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Separate paging is given to this part in order that it may be filed as a separate compilation.

PART III

Laws, Regulations and Rules passed thereunder.

**GOVERNMENT OF JAMMU AND KASHMIR
CIVIL SECRETARIAT—DEPARTMENT OF LAW,
JUSTICE AND PARLIAMENTARY AFFAIRS**

Jammu, the 22nd March, 2014.

The following Act as passed by the Jammu and Kashmir State Legislature received the assent of the Governor on 22nd March, 2014 and is hereby published for general information :—

**THE JAMMU AND KASHMIR REPRESENTATION OF
THE PEOPLE (AMENDMENT) ACT, 2014.**

(Act No. IX of 2014)

[22nd March, 2014.]

An Act to amend the Jammu and Kashmir Representation of the People Act, 1957 and State Ranbir Penal Code, Samvat 1939.

Be it enacted by the Jammu and Kashmir State Legislature in the Sixty-fifth Year of the Republic of India as follows :—

CHAPTER I

Amendments in the Jammu and Kashmir Representation of the People Act, 1957.

1. *Short title and commencement.*—(1) This Act may be called the Jammu and Kashmir Representation of the People (Amendment) Act, 2014.

(2) It shall come into force from the date of its publication in the Government Gazette.

2. *Insertion of section 9B, Act IV of 1957.*—After section 9A of the Jammu and Kashmir Representation of People Act, 1957 (hereinafter referred to as the 'principal Act'), the following section shall be inserted, namely :—

“9B. **Observer.**—(1) The Election Commission may nominate an Observer who shall be an officer of the Government to watch the conduct of election or elections in a constituency or a group of constituencies and to perform such other functions as may be entrusted to him by the Election Commission.

(2) The Observer nominated under sub-section (1) shall have the power to direct the Returning Officer for the constituency or for any of the constituencies for which he has been nominated, to stop the polling at any time on the day of polling, if in the opinion of the Observer booth capturing has taken place at a large number of polling stations or at places fixed for the poll or any ballot paper used at a polling station or at place fixed for the poll is unlawfully taken out of the custody of the Returning Officer or is accidentally or intentionally destroyed or lost or is damaged or tampered with.

(3) Where an Observer has directed the Returning Officer under this section to stop polling, the Observer shall forthwith report the matter to the Election Commission and thereupon the Election Commission shall, after taking all material circumstances into account, issue appropriate directions under section 68A or section 74A or section 76.

Explanation :—For the purposes of sub-section (2) and sub-section (3), “Observer” shall include a Regional Commissioner or any such officer of the Election Commission as has been assigned under this section the duty or watching the conduct of election or elections in a constituency or group of constituencies by the Commission.”

3. *Insertion of section 16A, Act IV of 1957.*—After section 16 of the ‘principal Act’, the following section shall be inserted, namely :—

“16 A. Special provisions for the permanent residents of the State residing outside India.—

(1) Notwithstanding anything contained in this Act, every permanent resident of the State,—

- (a) whose name is not included in the electoral roll ;
- (b) who has not acquired the citizenship of any other country ; and
- (c) who is absenting from his place of ordinary residence in India owing to his employment, education or otherwise outside India (whether temporarily or not), shall be entitled to have his name registered in the electoral roll in the constituency in which his place of residence in the State as mentioned in his passport is located.

(2) The time within which the name of persons referred to in sub-section (1) shall be registered in the electoral roll and the manner and procedure for registering of a persons in the electoral roll under sub-section (1) shall be such as may be prescribed.

(3) Every person registered under this section shall, if otherwise eligible to exercise his franchise, be allowed to vote at an election in the constituency."

4. *Amendment of section 18, Act IV of 1957.*—In section 18 of the 'principal Act',—

(a) after the words "amend, transpose or delete the entry", the words "after proper verification of facts in such manner as may be prescribed" shall be added ; and

(b) in proviso thereto, after the words "proposed to be taken in relation to him", the words "after proper verification of facts in such manner as may be prescribed" shall be added.

5. *Amendment of section 19, Act IV of 1957.*—In section 19 of the 'principal Act', in sub-section (2),—

(a) after the words "direct his names to be included therein", the words "after proper verification of facts in such manner as may be prescribed" shall be added ; and

(b) in proviso thereto, after the words "strike off the applicant's name in that roll", the words "after proper verification of facts in such manner as may be prescribed" shall be added.

6. *Amendment of section 19-A, Act IV of 1957.*—In section 19-A of the ‘principal Act’,—

(i) in clause (a) ; for the words “Chief Electoral Officer”, the words “District Magistrate or District Collector or Additional District Magistrate or Executive Magistrate or an officer of equivalent rank” shall be substituted ;

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

“(b) to the Chief Electoral Officer, from any order of the District Magistrate or District Collector, Additional District Magistrate or Executive Magistrate or an officer of equivalent rank, as the case may be, under clause (a).”

7. *Amendment of section 24, Act IV of 1957.*—In sub-section (1) of section 24 of the ‘principal Act’, after the words “section 143 of this Act” and before the words “shall be disqualified”, the following words shall be inserted :—

“or section 11 of the Customs Act, 1962 (Central Act No. 52 of 1962) or the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act No. 61 of 1985) or section 2 or section 3 of the Prevention of Insults to National Honour Act, 1971 (Central Act No. 69 of 1971)”.

8. *Substitution of section 43, Act IV of 1957.*—Section 43 of the ‘principal Act’ shall be substituted by following, namely :—

“43. **Nomination of candidates for election.**—Any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act.”

9. *Amendment of section 44, Act IV of 1957.*—In section 44 of the 'principal Act'—

After sub-section (6), the following sub-section shall be inserted namely :—

“(7) Notwithstanding anything contained in sub-section (6) or in any other provisions of this Act, a person shall not be nominated as a candidate for election :—

- (i) in the case of general election to the Legislative Assembly (whether or not held simultaneously from all Assembly Constituencies), from more than two Assembly Constituencies ;
- (ii) in the case of a biennial election to the Legislative Council from more than two Council Constituencies ;
- (iii) in the case of bye-elections to the Legislative Assembly which are held for two or more Assembly Constituencies simultaneously, from more than two such Assembly Constituencies ;
- (iv) in the case of bye-elections to the Legislative Council, from more than two such Council Constituencies.”

Explanation :—For the purposes of this sub-section, two or more bye-elections shall be deemed to be held simultaneously where the notification calling such bye-elections are issued by Election Commission under sections 27, 28, 29 or, as the case may be 152 and 153, on the same date.

10. *Insertion of section 44A, Act IV of 1957.*—After section 44 of the 'principal Act', the following section shall be inserted, namely :—

“44A. Candidate to furnish information only under the Act and the rules.—Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order

or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election which is not required to be disclosed or furnished under this Act or the rules made thereunder."

11. *Amendment of section 45, Act IV of 1957.*—In sub-section (1) of section 45 of the 'principal Act', for the words "a sum of five thousand rupees or where the candidate is a member of a Scheduled Caste, a sum of two thousand five hundred rupees", the words "a sum of ten thousand rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe community, a sum of five thousand rupees", shall be substituted.

12. *Amendment of section 49, Act IV of 1957.*—In section 49 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely :—

"(2) For the purpose of listing the names under sub-section (1), the candidates shall be classified as follows, namely :—

(i) candidates of recognized political parties ;

(ii) candidates of registered political parties other than those mentioned in clause i) ; and

(iii) Other candidates.

(3) The categories mentioned in sub-section (2) shall be arranged in the order specified therein and the names of candidates in each category shall be arranged in alphabetical order and the addresses of the contesting candidates as given in the nomination papers together with such other particulars as may be prescribed, shall also be mentioned."

13. *Insertion of section 50A, Act IV of 1957.*—After section 50 of the 'principal Act', the following shall be inserted, namely :—

"50-A. Allocation of equitable sharing of time.—(1) Notwithstanding anything contained in any other law for the time

being in force, the Election Commission shall, on the basis of the past performance of a recognized political party during elections, allocate equitable sharing of time on the cable television network and other electronic media in such manner as may be prescribed to display or propagate any election matter or to address public in connection with an election.

(2) The allocation of equitable sharing of time under sub-section (1), in respect of an election, shall be made after the publication of list of contesting candidates under section 49 for the election and shall be valid till forty-eight hours before the hour fixed for poll for such election.

(3) The allocation of equitable sharing of time under sub-section (1) shall be binding on all political parties concerned.

(4) The Election Commission may, for the purpose of this section, make code of conduct for cable operators and electronic media and the cable operators and every person managing or responsible for the management of the electronic media shall abide by such code of conduct."

Explanation :—For the purposes of this section,—

(a) "electronic media" includes radio and any other broadcasting media notified by the State Government in the Government Gazette ;

(b) "cable television network" and "cable operator" have the meanings respectively assigned to them under the Cable Television Networks (Regulation) Act, 1995 (Central Act No. 7 of 1995).

14. *Amendment of section 69, Act IV of 1957.*—In section 69 of the 'principal Act', for the words "and no vote shall be received by proxy", the words "and, save as expressly provided by this Act, no vote shall be received by proxy" shall be substituted.

15. *Substitution of section 70, Act IV of 1957.*—For section 70 of the 'principal Act', the following section shall be substituted, namely :—

"70. Special Procedure for voting by certain classes of persons.—Without prejudice to the generality of the provisions contained in section 69, provision may be made, by rules made under this Act, for enabling,—

- (a) any of the persons as is referred to in clause (a) or clause (b) of sub-section (8) of section 16 of this Act, to give his vote either in person or by postal ballot, or by proxy, but not in any other manner, at an election in constituency where poll is taken ;
- (b) any of the following persons to give his vote either in person or by postal ballot, but not in any other manner, at an election in a constituency where a poll is taken, namely :—
 - (i) any person as is referred to in clause (c) and clause (d) of sub-section (8) of section 16 of this Act ; and
 - (ii) the wife of any such person as is referred to in sub-clause (i) to whom the provisions of sub-section (6) of section 16 of this Act apply ;
- (c) any person belonging to a class of persons notified by the Election Commission in consultation with the Government to give his vote by postal ballot, but not in any other manner, at an election in a constituency where a poll is taken subject to the fulfillment of such requirement as may be specified in those rules ; and
- (d) any person subjected to preventive detention under any law for the time being in force to give his vote by postal ballot, but not in any other manner, at an election in a constituency where a poll is taken, subject to the fulfillment of such requirements as may be specified in those rules."

16. *Amendment of section 72, Act IV of 1957.*—In section 72 of the ‘principal Act’, after sub-section (5), the following sub-section shall be inserted, namely :—

“(6) Nothing contained in sub-sections (3) and (4) shall apply to a person who has been authorized to vote as proxy for an elector under this Act in so far as he votes as a proxy of such elector.”

17. *Amendment of section 85, Act IV of 1957.*—In sub-section (1) of section 85, of the ‘principal Act’, for Explanations I and II, the following explanations shall be substituted, namely :—

“*Explanation 1:*—For removal of doubts, it is hereby declared that—

- (a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorized by a candidate of that political party or his election agent for the purposes of this sub-section ; and
- (b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 132 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorized by a candidate or by his election agent for the purposes of this sub-section.

Explanation 2 :—For the purposes of clause (a) of Explanation 1, the expression “leaders of a political party”, in respect of any election, means :—

- (i) where such political party is a recognized political party, such persons not exceeding forty in number ; and

- (ii) where such political party is other than a recognized political party, such persons not exceeding twenty in number, whose names have been communicated to the Election Commission and the Chief Electoral Officer of the State by the political party to be leaders for the purposes of such election within a period of seven days from the date of the notification for such election published in the Government Gazette of the State, as the case may be under this Act :

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officer of the State, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place."

18. *Insertion of part IXA, Act IV of 1957.*—After Part IX of the 'principal Act', the following part shall be inserted, namely :—

"Part IXA. Free Supply of certain material to candidates of Recognized Political Parties"—

86A. Free supply of copies of electoral rolls.—(1) The Government shall, at any election to be held for the purposes of constituting the Legislative Assembly supply, free of cost,

to the candidates of recognized political parties such number of copies of the electoral roll, as finally published under this Act and such other material as may be prescribed.

(2) The material referred to in sub-section (1) shall be supplied,—

(i) subject to such conditions as may be imposed by the Government in consultation with the Election Commission with respect to the reduction of the maximum expenditure which may be incurred by the candidate under section 85 ; and

(ii) through such officers as may be specified by the Election Commission who shall act in accordance with such general or special directions as may be given by the Election Commission.

86-B. Supply of certain items to candidates, etc.—(1) The Election Commission shall, at any time between the date of publication of the notification calling the election for the purposes of constituting the Legislative Assembly and the date on which the poll is to be taken, supply or cause to be supplied, such items as the Government may, by order, determine in consultation with the Election Commission, to the electors in the constituencies concerned or to the candidates set up by the recognized political parties.

(2) Where the Election Commission supplies the items to the candidates under sub-section (1), the Government may, in consultation with the Election Commission, impose conditions with respect to the reduction of the maximum expenditure which may be incurred by the candidate under section 85.

Explanation :—For the purposes of section 50-A, this Chapter and clause (bb) of sub-section (2) of section 168, the

expression "recognized political party", means a political party for which a symbol is reserved by the Election Commission".

19. *Substitution of section 133, Act IV of 1957.*—For section 133 of the 'principal Act', the following section shall be substituted, namely :—

"133. Prohibition of public meetings during the period of forty-eight hours ending with hour fixed for conclusion of poll—

(1) No person shall—

- (a) convene, hold, attend, join or address any public meeting or procession in connection with an election ; or
- (b) display to the public any election matter by means of cinematograph, television or other similar apparatus ; or
- (c) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto, in any polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment of a term which may extend to two years or with fine, or with both.

*Explanation :—*In this section, the expression "election matter" means any matter intended or calculated to influence or affect the result of an election."

20. *Insertion of section 133A, 133B, Act IV of 1957.*—After section 133 of the ‘principal Act’, the following sections shall be inserted namely :—

“133-A. Restriction on publication and dissemination of result of exit polls, etc.—(1) No person shall conduct any exit poll and publish or publicise by means of the print or electronic media or disseminate in any other manner, whatsoever, the result of any exit poll during such period, as may be notified by the Election Commission in this regard.

(2) For the purposes of sub-section (1), the Election Commission shall, by a general order, notify the date and time having due regard to the following, namely :—

(a) in case of a general election, the period may commence from the beginning of the hours fixed for poll on the first day of poll and continue till half an hour after closing of the poll ;

(b) in case of bye-election or a number of bye-elections held together, the period may commence from the beginning of the hours fixed for poll on and from the first day of poll and continue till half an hour after closing of the poll :

Provided that in case of a number of bye-elections held together on different days, the period may commence from the beginning of the hours fixed for poll on the first day of poll and continue till half an hour after closing of the last poll ;

(3) Any person who contravenes the provisions of this section shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.”

Explanation :—For the purpose of this section—

- (a) “exit poll” means an opinion survey respecting how electors have voted at an election or respecting how all the electors have performed with regard to the identification of a political party or candidate in an election ;
- (b) “electronic media” includes internet, radio and television including internet protocol television, satellite, terrestrial or cable channels, mobile and such other media either owned by the Government or private person, or by both ;
- (c) “print media” includes any newspaper, magazine or periodical, poster, placard, handbill or any other document ; and
- (d) “dissemination” includes publication in any print media or broadcast or display on any electronic media.

“133-B. Offences by Companies.—(1) Where an offence under section 133-A has been committed by a company, every person who, at the time the offence was committed, was incharge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

Explanation :—For the purpose of this section,—

- (a) "company" means any body corporate, and includes a firm or other association of individuals ; and
- (b) "director", in relation to a firm, includes a partner in the firm.

21. *Amendment of section 134, Act IV of 1957.*—In section 134 of the 'principal Act',—

- (a) 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 six months or with fine which may extend to two thousand rupees" shall be substituted ;
- (b) after sub-section (1), the following sub-section shall be inserted, namely :—

"(1A) An offence punishable under sub-section (1) shall be cognizable."

22. *Amendment of section 140, Act IV of 1957.*—In section 140 of the 'principal Act', for the words "shall be punishable with fine which may extend to one thousand rupees" the words "shall be punishable with imprisonment which may extend to three months

and with fine which may extend to two thousand rupees" shall be substituted.

23. *Insertion of section 141-B, Act IV of 1957.*—After section 141-A of the 'principal Act', the following shall be inserted, namely :—

"141-B. Prohibition of going armed to or near a polling station.—(1) No person, other than the returning officer, the presiding officer, any police officer and any other person appointed to maintain peace and order at a polling station who is on duty at the polling station, shall, on a polling day, go armed with arms, as defined in the Arms Act, 1959, of any kind within the neighbourhood of a polling station.

(2) If any person contravenes, the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to two years or, with fine or with both.

(3) Notwithstanding anything contained in the Arms Act, 1959, where a person is convicted of an offence under this section, the arms as defined in the said Act found in his possession shall be liable to confiscation and the licence granted in relation to such arms shall be deemed to have been revoked under section 17 of that Act.

(4) An offence punishable under sub-section (2) shall be cognizable."

24. *Amendment of section 142, Act IV of 1957.*—In section 142 of the 'principal Act', in sub-section (1), for the word "fraudulently", the word "unauthorisedly" shall be substituted.

25. *Amendment of section 142-A, Act IV of 1957.*—In section 142-A of the 'principal Act', in sub-section (1),—

- (i) for the words "six months" and the words "two years", the words "one year" and the words "three years" shall respectively be substituted ; and

- (ii) in the explanation for the words "this section", the words "this sub-section and section 9B" shall be substituted ; and

26. *Insertion of section 142-B and 142-C, Act IV of 1957.*—
After section 142-A of the 'principal Act', the following sections shall be inserted, namely :—

"142-B. Grant of paid holiday to employees on the day of poll.—(1) Every person employed in any business, trade, industrial undertaking or any other establishment and entitled to vote at an election to the Legislative Assembly shall, on the day of poll, be granted a holiday.

(2) No deduction or abatement of the wages of any such person shall be made on account of a holiday having been granted in accordance with sub-section (1) and if such person is employed on the basis that he would not ordinarily receive wages for such a day, he shall nonetheless be paid for such day the wages he would have drawn had not a holiday been granted to him on that day.

(3) If an employer contravenes the provisions of sub-section (1) or sub-section (2), then such employer shall be punishable with fine which may extend to five hundred rupees.

(4) This section shall not apply to any elector whose absence may cause danger or substantial loss in respect of the employment in which he/she is engaged.

142-C. Liquor not to be sold, given or distributed on polling day.—(1) No spirituous, fermented or intoxicating liquors or other substances of a like nature shall be sold, given or distributed at a hotel, eating house, tavern, shop or any other place, public or private, within a polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in the polling area.

(2) Any person, who contravenes the provisions of sub-section (1), shall be punishable with imprisonment for a term

which may extend to six months, or with fine, which may extend to two thousand rupees, or with both.

(3) Where a person is convicted of an offence under this section, the spirituous, fermented or intoxicating liquors or other substances of a like nature found in his possession shall be liable to confiscation and the same shall be disposed of in such manner as may be prescribed."

27. *Insertion of section 153 A, Act IV of 1957.*—After section 153 of the 'principal Act', the following section shall be inserted, namely :—

"153-A. **Time limit for filling vacancies referred to in sections 152 & 153.**—Notwithstanding anything contained in section 152 and section 153, a bye-election for filling any vacancy referred to in any of the said sections shall be held within a period of six months from the date of the occurrence of the vacancy :

Provided that nothing contained in this section shall apply if—

(a) the remainder of the term of a member in relation to a vacancy is less than one year ; or

(b) the Election Commission in consultation with the Government certifies that it is difficult to hold the bye-election within the said period."

28. *Substitution of section 159, Act IV of 1954.*—For section 159 of the 'principal Act', the following section shall be substituted, namely :—

"159. **Staff of certain authorities to be made available for election work.**—(1) The authorities specified in sub-section (2) shall, when so requested by Election Commission or the Chief Electoral Officer or any returning officer, make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election.

(2) The following shall be the authorities for the purpose of sub-section (1), namely :—

- (i) every local authority ;
- (ii) every university established or incorporated by or under a Central or State Act ;
- (iii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) ;
- (iv) any other institution, concern or undertaking which is established by or under a Central, or State Act or which is controlled, or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or the State Government.

29. *Amendment of section 168 Act No. IV of 1957.*—In section 168 of the 'principal Act', in sub-section (2), the following clause shall be inserted, namely :—

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

“(bb) the manner of allocation of equitable sharing of time on the cable television network and other electronic media.”

- (ii) after clause (h), the following clauses shall be inserted, namely :—

“(hh) the procedure for proper verification of facts for amending, transposing or deleting any entry in the electoral rolls, under section 18.”

“(hhh) the procedure for proper verification of facts for inclusion of or striking off, names in the electoral rolls, under sub-section (2) of section 19 ;”.

(iii) after clause (j), the following clauses shall be inserted :—

“(ij) the form of affidavit under sub-section (2) of section 44.”

“(iij) the form of contribution report ;”

(iv) after clause (p), the following clause shall be inserted, namely :—

“(pp) the material to be supplied by the Government to the candidates of recognized political parties at any election to be held for the purposes of constituting the Legislative Assembly.”

CHAPTER II

Amendment in Ranbir Penal Code, Samvat 1989.

30. *Amendment of section 171-D of Ranbir Penal Code, Samvat 1989.*—In section 171-D, the following proviso shall be added :—

“Provided that nothing in this section shall apply to a person who has been authorized to vote as proxy of an elector under any law for the time being in force in so far as he votes as a proxy for such elector.”

(Sd.) **ACHAL SETHI,**

Additional Secretary to Government,
Department of Law, Justice and Parliamentary Affairs.