

CHAPTER VIII

DISQUALIFICATION OF THE PRESIDENT, VICE-PRESIDENT & MEMBER OF ZILLA PARISHAD, ANCHALICK PANCHAYAT AND GAON PANCHAYAT

111. Disqualification: -

No person shall be elected or co-opted and remain as President, Vice-President or Member of Zilla Parishad, Anchalik Panchayat and Gaon Panchayat, if he or she: -

- (a) Has been convicted of an offence involving moral turpitude or ordered to give security for good behaviour under section 110 of the Code of Criminal Procedure, 1973, unless a period of four years has lapsed on the date fixed for holding election from the date of his release in case of a sentence or imprisonment and in case of sentence other than imprisonment from the date of conviction; or
- (b) Has been dismissed from Government service for commission of act involving moral turpitude unless a period of, five years has elapsed on the date fixed for holding election from the date of his dismissal; or
- (c) Applies to be declared as an uncertified bankrupt or undischarged insolvent.

- (d) Has been proclaimed a tour under the Legal Practitioners Acts; or
- (e) Holds any service of profit under Government (or any educational institution recognised and receiving grant from the Government or holds remunerated office under Zilla Parishad, Anchalik Panchayat and Gaon Panchayat or holds any contract under any of the aforesaid bodies or under the Government; or
- (f) Has been during the fore years immediately preceding the date of election convicted of an offence punishable under section 135, or clause (a) or sub-section (2) of section 136 of the Representation of People Act, 1951 or has been found by a competent authority to have resorted to corrupt practice resulting in setting aside of his election to any local body or to any legislature in India; or
- (g) Has been defaulter of payment of any rate, tax, cess or fee imposed under the provisions of this Act and the Rules framed thereunder or of any loan of co-operative society.
- (h) If any question arises as to whether a member of Panchayat body at any level become subject to any of the disqualifications under this section, the question shall be referred for decision of such authority and in such manner as the Government may by law provide.

- (i) If a person who is chosen as a member of a Panchayat at is or becomes member of the House of the People, the State Legislative Assembly or is or becomes a Municipal Councillor or a Councillor of a Municipal Corporation or a member of a Town Committee, then within fifteen days from the date of commencement of the term or office of a member of the House of people, the State Legislative Assembly or of a Municipal Corporation or Councillor of Municipality or member of Town Committee, his seat in the Panchayat shall become vacant unless he has previously resigned his seat in the House of People, the State Legislative Assembly of the Municipality or the Municipal Corporation or the town committee as the case may be.
- (j)¹ No person shall be disqualified on the ground that he is less than twenty five years of age, if he has attained the age of twenty one years.

1. *Substituted by Assam Act No. X of 1997.*

CHAPTER IX

GENERAL POWERS OF INSTITUTION SUPERVISION AND CONTROL OF STATE GOVERNMENT.

112. General powers of Government.

- (1) The officers as are empowered by the Government in this behalf shall have general powers of inspection, supervision, over the performance of the administrative duties of a Zilla Parishad, Anchalik Panchayat or Gaon Panchayat and without prejudice to the generality of the foregoing powers may: -
 - (a) Enter into and inspect any immovable property in the occupation or control or any work in progress under the direction of a Zilla Parishad, Anchalik Panchayat or Gaon Panchayat.
 - (b) Call for and inspect any document which may, for the purpose of this Act, be in the possession or control of a Zilla Parishad, Anchalik Panchayat or Gaon Panchayat.
 - (c) Require, by an order, in writing a Zilla Parishad, Anchalik Panchayat or Gaon Panchayat to furnish such statements, accounts report, proceedings as they think it.

- (d) Give such a vice writing in respect of the aim is native works, duties and proceeding as they think necessary, also are all proceedings of a Zilla Parishad, Anchalik Panchayat or Gaon Panchayat are in conformity with law and annual any proceedings which is considered not to be in conformity with law and may do all things necessary to secure such conformity.
- (e) Institute an enquiry in respect of any matter relating to a Zilla Parishad, Anchalik Panchayat or Gaon Panchayat and ractify and act or omission.

CHAPTER -X

CONSTITUTION OF FINANCE COMMISSION AND STATE ELECTION COMMISSION FOR PANCHAYAT BODIES.

113. Finance Commission.

The State Government shall as soon as may be, within one year from the date of commencement of the constitution (seventy-third amendment) Act, 1992 and thereafter at the expiration of every fifth year constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Government as to –

- (a) The principles, which should govern -
 - (i) The distribution between the State and the Panchayat net proceeds of the taxes, duties, tolls and fees leviable by the State which may be divided between them and allocation between Panchayats at all levels of their respective share of such proceeds.
 - (ii) The determination of the taxes, duties, tolls and fees, which may be assigned to or appropriated by the Panchayats.

- (iii) The Grants-in-aid to the Panchayats from the consolidated fund of the State.
- (b) The measures needed to improve the financial position of the Zilla Parishads, Anchalik Panchayats and Gaon Panchayats.
- (c) Any other matter referred to the Finance Commission by the Governor in the interest of sound finance of the Panchayats.
- (d) The Financial Commission shall consists of a Chairman and two other members to be appointed by the Governor.
- (3) The Chairman and the members of the Finance Commission shall possess such qualification and shall be appointed in such manner as may be prescribed by Government.
- (4) The Finance Commission shall determine its procedures.
- (5) The Chairman or a member of the Finance Commission may resign his office by writing under his hand and addressed to the Chief Secretary to the Government of Assam, but he shall continue in his office until his resignation is accepted by the Government.

- (6) The casual vacancy created by the resignation of the member or Chairman under sub-section (5) or for any other reason, may be filled by fresh appointment and a member or Chairman so appointed shall hold office for the remaining period for which the member or Chairman in whose place he has appointed would have held office.
- (7) The Commission shall have the following powers in the performance of its functions namely -
 - (a) To call for any record from any office or authority.
 - (b) To summon any person to give evidence or produce records; and
 - (c) Such other powers as may be prescribed.
- (8) The Governor of the state shall cause every recommendation made by the Finance Commission under this section together with an explanatory memorandum as to the action taken to be laid before the House of the State Legislative.

114. State Panchayats Election Commission.

- (1) The Superintendence, direction and control of the preparation of election roll for, and the conduct of all election to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commission to be appointed by the Governor.
- (2) The condition of service and tenure of the State Panchayats Election Commission shall be such as the Governor may by rule determine, provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a judge of the High Court and the conditions of service of the State Panchayat Election Commissioner shall not varied to his disadvantage after his appointment.
- (3) The Government shall when so requested by the State Election Commissioner, make available to the State Election Commissioner such staff as may be necessary for the discharge of the functions conferred on the State Panchayat Election Commission under this Act.
- (4)¹ The Returning Officers, Assistant Returning Officers, Presiding Officers, Polling Officers, and any other officers appointed under this Act or any Police Officers designated for the time being by the State Government for the conducts of the Panchayats Election shall be

deemed to on deputation to the State Election Commission for the period commencing on and from the date of notification calling for Panchayat Election and ending with the date of declaration of the results of the election and accordingly such officers shall during that period be subject to the control, Superintendence and discipline of the State Election Commission.

- (5) Subject to the provisions of Constitution of India as amended, the State Legislature may by law, make provision with respect to all matters relating to, or in connection with Election to the Panchayats.

CHAPTER –XI

MISCELLANEOUS

115. Powers over decision of Committees.

Every Panchayat shall have powers to revise or modify any decision taken by any of its Committees.

116. Powers of Gaon.

- (1) A Gaon Panchayat may, subject to the provisions of the Act and the rules made thereunder and with the previous sanction of the Zilla Parishad, make bye-laws to carry out the purposes of this Act in so far as it relates to its powers and duties.
- (2) In particular and without prejudice to the generality of the forgoing power, a Gaon Panchayat may make such bye-laws as may be required to discharge the function and duties entrusted to under section 19.
- (3) In making any bye-laws under sub section (1) and (2) the Gaon Panchayat may provide that a contravention thereof shall be punishable with such fine as may be prescribed.

- (4) Any such bye-laws may also provide that a person contravening the same, shall be required to remedy so far as it lies in his power, the mischief, if any, caused by such contravention.
- (5) All bye-laws made under this section shall be subject to the condition or previous publication and such publication shall be made in such manner as may be prescribed.

117. Power of Anchalik Panchayat to make regulations.

- (1) An Anchalik Panchayat may, subject to the provisions of this Act and the rules made thereunder and with the previous sanction of the Government, by notification, make regulations to carry out the purpose of this Act in so far as it relates to its powers and duties.
- (2) The regulations made under sub section (1) shall be subject to the condition of previous publication and such publication shall be made in such manner as may be prescribed.

118. Power of Zilla Parishad to make regulations.

- (1) A Zilla Parishad may subject to the provisions of this Act and the rules made thereunder and with the previous sanction of the Government, by notification,

make regulations to carry out the purposes of this Act in so far as it relates to its powers and duties.

- (2) The regulations made under sub section (1) shall be subject to the condition of previous publication and such publication shall be made in such manner as may be prescribed.

119. Power of Government to make model regulations.

- (1) The Government may subject to the provisions of this Act, the rules made thereunder and after previous publication of the draft for not less than one month, make model regulations and bye-laws for Gaon Panchayat, Anchalik Panchayats and Zilla Parishad.
- (2) A Gaon Panchayat, Anchalik Panchayat or Zilla Parishad may, by resolution adopt the model bye-laws or regulations as the case may be made under sub section (1), and such bye-laws and regulations shall come into force within the jurisdiction of the Gaon Panchayat, Anchalik Panchayat or Zilla Parishad from such date as the Gaon Panchayat, Anchalik Panchayat or Zilla Parishad, as the case may be specify in a published in the prescribed manner.

120. Powers of Government to dissolve and reconstitute Panchayat the alteration of limits of Panchayat area.

- (1) When on account of the reason that the limits of a Panchayat area is altered, the Government may by order published in the Official Gazette dissolved such Panchayat, from a date, specified in the order and direct that Gaon Panchayat, Anchalik Panchayat or Zilla Parishad concerned.
 - (i) By reconstitute for the Panchayat area of which the Gaon Panchayat, or of which the Anchalik Panchayat or the district of which the Zilla Parishad has been dissolved; or
 - (ii) Be established for a Panchayat area, block or which has been newly reconstituted.
- (2) The member of the Gaon Panchayat Anchalik Panchayat or Zilla Parishad which has been dissolved under sub section (1) shall vacate their office from the date of specified in the order of the Government.
- (3) The Gaon Panchayat, Anchalik Panchayat or Zilla Parishad reconstituted or re-established under the provisions of sub-section (1) shall consist of members nominated by the Government and such member shall be persons who are members of the Gaon Panchayat,

Anchalik Panchayat or Zilla Parishad which has been dissolved under sub section (1).

- (4) The Chairperson of the of Gaon Panchayat, Anchalik Panchayat or Zilla Parishad shall be elected in the manner provided in this Act.
- (5) The term of the Gaon Panchayat, Anchalik Panchayat or Zilla Parishad so constituted or established shall be for such period not exceeding six months as the Government may by order specify.
- (6) Before the expiry of the term of the Gaon Panchayat, Anchalik Panchayat or Zilla Parishad in accordance with the provisions of sub-section (5) a Gaon Panchayat, Anchalik Panchayat or Zilla Parishad shall be constituted in the manner provided by this Act:

Provided that where the reminder of the period for which the Gaon Panchayat, Anchalik Panchayat or Zilla Parishad would have continued is less than six months, is shall not be necessary to hold an election under this section for constituting a Gaon Panchayat Anchalik Panchayat or Zilla Parishad for such period.

- (7) A Gaon Panchayat, Anchalik Panchayat or Zilla Parishad Constituted under sub section (6) shall continue only for the reminder of the period for which the dissolved Gaon Panchayat, Anchalik Panchayats or

Zilla Parishad would have continued had it not been dissolved.

- (8) When a Gaon Panchayat, Anchalik Panchayats Or Zilla Parishad has been dissolved and reconstituted or re-established under this section so much of the ed Gaon Panchayat, Anchalik Panchayat or Zilla Parishad fund and other property vested in the ed Gaon Panchayat, Anchalik Panchayats or Zilla Parishad which has been dissolved shall vest that and such portion of the debts and obligations shall be transferred to the Gaon Panchayat, Anchalik Panchayats or Zilla Parishad reconstituted or re- established under this section as the Government may by order in writing direct.
- (9) The rights and liabilities of the Gaon Panchayat, Anchalik Panchayats or Zilla Parishad which has been dissolved in respect of Civil or Criminal proceedings, contracts agreements and other matters or things arising in and relating to any part of the area subject to the authority of the Gaon Panchayat, Anchalik Panchayat or Zilla Parishad re-constituted or Re-established shall vest in such Gaon Panchayat, Anchalik Panchayats or Zilla Parishad.
- (10) Any appointment notification, notice, tax, order, scheme, licence, permission, rule, regulations or form made, imposed or granted by the Gaon Panchayat, Anchalik Panchayat or Zilla Parishad which has been

dissolved in respect of any part of the area subject to the authority of the Gaon Panchayat, Anchalik Panchayat or Zilla Parishad which has been reconstituted or re-established shall be deemed to have been made, issued, imposed or granted by such ed Gaon Panchayat, Anchalik Panchayat or Zilla Parishad unless and unit it is suspended by any appointment, notification, notice, order, scheme, licence, permission, rule, regulations or form made, issued, imposed or granted by such Gaon Panchayat, Anchalik Panchayat or Zilla Parishad.

- (11) If any difficulty arises in effect to the provisions of the proceedings sub-section the Government may by order published in the official Gazette, as the occasion may require, do anything which appears to it necessary to remove the difficulty.

121. Enquiry into the affairs of the Panchayats by the Government.

- (1) The Government may, at any time for reason to be recorded, cause an enquiry to be made against any of its officers in regard to any Gaon Panchayat, Anchalik Panchayat or Zilla Parishad on matters concerning it, or any matter with respect to which the sanction, approval, consent or orders of the Government is required under this Act.

- (2) The officer holding such enquiry shall have the powers of the Civil Courts under the Code of Civil Procedure, 1908 to take evidence and to compel attendance of witnesses and production of documents for the purpose of enquiry.

122. Direction from Government

- (1) Notwithstanding anything contained in this Act, it shall be lawful for the Government to issue directions to any Panchayat in matters relating to state and national policies and such directions shall be binding on the Panchayat.
- (2) The Government may –
 - (a) Call for any record or register or other document in possession or under the control of any Panchayat
 - (b) Require any Panchayat to furnish return, plan, estimate, statement, accounts or statistics; and
 - (c) Require any Panchayat to furnish any information or report on any matter connected with such Panchayat.

123. Restriction or withdrawal of powers and function from the Panchayats.

- (1) Notwithstanding the transfer of any powers, functions and duties in respect of any matter to a Panchayat under this Act, the Government on a proposal from the Panchayat in that behalf of where it is satisfied that by reason of a change in the nature of the matter such as the conversion of a primary health centre into a secondary health centre or conversion seed multiplication farm into an agricultural research farm or a road becoming a part of a highway and any other such things, the matter would cease to be a matter in the relevant Panchayat functions list and it is necessary to withdraw such powers, functions or duties in respect of such matter may, by notification in official Gazette withdraw such powers, functions and duties with effect from the date specified in the notification and make such incidental and consequential orders as may be necessary to provide for matters including the taking over of the property, rights and liabilities if any, vested in the Panchayat and of the staff if any, which may have been transferred to the Panchayat as the case may be.
- (2) The Government may, by notification in the official Gazette amend or add any activity, programme or scheme covered or mentioned under section 19, section 49 and section 90 and on the issue of such

notification, the relevant Panchayat functions list shall be deemed to have been amended accordingly. Every such notification shall be placed before the House of State Legislative.

124. Zilla Parishad power of suspending and executing power, order etc. of the Gaon Panchayat.

- (1) If in the opinion of the Zilla Parishad, the execution of any order or resolution of a Gaon Panchayat or any order of any authority or officer of a Gaon Panchayat or the doing anything which is about to be done, is improper or is causing or is likely to cause injury or annoyance to the public or to lead to a breach of peace, it may, by order suspend the execution or prohibit the doing thereof.
- (2) When the Zilla Parishad make an order under subsection (1) it shall forthwith forward to the Government and to the Gaon Panchayat effected thereby a copy of the order with a statement of reasons for making it, and it shall be in the direction of the Government to confirm or rescind the order and to direct that it shall continue to be in force with or without modification permanently or for such period as it thinks fit :

Provided that no order of the Zilla Parishad passed under this section shall be confirmed, revised or

modified by the Government without giving the Gaon Panchayat a reasonable opportunity of showing cause against the said order.

125. Dissolution of Panchayat.

- (1) If in the opinion of the Government, a Gaon Panchayat, Anchalik Panchayat or Zilla Parishad exceed; or abuses its power is not competent to perform or make persistent default in the performance of the duties imposed on it under this Act or any other law for the time being in force, the Government may, by an order published in the official Gazette dissolve such Gaon Panchayat or Anchalik Panchayat or the Zilla Parishad as the case may be.
- (2) Before publishing an order under sub-section (1), the Government shall communicate to the Gaon Panchayat or the Anchalik Panchayat or the Zilla Parishad, as the case may be, the grounds on which it proposes to do so, fixed a reasonable period for the Panchayat concerned to show cause against the proposal and consider its explanation or objection, if any.
- (3) When a Gaon Panchayat or an Anchalik Panchayat or a Zilla Parishad is dissolved all the members of the Gaon Panchayat or the Anchalik Panchayat or the Zilla

Parishad shall, from the date specified in the order vacate their offices as such members.

- (4) If a Gaon Panchayat or an Anchalik Panchayat or a Zilla Parishad is dissolved.
 - (a) All the powers and duties of the Gaon Panchayat or Anchalik Panchayat or Zilla Parishad shall during the period of its dissolution be exercised and performed by such person or persons as the Government may from time to time appoint in this behalf.
 - (b) All the property vested in the Gaon Panchayat or Anchalik Panchayat or Zilla Parishad shall, during the period of dissolved vest in the Government; and
 - (c) The person vacating office on the dissolution shall be eligible for re-election.

126. Preparation of Development plans.

- (1) Every Gaon Panchayat shall prepare every year a development plan and submit it to the Anchalik Panchayat before such date and in such form as may be prescribed by the District Planning Commission as under section 3 (1)

- (2) Every Anchalik Panchayat Shall prepare every year development plan for its area after including the development plans of the Gaon Panchayat and submit it to the Zilla Parishad before such date and in such form as may be prescribed by the District Planning Committee as under section 3 (1).
- (3) Every Zilla Parishad shall prepare every year a development plan of the district after including the development plans of the Anchalik Panchayat and submit it before such date and such form as may be prescribed by the District Planning Committee, to District Planning Committee, constituted under section 3 (1) of this Act.

127. Constitution of Panchayat Election Tribunal.

- (1) The Government shall constitute such Panchayat Election Tribunals as may be necessary on the recommendation of the High Court to dispose of all direct election petitions challenging elections under this Act. The jurisdiction, powers and functions and the headquarters of the Tribunal shall be decided by the Government in consultation with the High Court, as provided in section 10 of this Act.

127A¹.Any person who in connection with Panchayat Election promotes or attempts to promote on () of religion, race, caste, community or language

feeling of enmity or hatred between different classes shall be punishable with imprisonment for a term which may extend to three years or with fine to the extent of one thousand rupees or with both.

An offence punishable under section this shall be cognizable and bailable.

Prohibition of public meeting on the day proceeding the election day and on the election day.

127B². Any person who convenes, holds or attend any public meeting in any polling area during the period of forty eight hours ending with the hour fixed for the conclusion of the poll for Panchayat election in the polling area shall be punishable with fine which may extend to two hundred and fifty rupees.

An offence punishable under this section shall be cognizable and bailable.

Disturbances at election meeting.

127C³. Any person who at a public meeting of principal character held lawfully between the date fixed

ending election canvases, acts or incites other to act in a orderly manner for the purpose of preventing the transfer of the business for the meeting was called 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.

An offence punishable under this section shall be cognizable and bailable.

127D (1)¹ No person shall print or publish or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and address of the printer and the publisher thereof.

(2) No person shall print or cause to be printed election pamphlets or poster.

(a) Unless a declaration as to the identity of the publisher thereof signed by him and attested by two person to whom he is personally know, is delivered by him to the printer in duplicate, and

(b) Unless with reasonable time after the printing of the document, one

copy of the declaration is sent by printer together with one copy of the document to the District Returning Officer (District Magistrate) of the district where it is printed.

Any person who contravenes any of the provision of sub-section (1) and (2) shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two hundred rupees or with both.

An offence punishable under this section is cognizable and bailable

Maintenance of secrecy of voting.

127E² Every Officer, Assistant Agent or other person who perform any duty in connection with the recording or counting of votes in Panchayat Election shall maintain the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person information calculated to violate such secrecy.

Any person who contravenes this provision shall be punishable with imprisonment for a term, which may extend to three months or with fine, which may extend to five hundred rupees or with both.

An offence under this section is cognizable and bailable.

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1. *Inserted by Assam Act No. XXV of 1999.*
 2. *Inserted by Assam Act No. XXV of 1999.*
 3. *Inserted by Assam Act No. XXV of 1999.*
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Officers etc., at election to act for candidates or influence voting.

127F³ Any person who is a Returning Officer or an Assistant Returning Officer or a President or Polling Officer at a Panchayat Election or an officer or Assistant appointed by the Returning Officer or by the President Officer to perform any duty in connection with a Panchayat Election or a member or a Police force on duty shall not endeavour: -

- (i) To persuade any person to give his vote at a Panchayat Election.
- (ii) To dissuade any person from giving his vote at a Panchayat Election
- (iii) To influence the voting of any person at a Panchayat Election in any manner.

Any person who contravenes these provision shall be punishable with imprisonment which may extend to six months or with fine, which may extend to two hundred rupees or with both.

An offence punishable under this section shall be cognizable and bailable.

Prohibition of canvassing in or near polling station.

127G.¹No person shall, on the date or dates on which poll is taken at any polling station commit any of the following station or at any public or private place within a distance of one hundred metres of the polling station, namely: -

- (i) Canvassing for votes, or
- (ii) Soliciting the vote of any elector, or
- (iii) Persuading any elector not to vote for any particular candidate, or
- (iv) Persuading any elector not to vote at the election, or
- (v) exhibition any notice or sign other than an official notice relating to the Panchayat election

1. *Inserted by Assam Act No. XXV of 1999.*

Any person who contravenes these provisions shall be punishable with fine which may extend to two hundred any fifty rupees.

An offence punishable under this section shall be colonizable and bailable.

Penalty for disorderly conduct in or near polling stations.

127H.² No person shall, on the day or dates on which a poll is taken at any polling station.

- (i) use for operate, within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice, such as a megaphone or a loudspeaker, or
- (ii) shout, or other act in a disorderly manner, within or at the entrance of the polling station or in public or private place in the neighbourhood thereof, so as to cause annoyance to any person visiting the polling station for the poll, or so as to interfere with the work of the officers and other persons on duty at the polling station.

Any person who contravenes or wilfully aids or abets the contravention of, these provisions shall be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both.

An offence punishable under this section shall be cognizable and bailable.

- (2) If the Presiding Officer of a Polling Station has reasons to believe that any person is committing or has committed an offence punishable under this section he may direct any police officer to arrest such person and thereupon the police officer shall arrest him.
- (3) Any police officer may take such steps, and use such force, as may be reasonably necessary for preventing any contravention of the provisions of this section and may seize any apparatus used for such contraventions.

Penalty for misconduct at the polling station.

127 I.¹ Any person, who during the hours fixed for the poll at any polling station shows misconduct or fails to obey the lawful directions of the Presiding Officer, may be removed from the polling station by the Presiding Officer or by any Police officer on duty or by any person authorised in this behalf by such Presiding Officer.

The power conferred by the above provision shall not be exercised so as to prevent any elector who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station .

Any person, who has been removed from a polling station, if re-centres the polling station without the permission of the Presiding Officer, he shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

An offence punishable under this section shall be cognizable and bailable.

1. *Inserted by Assam Act No. XXV of 1999.*

Penalty for failure to observe procedure for voting.

127J.² If any elector to whom a ballot paper has been issued notice to observe the procedure prescribed for voting the ballot paper handed over to him shall be liable for cancellation.

2. *Inserted by Assam Act No. XXV of 1999.*

Penalty for the liable hiring or procuring of conveyances at election.

127K³. If any person who, is guilty of any such corrupt practice of illegal hiring or procuring of vehicle for voter at or in connection with the Panchayat election, he shall be punishable with fine which may extend to one thousand rupees.

The offence punishable under this section shall be cognizable and bailable.

3. *Inserted by Assam Act No. XXV of 1999.*

Breaches of official duty in connection with election.

127 L.¹ (1) If any person in official duty in connection with a Panchayat election to whom this

Act applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punishable with fine which may extend to five hundred rupees.

An offence punishable under this section shall be cognizable and bailable:

Provided that no suit or other legal proceeding shall lie against any such person for damages in respect of any such act or omission as aforesaid.

1. *Inserted by Assam Act no. XXV of 1999*

- (2) The person to whom this section applies are the Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer and other person appointed to perform any duty in connection with the receipt of nominations or withdrawal of candidature or recording or counting of votes at the Panchayat Election and the expression Official duty shall for the purpose of this section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act.

Penalty for Government servants for acting as election agent or counting agent.

127 M.²If any person in the service of the Government acts an election agent, or a polling agent or a counting agent of a candidate a Panchayat election, he shall 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.

An offence punishable under this section shall be cognizable and bailable.

2. *Inserted by Assam Act no. XXV of 1999*

Removal of ballot papers from polling station to be an offence.

127N³.Any person who at the Panchayat Election fraudulently take or attempts to take, a ballot paper out of a polling station, or wilfully aids or acts the doing of any such act, shall punishable with imprisonment for a term which may extend to one year with fine which may extend to five hundred rupees or with both.

If the Presiding Officer of a polling station has reason to believe that any person is committing or has

committed an offence punishable under this section, such officer may, before such person leaves, the polling station arrest or direct a police to arrest such person may search such person or cause him to be searched by a Police Officer:

Provided that when it is necessary to cause a woman to be searched, the search shall be made by another women with strict regard to decency.

Any ballot paper found upon the person arrested on search shall be made over for safe custody to a police officer by the Presiding Officer, or when search is made by a police shall be kept by such officer in safe custody.

3. *Inserted by Assam Act no. XXV of 1999*

An offence punishable under this section shall be cognizable and bailable.

Offence of booth capturing.

1270¹ 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, which may extend to one thousand rupees or with both.

An offence punishable under this section shall be cognizable and bailable.

Explanation: - For the purpose of this section “booth capturing” including among other things, all or any of the following activities, namely: -

- (i) Seizure or closure 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 affect the orderly conduct of election.
- (ii) Taking possession of a polling station or a place fixed for the poll by any person and persons allowing only his or their own supporters to exercise their right to vote and prevent others from voting.
- (iii) Threatening any elector or obstructing or preventing him from going to the polling station or a place fixed for the poll caste his vote.

- (iv) Seizure or closure or taking possession 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.
- (v) 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 activities in furtherance of the prospects of the election of a candidate or against the prospects of a candidate.

Other offence and penalty thereof.

127P².A person shall be guilty of all election offence, it at the Panchayat Election be: -

- (i) Fraudulantly defaces or fraudulently destroys any nomination papers, or
- (ii) Fraudulantly defaces, destroys or removes any list notice or other documents affixed by or under the authority of a Returning Officer, or

- (iii) Fraudulantly defaces or fraudulantly destroys any ballot paper or the official mark on any ballot papers or any declaration of identity or official envelope used in connection with voting ballot, or
- (iv) Without the authority supplies any ballot paper to any person or receives any ballot paper from any person or is in possession of any ballot papers, or
- (v) Fraudulently put into any ballot box anything other than the ballot paper which he is authorised by law to put in, or
- (v) Without due authority destroys, takes persons or otherwise interfaces with any ballot box or ballot.
- (vi) Fraudulently or without authority, as the case may be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such acts.

Any person guilty of an electoral offence under this section shall: -

- (a) If he is Returning Officer or Assistant Returning Officer or a

Presiding Officer at a polling station or any other officer or Assistant employed on official duty in connection with the Panchayat election, be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both.

(b) If he is any other person be punishable with imprisonment for a term which may extend to six months or with fine which may extend to six months or which may extend to two hundred rupees or with both.

(c) For the purpose of this section, a person shall be deemed to be on official duty if his duty is to take part in the conduct of Panchayat Election or [part of the election including the counting on votes or to be reasonable after the election for the used ballot paper and the other documents connected with the election, but the expression “Official duty” shall not include duty

imposed otherwise by or under this Act.

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1. *Inserted by Assam Act No. XXV of 1999.*
 2. *Inserted by Assam Act No. XXV of 1999.*

Trial by competent Court.

127Q¹No Court other than that of a Judicial Magistrate of the First Class of the competent Jurisdiction shall try any offence under this Act.

Offence to be tried summarily.

127R²Offence under this Act may be Act 2 of summarily in the manner provided for summary 1974, trial under the Code of Criminal Procedure, 1973.

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3. *Inserted by Assam Act No. XXV of 1999.*
 4. *Inserted by Assam Act No. XXV of 1999.*

128. Annual Administrative Report.:-

- (1) As soon as may be after the first day of July in every year and not later than the thirty first day of August every year, the Executive Officer of the Anchalik Panchayat shall place before the Anchalik Panchayat a report of the Anchalik Panchayat during the proceeding Panchayat year in such form and with

such details as the Government may direct and shall forward report with the resolution of Anchalik Panchayat at thereon to the Government by the thirtieth of September of every year.

- (2) As soon as may be after the first day of July every year, the Chief Executive Office of the Zilla Parishad shall prepare a report on the Administration of the Zilla Parishad during the proceeding Panchayat year in such form and with such details as the Government may direct and submit the report to the Zilla Parishad.

After approval by the Zilla Parishad it shall be submitted to Government by the thirtieth of September every year.

- (3) The report submitted to the Government under subsection (2) shall together with a memorandum by the Government reviewing the working of the Zilla Parishad be laid before the State Legislature.

129. Bar to interference by courts in the electoral matters.

Notwithstanding anything contained in this Act:

- (a) The validity of any law relating to the delimitation of constituencies on the allotment of seats to such constituencies, made under article 243 of the

Constitution of India shall not be called in question
any court.

- (b) No election to any Panchayat shall be called question
except by an election petition presented within sixty
days from the date of declaration of election results to
the Tribunal constituted under section 127.

130. Repeal and Saving:

All the Panchayats existing immediately before the
commencement of this Act, shall continue till the expiration
of their duration as under the Assam Panchayat Raj Act,
1986 unless sooner dissolved by a resolution passed to that
effect by the Legislative Assembly of the State.

¹Provided that in case of dissolution by a resolution passed
by the Legislative Assembly all the powers and duties of
Gaon Panchayats or Anchalik Panchayat shall, during the
period of such dissolution, be exercised and performed by
such officer not below the rank of a Gazetted Officer, as the
Govt. may from time to time appoint in this behalf.

1. *Inserted by Assam Act No. X of 1997.*

131. Repeal of previous Act:

- (1) On and from the date on which this Act comes into force, the Assam Panchayat Raj Act 1986 shall be deemed to be repealed:

Provided that –

- (a) Till such time when new rules and framed before the expiry of one year the from the coming into force of 73rd Amendment of the Constitution Act the rules framed under 1986 Act, shall remain valid.
- (b) The said repeal shall not effect the validity or invalidity of anything already done under the said enactment.
- (c) All rules and bye-laws, notifications, orders, appointments made, permissions and sanctions granted, taxes, cess, fees or rates levied, contract entered into, suits instituted and proceedings taken under the Assam Panchayat Raj Act, 1986 and in force immediately before the commencement of this Act shall continue to be in force and so far as they are not

inconsistent with this Act, shall be deemed to have been retrospectively made, granted, levied, entered into, instituted and taken under this Act until new provisions are made under this Act.

- (d) All assets and liabilities including the funds which are vested in erstwhile Gaon Panchayats, Anchalik Panchayats and Mahkuma Parishads under the provision of the Assam Panchayat Raj Act, 1986, shall vest in the Dy. Commissioner or the Sub -Divisional Officer as the case may be and shall be held by him in trust it can be made over to the Gaon Panchayats, Anchalik Panchayats and Zilla Parishads constituted under this Act under the jurisdiction of which the area of the erstwhile Gaon Panchayat, Anchalik Panchayat and the Mahakuma Parishad is included.
- (e) Notwithstanding repeal of the Assam Panchayat Raj Act, 1986, any area of taxes, cess, fees and rates which were levied by the Gaon Panchayat, Anchalik Panchayat and the Mahakuma Parishads, under provisions of the Assam Panchayati Raj Act, 1986, or any amount of money on account of fine or otherwise which was due to the Gaon Panchayat, Anchalik Panchayat and the Mahakuma Parishad under the Assam Panchayati Raj act, 1986, shall be

recovered by the Gaon Panchayat, Anchalik Panchayat and the Zilla Parishad, as the case may be credited into the respective Panchayat Fund.

- (f) Any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Act; or
- (g) Any investigation, legal proceeding or remedy in respect of such right, privilege, obligation, forfeiture or punishment aforesaid and any such investigation legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture, or punishment may be imposed as if this Act had not been passed.

- (2) When a Gaon Panchayat or Anchalik Panchayat or Zilla Parishad is dissolved, all the members of the Gaon Panchayat or Zilla Parishad shall from the date of dissolution, vacated their offices as such members.
- (3) The persons vacating office on dissolution shall be eligible for re-election or re-nomination.

132. Removal of difficulties.

If any difficulty arises in giving effect to the provisions of this Act, the Government may take such necessary action so long

as these are not repugnant to the main objectives and provisions of this Act.

- (a) The state Government may by notification constitute a standing committee of Legislatures to resolve disputes between the district administration and the Zilla Parishad.

133. Vesting in of properties etc., of Panchayat bodies on withdrawal of provision of the Act.

When the provisions of this Act are withdrawn from any Zilla Parishad or Anchalik Panchayat or Gaon Panchayat area, all the properties, funds and dues, which were vested in such be vested in the day. Commissioner or the Sub-Divisional Officers as the case may be, who shall make such allocation of the properties as he deems fit with the prior approval of the Government.

134. Taking Of Oath.

Every person who is elected to be a member of Zilla Parishad, Anchalik Panchayat or Gaon Panchayat shall, before taking his seat, make and subscribe before such authority as may be specified by the State Government in this behalf an oath or affirmation of his allegiance to the constitution of India at a meeting which shall hereinafter to be called the first meeting in the following form.

1. A, B, being a member of the Zilla Parishad/Anchalik Parishad/Gaon Panchayat do swear in the name of God (or solemnly affirm) that I will bear true faith and allegiance to the constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter.

135. Dispute between Panchayat and local authorities.

If dispute arises between two or more Panchayat bodies and local authority or between any two local authorities matter shall be referred to the Government or to such authority as the State Government may direct and decision of the Government or such authority shall be final and conclusive.

136. Augmentation of Consolidated Funds of the State.

All the measures needed to Augment the Consolidated Fund of the State to supplement the resources of the Panchayat in the State on the basis of recommendation made by the State Panchayat Finance Commission, shall be taken by the Government as it may deem fit.

137. Appeal against any order of the Panchayat Raj institution.

Any employee under a Panchayat institution or person aggrieved by any order or act of Panchayat institution may

file an appeal within fifteen days from the date of receipt of such order or performance of such Act, to the Government whose decision in this regard shall be final.

138. Delegation of powers to the Dy. Commissioner, Sub-Divisional Officer, or any other Gazetted officer.

- (1) The Statement may delegate of their powers under this Act or rules framed thereunder except where expressly provided to the contrary to any Government officer of Gazetted rank.
- (2) Except where expressly provided to the contrary, the Government may delegate all or any of the powers of the Deputy Commissioner or the Sub-divisional Officer under this Act or rules framed thereunder this Act to any Government Officer of Gazetted rank.
- (3) Except where expressly provided to the contrary, the Deputy Commissioner or the Sub-divisional Officer as the case may be, may delegate all or any of their powers under this Act or rules framed under this Act to any Government Officer of Gazetted rank.
- (4) The delegation of power under sub-section (1), (2) and (3) shall be an order in writing and such order may be modified or withdrawn at any time.

139. Powers of Anchalik Panchayat and Gaon Panchayat to make subsidiary Rule's.

Subject to the approval of the Government, every Anchalik Panchayat or Gaon Panchayat may, by subsidiary rules consistent with this Act and with any rules made thereunder, provided for-

- (a) The time and place of its meeting, the business to be transacted at the meeting and the manner in which the notice of the meeting be given.
- (b) The duties, and control of employees working under it.
- (c) The custody of the common seal and the purposes for which it shall be used.
- (d) The division of duties among its members and employees.
- (e) The powers to be exercised by the office bearers to whom particular duties have been assigned.
- (f) The person by whom receipt shall be granted for money received under this Act.

140. Staff selection Board.

- (i) For Zilla Parishad, Anchalik Panchayat and Gaon Panchayat Grade-III and Grade-IV staff shall be appointed by the Chief Executive Officer of Zilla Parishad on the recommendation of the District Selection Committee of Panchayat and Rural Development Department constituted by the Government in the Panchayat and Rural Development Department.

Grade-I and Grade-II officers shall be posted in the Panchayats and Zilla Parishad by the State Government.

¹Provided that no appointment under this sub-section shall be made by the Chief Executive Officer without the prior approval of the State Government.

- (2) The teachers in schools managed by the Panchayats shall be posted by the officer authorised by the Educational Department of the State Government on the recommendation of the District Teachers Selection Committee constituted by the Education Department.

141. Powers to make Rules.

- (1) The State Government may make rules for carrying out the purpose and objects of this Act.
- (2) any rule framed under sub-section (1) may be given retroactive effect.

142. Repeal and Saving Assam ordinance VI of 1994.

- (1) The Assam Panchayat Ordinance, 1994 is hereby repealed.
- (2) Notwithstanding such repeal, anything done or any action under the ordinance or any action taken under the ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act as if this Act came into force on the date on which said ordinance came into force.

K. LASKAR

**Secretary to the Govt. of Assam
Legislative Department.**