

The Dispatch
D o c u m e n t s

Jammu and Kashmir Representation of the People (Amendment) Act, 1995

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THE JAMMU AND KASHMIR REPRESENTATION OF THE PEOPLE
(AMENDMENT) ACT, 1995

(President's Act No. 3 of 1995)

[Enacted by the President and published in the J&K Government Gazette
(Extra) dated 11th October, 1995].

Enacted by the President in the Forty-sixth Year of the Republic of India.

**An Act to amend the Jammu and Kashmir Representation of the People
Act, 1957.**

In exercise of the powers conferred by section 3 of the Jammu and Kashmir
State Legislature (Delegation of Powers) Act, 1992 (21 of 1992), the President
is pleased to enact as follows :--

1. *Short title and commencement.*--(1) This Act may be called the Jammu
and Kashmir Representation of the People (Amendment) Act, 1995.

(2) It shall come into force at once.

2. *Substitution of new section for section 61 of Jammu and Kashmir Act
IV of 1957.*--In the Jammu and Kashmir Representation of the People Act,
1957, for section 61, the following section shall be substituted, namely :--

“61. *Death of a candidate before the poll.*--(1) If a candidate set up by
a recognised political party,--

(a) dies at any time after 11.00 A.M. on the last date for making
nominations and his nomination is found valid on scrutiny under
section 47 ; or

(b) whose nomination has been found valid on scrutiny under section
47 and who has not withdrawn his candidature under section 48,
dies,

and in either case, a report of his death is received at any time
before the publication of the list of contesting candidates under section
49 ; or

(c) dies as a contesting candidate and a report of his death is received
before the commencement of the poll,

the returning officer, shall upon being satisfied about the fact of the
death of the candidate, by order announce an adjournment of the poll to a

date to be notified later and report the fact to the Election Commission and also to the Government :

Provided that no order for adjourning a poll should be made in a case referred to in clause (a) except after the scrutiny of all the nominations including the nomination of the deceased candidate.

(2) The Election Commission shall, on the receipt of a report from the returning officer under sub-section (1), call upon the recognised political party, whose candidate had died, to nominate another candidate for the said poll within seven days of issue of such notice to such recognised political party and the provisions of sections 41 to 48 shall, so far as may be, apply in relation to such nomination as they would apply to other nominations :

Provided that no person who has given a notice of withdrawal of his candidature under sub-section (1) of section 48 before the adjournment of the poll shall be ineligible for being nominated as a candidate for the election after such adjournment.

(3) Where a list of contesting candidates had been published under section 49 before the adjournment of the poll under sub-section (1), the returning officer shall again prepare and publish a fresh list of contesting candidates under that section so as to include the name of the candidate who has been validly nominated under sub-section (2).

Explanation.--For the purposes of this section "recognised political party" means a political party for which a symbol is reserved by the Election Commission".

THE JAMMU AND KASHMIR REPRESENTATION OF THE PEOPLE
(SECOND AMENDMENT) ACT, 1995

(President's Act No. 4 of 1995)

[Enacted by the President and published in the J&K Government Gazette (Extra) dated 8th November, 1995].

Enacted by the President in the Forty-sixth Year of the Republic of India.

An Act further to amend the Jammu and Kashmir Representation of the People Act, 1957.

In exercise of the powers conferred by section 3 of the Jammu and Kashmir State Legislature (Delegation of Powers) Act, 1992 (21 of 1992), the President is pleased to enact as follows :--

1. *Short title and commencement.*--(1) This Act may be called the Jammu and Kashmir Representation of the People (Second Amendment) Act, 1995.

(2) It shall come into force at once.

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

“9A. *Chief Electoral Officers, District Election Officers, etc. deemed to be on deputation to Election Commission.*--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.”

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

“Provided further that nothing in this section shall prevent the Election Commission from appointing the same person to be the assistant returning officer for more than one constituency.”

4. *Insertion of new section 36A.*--After section 36 of the principal Act, the following section shall be inserted, namely :--

“36A. *Provision of polling stations outside the territorial limits of a constituency for security reasons.*--(1) Notwithstanding anything contained in section 36, the district election officer shall with the previous approval of the Election Commission, provide polling stations, outside the territorial limits of the constituency lying within his jurisdiction, to enable such class of persons of that constituency as may be notified under sub-section (2) to vote at an election.

(2) The Election Commission may, in consultation with the Government, by notification in the Gazette, specify such class of persons for the purposes of sub-section (1) who for reasons of security are not in a position to give their votes in the polling stations provided under section 36.”

5. *Insertion of new section 39A.*--After section 39 of the principal Act, the following shall be inserted, namely :--

“39A. *Returning Officer, Presiding Officer, etc., deemed to be on deputation to the Election Commission.*--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 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 officer shall during that period be subject to the control, superintendence and discipline of the Election Commission.”

6. *Insertion of new section 68A.*--After section 68 of the principal Act, the following section shall be inserted, namely :--

“68A. *Adjournment of poll or countermanding of election on grounds of booth capturing.*--(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,

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

(2) In every case referred to in clause (a) or clause (b) of sub-section (1), the Election Commission shall, on the receipt of a report from the returning officer under sub-section (1) or otherwise, after taking all material circumstances into account, either--

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

Explanation.--In this section, booth capturing shall have the same meaning as in section 142-A."

7. *Amendment of section 70.*--In section 70 of the principal Act after clause (b), the following clause shall be inserted, namely :--

"(c) any class of persons notified by the Election Commission in consultation with the Government to give their votes by postal ballot and not in any other manner at an election in a constituency where a poll is taken subject to the fulfilment of such requirements as may be specified in those rules."

8. *Amendment of section 85.*--In section ~~85~~ of the principal Act in sub-section (1), the following Explanations shall be inserted, namely :--

Explanation I.--Any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be expenditure in connection with the election incurred or authorised by the candidate or by his election agent for the purposes of this sub-section.

Explanation II.--For the removal of doubt, it is hereby declared that 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 to 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 authorised by the candidate or by his election agent for the purposes of this sub-section.

9. *Amendment of section 132.*--In section 132 of the principal Act,--

(a) in clause (7), the following proviso shall be inserted, namely :--

“Provided that where any person in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported to discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to or in relations to any candidate or his election agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.”

(b) after clause (7) the following clause shall be inserted, namely :--

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

10. *Insertion of new section 142-A.*--After section 142 of the principal Act, the following section shall be inserted, namely :--

“142-A. *Offence of booth capturing.*--(1) 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 three years but which may extend to five years and with fine.

Explanation.--For the purpose of this section, booth capturing includes, among other things, all or any of the 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 free exercise of their right to vote ;

- (c) coercing or intimidating or threatening, directly or indirectly 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 effects the orderly counting of votes ;
 - (e) doing by any person in the service of the 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.
- (2) an offence punishable under sub-section (1) shall be cognizable''
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**THE JAMMU AND KASHMIR REPRESENTATION OF THE
PEOPLE (AMENDMENT) ACT, 2002.**

Act No. I of 2002.

[Received the assent of the Governor on 15th March, 2002 and published in the Government Gazette dated 15th March, 2002.]

An Act to amend the Jammu and Kashmir Representation of the People Act, 1957.

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

1. *Short title and commencement.*—(1) This Act may be called the Jammu and Kashmir Representation of the People (Amendment) Act, 2002.

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

2. *Amendment of section 68, Act IV of 1957.*—In sub-section (1) of section 68 of the Jammu and Kashmir Representation of the People Act, 1957 (hereinafter referred to as the 'principal Act') ,—

(i) 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” ; and

(ii) in sub-clause (ii) of clause (c), for the words “result of the election, or that” the words “result of the election or that the mechanical failure of the voting machine or” shall be substituted.

3. *Insertion of section 71-A in Act IV of 1957.*—After section 71 of the principal Act, the following section shall be inserted, namely :—

“71-A. Voting machine at elections.—Notwithstanding anything contained in this Act or the rules made thereunder, the giving and recording of votes by voting machines in such manner as may be prescribed, may be adopted in such 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.”

4. *Amendment of section 168, Act IV of 1957.*—In sub-section (2) of section 168 of the principal Act,—

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

“(mm) 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 (o), the following clause shall be inserted, namely :—

“(oo) the procedure as to counting of votes recorded by means of voting machines ;”;

(iii) in clause (p), for the words “ballot boxes”, the words “voting machines” shall be substituted.

**THE JAMMU AND KASHMIR REPRESENTATION OF
THE PEOPLE (SECOND AMENDMENT) ACT, 2002.**

Act No. XXXIII of 2002.

**[Received the assent of the Governor on 21st April, 2002
and published in the Government Gazette dated 6th May,
2002].**

**An Act to amend the Jammu and Kashmir Representation of
the People Act, 1957.**

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

**1. *Short title and commencement.*—(1) This Act may be
called the Jammu and Kashmir Representation of the People
(Amendment) Act, 2002.**

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

**2. *Amendment of section 3, Act IV of 1957.*—The full-stop
at the end of clause (b) of sub-section (I) of section 3 of the Jammu
and Kashmir Representation of the People Act, 1957 shall be
substituted by colon and thereafter the following proviso shall be
inserted, namely :—**

**“Provided that until the relevant figures for the first census
taken after the year 2026 have been published, it shall not
be necessary to constitute a Commission to determine the
delimitation of Assembly Constituencies in the State under
this sub-section.”**

**THE JAMMU AND KASHMIR REPRESENTATION OF
THE PEOPLE (THIRD AMENDMENT) ACT, 2002.**

Act No. XXXIX of 2002.

[Received the assent of the Governor on 12th December, 2002 and published in the Government Gazette dated 16th December, 2002].

An Act to amend the Jammu and Kashmir Representation of the People Act, 1957.

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

1. *Short title and commencement.*—(1) This Act may be called the Jammu and Kashmir Representation of People (Third Amendment) Act, 2002.

(2) It shall deemed to have come into force on the 16th day of August, 2002.

2. *Insertion of new section 44A in Act IV of 1957.*—After section 44 of the Jammu and Kashmir Representation of the People Act, 1957 (hereinafter referred to as 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.”

3. *Insertion of new section 44B in Act IV of 1957.*—After section 44A of the principal Act as so inserted, the following section shall be inserted, namely :—

“44-B. *Right to information.*—(1) A candidate shall, apart from any information which he is required to furnish, under this

Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 44, also furnish the information as to whether—

- (i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction ;
- (ii) he has been convicted of an offence (other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section (4) and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 44 also deliver to him an affidavit sworn by the candidate in the prescribed form for verifying the information specified in sub-section (1).

(3) The returning officer shall, as soon as may, be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.”

4. *Insertion of new section 83A in Act IV of 1957.*—After section 83 of the principal Act, the following section shall be inserted, namely :—

“83-A. *Declaration of assets and liabilities.*—(1) Every member of the Legislature of the State, whether elected or nominated, shall, within ninety days from the date on which he makes and subscribes an oath or affirmation, according to the form set out for the purposes in the Fifth Schedule to the Constitution, for taking his seat in the Legislative Assembly of the State, or the Legislative Council of the State, as the case may be furnished the information, relating to—

- (i) the movable and immovable property of which he is the owner or a beneficiary ;

(ii) his liabilities to any public financial institution ; and

(iii) his liabilities to the Central Government or the State Government

to the Chairman of the Legislative Council of the State or the Speaker of the Legislative Assembly of the State, as the case may be.

(2) The information under sub-section (1) shall be furnished in such form and in such manner as may be prescribed in the rules made under sub-section (3).

(3) The Chairman of the Legislative Council of the State or the Speaker of the Legislative Assembly of the State, as the case may be, may make rules for the purposes of sub-section (2).

(4) The rules made by the Chairman of the Legislative Council of the State or the Speaker of the Legislative Assembly of the State under sub-section (3) shall be laid, as soon as may be after they are made, before the Council or the Legislative Assembly, as the case may be, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the Legislative Council or the Legislative Assembly and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form as the case may be, and where they are so disapproved, they shall be of no effect.

(5) The Chairman of the Legislative Council of the State or the Speaker of the Legislative Assembly of the State may direct that any wilful contravention of the rules made under sub-section (3) by an elected candidate referred to in sub-section (1) may be dealt with in the same manner as the breach of privilege of the Legislative Council or the Legislative Assembly, as the case may be.

Explanation.—For the purposes of this section,—

- (i) “immovable property” means the land and includes any building or other structure attached to the land or permanently fastened to anything which is attached to the land ;

- (ii) "moveable property" means any other property which is not the immovable property and includes corporeal and incorporeal property of every description ;
- (iii) "public financial institution" means a public financial institution within the meaning of section 4A of the Companies Act, 1956 and includes bank ; and
- (iv) "bank" referred to in clause (iii) means—
 - (a) "State Bank of India" constituted under section 3 of the State Bank of India Act, 1955 ;
 - (b) "Subsidiary Bank" having the meaning assigned to it in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 ;
 - (c) "Regional Rural Bank" established under section 3 of the Regional Rural Banks Act, 1976 ;
 - (d) "Corresponding new Bank" having the meaning assigned to it in clause (da) of section 5 of the Banking Regulation Act, 1949 ; and
 - (e) "co-operative bank" having the meaning assigned to it in clause (cci) of section 5 of the Banking Regulation Act, 1949 as modified by sub-clause (i) of clause (c) of section 56 of that Act.

5. *Insertion of new section 132AA in Act IV of 1957.*—After section 132A of the principal Act, the following section shall be inserted, namely :—

"132AA. *Penalty for filing false affidavit, etc.*—A candidate who himself or through his proposer, with intent to be elected in an election,—

- (i) fails to give information relating to sub-section (1) of section 44B ; or
- (ii) gives false information which he knows or has reason to believe to be false ; or

(iii) conceals any information,

in his information paper delivered under sub-section (1) of section 44 or in his affidavit which is required to be furnished therein under sub-section (2) of section 44B as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable, with imprisonment for a term which may extend to six months, or with fine, or with both.

6. *Repeal and Savings.*—(1) The Jammu and Kashmir Representation of People (Amendment) Ordinance, 2002 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act as amended by this Act.