete defence to or upon any charge under Chapter IX-A of the Indian Penal Code arising out of the matter to which such certificate relates, nor shall any such answer be admissible in evidence against him in any suit or proceedings

(2) Nothing in sub-section (1) shall be deemed to relieve a person receiving a certificate of indemnity from any disqualification in connection with an election imposed by any law or any rule having the force of law.

Section 9 Any appearance, application or act before the Commissioners may be made or
 Appearance by done by the party in person or by a
 pleader. pleader duly appointed to act on his
 behalf:

Provided that any such appearance shall, if the Commissioners so direct, be made by the party in person.

"Pleader" is defined in the Act as meaning any person entitled to appear and plead for another in a Civil Court and includes an Advocate, a Vakil, and an Attorney of the High Court.

Section 10 The reasonable expenses incurred by any
 Expenses of wit- person in attending to give evidence
 nesses. may be allowed by the Commissioners
 to such person, and shall, unless the
 Commissioners otherwise direct, be deemed to be part of the
 costs.

Section 11 (1) Costs shall be in the discretion of the
 Commissioners and the Commissioners
 Costs and Plea- shall have full power to determine by
 der's fees, etc. and to whom and to what extent such
 costs are to be paid and to include in their report all neces-
 sary recommendations for the purposes aforesaid. The Com-
 missioners may allow interest on costs at a rate not exceed-
 ing six per cent. per annum, and such interest shall be add-
 ed to the costs.

(2) The fees payable by a party in respect of fees of his adversary's pleader shall be such fees as the Commissioners may allow.

"Costs" are defined in the Act to mean all costs, charges and expenses of, or incidental to, an inquiry. They

include "costs" of setting up the Commission and fees payable to the Commissioners.

Section 12 Any order made by the Governor General or Governor or Lieutenant Governor on the report of the Commissioners regarding the costs of the inquiry may be produced, before the principal Civil Court of original jurisdiction, within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or, where such place is within the local limits of the ordinary original civil jurisdiction of a Chartered High Court, before the Court of Small Causes having jurisdiction there, and such Court shall execute such order or cause it to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

Execution of Orders as to costs.

The Commissioners are not competent to go behind their appointment as such, and to inquire into the question of the proper presentation of the petition. The Commissioners must assume that the prior requisites have been complied with, otherwise the petition would have been dismissed by the Governor. **Aligarh Muttra and Agra Districts**, Jagat Narain I. E. P. Vol. II p. 7 see also Jagat Narain I. E. P. Vol. I pp. 18 and 68.

In the **Dinajpore** case, Jagat Narain I. E. P. Vol. II p. 75 it was held. that it was not open to the Commissioners to question the form, verification. and other things relating to the petition which happened prior to the appointment of the Commission. Nor have the Commissioners any power to reject a petition on the ground of vagueness after it has been admitted by the Governor **Burhanpore**, Jagat Narain I. E. P. Vol. I p. 15. The objection that the petition was filed before the return of election expenses of the respondent was filed, cannot be entertained by the Commissioners after the petition has been admitted by the Governor to whom it was presented; **Sholapur District**, Jagat Narain I. E. P. Vol. III. p. 159.

The rules provide for the filing of an election petition by an elector and a petition cannot be rejected on the ground that it has been filed "Benami" at the instance of a candidate. **Burhanpore Supra.**

VIII The inquiry shall be held at such place as the Place of inquiry. Governor may appoint:

Provided that the Commissioners may in their discretion sit at any other place in the Province for any part of the inquiry, and may depute any one of their number to take evidence at any place in the Province.

IX (1) An election petition may be withdrawn only by leave of the Commissioners, or, if an application for withdrawal is made before any Commissioner has been appointed, of the Governor, exercising his individual judgment.

(2) If there are more petitioners than one, no application to withdraw a petition shall be made, except with the consent of all the petitioners.

(3) When an application for withdrawal is made to the Commissioners, notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Gazette.

~~(4) No application for withdrawal shall be granted if~~ in the opinion of the Governor, exercising his individual judgment, or of the Commissioners, as the case may be such application has been induced by any bargain or consideration which ought not to be allowed.

(5) If the application is granted—

(a) the petitioner shall, where the application has been made to the Commissioners, be ordered to pay the costs of the respondent theretofore incurred or such portion thereof as the Commissioners may think fit;

- (b) notice of the withdrawal shall be published in Gazette by the Governor, exercising his individual judgment, or by the Commissioners, as the case may be; and
- (c) any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing and, upon compliance with the conditions of rule V as to security, shall be entitled to be so substituted to continue the proceedings upon such terms as the Commissioners may think fit.

(6) When an application for withdrawal is granted by the Commissioners and no person has been substituted as petitioner in place of the party withdrawing under clause (c) of sub-rule (5), the Commissioners shall report the fact to the Governor.

Permission to withdraw a petition will be granted when it is shown that the withdrawal has not been induced by any bargain or arrangement between the parties; **Magwe West Jagat Narain I. E. P. Vol. II p. 112.** In **Bombay City North Jagat Narain I. E. P. Vol. II p. 53**, leave to withdraw the petition against one of the Respondents was granted when the Commissioners were satisfied that the application for withdrawal was not induced by any bargain or consideration.

In the **Attock case Jagat Narain I. E. P. Vol. I p. 1**, it was held that leave to withdraw a claim for seat could not be granted after the respondent had put in his recriminatory petition.

Where after the hearing of the petition had gone on for 12 days and the Respondent was about to close his case, an application was made for leave to withdraw the petition, leave was refused on the ground that the Respondent whose integrity the petition assailed was entitled to a decision on the evidence, and also because the permission for withdrawal might involve an application for substitution and an unne-

cessary prolongation of the proceedings; **North East Darbhanga Jagat Narain I. E. P. Vol. I p. 52.**

In **Aldrige vs. Hurst** (1876) I C. P. D. 410 it was held that the withdrawal of that portion of the petition which claims the seat cannot be effected by way of amendment of the petition because the rights of the constituency would be affected by their not having the opportunity of substituting another petitioner as regards the claim to the seat. The court however pointed out that the petitioner might give notice to the respondent of his intention not to claim the seat so as to enable the latter to avoid the costs of meeting such a claim, without, on the other hand, preventing the possibility of recriminatory evidence being given. Recriminatory charges are permitted in the interest of electors in order to prevent a successful petitioner obtaining the seat for himself or any other person if he has violated any provisions of election law. See also **Agra District, Jagat Narain I. E. P. Vol. IV p. 4.**

X (1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.

Abatement or substitution on death of petitioner or respondent.	Provided that where such sole petitioner was an officer empowered under clause (b) of sub-paragraph (1) of paragraph three of Part III of the Corrupt Practices Order, the proceedings may be continued by any other officer empowered in this behalf by the Governor, exercising his individual judgment, under the said clause.
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(2) Notice of abatement of an election petition shall be published in the Gazette by the Commissioners or, if the petition abates before any Commissioner has been appointed, by the Governor, exercising his individual judgment.

(3) Any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party deceased, and, upon compliance with the condition of rule IV as to security, shall be entitled to be so substituted and to con-

tinue the proceedings upon such terms as the Commissioners may think fit.

(4) If before the conclusion of the trial of an election petition, the respondent, dies or gives notice that he does not intend to oppose the petition, the Commissioners shall cause notice of such event to be published in the Gazette and there upon any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted for such respondent to oppose the petition and shall be entitled to continue the proceedings upon such terms as the Commissioners may think fit.

XI (1) Where at an inquiry into an election petition any candidate, other than the returned candidate, claims the seat for himself, **Recriminations when seat claimed.** the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented complaining of his election.

(2) Any party to the election petition other than the returned candidate may also give evidence to prove that the election of the returned candidate is void:

Provided that such other party shall not be entitled to claim the seat for himself unless he has lodged under the provisions of the Corrupt Practices Order an election petition claiming the seat for himself:

Provided further that the returned candidate or such other party aforesaid shall not be entitled to give such evidence, unless he has, within fourteen days of the publication, of the election petition under sub-rule (2) of rule VI given notice of his intention to the Commissioners and made the deposit and procured the execution of the bond referred to in rules V and VI respectively. Every such notice shall be accompanied by the statement and the list of particulars required by rule III in the case of an election petition and shall be signed and verified in the like manner.

The right to recriminate can only be exercised if the petitioner claims the seat for himself; **Bombay City Jagat Narain I. E. P. Vol. II p. 48.** And a recriminatory petition cannot be filed against a petitioner unless he claims the seat. **Rawalpindi and Lahore Jagat Narain I. E. P. Vol. II p. 149.**

A seat can only be claimed by an election petition presented in the ordinary way. A respondent cannot claim a seat by a written statement in answer to a petition or by his recriminatory petition. **Sholapur District Jagat Narain I. E. P. Vol. III p. 193.**

A seat can be claimed on two grounds only:—

- (a) that in fact the petitioner received a majority of the valid votes; or
- (b) that but for the votes obtained for the returned candidate by Corrupt practices the petitioner would have obtained a majority of the valid votes.

A petitioner who claims the seat must show that but for the corrupt practices and irregularities proved in the case he would have secured the majority of the lawful votes. The petitioner does not get the seat as a matter of right after the removal of the Respondent therefrom; **Bareilly City, Jagat Narain I. E. P. Vol. II p. 17.**

There is a difference of opinion in India, whether in a case where there are more than two candidates for a single seat and the successful candidate is unseated on account of corrupt practices the petitioner who polled the next largest number of votes gets the seat. In the cases of **Kangra cum Gurudaspur Jagat Narain I.E.P. Vol. II p. 103, Rhotak North West Jagat Narain I. E. P. Vol. II p. 159; Amritsar City Jagat Narain I. E. P. Vol. II p. 10, Farukhabad District Jagat Narain I. E. P. Vol. III p. 22** it was held that he did not and a fresh election was necessary. But in the case of **Bombay City North, Jagat Narain I. E. P. Vol. II p. 53** the petitioner who had secured the next largest number of votes

was declared to have been elected under similar circumstances. It is submitted that the former is the better view and a fresh election is necessary in such a case as the votes given to the returned candidate cannot be said to have been cast away and it is not possible to say whether the petitioner or the other candidates would have succeeded if the returned candidate had been out of the field. Besides, it is fair and reasonable to give the electorate an opportunity of making a fresh choice under the circumstances.

No person shall be allowed to lead recriminatory evidence unless he has within fourteen days of the publication of the petition in the Gazette given notice of his intention to the Commissioners, made the deposit mentioned in rule V, executed the bond referred to in rule VI and along with the notice lodged a statement in concise form of the material facts on which he relies, together with the list of particulars of the corrupt practices he alleges, signed and verified in the like manner to a petition. This is known as a recriminatory petition. Any respondent other than the returned candidate can recriminate against both the petitioners and the returned candidate. The Respondent to a petition cannot be permitted to call in question the validity of the petitioner's nomination without his having filed a recriminatory petition. *Aligarh Muttra and Agra Jagat Narain I. E. P. Vol. II p. 7.*

If in the opinion of the Commissioners (a) the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt practice; or (b) any corrupt practice specified in Part I of the First Schedule to the Corrupt Practices Order has been committed in the interest of a returned candidate; or (c) the result of the election has been materially affected by the improper acceptance or rejection of any nomination, or by reason of the fact that any person nominated was not qualified or disqualified for election, or by the improper reception or refusal of a vote, or by reception of a vote which is void, or by non-compliance with the provisions of

the Government of India Act, 1935 or of the Corrupt Practices Order or of any Act of the Provincial Legislature or Rules relating to the election, or by any mistake in the use of any prescribed form; or (d) the election has not been a free election by reason of the large number of cases in which bribery or undue influence has been exercised or committed, the election of the returned candidate shall be void and the Commisisoners shall report accordingly to the Governor.

But if the Commissioners report that a returned candidate has been guilty by an agent, other than his election agent of any corrupt practice specified in Part I of the First Schedule to the Corrupt Practices Order but further report that

- (a) no corrupt practice was committed at the election by the candidate or his election agent, and the corrupt practices mentioned in the report were committed contrary to the orders, or without the sanction or connivance of the candidate or his election agent; and
- (b) the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and
- (c) the corrupt practices mentioned in the report were of trivial and limited character or took the form of customary hospitality which did not affect the result of the election; and
- (d) in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the Commissioners may find that the election of the candidate is not void.

If a person (not being entitled so to do) votes more than once at the same election all his votes shall be deemed to be void.

In **Salem & Coimbatore**, Jagat Narain, I. E. P. Vol. I, p. 68, the change of polling station by the polling officer,

without sufficient notice to the constituency, was held to be a material irregularity enough to avoid the election, when the majority in favour of the respondent was only 7, and it was proved that 12 of 13 voters had in fact gone to record their votes to the place originally fixed for polling. If transgressions of the law by the officials are admitted or proved and the Court sees that it is open to reasonable doubt whether those transgressions may not have affected the result of the election, the Court is bound to declare the election void.

An election cannot be said to be materially affected unless the irregularities which have occurred have actually turned the scale in favour of the returned candidate. It must be shown that but for the alleged irregularities the returned candidate would not have secured the majority of the votes. It is not enough to show that the result of the election might have been affected. It must be shown that it was actually affected by non-compliance with the rules and regulations; **Bhandara District**; Jagat Narain, I. E. P. Vol. IV, p. 22.

At the conclusion of the inquiry the Commissioners shall report whether the returned candidate or any person who has lodged a petition and claimed a seat, has been elected. The report shall further include a recommendation *as to the total amount of costs which are payable and the persons by and to whom the costs should be paid*, and any such recommendation may include a recommendation for the payment of costs to the Advocate-General of the Province or a person acting under his instruction attending the trial in pursuance of an order of the Commissioners. The report shall be signed by all Commissioners and the Commissioners shall forthwith forward it to the Governor, who on receipt thereof shall issue orders in accordance with the report in the Government Gazette of the Province, and the Orders of the Governor shall be final. If either in the report or upon any matter there is a difference of opinion among the Commissioners, the opinion of the majority shall

prevail and the report shall be expressed in terms of the views of the majority.

Where any charge is made in an election petition of any corrupt practice, the Commissioners shall record in their report.

- (a) a finding whether a corrupt practice has or has not been proved to have been committed by any candidate or his agent, or with connivance of any candidate or his agent and the nature of that corrupt practice, and
- (b) the names of all persons, if any, who have been proved at the inquiry to have been guilty of any corrupt practice and the nature of that corrupt practice with any such recommendation as the Commissioners may think proper to make for the exemption of any persons from disqualification which they may have incurred in this connection under paragraphs two to five of Part IV of the Corrupt Practices Order:

Provided that no person shall be so named in the report unless he has been given a reasonable opportunity of showing cause why his name should not be so recorded.

The usual rule is that costs follow the event and the successful party must get his costs from the unsuccessful party. But costs are always within the discretion of the Commissioners and a successful respondent may be deprived of costs where he was proved to have been negligent in ascertaining the truth of the statements he made against the petitioner; **Bulundshahir District**, Jagat Narain, I. E. P. Vol. II, p. 53. Similarly a party who fails to establish anything but a minor part of his case should be made to bear the costs of the petition; **Dinajpore**, Jagat Narain. I. E. P. Vol. II, p. 75. And a petitioner will not be mulcted in costs even if the petition is dismissed, if he had reasonable grounds for filing the petition; **Insein**, Jagat Narain, I. E. P. Vol. II, p. 98. In **Lucknow cum Cawnpore** case, Jagat Narain,

I. E. P. Vol. III p. 2, a successful respondent was deprived of half his costs because he had suppressed the fact that a certain person was his agent. In **Shaikhpara**, Jagat Narain I. E. P. Vol. II, p. 177, though the petition failed, the Commissioners fixed the respondent's costs at a low figure as they had reasons to suspect that the hands of the respondent and his agents were not clean.

The word 'costs' means all costs charges and expenses of and incidental to the inquiry and include fees to be paid to the Commissioners, **Kolaba District**, Jagat Narain, I. E. P. Vol. III, p. 173. The Commissioners' recommendation must be as to the total amount of costs payable. The question therefore arises whether instead of mentioning a lump sum the Commissioners can award costs as taxed by the Taxing Master. In a Bombay case reported in Jagat Narain, I. E. P. Vol. II, p. 48 the recommendation of the Commissioners was as follows:—

"Our recommendation is that the petitioner be liable in the first instance for the costs of setting up the Commission. The first respondent do pay the petitioner the cost of setting up the Commission and the taxed costs of and incidental to the filing of his written statement and of the costs incurred by the first respondent, if any, in connection with the list of further particulars of the charge of personation which was filed by the petitioner and in connection with recriminations put forward by the first respondent."

Upon this recommendation the Governor issued an order that the costs should be paid as recommended by the Commissioners in their report and by a special resolution the Taxing Master of the High Court was appointed to tax the bill of costs of the petitioner. The petitioner lodged his bill for taxation. Before the allocatur was issued the respondent filed an application under Section 45 of the Specific Relief Act, for an order directing the Taxing Master not to proceed with the taxation of the bill and not to issue the allocatur on the ground that the Commissioners had no power to recommend the payment of costs except in a lump

sum. The learned Judge (Shah J.) was of the opinion that the conditions of Section 45 of the Specific Relief Act were fulfilled and ordered the Taxing Master not to proceed further with the bill or issue the allocatur. On appeal the High Court held, that it could not under the provisions of Section 45 of the Specific Relief Act, make an order prohibiting the Taxing Master from taxing a bill of costs in an election petition, referred to him under a special resolution of the Government of Bombay; 28 Bombay Law Reporter 264.

CHAPTER X

CORRUPT PRACTICES

In the English Election Law a clear distinction is made between a "corrupt practice" and "an illegal practice" A corrupt practice is the thing the mind goes along with An illegal practice is a thing the Legislature is determined to prevent, whether it is done honestly or dishonestly (**Barrow-in-Furness**, 1886 4 O' M & H 77) An illegal practice involves no question of motive, pure or otherwise The only question the Court has to consider is whether there has been a breach of the Act (**Walsall**, 1892 4 O' M & H 123) In India no such distinction is made between a corrupt practice and an illegal practice In fact the term "illegal practice" is not known in Indian election law In **Dinajpore Jagat Narain**, I E P Vol II, p 75 the Commissioners observed "There is a further difficulty in the way of our accepting the English rule that a corrupt practice cannot be proved unless a corrupt motive is shown Every electoral offence described in Schedule 5 (corresponding to what is now the First Schedule to the Corrupt Practices Order of which hereafter) is a corrupt practice In English Law there is a distinction between corrupt practices and illegal practices, and in the case of the latter motive or intention is immaterial. Schedule 5 includes what are corrupt practices in England as well as what are illegal practices If therefore the English rule as to corrupt practices be followed, a practice such as hiring of a liquor shop as a committee room, which is clearly meant to be forbidden absolutely will in this country be permissible if the intention of the hirer is innocent. We therefore hold that we are not concerned with the honesty or otherwise of the person said to have committed personation provided his acts fall within the words of the rule But on the other hand in **Bareilly District: Jagat Narain**, Vol. III, p. 3 the Commissioners while accepting the

proposition that there is no distinction in the Indian Election Rules between a corrupt practice and an illegal practice, held, that there could be no corrupt practice without a corrupt motive and that it was the duty of the petitioner to prove *mens rea* in every case; and unless therefore there was corruption and a bad mind and intention in personating, it was not an offence. They also held that the word "false" in relation to the return of election expenses meant "deliberately incorrect" and implied a corrupt motive and an intention to conceal expenditure. In the *Lahore* case, Jagat Narain, I. E. P. Vol. I, p. 43, it was also held that a corrupt motive was essential to constitute a corrupt practice.

The First Schedule to the Corrupt Practices Order, specifies the various corrupt practices. The Schedule is divided into 3 parts. Part I deals with (1) Bribery, (2) undue influence, (3) *procuration*, abetment or attempted *procuration* of personation at an election, (4) *procuration* of the removal of a voting paper from the polling station, (5) publication of false statements in relation to the personal character or conduct of a candidate, and (6) incurring or authorising of expenditure and employment of any person in contravention of the Corrupt Practices Order, or Act of Provincial Legislature or Rules, committed by the candidate, or his agent or any other person with the connivance of the candidate or his agent.

Part II deals with (1) any act specified in Part I done by any person other than a candidate or his agent or a person acting with the connivance of the candidate or his agent (2) application for voting paper by a person in the name of any other person or in his own name when by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote (3) receipt or agreeing to receive a bribe (4) making of a false return of election expenses and making of a declaration verifying the same.

Part III deals with (1) incurring or authorisation by any person other than the candidate or his agent of certain expenses for the purpose of promoting or procuring the election of candidate without being authorised to do so in

writing by the candidate (2) the hiring using or letting as a committee room or for the purpose of any meeting, of a place where intoxicating liquor is sold to the public and (3) issuing of a circular placard or poster having a reference to the election which does not on its face bear the name and address of the printer and publisher thereof.

A corrupt practice whenever committed in relation to an election may avoid an election. In **Stroud** (1874): 2 O' M. & H. 183, **Bramwell B** said: "Although the bribery must be committed at the election.....yet it has been held, and properly held, that it does not mean at the very moment the polling is going on, but it means at such a time as makes the bribery operative on the election. To take an extreme case, if the respondent had said to any voter, 'here is £5 for you if you will promise to vote for me when I am a candidate' if he had not come forward for the next ten years it would still have been within the Act of Parliament." In **Hexham** (1892) 4 O' M. & H. 147, treating was held to have been committed more than a year before the election and by an agent of the respondent, so as to avoid the election, eight months before. Where, however, the act complained of has occurred a considerable time before the election, the element of time becomes material in determining the question whether it was done to influence votes: **St. George** (1896) 5 O' M. & H. 100; **Rogers on elections** 20th Ed. p. 265.

The following are the provisions of the First Schedule to the Corrupt Practices Order.

FIRST SCHEDULE CORRUPT PRACTICES

PART I

1 Bribery, that is to say, any gift, offer or promise by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, of any gratification to any person whomsoever, with the object, directly or indirectly, of inducing—

- (a) a person to stand or not to stand as, or to withdraw from being, a candidate at an election; or
- (b) an elector to vote or refrain from voting at an election,

or as a reward to—

- (i) a person for having so stood or not stood, or for having withdrawn his candidature; or
- (ii) an elector for having voted or refrained from voting.

For the purposes of this paragraph the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money, and it includes all forms of entertainment and all forms of employment for reward; but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the return of election expenses prescribed by this Order.

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

Provided that—

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

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

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

3 The procuring or abetting or attempting to procure by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, the application by a person for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or by a person for a voting paper in his own name when, by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote.

4 The removal of a voting paper from the polling station during polling hours by any person with the connivance of a candidate or his agent.

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

6 The incurring or authorising by a candidate or his agent of expenditure, or the employment of any person by a candidate or his agent, in contravention of this Order or of any Act of the Provincial Legislature or Rules.

PART II

1 Any act specified in Part I of this Schedule, when done by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent.

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

3 The receipt of, or agreement to receive, any gratification whether as a motive or a reward—

- (a) by a person for standing or not standing as, or for withdrawing from being, a candidate; or
- (b) by any person whomsoever for himself or any other person for voting or refraining from voting, or for inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw his candidature.

For the purposes of this paragraph the term “gratification” has the same meaning as it has for the purposes of paragraph one of Part I of this Schedule.

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

PART III

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

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

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

It will be noticed that the First Schedule to the Corrupt Practices Order makes a reference to the "agent" of the candidate. The term used is "agent" and not "election agent." It is therefore necessary to consider what constitutes agency. Paragraph 1 of Part III of the Corrupt Practices Order defines "agent" to include an election agent and any person who, on the trial of an election petition is held by the Commissioners to have acted as an agent in connection with the election with the knowledge or consent of the candidate. The relationship of candidate and agent in election law is much wider than that of principal and agent under the ordinary law. Mr Powell in "Practical Notes on Management of Elections" gives what he calls a good working knowledge of the "drift" of the doctrine in England.

"The ordinary legal agency may be created in four ways: (1) by express contract, (2) by implication, (3) from necessity, and (4) by ratification. Agency by express contract is the kind of agency which exists in the case of an election agent and his staff where there is an explicit and specific engagement. Agency by implication is that which is created for instance, when a coachman, who has the care of his master's horses is understood to possess authority to order corn for them as his master's agent. Agency by necessity has no application to election work, so that the special doctrine of agency, as applied to elections is a modification, by way of extension, of agency by implication and agency by ratification. For instance, assuming for the moment that an action (based upon the alleged existence of agency in the ordinary sense) would lie for the recovery of money laid out in bribery at the alleged request of the defendant a candidate, the main question would be whether, in fact the defendant had authorised the laying out of the money. If it could be shown that the person who had paid the bribes, though in fact he was an agent of the defendant, had in this instance been expressly prohibited from laying out money in that way (and especially if the persons who received it were well aware of the prohibition) the action to recover it from the candidate would fail. But as regards agency in the

election sense the question would be totally different. The proof of general agency (i.e. of agency in the ordinary legal sense) would render abortive any protection that was sought in the express prohibition of the corrupt acts, however honest that prohibition might have been. The corrupt acts of the agent, though forbidden by the candidate, would, if within the very liberally defined scope of authority, be fatal to his candidature.

In the ordinary sense of the word, a man cannot easily make another his agent without having his eyes fully open to what he is doing. But he may create an agent in the election sense of the word without being conscious of what is being done and in fact in such a manner that when the person is ultimately decided to be his agent nobody is more astonished than himself. The reason for this wide difference between Common Law agency and agency in the election sense was stated in the Gloucester petition (1873, 2 O.M. & H: 59) to be that, where any corruption is intended the candidate is most carefully kept in intentional ignorance of it. In the Wigan case (1881: 4 O.M. & H.; 11) it was said. that the position of the candidate in the election sense was analogous to that of a man who buys a yacht to race in his name and finds a captain and crew on board. The fact that he consents to sail with them makes them his agents for the purpose of sailing the race in accordance with the laws of the course. The fact is that in the ordinary relations of life a man has very large powers of control over his agents and knows, or can with reasonable diligence discover, who they are. But in the conduct of an election his political fate may be jeopardised by persons over whose actions he has little or no control, like the tradesman who canvassed a street with him and then proceeded to the nearest public house and called for drinks all round and the health of the candidate. Even if they act in defiance of his orders, where he has power to give them, or do the wrongful act maliciously with intention of injuring him or totally unknown to him yet still he may find that they are held to be his agents. This question whether A is or is not the agent of B at a certain election is of no great importance while the contest

proceeds But when the contest is over and the electors have delivered their verdict it may become of very great consequence indeed For then it becomes possible for an appeal to be made from the electorate to an election petition Court, whose judgment, possibly setting aside that of the electorate, may be very largely based upon the individual opinions of two judges with regard to the nebulous doctrine of agency in the election sense The result may be that the candidate is exposed to the risk of the very severest penalties, not because he himself has done anything wrong, but because in the opinion of the judges, some person over whom neither candidate nor constituents had any control has been guilty of breach of election law These considerations should make it clear how vast the sweep of this election doctrine of agency is "

In the *Great Yarmonth* case (1906) 5 O'M & H 178, Mr Justice Channell said "Substance of the principle of agency is that if a man is employed at the election to get you votes, or if without being employed, he is authorized to get you votes, or if, although neither employed or authorized, he does to your knowledge get you votes, and you accept what *he has done and adopt it, then he becomes a person for whose acts you are responsible in the sense that, if his acts have been of an illegal character you cannot retain the benefit which those illegal acts have helped to procure for you That is as I apprehend clearly established law It is hard upon the candidates in one sense because it makes them responsible for acts which are not only in accordance with their wish, but which are directly contrary to it "*

Rogers on "Elections" (20th Ed p 388) says —

"It is obvious that the principles of legal agency, derived as they are from transactions of private life, cannot be applied with strictness to cases of electioneering agency A candidate at an election professedly seeks an office of trust for the benefit of the public, the public, therefore is the party mainly interested nor is it too much to require that, in seeking to obtain such an office the candidate should employ trust-worthy agents and become responsible for their con-

duct. Besides it is not to be expected that any express directions to bribe, treat or unduly influence electors, or any distinct recognition of such acts if done—such as would be required in an ordinary inquiry before a Court of Law—could usually be brought home to candidates. *If the principles of agency, therefore, held by Courts of Law were not relaxed in the consideration of election petitions, the very object of the inquiry would be defeated.*

The principles of agency as applied to elections have been differently expressed by different judges. Some have likened it to the relation of master and servant; others to the employment of a man to steer and assist in the management of his yacht in a race; others to the relation of Sheriff and under-Sheriff."

In *Norwich* (1869), 1 O'M. & H. 10 *Martin B. said*, "Mr. Justice Blackburn, Mr. Justice Willes and myself unanimously came to the conclusion that any person authorised to canvass was an agent, and it does not signify whether he has been forbidden to bribe or not. If the candidate, had told him honestly 'Do not bribe'; I will not be responsible for it; if bribery was committed that bribery would affect him. The relation is more on the principle of master and servant than of principal and agent. It has been arrived at after full consideration, and it is a conclusion by which I am prepared to abide. A master is responsible for an act of negligence on the part of his servant, notwithstanding the direction he may have given him.

In *Westminster*, *ibid*, 95, the same judge said "The law is a stringent law, a harsh law, a hard law, it makes a man responsible who has directly forbidden a thing to be done when that thing is done by a subordinate agent. It is in point of fact making the relation between a candidate and his agent the relation of master and servant and not the relation of principal and agent. But I think I am justified when I am about to apply such a law, in requiring to be satisfied beyond all reasonable doubt that the act of bribery was done, and that unless the proof is strong and cogent:—I should say, very strong and very cogent—it

ought not to affect the seat of an honest and well intentioned man by the act of a third person.

In **Blackburn** (1896) 1 O' M. & H. 201, **Willes J.** said: Nothing can be clearer than the law; it has existed for a very considerable period, I believe certainly from as early as the time of James I. Some 265 years ago the general principle was laid down upon the first and the only occasion upon which the jurisdiction of the House of Commons over parliamentary petitions was seriously questioned (**Goodwin's case** 2 State Trials 91), and upon which occasion it was confirmed . . . that no matter how well the member may have conducted himself, in the election, no matter how clear his character may be from any imputation of corrupt practice in the matter, yet if an authorised agent of his, a person who has been set in motion by him to conduct the election or canvass votes in his behalf, is in the course of his agency guilty of corrupt practices, an election obtained under such circumstances cannot be maintained." See also **Westbury** (1868), 1 O'M. & H. 54; **Tamworth** (1869) *ibid* 81; **Coventry** (1869), *ibid.* 107.

In **Greenock** (1869) 1 O' M. & H. 251, **Lord Barcaple** in dealing with the question of agency, said "all agree that the relation is not the common law one of principal and agent but that the candidate may be responsible for the acts of one acting on his behalf, though the acts be beyond the scope of the authority given, or indeed in violation of express injunction. So far as regards the present case, I am of opinion that, to establish agency for which the candidate would be responsible, he must be proved by himself or his authorised agent to have employed the persons whose conduct is impugned to act on his behalf, or to have to some extent put himself in their hands, or to have made common cause with them for the purpose of promoting his election.

In **Wakefield** (1874) 2 O'M. & H. 103 the learned judge observed "A candidate is responsible generally, you may say, for the deeds of those who to his knowledge, for the purpose of promoting his election, canvass and do such other acts as may tend to promote his election, provided the can-

didate or his authorized agents have reasonable knowledge that those persons are so acting with that object.

In **Barnstaple** (1874) 2 O' M. & H. 105, **Mellor J.** said "I say that if an agent, although he may be no agent to the candidate, be employed by the agent of a candidate, he is a sort of subordinate agent; and if he is employed by persons who have authority to employ people to further the election of a particular individual and the course of canvassing makes use of a threat or a promise, such an act would make the candidate liable however innocent the candidate may be, or however careful the candidate may have been to avoid such conduct But the judge must be satisfied that the man, when he was acting, was acting as the agent for furthering" the election of a particular candidate.

In **Harwich** (1890) 3 O' M. & H. 69, **Lush J.** said "The relation between the candidate and a person whom he constitutes his agent is much more intimate than that which subsists between an ordinary principal and agent. The closest analogy is that of a Sheriff and his under-Sheriff and bailiff. For as regards the seat, the candidate is responsible for all misdeeds of his agent committed within the scope of his authority, although they were done against his express directions, and even in defiance of them." See also **Westbury** (1880) *ibid* 79; and **Dungannon** (1880) *ibid* 101.

In **Plymouth** (1880) 3 O'M. & H. 103, **Lush J.** said "It is clear law that if an agent of a candidate employs a sub-agent to negotiate with a voter for going to the poll, and the sub-agent commits an act of bribery in carrying out his commission the candidate is responsible as if the act was done by the agent himself.

Blackburn J. in **Bridgewater** (1869) 1 O'M. & H. 115 observed:—"It has never yet been distinctly and precisely defined what degree of evidence is required to establish such a relation between the candidate and the person guilty of corruption as should constitute agency. No one has been able to go further than to say, as to some cases enough has been established; as to others enough has not been established, to vacate the seat."

It is considered sufficient if the fact of agency be established by circumstances arising out of the general features of the case, the conduct or connection of the parties, the subsequent recognition of the acts of the supposed agent, or at least the absence of any disavowal of such acts. And it is usually proved by inference from a variety of facts, each of which, taken singly may not furnish any conclusive or even material evidence against the party accused, but the aggregate of which combine to establish, to the satisfaction of the Court, the connection between the candidate and the alleged agent **Bewdley** (1869) 1 O'M & H 17

Generally speaking, it may be said that canvassing by the authority, express or implied of the candidate or his agents—not merely accompanying him in his canvass is usually considered sufficient evidence of agency, See **Windsor** (1804) 2 Peck 194, **Penryn** (1819), C & D 61, **Ipswich** (1839) K & O 343, 345. Thus authority to canvass, whether the canvasser be paid for his services or not, has been held to be sufficient to establish agency. See **Norwich Supra Harwich Supra**; **Lichfield** (1869) 1 O'M & H 25 **Windsor** *ibid* 3

Employment in the business of election has an important bearing on the question of agency. But it is a question of degree. As observed by **Blackburn J.** in **Hereford** (1869) 1 O'M & H 195, as you go lower down, you require more distinctly to show that the act was done by a person whom the candidate would be responsible for. As you come higher up it is more as if the candidate had done it himself. In **Hastings** *ibid* 219, it was observed "If a small thing is done by the head agent, that would upset the election, and if, small things were done to a great extent by a subordinate person comparatively slight evidence would probably be sufficient to prove that he was an agent. But to make a single case upset the election it would require considerable evidence of agency. A mere messenger to carry cards from the polling booths to the committee rooms is not an agent. **Windsor** (1869) *ibid* 3. Nor a person similarly employed solely to get conveyances for voters, **Durham** 2 O'M & H

137. The butler and confidential servant of the candidate was not held to be an agent, though he had paid the watchman employed, and paid the flag bearers, the band and the persons hired to accompany the candidate to the hustings, etc. **Cockermouth** (1853), 2 P. R. & D. 170. In **Pontefract** (1893) Day's El. Cas. 131, a lad was engaged by an election agent as clerk in the only committee room in a polling district, and made out canvassing cards, obtained canvassers, and, wrote asking distant voters to vote, there being no committee and no person, exercising control over him, he was held to be an agent. In **Sunderland** (1896) 5 O'M. & H. 66. the editor and manager of a newspaper who composed and printed literature at the instance of the candidate's election agent was held to be the candidate's agent.

Payment of election bills or despositing money in the alleged agent's hands for that purpose was considered sufficient proof of agency: **Durham** (1804) 2 Peck 186; **Ipswich** (1785) 1 Lud 51, **Oxford** (1833) P. & K. 63; **Lancaster** (1848), 1 P. R. & D. 44. General activity in the election such as attending candidate's committee twenty times and on the polling day getting up voters who required particular attention was held sufficient to establish agency: **Durham** (1874) 2 O'M. & H. 136. Evidence of personal intimacy with the candidate such as living with him at the same house or inn, being seen arm-in-arm with him on his canvass, saying he had brought him down to contest the election etc. personally introducing voters to him or him to voters is important towards establishing agency: See 2nd **Horsham** (1848) 1 P. R. & D. 251; 2nd **Sligo** (1848), *ibid* 212; **Beverley** (1859) W. & Br. 79; **Mitchell** (1785) 1 Lud 83; **Penryn** (1819) C. & D. 61.

The relationship of candidate and agent in election law is much wider than that of principal and agent under the ordinary law, and Indian cases. such relationship is to be inferred from facts. Where two men intimately connected with the respondent one being his brother and the other a near relation and one of his polling agents and a person for whom he had appeared as a pleader in a number of cases were found to have acted at

the election for him, they were held to be agents within the meaning of the term as understood in election law: **Hissar District**, Jagat Narain, I. E. P. Vol. I, p. 35. The term agent has a wide significance in election law. No authorization or declaration in writing is necessary and agency has to be inferred from the circumstances and conduct of parties. One F was found to have canvassed for the respondent and to have led voters to and identified them at the polling booth. F was held to be an agent within the meaning of the election law: **Amritsar City**, Jagat Narain, Vol. II, p. 10.

In **Rohtak North West**, Jagat Narain I. E. P. Vol. II p. 159, the Commissioners observed "The law of agency in election cases has for a period of many years...been held to go much further than the ordinary law of principal and agent. Various attempted definitions have been given of it but none has been entirely successful. Each case in that respect must stand upon its own ground and it really comes to this that the Court must see what the relation of the person charged is from the facts of the case, and it is more a matter of inference from facts than anything that is capable of being expressed by positive law. The question whether a particular person is or is not, an agent of a candidate is to be decided on the facts of each case. General canvassing for a candidate or general activity at an election including, taking voters to the poll have been held to be sufficient to constitute agency.

In **Bareilly City**, Jagat Narain, I. E. P. Vol. II, p. 17. One B was proved to have canvassed for the respondent. B was held to be an agent. The relation of a candidate and an agent is more like that of master and servant, where the former is held responsible for the unauthorised or negligent acts of the latter. No appointment is necessary and the relationship of agency is to be inferred from the facts and circumstances of each case; **Sheikhpura**, Jagat Narain, I. E. P. Vol. II, p. 176.

In a recent Calcutta case, a petition under the Calcutta Municipal Act, **Nasiruddin Ahmed vs. Haji Mahomed Yusuf** (1935) I. L. R. 63 Cal. 825, Mr. Justice Mac Nair held, that a

man may become the agent of another either by actual employment or by recognition and acceptance and to establish agency it is, not necessary to show that the candidate himself knew of and accepted voluntary services, knowledge and acceptance by other persons in control are sufficient.

BRIBERY

Paragraph 1 of Part I of the First Schedule defines bribery as —

1 Bribery, that is to say, any gift, offer or promise by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, of any gratification to any person whomsoever, with the object, directly or indirectly, of inducing —

- (a) a person to stand or not to stand as, or to withdraw from being, a candidate at an election; or
- (b) an elector to vote or refrain from voting at an election or as a reward to—
 - (i) a person for having so stood or not stood, or for having withdrawn his candidature; or
 - (ii) an elector for having voted or refrained from voting

For the purpose of this paragraph 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 expense bona fide incurred at, or for the purpose of, any election and duly entered in the return of election expense prescribed by this Order.

Paragraph 3 of Part II of the First Schedule makes the following acts corrupt practices.

3 The receipt of, or agreement to receive, any gratification whether as a motive or a reward:—

- (a) by a person for standing or not standing as, or for withdrawing from being, a candidate; or
- (b) by any person whomsoever for himself or any other person for voting or refraining from voting, or for inducing or attempting to induce any elector to vote or refrain from voting or any candidate to withdraw his candidature.

For the purpose of this paragraph the term "gratification" has the same meaning as it has for the purposes of paragraph one of Part I of this Schedule.

Under Section 171 B of the Indian Penal Code

(1) Whoever—

- (i) gives gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such electoral right; or
- (ii) accepts either for himself or any other person any gratification for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

Commits the offence of bribery.

Provided that a declaration of public policy or a promise of public action shall not be an offence under this Section.

(2) A person who offers, or agrees to give, or offers or attempts to procure a gratification shall be deemed to give gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

Under Section 171 E—

Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both.

Provided that bribery by treating shall be punished with fine only

"Electoral right" is defined as the right of a person to stand or not to stand as, or to withdraw from being a candidate or to vote or refrain from voting at an election. In England bribery was first defined in 17 and 18 Vict C 102 in four clauses of Section 2 which were re-enacted in Section 3 of the Corrupt and Illegal Practices Prevention Act, 1883. The Indian definition is an ingenious attempt to summarise the somewhat cumbrous definition to be found in the Corrupt and Illegal Practices Prevention Act of 1883.

The term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money but includes all forms of entertainments which are included in the term treating such as refreshments, free shows etc and also all forms of employment for reward. The payment of bona fide expenses incurred at or for the purpose of the election and duly entered in the candidate's return of election expenses is expressly excluded. Mr Hammond in "The Indian Candidate and Returning Officer" at p 131 says —

"A common form of bribery in England was stopped by Section 17 of the Corrupt and Illegal Practices Prevention Act, 1883

"No person shall, for the purpose of promoting or procuring the election of a candidate at any election be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except for any purpose or capacities mentioned in the first or second parts of the First Schedule to this Act"

The Schedule referred to, limits the establishment an election agent may entertain. Previously the employment of voters for payment at an election with the object of in-

fluencing their votes was common. In the absence of any such restriction like that quoted above or any limit on expenditure it appears quite possible that attempts may be made in India to win votes by 'colourable' employment i.e. by hiring a large number of persons ostensibly to work for the candidate, but actually to vote for him. Hence the word bona fide in the proviso. The comparison of the number of voters employed upon election work with the number of the electorate to be polled may be an important consideration in determining whether the employment was colourable."

"Treating" is a form of bribery. A short definition of treating is to be found in *King's Lynn* (1911); 6 O'M. & H. 179, a very instructive case, as 'the corrupt giving of meat, drink or entertainment to persons in order to influence their votes' or more bluntly put as 'getting at the voters through their mouths and their stomachs. Treating on a large scale like general bribery will invalidate an election on a petition by the officer specially appointed for the purpose of presenting a petition on the ground that the election has not been a free election by reason of the large number of cases of bribery committed in connection with the election. Mr. Hammond's remark on p. 133 of "Indian Candidate and Returning Officer" are very instructive. He says:—

"To the Indian candidate, with traditions of Eastern hospitality behind him, it may seem a shameful thing that he may not give a glass of sherbet to an elector who has come a long distance through the heat of the day to record his vote. This, is only one of the minor discomforts accompanying the adjustment of Eastern ideas to a system evolved from conditions prevailing in the West. It may be said that the privilege of the franchise carries with it certain necessary limitations to hospitality. What these are may best be gathered from some of the reported cases. It must be remembered, however, that the English definition in the Corrupt and Illegal Practices Prevention Act, Section 1 also lays stress on the corrupt intention of either the donor or recipient.

It has been often said that 'One man may steal a horse while, another may not even look over the hedge.' Such disparity of treatment is also to be found in the laws regarding elections in England as the following contrast will show.

At a certain constituency in Cornwall some years ago there arrived a stranger who visited the local curiosity shop, and made extensive purchases to the value of over £100. 'I will' he said come back at four o'clock tomorrow afternoon and pay you for these, if you place them all on one side of your shop windows with a notice that these goods were all purchased today by Mr. H. who is taking delivery at 4 p.m. At that hour a crowd had collected to see the purchaser, and Mr. H. addressing them said that if he become a resident in that town, he would do the same by every shopkeeper in the town who had good value to offer for money. Then followed the present of a park and the redemption, by paying the capitalized value, of a local tax of no great amount but the collection of which was resented.

A few months passed and the generous stranger became a candidate and was in due course triumphantly elected. Nor was his return contested by petition.

At a neighbouring constituency the son of a peer was to become a candidate. His mother celebrated the auspicious event by lending the grounds for a garden party to which many persons were invited without regard to their political opinions. Tea and refreshments on a lavish scale, but no intoxicants were provided and political speeches were made by the candidate, his father and his election agent. It was held that the entertainment was really provided by the agent though nominally by a political association. The candidate's father paid the bill amounting to £170—The subsequent election was avoided on petition on the ground of 'treating' by the election agent, and the candidate, who had been returned, was unseated."

O'Malley & Hardcastle's **Reports of Election Petitions** contain numerous cases of treating which would give the candidate and the election agent an idea as to what they should avoid.

The offer of a bribe without acceptance is sufficient to unseat the member on whose behalf it was made and to subject him and his agent to a penalty, **Coventry** (1868) 1 O'M & H 107 In the **Aylesbury** case (1859) W & Br 16 the Committee reported that a voter was bribed by the offer of two guineas for cart hire by an agent of the sitting member and avoided the election In **Watford** (1870) 2 O'M & H 25, an offer to vacate a seat on a Town Council in favour of a voter if he would vote for the respondent was held to be bribery Even if the voter be in fact disqualified the offer of a bribe to him will unseat a candidate It is sufficient if the voter be *prima facie* entitled **Guildford** (1869), 1 O'M & H 14 But stronger evidence is required where the bribery consists of offers or proposals only **Cheltenham** (1869), 1 O'M. & H 64, **Hereford** (1869) *ibid* 195 **Mallow** (1870), 2 O'M & H 22, **Carrick Fergus** (1880) 3 O'M & H 92 A promise to give refreshments to induce a voter to vote or to refrain from voting is bribery; **Bodmin** (1869) 1 O'M & H 124 **Montgomery** (1892) 4 O'M. & H 69 So also promises of situation **Plymouth** 2 P R & D 238, and **Lichfield** (1869) 1 O'M & H 27, 28 A promise to endeavour to procure is to be put on the same footing In the **Plymouth** case *supra* the committee reported (*Inter alia*) that an elector had been bribed by a promise on the part of the sitting member to use his interest to obtain for him a situation in the Excise (*Vide Rogers on Elections* 20th Ed pp 269—270)

Loans of money to a voter or a person likely to influence him are placed on the same footing as regards the lenders, as absolute gifts, **Lime Regis** (1842) B and Aust 454 and **Rye** (1853), 2 P R & D 115 Payment of rates for the purpose of enabling voter to be registered amounts to bribery **Worcester** (1819) C & D 173, **Bayutun vs Cattle** (1837) 1 M & R 264, **R. V. Bridgenorth** (1839) 10 A & E 66 (See Section 49 of 30 & 31 Vict Ch 102) In the **Liverpool** case (1853), 2 P R & D 248, decided under 5 and 6 Vict Ch 102 S 20, small sums of five and four shillings were paid to several voters under the name of "the day's pay" and as "compensation for loss of time" and the committee

held such payments to be corrupt, though the sums were not larger than the daily earnings of such voters; nor was any evidence given to show that such payments had been the primary motive in deciding their votes. But it appears that the disposition of the polling places was such that every voter might have polled without any interruption of his employment as to occasion the loss of wages, and without any necessity for refreshment.

Charity may amount to bribery. The giving of subscriptions to charity is not bribery unless excessive as in the **Stafford** case (1869) 1 O'M. & H. 230, where a candidate, having previously been in the habit of spending £300, at Christmas, at the X'mas before the election suddenly increased it to £720. The question when charity or seeming charity becomes corrupt is one of great difficulty. **Rogers on Elections** 20th Ed. at pages 283-290 deals with all the English cases on the subject which are very instructive.

In **Windsor** (1874), 2 O'M. & H. it was held that the distribution of £100 by the respondent among his tenants some voters and some not; which was spent in coal, beef and tea long before the election was not bribery, although the respondent admitted that when he had made the gift he had the election to a certain extent in view and **Bramwell B.** said: "It is certain that the coming election must have been present to his mind when he gave away these things . . . He is not to refrain from doing that which he might legitimately have done on account of the existence of this motive, which by itself would have been an illegitimate motive. If the respondent had not been an intending candidate for the borough, and yet had done as he has done in respect of these gifts, there would have been nothing illegal in what he did, and the fact that he did intend to represent Windsor and thought good would be done to him and that he would gain popularity by this does not make that corrupt which otherwise would not be corrupt at all."

In **Stroud** (1874) 2 O'M. & H. 184, the same learned judge observed "The Legislature intended to prohibit acts done with the specific object of influencing the mind of the

individual voter to whom they had relation by the particular temptation held out to him, but it did not intend to prevent an act being done to a person, kind and good in itself, merely because it had a tendency to make that person favourable to the person doing it."

In **Salisbury** (1883), 4 O'M. & H. 28, the respondent within a very short period after the election distributed £100 to be spent in coals and blankets, and **Pollock B.**, after citing the opinion of **Bramwell B.**, in **Windsor Supra** said "If it were necessary to consider this as a new matter I am not quite sure that I should have been prepared to go so far as **Lord Bramwell** went in that proposition. I should rather prefer myself to say we must take the whole of the evidence into account, and consider whether the governing principle in the mind of man who gave away such gifts was, that he was doing something with a view to corrupt the voters, or whether he was doing something which was a mere act of kindness or charity."

In **Plymouth** (1880) 3 O'M. & H. 109, **Lush J.** said "It is obvious that what are called charitable gifts may be nothing more than a specious and subtle form of bribery, a pretext adopted to veil the corrupt purpose of gaining or securing the votes of the recipient. A motive originally pure cannot become corrupt, by reason of a misuse of what was originally intended to be a benefit. Under the circumstances we are asked to find that the alleged sympathy of the respondent with the poor was a hypocritical sham a mere pretence for veiling his real motive, and that motive was the corrupt one of purchasing popularity, and thus influencing future elections in his favour. We unhesitatingly decline to draw any such inference . . . one argument was used which surprised us; it was that the respondent had no property in the borough of Plymouth, and no other connection with the borough than that of being its representative in Parliament, as if it is a novelty and *prima facie* a crime for a member to bestow gifts upon the borough he represents. Is not this what every member is expected to do and a great many members constantly do?"

In this case it was proved that the respondent ever since he had been first returned as a member was in the habit of sending sums of money amounting to £250 or £500 to be distributed among the poor on occasions such as the marriage of one of his children, and that in 1874 on another of such occasion he sent a large quantity of mattresses, bedding and clothing for that purpose, which were called by the name of "Bates' blankets," and wrote to the Mayor saying that it was his wish that they should be fairly divided among the deserving poor without reference to creed or politics and that a similar distribution was made in 1876. The election took place in 1880 and the Court refused to avoid the election.

In *East Nottingham* (1911) 6 O'M. & H. 300, **Channel J.** after referring to the *Windsor*, *Stroud*, *Salisbury* and *St. George* cases *Supra* said "Now upon those cases it appears to be clear that we must take it that the proposition of **Mr. Baron Bramwell** in the *Windsor* case is qualified but it is qualified to this extent, and to this extent only, that one has to look at what we think is the governing principle in the mind of the man; that is to say that if we think that this was real charity and that incidentally, as it were, he also saw and was willing and had the intention of taking advantage of the fact that there was popularity to be gained by it, and therefore there were votes to be gained by it, that if the real governing thing in his mind was charity, that would not be illegitimate. On the other hand if the real thing was to get popularity, to debauch the constituency . . . and do it under the name and pretence of charity, why then of course, that would be bribery of a very serious kind."

One R, a man of considerable influence, was prosecuted by the Municipal Board of which J, an Indian cases. agent of the respondent was the Chairman. J agreed to the case being withdrawn and R, began to work for the respondent, and even acted as his polling agent and identified voters on his behalf. The withdrawal of the case was held to be in the nature of reward to R for

voting and procuring votes for the respondent, and therefore an act of bribery. The learned Commissioners remarked that direct evidence of any connection between the withdrawal of the case against R and the latter voting, canvassing and acting for the respondent, would naturally not be forthcoming: **Bareilly City**, Jagat Narain I. E. P. Vol. II p. 17.

Exaggerated benevolence with a view to secure a political purpose of obtaining votes amount to bribery but acts of benevolence which are innocent in themselves cannot be treated as corrupt because political capital has been subsequently made out of them: **Saran North**, Jagat Narain I. E. P. Vol. II p. 173.

G, a voter had always opposed the respondent in former elections. G was himself a candidate for a ward in the Municipal Board of which the respondent was the Chairman. G stood for a seat in the Municipal Board from one ward several times but was always defeated, getting second place. A resolution giving an additional member to the ward was carried by the respondent at a meeting of the Board. G worked for the respondent at the election and acted as his polling agent. Bribery was held to have been proved from this. One K wanted the removal of a latrine from a certain place the removal being opposed by the Health Officer and public generally; the respondent who was the Chairman of Municipal Board got a resolution passed by the Board authorising him to order the removal if necessary. He did in fact order the removal. K acted as his polling agent and voted for him. Held that bribery was proved in the case of K. One G intended to be a candidate along with the respondent. The respondent asked G not to stand and made several other persons to do the same. G retired and worked for the respondent. After the election a brother of G was appointed on a post under the respondent specially created for him. Held, that bribery was proved in the case of G. In cases of charity the criterion is the intention of the donor. If the intention appears to be to influence the voters, then the act though obviously for a charitable purpose is

bribery in the eye of law. **Agra City**; Jagat Narain, I. E. P. Vol. III, p. 5.

It is very difficult to ascertain where charity ends and bribery begins. Charitable gifts may be only subtle forms of bribery, a pretext adopted to veil the corrupt practice of gaining or securing votes of the recipients. But a charitable gift, however injudicious it may be is harmless in the eye of law, whatever its effect may be and certainly is not bribery. The whole of the evidence should be taken into consideration to see whether the governing principle in the mind of the man who makes such gifts was that he was doing something with a view to corrupt the voters, or whether he was doing something which was a mere act of kindness or charity; **Farrukhabad District**, Jagat Narain, I. E. P. Vol. III, p. 22.

Treating means "getting at the voters through their mouths and stomachs," but it means much more. The word "entertainment" used in the definition means that treating cannot only be through the mouth but through other senses also, consequently, a "Navtanki" show was held to be treating; **Farrukhabad Supra**. Treating being a form of bribery cannot be established unless intention to influence voting is proved. Conduct of the parties concerned is a good index of such intention; **Habibganj**, Jagat Narain, I. E. P. Vol. II, p. 85. Where about 80 voters were fed with "Pulao" on the day of the election by M a near relation of the respondent, who was held to be an agent, it was held that this feeding amounted to the corrupt practice of treating. Intention has in cases of treating to be judged from the surrounding circumstances. The question whether or not there is a corrupt giving of meat and drink, like every other question of intention, depends upon what was done and to a great extent the extent to which it was done the manner and the way; **Kangra Cum Gurdaspur**, Jagat Narain, I. E. P. Vol. II, p. 103. A person must be considered to intend the natural consequences of his acts; where therefore 100 voters were fed on the polling day it was held that this was done to influence their votes; **South Balore**, Jagat Narain, I. E. P. Vol. III, p. 93.

A bribe given to a candidate to withdraw from the contest even after the date upto which he can withdraw without forfeiting his deposit, would constitute a corrupt practice, as the purity of elections must be preserved right up to the end, **Bombay City South, Jagat Naram, I E P Vol IV, p 40**

UNDUE INFLUENCE

Paragraph 2 of Part I of the First Schedule to the Corrupt Practices Order deals with the corrupt practice of undue influence in following terms

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

Provided that—

- (a) without prejudice to the generality of the provisions of this paragraph, any such person as is referred to therein who—
 - (i) threatens any candidate or elector, or any person in whom a candidate or elector is interested, with any injury of any kind, or
 - (ii) induces or attempts to induce a candidate or elector to believe that he, or any person in whom he is interested will become or will be rendered an object of divine displeasure or of spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of that candidate or elector within the meaning of this paragraph,
- (b) a declaration of public policy, or a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral right shall not be deemed to be interference within the meaning of this paragraph.

Section 171-C of the Indian Penal Code defines the offence of undue influence as —

(1) whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election

(2) without prejudice to the generality of the provisions of sub-section (1) whoever—

(a) threatens any candidate or voter or any person in whom the candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or of spiritual censure

Shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter within the meaning of sub-section (1)

(3) A declaration of public policy or a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral right shall not be deemed to be interference within the meaning of this Section

Section 171-F prescribes the punishment for the offence of undue influence at an election

“Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

Both in the Corrupt Practices Order and in the Indian Penal Code

“Electoral right” means the right of a person to stand or not to stand as, or to withdraw from being a candidate, or to vote or refrain from voting at an election.

The present English definition of undue influence at elections is to be found in Section 2 of the Corrupt and Illegal Practices Act of 1883.

"Every person who shall, directly or indirectly by himself or any other person on his behalf, make use of or threaten to make use of any force, violence or restraint or inflict or threaten to inflict by himself or by any other person, any temporal or spiritual injury, damage harm or loss upon or against any person in order to induce or compel such person to vote or to refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress or any fraudulent device or contrivance impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce or prevail upon any elector either to give or refrain from giving his vote at any election, shall be guilty of undue influence."

There appears to be some difference between the two definitions. In England the manner of possible interference is indicated; in India any interference, provided it is active, may amount to undue influence. In England it was not contemplated that any candidate might wish to withdraw and be restrained from doing so. In India it is thought desirable to refer specifically to such a contingency. Also in India the extent of influence is regarded as extending to a third party in whom the person threatened is interested. See Hammond's *"The Indian Candidate and Returning Officer"*, pp. 138—139.

Undue influence exercised on a large scale—So as to make the election not a free election will be avoided on a petition presented under paragraph 3 of Part III of the Corrupt Practice Order. Physical violence or rioting on a large scale are not the only grounds for setting aside an election on the ground of general intimidation. Spiritual threats of divine displeasure, widely circulated, would, it is submitted, have the same effect, if the threats were designed to interfere with the electoral right. Intimidation need not be direct or openly practised.

Except in the case of general undue influence, undue influence in order to avoid the election of a candidate must be exercised by the candidate or his agent or some other person with the connivance of the candidate or his agent.

The use of open force or violence or threat thereof.

In **Stafford** (1869) 1 O' M. & H. 228 it was proved that an agent of the sitting member incited the mob to beat and molest people on the day of the election, so as to terrify a number of voters and prevent them coming to vote. The election was avoided. Where a person in order to prevent another from voting or to force him to vote, either beats him or threatens injury to his person, or his house, or the like, that is undue influence; **North Norfolk** (1869) 1 O' M. & H. 240. In **East Kerry** (1910) 6 O' M. & H. 66, the evidence showed that an agent of the respondent with thirty boys and young men, some with sticks, perambulated the road in front of one of the polling stations and obstructed voters, and the agent said if a voter was not going to vote for the right man he would not be accountable for his life, and the voters were in fact intimidated; the election was avoided. In **North Louth** (1911) 6 O' M. & H. 140, where an agent of the respondent on the polling day told the sister of a voter to keep her brother at home, and remarked about the consequences of it, the Court found the offence proved.

The infliction of any temporal injury, damage, harm or loss or by threat thereof.

In **West Kerry** (1900) 6 O' M. & H. 80, an agent of the respondent asked a customer to sign the respondent's nomination paper, and on his refusal said that he would remember it for 100 years, and the same night sent in a bill for an account of over £38 with a letter stating that he need not expect any time, the Court avoided the election. In **North Norfolk** (1869) 1 O' M. & H. 241; **Blackburn J.** observed. "The landlord has a perfect right to choose his tenant and to turn him out, but if the landlord threatens to inflict or does inflict that turning out of his tenant for his vote that is

inflicting harm or loss within the meaning of the Act. In **Westbury** (1869) 1 O' M. & H. 50, where it was proved that an agent of the sitting member, who was a large employer of labour just extracted a promise from his men not to vote at all, and subsequently threatened that if they voted for L. they should have no further employment from him, the election was avoided, although some of the men so threatened left of their own accord previously to the election. In **Wareham** (1857) W. & D. 90, the vote of a voter unduly influenced by threat of the loss of employment was struck off on a scrutiny. So also in **Oldham** (1869) 1 O' M. & H. 161. Threat of withdrawal of custom was held to be undue influence in **R. vs. Barnwell** (1857), 5 W. R. 557. Similarly in **Northallerton** (1869) 1 O' M. & H. 168, it was held that a threat to a Baptist minister to give up sitting in his meeting house, if he voted as he wished, amounted to intimidation. The learned judge remarked a mere attempt on the part of an agent to intimidate a voter, even if unsuccessful, would avoid an election.

Infliction of Spiritual injury, damage harm or loss or threat thereof.

In **Longford** (1870) 2 O' M. & H. 16, **Fitzgerald J.**, said: "In considering what I call here undue clerical influence it is not my intention in any way to detract from, the proper influence which a clergyman has, or by a single word to lessen its legitimate exercise..... the Catholic priest has, and he ought to have, great influence. His position, his sacred character, etc., ensure it to him..... In the proper exercise of that influence on the electors the priest may counsel, advise, recommend, entreat and point out the true line of moral duty and explain why one candidate should be preferred to another, and may, if he think fit, throw the whole weight of his character into the scale, but he may not appeal to the fears or terrors or superstition of those he addresses. He must not hold out hopes of reward here or hereafter, and he must not use threats of temporal injury, or of, disadvantage or of punishment hereafter. In **Galway**, (1872), 2 O' M. & H. 57, **Keogh J.** said: If a single

elector, the most miserable freeman that crawls about this town, had been refused the rites of the churches in order to compel him to vote, or because he had voted or because a member of his family had voted in a particular way, I would have avoided this election without the slightest hesitation. See also *Limeric* (1869) 1 O' M. & H. 262, *Tipperary* (1870) 2 O' M. & H. 31.

The impeding, etc., the due exercise of the franchise, etc., by adunction, duress, or any fraudulent device or contrivance.

In *Cockermouth* (1853) 2 P. R. & D. 166, a voter was removed to the house of a relation. In *Lisburn* (1863) W. & Br. 227, voters were detained by armed men in a room several days before the election and subjected to undue influence and treating, to induce them to vote for the respondent. In *Litchfield* (1880) 3 O' M. & H. 136, two voters were abducted on the day of the election by an agent of the respondent. In *Gloucester* (1873) 2 O'M. & H. 60. It was proved that the sitting member's committee issued cards just like ballot papers, with mark opposite the name of the sitting member, and that it was stated on the cards that if any voter marked his ballot paper, otherwise than in the way in which the card was marked his vote would be invalidated. It was contended that this, was a fraudulent contrivance to "Catch" voters but **Blackburn J.** thought that the committee who issued the cards had no intention to mislead, although possibly in some cases the card might have had that effect, and refused to avoid the election. In *Down* (1880) 3 O'M. & H. 122, the agent of a candidate publicly stated on several occasions that he had discovered a plan by which he would be able to ascertain how each elector had voted, and that the Ballot Act was a farce. He also distributed in the constituency 10,000 copies of a newspaper containing an article to the effect that he had fully substantiated his statement. The Judges were divided in their opinion as to whether this was a "fraudulent device" and the election accordingly was not avoided. See also

Stepney (1886) 4 O'M. & H. 55 (vide **Roger's on Elections**, 20th Ed. pp. 330—340).

Undue influence includes any direct or indirect attempt

to interfere with the free exercise of a voter's electoral right but this cannot be taken to shut out legitimate canvassing. Spiritual undue influence is not restricted to inducing a person to believe that he will be object of divine displeasure or spiritual censure. **Ferozpur**, Jagat Narain, I. E. P. Vol. II, p. 80. Mere appeal to the religious prejudices of voters does not amount to undue influence, unless there is something to show that the voters would render themselves objects of divine displeasure or spiritual censure; **Kheri & Sitapore**, Jagat Narain, I. E. P. Vol. II, p. 108. It is not every influence that is corrupt within the meaning of electoral rules. Influence or persuasion can be validly exercised by one person over another. It is only when the element of compulsion comes in that the influence then becomes undue. In the case of undue influence the exercise of free will is taken away; **Farrukhabad District**, Jagat Narain, I. E. P. Vol. III, p. 22. "Pirs" in India have an extraordinary influence over their disciples, and if language of any manifesto is such as to rouse in the minds of voters an idea that they would be sinning if they disobeyed, it would amount to undue influence; **Dacca West, Rural Mahomedan**, Jagat Narain, I. E. P. Vol. III, p. 175. Where certain "Pirs" only expressed a wish that their followers might support the respondent without any threat or inducement, this was held not to amount to undue influence; **Lahore**, Jagat Narain, I. E. P. Vol. I, p. 43. Representation made to voters that respondent was set up by Mr. Gandhi, and they were to place their ballot papers in Mr. Gandhi's box, which was the green box of the respondent in the centre, while Mr. Gandhi was admittedly regarded as a Mahatma, were held to amount to undue influence and fraud; **North-east, Darbhanga**, Jagat Narain, I. E. P. Vol. I, p. 52.

PERSONATION AT ELECTIONS

Paragraph 3 of Part I of the First Schedule to the Corrupt Practices Order makes:

"The procuring or abetting or attempting to procure by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, the application by a person for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or by a person for a voting paper in his own name when, by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote," a corrupt practice.

Similarly under paragraph 2 of Part II of the First Schedule,

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

Section 171-D of the Indian Penal Code provides:—

"Whoever at an election applies for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures, or attempts to procure the voting by a person in any such way, commits the offence of personation at an election."

Section 171-F of the Indian Penal Code punishes the offence of personation at an election with imprisonment of either description for a term which may extend to one year or with fine or with both.

Though personation in India as will be seen later on, as regards the penalty ranks equally with bribery and undue influence there is this difference that general personation, unconnected with the candidate does not like general bribery or general undue influence invalidate the election.

Mr. Hammond in "**The Indian Candidate and the Returning Officer**" says:—

"There is reason to believe that partly owing to the careless preparation of the electoral rolls in municipalities this corrupt practice has been fairly common in municipal elections in India. It can only be defeated by a careful and accurate system of registration accompanied by real vigilance on the part of election agents, **not** of the presiding officer or the polling officers at the time of the ballot. These officers cannot effectively prevent much less detect personation. The description of the elector in the electoral roll should be accurate and contain details sufficient for purposes of identification. It is one of the primary duties of an election agent to see that the electors whose names have been enrolled are identifiable and have been correctly entered."

The conclusiveness of the electoral roll on the presiding officer has already been dealt with in a previous chapter, and the presiding officer cannot question the correctness of any entry in the roll. The only grounds on which a ballot paper can be withheld under the rules is if the elector does not answer in the manner prescribed the questions which may be put to a person applying for a ballot paper, under the rules. The candidate who wishes to see that unregistered persons do not vote for his opponent must take active steps in this behalf and not leave it to the presiding officer who may not be in a position to prevent or detect such corrupt practice.

To invalidate an election on the ground of personation, it is necessary to prove, either that the candidate or his agent or some other person with the connivance of the candidate or his agent has procured or abetted the personation, or that the personation being unconnected with the candidate has 'materially' affected the result of the election. The candidate should instruct his polling agents to take steps to prevent personation and to expose all attempts of personation and where the offender cannot be detected to make a note of any suspicious elector with a view to make subse-

quent inquiries in order to have any invalid votes struck off on a scrutiny.

The English definition of personation at an election is almost in the same terms as the Indian definition. The definition is wide enough to include the case of person who innocently applies for a ballot paper in the name of some other person or votes a second time because it contains no such words as "wilfully" or "corruptly." In the *Stepney* case (1886), 4 O'M. & H. 43. a voter registered in two divisions of the borough divided into divisions voted in both in the honest belief that he was entitled to do so. The question was *whether his first vote should be struck off* because he had been guilty of a corrupt practice. The Court held that personation had not been committed because there was no corrupt intention and that the first vote was good. Under the election rules in India both the votes would be void. The difference of opinion among the Indian election tribunals as to whether a corrupt motive is necessary to constitute a corrupt practice has already been pointed out. The majority of tribunals are of the view that such a corrupt motive is necessary. This is also the English view.

In *Hexham* (1892) *Day's El. Cas.* 68 and *Gloucester* (1873) 2 O'M. & H. 63, agents were proved to have endeavoured to get persons to vote who were not entitled to vote but were acquitted of aiding, and abetting as they did not know that such persons were not entitled to vote and *Cave J.* said in the former case, "persons might be guilty of aiding and abetting personation who corruptly induced a person to vote, although he was not guilty of personation because he did not know that he was not entitled to vote. But the vote of a person improperly given under any of the above circumstances may be struck off on a scrutiny whether he is guilty of personation or not. In *R. V. Fox* (1887), 16 Cox. C. C. 166, a person who was put on the register by the overseers in a name not his own and applied at an election for a ballot paper in that name was held not guilty of personation, because he did not apply for a ballot paper in the name of some other person or of a fictitious person.

In dealing with cases of personation, suspicion however strong cannot take the place of positive proof and before basing a decision on circumstantial evidence every reasonable hypothesis consistent with the innocence of the person charged must be excluded; *Sheikhpura*, Jagat Narain, I. E. P. Vol. II, p. 177.

It is the duty of polling agents to identify voters only in cases where they have personal knowledge. The fact that the agent believed in good faith a person to be a voter while he was not such a voter, or that there was genuine mistake on the part of the polling agent will not be good defence to a charge of personation at an election; *Jaunpore*, Jagat Narain, I. E. P. Vol. I, p. 37.

Procuring of personation by an agent is a corrupt practice and is sufficient to render the election void even though the candidate himself had no knowledge of it; *Amritsar City*, Jagat Narain, I. E. P. Vol. II, p. 10.

Under paragraph four of Part I of the Corrupt Practices Order "The removal of a voting paper from the polling station during the polling hours by any person with the connivance of the candidate or his agent" is a corrupt practice. During elections a great deal of traffic in votes goes on. Voting papers are brought out of the polling stations and sold to interested candidates. It is to prevent this, that the practice has been declared to be corrupt practice.

PUBLICATION OF FALSE STATEMENTS ABOUT CANDIDATES

Paragraph five of Part I of the First Schedule makes the following a corrupt practice.

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

In order to come within the scope of the paragraph the statement must be:—

- (1) a statement of fact
- (2) published by a candidate or his agent or some other person with the connivance of the candidate or his agent
- (3) false
- (4) believed to be false or not believed to be true by the person publishing it.
- (5) in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, and
- (6) reasonably calculated to prejudice the prospects of the candidate's election.

The mere statement of a defamatory opinion unless coupled with the grounds upon which it is formed, is not a statement of fact. But only false statements of fact as to the personal character or conduct of a candidate or about his candidature or withdrawal from candidature come within the paragraph. **Rogers on Elections** has the following:—

"It may have been intended to except false statements concerning a candidate qua politician or official. But in these capacities his personal as well as his political or official character may be involved, and if so, the section applies, although in many cases it may be difficult to decide whether the false statement had reference to his personal character and conduct or otherwise."

No question of malice arises as in cases of libel, but it is essential that the statement should have been made or published for the purpose of affecting the return of the candidate. In England the words of the section are wide enough to include beneficial as well as prejudicial statements but in India the paragraph applies only to statements calculated to prejudice the prospects of the candidate's

election. **Ferozpore**, Jagat Narain, I. E. P. Vol. II, p. 80.
Farrukhabad District, Jagat Narain, I. E. P. Vol. III, p. 22.

In **Bayley vs. Edmund and others** (1875), 11 Times L. R. 537, the defendants had distributed a leaflet among the electors, stating that the firm of which the plaintiff was a member had locked out their miners for six weeks, until the price of coal reached 22s. or 23s. at the pitmouth and that then the plaintiff's conscience would not allow them to starve the poor miners any more. The Court of appeal held that the statements were derogatory to the personal character of the plaintiff and came within the section.

Pollock B. in the course of his judgment in **Sunderland** (1896) 5 O'M. & H. 53, gave two illustrations of false statements of fact within the meaning of the section arising out of innocent acts, viz., the statement that a candidate in a county constituency had shot a fox and that a candidate, who was a temperance man, had drunk a glass of sherry. The learned judge doubted whether such expression as "Paying wretched wages," "sheltering under a radical shuffle," etc., would come within the section.

In **Silver vs. Benn** (1896), 12 T. L. R. 199, the editor of a newspaper was fined for publishing of a candidate that there was a very dark passage in his life and a skeleton in his cupboard which may be exposed. It was held that these words imputed something discreditable and were a breach of the Statute.

In **St. George's** (1896), 5 O'M. & H. 104, the statement was that the respondent had been guilty of lying, cowardice and bribery and giving alleged instances. In **Monmouth**, 5 O'M. & H. 171, the statements were that the candidate lived on the profits of cheap foreign labour and depended for his income on "sweated" foreign labour, and supplied reliable information and smuggled ammunition to the enemy. In **Healy vs. O'shee** (1910), 6 O'M. & H., the statement contained in a letter was that the plaintiff, a barrister had held brief for landlords to resist the restoration of evicted tenants. In **Keighley vs. Gordon** (1910), 6 O'M. &

H. a leaflet imputed to the plaintiff that funds were received or utilised for the purpose of disenfranchising Protestant voters at revision. In *North Louth* (1911), 6 O'M. & H. 122, 154, 167, a letter was circulated by the election agent of the respondent in a newspaper in answer to an attack made in a speech by the opposing candidate, headed "Mr. H. (the candidate in question) and place hunters", in which he was described as absolutely fed with British gold, and it was stated that many of his relations had become or were about to become barristers, doctors, engineers, attorneys and politicians, and no doubt the list would soon be extended. The statements in all the above cases were held to come within the Act.

In *Ellis vs. The National Union of Conservative and Constitutional Associations and Others*, 109 Law Times Newspaper 493, where a poster was published that the Radical members of the House of Commons were in correspondence with the enemy and setting out a letter from the plaintiff to a lady at the Cape asking for information as to suppression of telegrams, opening of letters, arbitrary arrests, etc., it was held not to come within the Act on the ground that it did not state that the plaintiff was in correspondence with the Boers, and that any false statements were of opinion only and not of fact. See *Cockermouth* (1901), 5 O'M. & H. 158, *Attercliff* (1906) 5 O'M. & H. 218, for statements which were held not come within the Act.

The statement that a particular person voted or refrained from voting in a particular manner is not a statement in relation to the personal conduct or character of the person. *Bareilly City*, Jagat Narain, I. E. P. Vol. II, p. 17; *Buludshahr District* *ibid* p. 55. And in *Bareilly District* *ibid*, p. 27. the statement that the respondent voted in the Council in favour of Cow-slaughter was held not to relate to the personal conduct or character of the candidate as distinguished from his political position, reputation or action.

To come within the paragraph the statements should be direct statements of fact and not mere inferences from

facts, however, unjustifiable the inferences may be. **Dinaj-pore**, Jagat Narain, I. E. P. Vol. II, p. 75.

In **Bulundshahr District**, Jagat Narain, I. E. P. Vol. IV, p. 52, a leaflet published on behalf of a secretary of a committee which supported the respondent called the petitioner "**Khudgarz**" and "**Deshdrohi**", but the words referred to his conduct in seeking election against the wishes of the Congress, and also stated that the petitioner while a member of the Council had voted for high salaries to be reserved for Europeans; it was held that the statements referred only to the petitioner's actions in his public capacity, and did not amount to a corrupt practice.

In **Hanthawady**, Jagat Narain, Vol. II, p. 94, the Commissioners doubted whether defamation merely by innuendo could come within the paragraph. In **Saran South**, *ibid*, p. 173, the Commissioner doubted whether the imputation of legitimate ambition to candidate could be reasonably regarded as prejudicing the prospects of his election.

Under **Section S 171-G** of the Indian Penal Code "Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine."

Under **paragraph 6 of Part I of the First Schedule** "The incurring or authorising by a candidate or his agent of expenditure or the employment of any person by a candidate or his agent in contravention of this Order or of any Act of Provincial Legislature or Rules" is made a corrupt practice. This is to hit at unlimited expenditure on election. No maximum has yet been fixed with regard to election expenses as in England except in Madras and the United Provinces. There is no doubt that such a maximum will be fixed as soon as statistics are available. When such a maximum will have been fixed either by an Act of the Provincial Legislature or under the rules, exceeding the

maximum will amount to a corrupt practice within the meaning of this paragraph. The rules now prescribe that no person who is disqualified under the Corrupt Practices Order can be employed as an agent in connection with an election. The employment of such a person would now amount to a corrupt practice under this paragraph.

Paragraph 1 of Part II of the Schedule makes any act specified in **Part I of the Schedule**, when done by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent, a corrupt practice.

Paragraphs 2 and 3 of Part II have already been dealt under personation and bribery.

Under **paragraph 4 of Part II**, "The making of any return of election expenses which is false in any material particular or the making of a declaration verifying any such return" is a corrupt practice. Under the old rules, the making of a false return of election expenses was not a corrupt practice and was itself not sufficient to avoid an election, but subjected both the candidate and his election agent to a disqualification and consequent vacation of seat: **Amritsar City, Jagat Narain, I. E. P. Vol. II, p. 10.**

Other Corrupt Practices

Part III of the First Schedule specifies three other corrupt practices.

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

Under **Section 171-H of the Indian Penal Code**, "Whoever without general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement,

circular, or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate shall be punished with fine which may extend to five hundred rupees: Provided that any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expense with the authority of the candidate.

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

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

Two other practices which used to be corrupt practices under the old rules are omitted from the list of corrupt practices specified in the **First Schedule of the Corrupt Practices Order**. They are (1) payment for conveyance of an elector to or from any place for the recording of his vote and (2) hiring or use of public conveyances for the purposes of the election. In England these are made illegal practices (*Vide Rogers on Elections*, 20th Ed. pp. 360, 380).

CHAPTER XI

'DISQUALIFICATION DUE TO CORRUPT PRACTICES AND ELECTION OFFENCES

Part IV and the Second Schedule to the Corrupt Practices Order deal with disqualifications consequent on certain corrupt practices and offences committed at elections. The following are the provisions of Part IV and the Second Schedule to the Corrupt Practices Order.

PART IV

Disqualifications

1. The offences and practices specified, in relation to certain elections, in the Second Schedule to this Order shall, for the periods respectively specified in relation to those offences and practices in that Schedule, entail *disqualification for membership of any Provincial Legislature.*

2. If any person—

(a) is, in connection with an election to a Provincial Legislature, the Coorg Legislative Council or a local body in British India, convicted of an offence under Chapter IX-A of the Indian Penal Code punishable with imprisonment for a term exceeding six months; or

(b) is after an inquiry under Part III of this Order reported as guilty of any such corrupt practice as is specified in Part I or Part II of the First Schedule to this Order,

he shall, for a period of six years from the date of the conviction or report, be disqualified for voting at any election.

3. If, in relation to any election (other than election by the members of a Provincial Legislative Assembly to fill seats in the Provincial Legislative Council), any person is after such an inquiry as aforesaid reported as guilty of any such corrupt practice as is specified in Part III of the said Schedule he shall be disqualified for voting at any election for a period of four years from the date of the report.

4. When under either of the two last preceding paragraphs a person is, in connection with an election in a commerce and industry, mining or planting constituency, disqualified for voting for any period, then, if that person was at the date of the election either—

(a) included in the electoral roll for the constituency as the nominee of a firm, Hindu joint family or corporation entitled to nominate persons for inclusion therein, or

(b) a member of any such firm or Hindu joint family, or a director, managing agent or manager of any such corporation, or a person authorised to sign the name of any such firm, Hindu joint family or corporation in the ordinary course of its business,

the firm, family or corporation shall, for the like period, be disqualified from nominating persons for inclusion in the electoral roll of any commerce and industry, mining or planting constituency.

5. If default is made in making the return of the election expenses of any person who has been nominated as a candidate at an election to which Part II of this Order applies, or if such a return is found, either by Commissioners holding an inquiry into the election or by any court in a judicial proceeding, to be false in any material particular, the candidate and his election agent shall be disqualified

for voting at any election for a period of five years from the date by which a return was required to be lodged.

6. Every person shall be disqualified for voting at any election who is for the time being disqualified for voting at elections to the Federal Legislature by reason of misconduct in connection with an election to that Legislature, or by reason of a default in making, or of the falsity of, any return of election expenses at any election to that Legislature.

References in this paragraph to the Federal Legislature shall until the establishment of the Federation be construed as references to the Indian Legislature.

7. Any person who is for the time being disqualified under the foregoing provisions of this Part of this Order for being a member of a Provincial Legislature, or for voting at elections, shall, so long as the disqualification exists, also be disqualified for being an election agent at any election.

8. Any disqualification under paragraphs two to five of this Part of this Order arising in connection with an election to the Legislature of, or to a local body in, a Province may be removed by the Governor of that Province in his discretion, and any other disqualification under the said paragraph two may be removed, before the establishment of the Federation, by the Governor-General in Council, and, after the establishment of the Federation, by the Governor-General in his discretion.

9. In paragraph one of this Part of this Order, "elections" includes all the elections referred to in the Second Schedule to this Order, but save as aforesaid, the references in this Part of this Order to elections, other than express references to elections of any other kind, shall be construed as references to elections as defined in paragraph three of Part I of this Order.

SECOND SCHEDULE

**Disqualifications for Membership of Provincial
Legislatures**

Elections	Offence or Corrupt Practice	Period of Disqualification
Elections to which Chapter IXa of the Indian Penal Code applies.	Offences under Chapter IXa of the Indian Penal Code punishable with imprisonment for a term exceeding six months.	Six years from the date of conviction.
Elections as defined in paragraph three of Part I of this Order.	Corrupt practices specified in Parts I and II of the First Schedule to this Order.	Six years from the date of the report of the tribunal holding the inquiry.
Election as defined in paragraph three of Part I of this Order, other than elections by the members of a Provincial Legislative Assembly to fill seats in the Provincial Legislative Council.	Corrupt practices specified in Part III of the First Schedule to this Order.	Four years from the date of the report of the tribunal holding the enquiry.
Elections to Federal Legislature.	Corrupt practices as defined in any Order under the Act relating to such elections.	The period for which the corrupt practice entails disqualification for membership of Federal Legislature.
Elections under the Government of India Act.	Any corrupt practice within the meaning of the Electoral Rules under the Government of India Act relating to the election in question.	Such period, commencing on the date of the report of the Commissioners under the Electoral Rules relating to the election in question, as is the maximum period of disqualification specified in those Rules for inclusion in electoral rolls thereunder.

Besides these disqualifications as to voting at elections or for the membership for Provincial Legislatures, **Section 13 of the Election Offences and Inquiries Act 39 of 1920**, prescribes further disqualifications.

Section 13 provides:—

Any person who has been convicted of an offence under Section 171-E or 171-F of the Indian Penal Code or has been disqualified from exercising any electoral right, for a period of not less than five years, on account of malpractices in connection with an election shall be disqualified for five years from the date of such conviction or disqualification from:—

- (a) being appointed to, or acting in, any judicial office;
- (b) being elected to any office of any local authority when the appointment to such office is by election, or holding or exercising any such office to which no salary is attached;
- (c) being elected or sitting or voting as member of any local authority; or
- (d) *being appointed or acting as trustee of a public trust.*

Provided that the Governor-General in the case of an election to the Council of State or Legislative Assembly, and the Governor or the Lieutenant Governor in the case of election to his Legislative Council, may exempt any such person from such disqualification.

The disqualification consequent on the commission of an election offence or of a corrupt practice arises only on a conviction for the offence or if the person is named in the report by the Commissioners holding an election inquiry.



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