

THE REPRESENTATION OF THE PEOPLE (AMENDMENT)  
ACT, 1988

No. 1 OF 1989

[5th January, 1989.]

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

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Representation of the People (Amendment) Act, 1988.

Short title  
and com-  
mencement.

(2) It shall come into force on such date<sup>1</sup> as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II

AMENDMENT OF THE REPRESENTATION OF THE PEOPLE ACT, 1950

2. In Part IIA of the Representation of the People Act, 1950, after section 13C, the following section shall be inserted, namely:—

Amend-  
ment of  
Act 43  
of 1950.

“13CC. The officers referred to in this Part and any other officer or staff employed in connection with the preparation, revision and correction of the electoral rolls for, and the conduct of, all elections shall be deemed to be on deputation to the Election Commission for the period during which they are so employed and such officers and staff shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.”

Chief  
Electoral  
Officers,  
District  
Election  
Officers,  
etc.,  
deemed  
to be on  
deputation  
to Election  
Commis-  
sion.

<sup>1</sup>The provisions of all the sections except sections 3, 6, 7 and 8 shall come into force on 15-3-1989.

The provisions of sections 7 and 8 shall come into force on 1-4-1989.

Vide Notification No. G. S. R. 356 (E), dated 13-3-1989.

The provisions of sections 3 and 6 shall come into force on 15-6-1989: Vide Notification No. G. S. R. No. 624 (E), dated 15-6-1989.

## CHAPTER III

## AMENDMENTS OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

Amend-  
ment of  
section 2.

3. In section 2 of the Representation of the People Act, 1951 (hereafter in this Chapter referred to as the principal Act), after clause (e), the following clause shall be inserted, namely:—

43 of 1951.

'(f) "political party" means an association or a body of individual citizens of India registered with the Election Commission as a political party under section 29A;'

Amend-  
ment of  
section 8.

4. In section 8 of the principal Act,—

(a) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

'(1) A person convicted of an offence punishable under—

(a) section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or section 171E (offence of bribery) or section 171F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of section 376 or section 376A or section 376B or section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code; or

45 of 1860

(b) the Protection of Civil Rights Act, 1955 which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or

22 of 1955

(c) section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962; or

52 of 1962

(d) sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association, offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967; or

37 of 1967

(e) the Foreign Exchange (Regulation) Act, 1973; or

46 of 1973

(f) the Narcotic Drugs and Psychotropic Substances Act, 1985; or

61 of 1985

(g) section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987; or

28 of 1987

(h) section 7 (offence of contravention of the provisions of sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988; or

41 of 1988

(i) section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) or clause (a) of sub-section (2) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act,

shall be disqualified for a period of six years from the date of such conviction.

(2) A person convicted for the contravention of—

(a) any law <sup>providing for</sup> ~~providing for~~ the prevention of hoarding or profiteering; or

(b) any law relating to the adulteration of food or drugs; or

28 of 1961.

(c) any provisions of the Dowry Prohibition Act, 1961; or

3 of 1988.

(d) any provisions of the Commission of Sati (Prevention) Act, 1987,

and sentenced to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release;

(b) sub-section (3) shall be renumbered as sub-section (4) thereof, and in sub-section (4) as so renumbered, for the words, brackets and figures "in sub-section (1) and sub-section (2)", the words, brackets and figures "in sub-section (1), sub-section (2) or sub-section (3)" shall be substituted.

5. After section 28 of the principal Act, the following section shall be inserted, namely:—

Insertion  
section  
28A.

"28A. The returning officer, assistant returning officer, presiding officer, polling officer and any other officer appointed under this Part, and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission."

Returning  
officer,  
presiding  
officer, etc.,  
deemed  
to be on  
deputa-  
tion to  
Election  
Com-  
mission.

6. After Part IV of the principal Act, the following Part shall be inserted, namely:—

Insertion  
of new  
Part  
IVA.

"PART IVA

REGISTRATION OF POLITICAL PARTIES

29A. (1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the

Registra-  
tion.

with the  
Commission of  
associations  
and  
bodies as  
political  
parties.

provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

(2) Every such application shall be made,—

(a) if the association or body is in existence at the commencement of the Representation of the People (Amendment) Act, 1988, within sixty days next following such commencement;

(b) if the association or body is formed after such commencement, within thirty days next following the date of its formation.

(3) Every application under sub-section (1) shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as Secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

(4) Every such application shall contain the following particulars, namely:—

(a) the name of the association or body;

(b) the State in which its head office is situate;

(c) the address to which letters and other communications meant for it should be sent;

(d) the names of its president, secretary, treasurer and other office-bearers;

(e) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;

(f) whether it has any local units; if so, at what levels;

(g) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

(6) The Commission may call for such other particulars as it may deem fit from the association or body.

(7) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body:

Provided that no association or body shall be registered as a political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub-section (5).

(8) The decision of the Commission shall be final.

(9) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material matters shall be communicated to the Commission without delay."

7. In section 33 of the principal Act, in sub-section (1), after the proviso, the following proviso shall be inserted, namely:—

Amendment of section 33.

'Provided further that in the case of a local authorities' constituency, graduates constituency or teachers' constituency, the reference to "an elector of the constituency as proposer" shall be construed as a reference to "ten per cent. of the electors of the constituency or ten such electors whichever is less, as proposers".'

8. In section 39 of the principal Act, in sub-section (2), in the proviso, clause (aa) shall be relettered as clause (ab) thereof, and before clause (ab) as so relettered, the following clause shall be inserted, namely:—

Amendment of section 39.

'(aa) the reference in the opening paragraph of sub-section (1) of section 33 to "an elector of the constituency as proposer" shall be construed as a reference to "ten per cent. of the elected members or of the members of the Legislative Assembly of a State or of the members of the electoral college of a Union territory, as the case may be, or ten members concerned whichever is less, as proposers":

Provided that where as a result of the calculation of the percentage referred to in this clause, the number of members arrived at is a fraction and if the fraction so arrived at is more than one-half counted as one, and if the fraction so arrived at is less than one-half it shall be ignored;'

9. In section 58 of the principal Act,—

Amendment of section 58.

(a) in sub-section (1), after clause (a), the following clause shall be inserted, namely:—

"(aa) any voting machine develops a mechanical failure during the course of the recording of votes; or";

(b) in sub-section (2), in clause (b), after the words "result of the election or that", the words "the mechanical failure of the voting machine or" shall be inserted.

10. After section 58 of the principal Act, the following section shall be inserted namely:—

Insertion of new section 58A.

58A. (1) If at any election,—

(a) booth capturing has taken place at a polling station or at a place fixed for the poll (hereafter in this section referred to as a place) in such a manner that the result of the poll at that polling station or place cannot be ascertained; or

(b) booth capturing takes place in any place for counting of votes in such a manner that the result of the counting at that place cannot be ascertained,

Adjournment of poll or countermanding of election on the ground of booth capturing.

the returning officer shall forthwith report the matter to the Election Commission.

(2) The Election Commission shall, on the receipt of a report from the returning officer under sub-section (1) and after taking all material circumstances into account, either—

(a) declare that the poll at that polling station or place be void, appoint a day, and fix the hours, for taking fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner as it may deem fit; or

(b) if satisfied that in view of the large number of polling stations or places involved in booth capturing the result of the election is likely to be affected, or that booth capturing had affected counting of votes in such a manner as to affect the result of the election, countermand the election in that constituency.

*Explanation.*—In this section, “booth capturing” shall have the same meaning as in section 135A’.

Insertion  
of new  
section  
61A.

11. After section 61 of the principal Act, the following section shall be inserted, namely:—

Voting  
machines  
of  
elections.

‘61A. Notwithstanding anything contained in this Act or the machines, in such manner as may be prescribed, may be adopted in rules made thereunder, the giving and recording of votes by voting such constituency or constituencies as the Election Commission may, having regard to the circumstances of each case, specify.

*Explanation.*—For the purpose of this section, “voting machine” means any machine or apparatus whether operated electronically or otherwise used for giving or recording of votes and any reference to a ballot box or ballot paper in this Act or the rules made thereunder shall, save as otherwise provided, be construed as including a reference to such voting machine wherever such voting machine is used at any election.’

Amend-  
ment of  
section 77.

12. In section 77 of the principal Act, in sub-section (1), *Explanation 2* shall be omitted.

Amend-  
ment of  
section  
123.

13. In section 123 of the principal Act,—

(a) after clause (7), and before the *Explanation*, the following clause shall be inserted, namely:—

“(8) Booth capturing by a candidate or his agent or other person.”;

(b) in the *Explanation*, after clause (3), the following clause shall be inserted, namely:—

“(4) For the purposes of clause (8), “booth capturing” shall have the same meaning as in section 135A.’

Amend-  
ment of  
section  
127.

14. In section 127 of the principal Act, in sub-section (1), for the words “shall be punishable with fine which may extend to two hundred and fifty rupees”, the words “shall be punishable with imprisonment for a

term which may extend to three months or with fine which may extend to one thousand rupees, or with both" shall be substituted.

15. After section 135 of the principal Act, the following section shall be inserted, namely:—

Insertion  
of new  
section  
135A.

'135A. Whoever commits an offence of booth capturing shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine, and where such offence is committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine.

Offence  
of booth  
capturing.

*Explanation.*—For the purposes of this section, "booth capturing" includes, among other things, all or any of the following activities, namely:—

(a) seizure of a polling station or a place fixed for the poll by any person or persons, making polling authorities surrender the ballot papers or voting machines and doing of any other act which affects the orderly conduct of elections;

(b) taking possession of a polling station or a place fixed for the poll by any person or persons and allowing only his or their own supporters to exercise their right to vote and prevent others from voting;

(c) threatening any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote;

(d) seizure of a place for counting of votes by any person or persons, making the counting authorities surrender the ballot papers or voting machines and the doing of anything which affects the orderly counting of votes;

(e) doing by any persons in the service of Government, of all or any of the aforesaid activities or aiding or conniving at, any such activity in the furtherance of the prospects of the election of a candidate.

16. In section 169 of the principal Act, in sub-section (2),—

Amend-  
ment of  
section 169.

(i) after clause (e), the following clause shall be inserted, namely:—

"(ee) the manner of giving and recording of votes by means of voting machines and the procedure as to voting to be followed at polling stations where such machines are used;";

(ii) after clause (g), the following clause shall be inserted, namely:—

"(gg) the procedure as to counting of votes recorded by means of voting machines;";

(iii) in clause (h), for the words "ballot boxes", the words "ballot boxes, voting machines" shall be substituted.