

# INDIAN ELECTION GUIDE

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## MANUAL

FOR

CANDIDATES AND ELECTORS.

BY

I. C. S.

*Non Coronabitur qui non legitime certaverit*

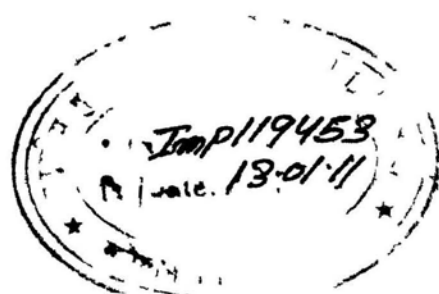
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## PREFACE.

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THE main object of this book is to furnish candidates, electors, and officials and others who are required to take an active part in the conduct of elections to the Legislative Councils, and the Chambers of the Indian Legislature, with an account of the procedure laid down in the rules and regulations for the conduct of elections in India. The colossal task of carrying through a general election throughout the whole of India is near at hand. The candidates are inexperienced, and masses of the voters do not yet understand what the vote means, what power it confers, and how its efficacious use may revolutionize the whole system of Government and change the destinies of India.

In order to explain the principles which underlie the rules and regulations, frequent reference is made throughout to the decisions of the English Courts and to English practice. The Indian rules and regulations are modelled on the English election laws and English practice, and it is hoped that the discussions of the principles and cases will be of assistance to the judges who will soon have to decide petitions questioning the validity of elections.

The Appendices contain the regulations for the nomination of candidates and the conduct of elections by Returning and Presiding Officers, including the method of voting, as prescribed by the Local Governments of Bengal, Bihar and Orissa, and Bombay. These regulations are typical of the system adopted throughout India.

By those who desire to study the working of the English election system in detail, reference may be made to *Roger's on Elections* and *Parker's Election Agent and Returning Officer*.

I. C. S.

Calcutta, 25th Sept., 1920.

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# INDIAN ELECTION GUIDE

## CHAPTER I.

### RULES AND REGULATIONS

ELECTORS are registered and elections are carried through in the United Kingdom under the powers conferred by a series of laws and enactments which have been passed, amended and enacted during the last one hundred years. There are some still earlier enactments dealing with registration of voters and elections beginning with the Statute of Henry VI (1429), *what sort of men shall be choosers and who shall be chosen Knights of the Parliament*. The passing of the Representation of the People Act of 1832, commonly known as the Reforms Act, is, however, the first great landmark in modern franchise reform. The roll of voters was at least doubled by this Act and reached the not inconsiderable total for these days of 280,000 registered electors. Eighty-six years later, the franchise reached its full development in the Representation of the People Act of 1918. The Corrupt and Illegal Practices Prevention Act of 1883, though it has been amended in some particulars, is still the law which regulates the management and conduct of elections, so far as corrupt and illegal practices are concerned. It marks the culmination of the struggle to curtail election expenditure and to prohibit corrupt practices.

The Government of India have not undertaken the task of framing a code of election law for the registration of electors and the conduct of elections on the lines of the various Acts passed by Parliament. Instead power was taken under sections 7 and 21 of the Government of India Act of 1919 to make rules

prescribing the qualifications of electors, the constitution of constituencies, the methods of election and other matters incidental or ancillary thereto, the final decision of doubts or disputes as to the validity of elections, and the manner in which the rules are to be carried into effect. By this device, the Government of India have been enabled to frame franchise qualifications and other rules applicable to the varied conditions of the different provinces of India in which the Reform scheme is being put in force. The rules prescribing the franchise qualifications vary considerably from province to province, in accordance with local circumstances and the standards of property prevalent in each; whereas the rules framed in regard to the general disqualifications for election, the general conditions of registration, the nomination of candidates, election agents and return of expenses, nomination of members, and corrupt practices are of universal application, and apply to the elections to both chambers of the Indian Legislature as well as to the elections for local Councils. These rules, which are referred to in succeeding chapters as the main rules or the rules, have been sanctioned by the Secretary of State in Council and by both Houses of Parliament; and they cannot now be altered or amended without the approval of these authorities. The intention is that they should remain unamended for a period of ten years, during which the Reform scheme is on its trial.

In addition to the rules, the Government of India Act provides for the delegation by the Government of India to Local Governments of powers to make

subsidiary regulations affecting the matters referred to in the rules, and the Government of India have accordingly delegated such powers to Local Governments by rules 9 and 13. Under the provisions of rule 9, Local Governments are empowered to make regulations providing for the authority by whom the electoral rolls shall be prepared and the particulars to be contained in them; the time at which they shall be prepared; the manner in which claims and objections may be made; the appointment of Revising Officers to hear them; the manner in which notices or objections shall be given; the place, date and time at which, and the manner in which claims and objections shall be heard; and other matters incidental or ancillary to the preparation or revision of the rolls. Similarly under rule 13, Local Governments are empowered to make regulations regarding the conduct of elections; nominations; appointment of Returning Officers; polling stations; Presiding Officers at polling stations; the method of voting; procedure to be followed in respect of tender of votes; scrutiny of votes; safe custody of ballot papers and other election papers; and regulations regarding other such matters which may be necessary for the conduct of the elections, as they may think fit. The regulations so made by various Local Governments vary considerably from province to province, not merely in regard to the method of preparing and revising the rolls and the agency employed for the purpose, but also in regard to the manner of recording the votes and taking the poll. Copies of the regulations of some of the more important provinces are annexed, and the main differences and variations in the methods of recording the votes and carrying through the elections are discussed in succeeding chapters. By adopting the method of rules, the Government of India have been able to frame an election code suitable to the multifarious conditions and needs of different provinces with great expedition; but there are obvious disadvantages in the method; the rules confer no statutory powers or authority on the persons who prepare, revise, and publish electoral rolls; nor, is it possible to provide for the punishment of

election offences by means of rules. No doubt, it will be found necessary, as in England, to take the necessary statutory powers and to provide for the punishment of the numerous offences which are certain to be committed in connection with election proceedings, as the system develops. A beginning has been already made with the Indian Elections Offences and Inquiries Act.

## CHAPTER II.

### CANDIDATES FOR ELECTION.

The following classes of persons are disqualified from being elected to any legislative body in India:—Aliens; females; persons who are already members of any legislative body constituted under the Government of India Act, dismissed or suspended legal practitioners; lunatics; persons under 25 years of age; undischarged insolvents; discharged insolvents who have not obtained from the court a certificate that their insolvency was caused by misfortune, and not by misconduct; and officials.

In addition certain classes of persons are disqualified from being elected for a period of years; persons who have been sentenced by a criminal court to transportation or imprisonment for a period exceeding six months are ineligible for election for a period of five years from the date of the expiration of the sentence, unless the offence has been pardoned. Persons convicted under Chapter 9-A of the Indian Penal Code of offences punishable with imprisonment for a term exceeding six months, or reported by Election Commissioners to be guilty of a corrupt practice as specified in Part I or paragraphs 1, 2 or 3 of Part II of Schedule IV of the rules framed under the Government of India Act are ineligible for election for a period of five years from the date of the conviction or of the finding; and a person reported by the Commissioners to be guilty of any other corrupt practice is similarly disquali-

fied for three years. Persons who have been candidates or election agents, and who have failed to lodge the prescribed return of election expenses, or have lodged returns which are found by the Election Commissioners or by a Magistrate in a judicial proceeding to be false in any material particular are ineligible for election for five years from the date of the election. The last two disqualifications may, however, be removed by an order of the Local Government.

A person who is not disqualified, as above, may be a candidate for election provided he is registered as an elector in certain specified constituencies. The qualifications vary to some extent from province to province.

For the special constituencies, *viz.*, the Landholders', University, Planting, Mining, and Commerce and Industry constituencies, the rule is uniform, and the candidate must be an elector of the constituency. For the general constituencies the principle generally adopted is that the candidate must be registered as an elector in any one constituency in the province and must himself be a member of the community to which the constituency belongs. Thus, in the case of a Muhammadan constituency, he must be an elector in a Muhammadan constituency in the province and must himself be a Muhammadan. In the case of the European constituency, he must be an elector in the European constituency, and so on. Under this rule, a Muhammadan cannot stand for a Non-Muhammadan seat, nor *vice versa*, nor can a European, if there is a European constituency in the province, stand as a candidate for a Non-Muhammadan seat. The rule, which is so designed that members of each community represented in the Council or legislative body shall be registered as electors in their own constituencies only, and none but members of their own community can represent them, has been adopted in Madras, Bombay, Bengal, Punjab, Bihar and Orissa and the Central Provinces. In the Punjab and the Central Provinces, however, a candidate must also reside in the constituency for which he seeks election; and, in the Bombay Presidency he must have resided in the constituency

for which he seeks election for a period of six months previous to the last date fixed for the nomination of candidate in the constituency. In the other provinces there is no residential qualification.

In the United Provinces, a person is eligible for election to represent any general constituency including Non-Muhammadan and Muhammadan, if he is registered as a voter on the roll of any constituency in the province other than the European. Thus, a Muhammadan can stand for a Non-Muhammadan constituency and *vice versa*, but a European can stand for neither. The European constituency is regarded for the purposes of election as a special one, and only a European voter can represent it.

Any person registered as an elector in the Shillong constituency or in a Muhammadan or Non-Muhammadan rural constituency in Assam can stand as a candidate for any general constituency in the province, *i.e.*, for the Shillong constituency or any Non-Muhammadan or Muhammadan seat. Here, again, a Muhammadan can stand for a Non-Muhammadan seat or *vice versa* and a European may stand as a candidate for either, if he is registered as an elector in any constituency in Assam. There is no general European constituency for Europeans as such, though there are five seats reserved for the Planting community.

In the Central Provinces, a candidate is deemed to have a place of residence in the constituency, if he has actually lived in a house or a part of it for a period of not less than one hundred and eighty days during the calendar year preceding the year in which the electoral roll is first published; or, if he has maintained for a similar period a house or part of a house as a dwelling for himself in charge of servants and if he has visited such house during such year.

According to the Punjab rules, a candidate will be presumed to reside in a constituency if he owns a residential house or a share in one in the constituency, and the house has not during the twelve months preceding the date of the publication of the electoral roll been let on rent, either in whole or in part.

An elector of the special constituencies (University, Planting, Mining, Commerce and Industry and Landholders') is qualified as a candidate for any general constituency in Bombay, Madras, Bengal, Punjab, Bihar and Orissa and the Central Provinces, provided he is a member of the community to which the seat belongs (Rule 6 of Part II). Thus an elector registered in the University constituency in Bihar and Orissa can stand as a candidate for the European constituency though he is not registered as an elector of that constituency, provided he is a European, and a Muhammadan elector of the Calcutta University may contest any Muhammadan urban or rural constituency in Bengal, though he is not an elector in any constituency of either description.

In the United Provinces, an elector of the special constituencies is qualified to contest as a candidate any general constituency except the European, while in Assam he may contest any of the general constituencies.

A person's full age is completed on the day preceding the anniversary of his birth. It is questionable whether a person who has not attained the age of 25 years on the date of the nomination of candidates, though he will have attained that age on the date of the poll, is disqualified or not. The election rules appear to leave it an open question. Rule 5 (Part II) merely states that the candidate must not be under 25 years of age, without reference to the time at which the age is to be computed. It is submitted that he is qualified, as the date of the poll is, properly speaking, the date of the election.

Persons who are not British subjects are disqualified from voting or from standing as candidates; but such persons may be naturalised, in which case they attain the full rights of British subjects with regard to elections, as well as in other matters. Subjects of Indian States are not British subjects, but Local Governments may, under the proviso to rule 5, direct that subjects and Rulers of such States shall not be ineligible for election by reason only of their not being British subjects. The mere fact that a subject of an Indian State has resided in British India for a number

of years does not confer upon him the status of a British subject, but such persons who have lived in British India for a period of not less than five years may apply for naturalisation as British subjects. Persons born in British India of parents who are not British subjects are themselves British subjects, if they reside in the country. Under the British Nationality and Status of Aliens Act, 1914, as amended, the following classes of persons are natural born British subjects: persons born within His Majesty's dominions and allegiance; persons born out of His Majesty's dominions whose fathers were British subjects at the time of their birth; and persons born on British ships whether in foreign or territorial waters.

Under the provisions of sections 63-E and 80-B of the Government of India Act, officials are not qualified for election as members of local Legislative Councils or of either chamber of the Indian Legislature, and, if a non-official member accepts any office in the service of the Crown in India, his seat becomes *ipso facto* vacant, provided, however, that for the purpose of these provisions a Minister shall not be deemed to be an official.

Under the powers conferred by sections 134 and 129-A, the Governor-General in Council, with the sanction of the Secretary of State in Council,\* has framed rules called the Non-Official (Definition) Rules defining for the purposes of the Government of India Act the classes of persons who shall not be regarded as officials. Under these rules a person may hold an office in the civil or military services of the Crown, but he will not be an official for the purposes of the Act unless the appointment fulfils two separate conditions. The incumbent must be a whole-time servant of Government and he must be remunerated either by salary or fees. Persons, therefore, holding honorary appointments of any description are not officials; nor are persons such as Government Advocates and Public Prosecutors who receive a salary or retaining fees from Government, but who are also allowed to practise privately in the exercise of their profession.

If any question arises whether a particular officer is, or is not, a Government servant, the Governor-General in Coun-

\*These rules have not yet received the sanction of Parliament.

cil is empowered to decide the question finally.

In England certain classes of officials are incapacitated from standing as candidates because they are believed to be under the influence of the Crown, while it is considered undesirable that a class of persons, whose conduct should be impartial, should take any part in party contests. If officials were allowed to stand as candidates in India, it would certainly detract from their usefulness and they would probably be elected members for all the rural seats. This latter fact is so well known to Indians that it has been proposed in some quarters to declare even Honorary Magistrates and persons holding titles of any kind incapacitated from standing, on the ground that they participate in or share the official's influence over the mass of the voters.

The rules for the various provinces have been adopted by the Government of India for the election of members to the Indian Legislative Assembly and the Council of State, *i.e.*, the Madras rules prevail in Madras and the Bengal rules in Bengal, etc., for all elections to both chambers of the Indian Legislature from the respective provinces.

If a person is elected by a local Council and by a constituency of either chamber of the Indian legislature, the election to the Council is void; and if a person is elected by more than one constituency of a local Council, he must within seven days of the publication of the result choose for which he shall serve (rule 14)

### CHAPTER III.

#### NOMINATION OF CANDIDATES.

A candidate for election must be nominated in writing on a form supplied by the Returning Officer of the constituency. A candidate should, therefore, obtain a copy of the prescribed form, although it appears, if the nomination paper is in the prescribed form, it need not necessarily be obtained from the Returning Officer. The ordinary rule is that the nomination paper shall be supplied to any

elector of a constituency on any day between the date of the notice of election and the date of the scrutiny of the nominations.

Nomination is the first substantive step taken by a candidate to secure his election. On or before the date on which a candidate is nominated, he is, however, obliged in addition under rule 11 of Part IV of the main rules, to make a declaration in writing appointing either himself or some other person, who is not incapacitated under the rules to be his election agent. The rule is mandatory, and is applicable to the elections of all Councils, and legislative bodies. "No candidate shall be deemed to be duly nominated unless such declaration has been made." The appointment of the election agent is almost as important a step as the nomination of the candidate himself, for on the agent depends not merely the efficiency with which the election campaign is conducted, but also whether it is free from corrupt practices. However successful a candidate may be at the polls, the result will be infructuous, if the election agent is found guilty of corrupt practices, as the candidate will be held responsible for them, whether he agreed to, or connived at, them or not.

The orders prescribing in detail the manner in which nominations shall be made and providing for the scrutiny of the nominations so made are contained in the regulations published by various provinces under the powers conferred by rule 13 of the main rules, and these regulations apply also to the elections of members from the respective provinces to both chambers of the Indian Legislature. They prescribe that the candidate must be nominated by two electors of the constituency as proposer and seconder; the same elector may subscribe as many nominations as there are vacancies to be filled; each candidate must be nominated by a separate nomination paper, and the nomination papers must be delivered by the candidate or his proposer or seconder at the office of the Returning Officer, or must be sent so as to reach his office by a certain date\*; the candidate must sign the nomination paper as assenting to the nomina-

\* The Regulations for three provinces will be found under the heading "Nomination of Candidates," in the Appendices.



tion; nomination papers which are not delivered to the Returning Officer or which do not reach his office before the time appointed for the scrutiny of the nomination papers are void; a candidate who has been duly nominated may withdraw by a written and signed communication delivered to the Returning Officer not less than fourteen days (in Bengal twenty-one clear days) before the date of the recording of the votes, or if the period between the dates fixed for the scrutiny of nomination papers and the recording of votes is less than fourteen clear days, not later than the date fixed for the scrutiny; and, under the main rules which are applicable to the whole of India, a candidate who has once withdrawn his candidature is not allowed to cancel it or to be renominated as a candidate for the election.

The Returning Officer is bound to examine the nomination papers on the date and at the time appointed for the scrutiny of nominations, and must decide forthwith any objections which may be made to any nomination paper. The candidate and his proposer and seconder may attend the scrutiny. They are permitted to examine the nomination papers of all candidates, and may put in objections to any paper on the ground that it is not valid. The functions of the Returning Officer are, however, in this respect confined to objections made to the nomination paper itself. The questions, therefore, with regard to which objections may be entertained, are those arising out of the information contained in the form of nomination itself. These relate to the description of the candidate, his name, and father's name, his age and address, and whether he has been nominated by a proposer and seconder who are recorded as electors on the electoral roll of the constituency. The Returning Officer has no jurisdiction to determine the question whether the candidate himself is duly qualified or not, save apparently the question of his age, if the age is one of the details required to be given in the nomination form. The question of the other qualifications of a candidate can be determined only by Election Commissioners appointed to hear a petition questioning the validity of an election. A candidate, therefore, who is not quali-

fied, although he may be declared to be duly nominated by the Returning Officer, may, if elected, be unseated on petition. Only candidates held to be duly nominated by the Returning Officer can have their names put up for election on the date of the poll.

The Returning Officer has full power to investigate the nomination paper, and to see that the details mentioned in the nomination form are correct. The main points are, that the candidate has been nominated by a proposer and seconder who are electors, and that he is not under 25 years of age. None but an elector can nominate a candidate, as nomination is the first step to election and becomes the election, if more candidates are not nominated than there are vacancies to be filled. Clerical mistakes in the spelling of the name of the candidate himself or his father's name, or mistakes in his address may, it is submitted, be corrected. When the nominations have been disposed of in this manner, the Returning Officer's control ends and his duty is to go on with the elections.

The regulations regarding the delivery or despatch of nomination papers to the Returning Officer vary to some extent from province to province. In Bengal and the United Provinces, the regulation prescribes that the nomination paper must reach the Returning Officer by a specified date which is notified by the Local Government; but every nomination paper must be attested by an attesting officer. In Bombay, the nomination paper may be presented at the office of the Returning Officer by the proposer or seconder, and in the Central Provinces by the proposer and seconder, on or before the appointed time; or it may be sent by post so as to reach his office before the time appointed, but in this case the proposer and seconder must append to the nomination paper a certificate from a gazetted Revenue or Judicial officer that they have signed the paper in his presence, and that they are electors in the constituency. In Bihar and Orissa, the nomination paper must, in the case of the general constituencies, be delivered at the office of the Returning Officer by the candidate himself or his proposer or seconder. In the Punjab, it must be delivered at the

office of the Returning Officer. The object aimed at in all cases is to prevent the nomination of bogus candidates or of persons who do not wish to contest the election. Where the nomination paper is sent by post, it must be attested by a responsible officer who is required to see that the persons who have signed it are electors registered on the electoral roll of the constituency. The same purpose is served by the provision requiring the nomination paper to be delivered by the candidate himself or his proposer or seconder. The Returning Officer should in that case on receipt of the paper, make the necessary inquiries summarily to satisfy himself that the candidature is genuine. This procedure is more essential in India than in England, because under the rules and regulations a candidate is not at present required to pay any fee, so that any person may be set up as a candidate, if two electors sign a nomination paper on his behalf.

The nomination paper of a candidate for any general constituency in Bihar and Orissa must be delivered at the office of the Returning Officer. It cannot, therefore, be sent by post, and it must be delivered by the candidate himself or his proposer or seconder. In *Monks v. Jackson*, it has been held under the corresponding English law that a nomination paper which has been delivered by a person who is neither the candidate nor his proposer nor seconder is invalid. In the Punjab, it is apparently not necessary that the person who delivers the nomination paper should be either the candidate himself, or his proposer or seconder; and the Returning Officer is prohibited from enquiring into the identity or qualification of any signature to a nomination paper or as to the accuracy of any entry therein (regulation). This being so, the scrutiny in this province is practically confined to the question whether the nomination was presented in due time or not.

Some of the more important English decisions bearing on the subject of the description of the candidate in his nomination paper are stated below by way of analogy.

All the names of the candidates should be written in full; initials are insufficient, but an abbreviation of the Chris-

tian name may be sufficient when there is no doubt about its meaning, e.g., Wm. for William; where the word "Millar" was written instead of "Miller," the court held that the nomination was valid, there being no doubt about the identity of the person.

The Returning Officer must personally attend at the appointed place to receive nominations, and he has no power to extend the time.

Although the Returning Officer is not entitled to enquire into the qualifications of the candidates and is limited to objections made to the nomination paper itself, it has been held in *Harford vs. Linsley* under the corresponding English law that he should reject any nomination paper which is on the face of it an abuse of the right of nomination, e.g., if a deceased person or woman is nominated as a candidate.

Where the disqualification is not apparent on the face of the nomination paper, the candidate may be declared duly nominated, though he is in fact disqualified.

The Returning Officer is not bound to hear evidence or to make enquiry. His decision must be summary and given promptly.\* It is doubtful whether he can adjourn the proceedings for consideration of his decision or to seek advice.

The functions of the Returning Officer at a scrutiny of nominations are thus summed up in "Parker's Election Agent and Returning Officer." "He is a judge of fact, and the fact in all cases within his jurisdiction is whether the requirements of the law with respect to the filling up, signature, and time of delivery of a nomination paper have, in substance and in common sense, been complied with. In the exercise of this function, the Returning Officer acts judicially, and he must therefore proceed with the utmost *bona fides* and impartiality; if in so doing no partiality or misconduct can be charged against him, he is not responsible for a *bona fide*, though erroneous, decision upon any point of law which can be raised in regard to any nomination paper (see *Harmon v. Park*, 6 C. B. D. 323)."



## CHAPTER IV.

## CORRUPT PRACTICES

The commission of a corrupt practice by the candidate, his agent or other person with the connivance of either is sufficient to invalidate the election of a returned candidate. It is, therefore, important that candidates and their agents should be fully acquainted with the rules relating to these offences and the principles which underlie them.

Under Part I of Schedule IV of the main rules, the following offences are corrupt practices: bribery; undue influence; personation; publication of false statements and the authorization or incurring of expenditure prohibited by any notification issued under rule 18 of Part IV, or the employment of persons in contravention of the provisions of any such notification. Bribery under Part I is defined to mean:—

“A gift, offer or promise by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, of any gratifications to any person whomsoever, with the object, directly or indirectly, of inducing—

(a) a person to stand or not to stand as, or to withdraw from being, a candidate, or

(b) an elector to vote or refrain from voting at an election, or as a reward to

(a) a person for having so stood or not stood, or for having withdrawn his candidature, or

(b) an elector for having voted or refrained from voting.

*Explanation.*—For the purposes of this clause the term ‘gratifications’ is not restricted to pecuniary gratifications or gratifications estimable in money, and includes all forms of entertainment and all forms of employment for reward; but it does not include the payment of any expenses *bona fide* incurred at, or for the purposes of, any election and duly entered in the return of election expenses prescribed by these rules.”

The terms of the definition are very comprehensive and are evidently meant to cover any inducement whatsoever

offered to an elector to induce him to come to the poll and vote for the candidate.

Bribery as here defined undoubtedly includes all forms of treating of voters, if the intention is to induce the voter to vote for the candidate, or to bring him to the poll for that purpose. Thus the hiring of conveyances to bring voters to the poll or the supply of food and drink at the poll amounts to bribery, if the giver had a corrupt intention. If, however, you give a voter food and drink and supply him with a conveyance on the date of the poll, and you are a candidate or a candidate's agent, it is not difficult to diagnose the motive underlying the generosity. There should be a presumption, it is submitted, when a candidate supplies food and drink to voters or hires conveyances to bring them to the poll, that his intention is corrupt; but, even in the absence of such a presumption, it will in nearly all cases be difficult for the Election Commissioners to come to any other conclusion. Reductions made by a landlord in his tenant's rent, commutation of produce rents to cash rents, reduction in the rate of interest, settlement of lands with tenants and the writing off of arrears of rent may amount to bribery, as here defined. The intention can only be decided from the circumstances of each case.

Even grants made by way of charity may amount to bribery. These stringent, not to say, harsh provisions have become necessary as the result of experience in England. Who can say that they are likely to be less necessary in India? An election has been compared to a game for which various competitors enter, who are required to observe the rules of the contest. If one of them breaks a rule, the umpire steps in and declares that, though he won, his victory is void, and that another person must obtain the prize, or that the race must be run over again. The English cases make the principle clear: thus in the *Coventry* case it is said: “A person can no more claim to be a member of Parliament for a place as the result of an election in which his agent has been guilty of bribery, than a person can fairly claim a prize if the person whom he employs to ride his

horse, or to steer his vessel, has been guilty of foul play in the course of his employment.\*"

And again in the *Lichfield* case: "If it were shown that the agent of the member bribed, even without the authority and contrary to the express orders of the member, his seat was forfeited—not by way of punishment to the member—but in order to avoid the danger that would exist if persons subordinate to the candidate during an election were led away, by their desire to benefit their superior, into illegal acts, the precise extent of which it was difficult to prove, but a single one of which if proved, it was the policy of the law to hold would have the effect of avoiding the proceeding. That a member was thus answerable for his agent at common law—his agent in the sense of conducting the election, not merely in the sense of being authorized to bribe—is perfectly clear."†

Any general organized system of bribery, whether the candidate or his agent is responsible for it or not, will also render an election void under clause (a) of the first sub-rule of rule 42. It is sufficient to show that the result of the election has been materially affected by any corrupt practice. The principle at stake is the freedom of election. If large numbers of persons vote under the influence of any corrupt inducement, the election is void as there was no real election. One or two cases of bribery would not, however, ordinarily be held to have a material effect on the result, unless of course the majority of the successful candidate was only a few votes. The principle is explained in the *Beverley* case‡: "A man giving a vote for a member of Parliament under what the law deems undue influence gives no vote at all. This is the common law; it depends upon no statute, and it is a consequence of it that if the Judge is satisfied that the votes of a considerable number of persons were corrupted and bribed, however innocent the candidate may be, and though himself unconnected with corrupt practices, his election is void by reason of the incapacity of the voters, because of general corruption to give valid and effective votes."

Again in the *Ipswich* case§ it was said: "If one saw that bribery was so rife that there could be no further election held in the place, then I should say the election would be avoided, subject only to this, that it would be obviously unfair to avoid the election if one found that the bribery which had been committed had not been in favour of the person who had been elected,—there must be that qualification always,—for it would be impossible for a person who had been fairly elected to be unseated merely because his opponents has been largely guilty of bribery."

Amongst the various acts held by the courts in England to be bribery and corrupt or illegal practices in election proceedings are: A promise to give refreshment to a voter to induce him to vote; a promise to procure a post or a situation for a voter; loans of money to a voter or to a person likely to influence him; employment given to voters, if not *bona fide*; the employment of a large number of messengers who were voters and who were not required for *bona fide* purposes; payments of rates to enable voters to be registered; payment of a voter's travelling expenses; giving voters the right to trap and shoot rabbits immediately before the election; a promise to obtain reconsideration of a rejected claim to an old age pension; an agreement to take shares in a building society on which money was due; excessive payments for purchases, e.g., for pigs or horses, or for a room; and payment to a voter's wife in order to influence his vote.

To amount to a corrupt practice the bribe must be given at a time when it is operative on the election. There is no limitation of time in the definition. In the *Sligo* case (1869) the Judge said: "Any act committed previous to an election, no matter at what distance of time, with a view to influence a voter at the coming election, whether it is one, two, or three years before, is just as much bribery as if it was committed the day before the election or the day of the election, nay, more, if a man commits bribery on the first week of a Parliament, and if he sues for the suffrages of that constituency in the last week of the seven years which precede a dissolution, that act committed six

\* 1 O. and H. 107.  
† O. and H. 28.

‡ 1 O. and H. 147.  
§ 1 O. and H. 71.

years before can be given in evidence against him, and his seat will not hold an hour."

The distribution of charity may amount to a corrupt practice, if the chief motive of the person who makes the gift is to influence the voters. Thus in the *Plymouth* case\* it was said: "What are called charitable gifts may be nothing more than a specious and settled form of bribery, a pretext adopted to veil the corrupt purpose of gaining or securing the votes of the recipients. And if this is found to be the object of a donor, it matters not under what pretext, in what form, to what person, or through whose hands the gift may be bestowed, or whether it has proved successful in gaining the desired object or not. On the other hand, a gift may really be what it professes to be, the offspring of a purely benevolent impulse, and, if this be its character, it matters not whether the recipient makes a good or bad use of it, or what the effects may be upon him." And again in the same case,† "a charitable gift, however injudicious it may be, is harmless in the eye of the law, whatever its effects may be upon the recipients, and certainly is not bribery."

The distribution of charity by politicians or their agents, when an election is imminent, ought to be kept in the background. It may be easy to deduce from the facts that the paramount motive was to influence votes. The motive which makes a man distribute relief to the poor at an election will generally be found to be not charity, but as was said in the *Wigan* case, "party feeling following in the steps of charity, and mimicking her gait."

The amount distributed by way of charity, as well as the circumstances, is a determining factor in the case. Thus, in the following cases the payments or gifts were held not to amount to bribery: a gift of a sovereign on the occasion of a birth or death; the gift of 5s. to a poor woman in distress; gifts of money, bedding and clothing to the poor on the occasion of the marriage of a member of the family; and the throwing about of copper among children on the election day.

Undue influence is defined in rule 2 of Part I of Schedule IV as follows:

"(1) Any direct or indirect interference or attempt to interfere on the part of a candidate or his agent or of any other person with the connivance or a candidate or his agent, by any of the means hereafter specified, with the right of any person to stand or not to stand or to withdraw from standing as a candidate, or with the free exercise of the franchise of an elector.

(2) The means above alluded to are—

(a) Any violence, injury, restraint, or fraud, and any threat thereof, (b) any threat to a person or inducement to a person to believe that he or any person in whom he is interested will become or be rendered an object will become or pleasure or spiritual censure, but do not include any declaration of public policy or promise of public action."

As in the case of bribery, a single case of the exercise of undue influence proved against the candidate himself or his agent, or any other person who acted in connivance with either, is sufficient to invalidate an election, while, if there is proof that undue influence played a material part in securing the election of the returned candidate, the election is also void, for the reason that it was not a real or free election. The rule does not aim at destroying the legitimate influence which a landlord exercises over his tenants, a master or employer over his servants or a politician over his supporters. It is only influence wrongfully exercised by means of violence, injury, restraint, frauds or threats that is prohibited, as also influence secured by threats that a person will be liable to spiritual censure or divine displeasure, if he does not exercise his electoral rights in the manner indicated or enjoined.

A landlord may certainly endeavour to persuade his tenants to vote for him, and a politician may address his voters explaining the advantages of his public policy and the disasters that will ensue, if they support the policy of his rivals, without fear of infringing the provisions of the rule, but, if a landlord threatens to eject his tenants if they do not vote for him, or to bring suits for three years' arrears of rent, or to take away portions of their lands, he will be guilty of "undue influence."

\* 3 Q and H 100, 110.

† 3 Q and H. 111.

just as he would be guilty of bribery if he offered to remit all arrears or to settle new lands with them on the express or implied condition that they voted for him.

In the *Lichfield* case\* the distinction between lawful and undue influence is laid down as follows: "The law cannot strike at the existence of influence. The law can no more take away from a man, who has property or who can give employment, the insensible but powerful influence he has over those whom, if he has a heart, he can benefit by the proper use of his wealth, than the law could take away his honesty, his good feeling, his courage, his good looks, or any other qualities which give a man influence over his fellows. It is the abuse of influence with which alone the law can deal. Influence cannot be said to be abused because it exists and operates."

The provisions regarding the exercise of undue influence by means of threats of spiritual censure or divine displeasure are directed against improper influence by ministers of religion, or other exponents of religious or quasi-religious dogmas or doctrines. It is not intended to penalize legitimate influence. A clergyman, a Brahman priest, or a Maulana is not prohibited from counselling, advising, or recommending voters over whom he has influence to vote for any particular candidate, but, if he threatens them with ecclesiastical censure or the divine wrath, he commits the offence of undue influence, and may by so doing void the whole election, if the Election Commissioners consider that such action on his part exercised a material effect on the voting. It is not essential to the commission of the offence that the motive should be a corrupt one in the ordinary interpretation of the word. The English law on the subject is explained as follows in the *Langford* case†. "In considering what I call here undue clerical influence, it is not my intention in any way to detract from the proper influence which a clergyman has, or by a single word to lessen its legitimate exercise... in the proper exercise of that influence on electors the priest may counsel, advise, recommend, entreat, and point out the true line of moral duty, and explain why one candidate

should be preferred to another, and may, if he thinks fit, throw the whole weight of his character into the scale, but he may not appeal to the fears, or terrors, or superstition of those he addresses. He must not hold out hopes of reward here or hereafter, and he must not use threats of temporal injury, or of disadvantage, or of punishment hereafter. He must not, for instance, threaten to ex-communicate or to withhold the sacraments, or to expose the party to any other religious disability, or to denounce the voting for any particular candidate as a sin, or as an offence involving punishment here or hereafter. If he does so with a view to influence a voter or to affect an election, the law considers him guilty of undue influence."

The question of motive is discussed in the *North Meath* case‡ by the Judge as follows: "Although the statute classes the offence of undue influence among corrupt practices, it is not essential, in order to determine whether this offence has been committed, to find a corrupt motive, in the ordinary sense of those words. Its illegality, both at common law and under the statute, lies in its interference with freedom of election. It is not my duty to investigate the motives of the Bishop or his clergy any further than to ascertain whether their action was with the object of influencing votes, but it is my duty to declare that their action with reference to the pastoral pending an election was illegal."

Personation is defined in rule 3 of Part I, Schedule IV, as follows:

"The procuring or abetting, or attempting to procure by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, the application by a person for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or by a person who has voted once at an election for a voting paper in his own name at the same election."

In England it is the duty of the Returning Officer, under the provisions of section 24 of the Ballot Act, to institute a prosecution against any person whom he believes to have been guilty of personation or of aiding or abetting the offence. In India apparently it is left to the rival candidates or their agents

\* 10 and H. 28

† 2 O. and H. 16.

‡ Day's Election Cases, 142.

to see that the criminal law is put in force. It is apprehended in some quarters that there may be a flood of false cases; in others that the provisions of the law and the rules regarding personation will be a dead letter. In those provinces in which provision has been made for the identification of voters either by an impartial agency as a preliminary to voting, or on the objection taken by a candidate or his agent, there should be little personation.

An election may be voided if it is proved that personation exercised a material influence on the result. It does not appear, however, how general personation can be proved. It may be practicable to prove specific cases, in which case the only result would be that the vote of the personator would be disallowed. In the *Belfast* case\* the Judge discussed the principles applicable as follows:

"It has been said and evidence has been given on that basis, that if the personation was general in its nature, it might unseat the member, irrespective of any agency at all. With that view, we admitted some evidence in the early part of the case, but it is now perfectly apparent that nothing of the kind can be maintained. It would be impossible even if such were the law, that thirteen cases of personation out of a constituency of over eight thousand, and where there were upwards of three thousand five hundred who voted for the successful candidate, could be said to so infect the whole constituency as to make the election void at common law. But I find no authority that the election will be void at common law in such a case as this."

As personation is a corrupt practice in any case, if the candidate or his agent is proved to be privy to the offence, the election is voided.

Personation may, however, be committed by a person at an election without any reference to the candidate or his agent.

In the definition contained in rule 2 of Part II of Schedule IV, there is no reference to the intention, and it appears, therefore, that a corrupt intention is not essential to the commission of the offence. It has been held, however, in England, although the definition of personation in section 24 of the Ballot Act is similar, that the offence cannot be

committed unless there is a corrupt intention. Thus in the *Stepney* case† the Judge held: "that, unless there be corruption and a bad mind and intention in personating, it is not an offence . . . to suppose that the legislature ever intended to enact that a man who with perfect honesty, but from a mere blunder as to his right, gives a vote, and then believing that he has a right to do so gives a second vote, he being on the register, on the same day, is to be deemed guilty of felony, is to impute an intention to the legislature which is absurd, though, if it had said so in absolutely plain words, we must have carried it out. I do not think that that is the intention of the Act. I think there is still to be added to the offence of personation a corrupt intention, and where the corrupt intention is absent the offence of personation cannot have been committed." So, it has been held that a person who really believes that he is entitled to vote in the name in which he votes, though he was not so entitled, is not guilty of personation.

The publication of false statements regarding the personal character of a candidate is a corrupt practice. Rule 4 of Part I, which defines the corrupt practice, is as follows: "The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false and which he either believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal of any candidate, which statement is reasonably calculated to prejudice such candidate's election." The rule is founded on the provisions of the amendment to the Corrupt and Illegal Practices Prevention Act, which were enacted in 1893, with the object of prohibiting the dissemination of false statements regarding candidates. Under the English law a person making or publishing false statements of facts regarding a candidate may be restrained by an interim or perpetual injunction by the High Court of Justice from repeating such false statements. It will be observed that the mere statements of opinion, however unreasonable or unfair they may be, are not penalised; nor does the

\* 4 O. and H. 108.

† 4 O. and H. 46.



question of malice enter into the commission of the offence. The essential elements are that the false statement of fact is made by a candidate or his agent or other person with the connivance of either, although he believes it to be false or does not believe it to be true, and the statement must be such as is likely to affect injuriously the return of the person about whom it is made. The offence may also be committed by persons other than the candidate or his agent. The editors of newspapers, for instance, may be held guilty of this corrupt practice, if they disseminate false statements about a person who is a candidate for election. In the case of *Silver v. Benn*,\* the editor of a newspaper was fined for publishing the statement that a candidate had a skeleton in his cupboard. On the other hand, the very uncomplimentary and apparently harmful remark that there was not a greater fool in the House than a certain candidate, and that when he made a speech most of the members of the House went out for a drink, was held to be a statement of opinion and not of fact. It will thus be seen that great liberty of expression, if not licence, is permitted in electioneering campaigns, provided it is confined to matters of opinion regarding the capacity, political position, or reputation of the candidate. As the commission of the offence is not merely a corrupt practice under the rules, but also an offence which it is proposed to punish with fine or imprisonment under the Indian Elections Offences and Inquiries Act, the editors of Indian newspapers will have to run the gauntlet of the new law which may prove more formidable during election campaigns than the Press Acts, if too much freedom of expression is allowed to the supporters of any particular candidate in the pages of a journal. The English law on the subject is explained in the *Cockermouth* case† in which the Judge said: "It is not an offence to say something which may be severe about another person, nor which may be unjustifiable, nor which may be derogatory, unless it amounts to a false statement of facts in relation to the personal character or conduct of such candidate; and I think the Act says that there is a great distinction to be drawn between a false

statement of fact, which affects the personal character or conduct of the candidate, and a false statement of fact which deals with the political position or reputation or action of the candidate. If that were not kept in mind, this statute would simply have prohibited at election times all sort of criticism which was not strictly proved, even relating to the political behaviour and opinions of the candidate. That is why it carefully provides that the false statement in order to be an illegal practice, must relate to the personal character and personal conduct. One can easily imagine this kind of thing. To say of a person that he was a fraudulent bankrupt, would, undoubtedly, be within the statute."

An editor of a newspaper may, therefore, inveigh against a candidate almost to any extent, provided that he does not begin to make statements of fact about his character or reputation. He may dub the candidate "a political charlatan," "a quack," "an armchair enthusiast," "an opponent of *Somatun Dharma*," "a traitor," or "a patriot," without fear of any consequences as far as the electoral rules are concerned, but he may not state, unless he has good reasons and some proofs on which to rely, that the same person has cheated somebody out of his property, or is making his livelihood by unlawful means, or make any similar statement. The following cases have been held to be false statements within the purview of the English law on which the rule is modelled: where it was said that the candidate was a member of a firm who paid the work-girls such low wages that they were forced to seek other means of support; a statement that the candidate lived on the profits of cheap foreign labour and found his election expenses out of them, and that he sweated men and women at 9d. a day; a statement that a county candidate had shot a fox; a statement that a candidate, who was a temperance man was found drinking a glass of sherry; and a statement regarding an Irish Nationalist candidate that he was in receipt of British gold.

Rule 5 of Part I contains the definition of unauthorised expenditure or employment, which is a corrupt practice in the circumstances mentioned. It is as

\* 72 Times L. R. 109. † 5 Q. and B. 158.

follows: "The incurring or authorizing by a candidate or his agent of expenditure or the employment of any person by a candidate or his agent in contravention of the provisions of any notification of the Governor-General in Council issued under rule 18 of these rules."

Rule 18 referred to empowers the Governor-General in Council to fix maximum scales of election expenditure, and to prescribe the number and description of persons who may be employed for payment in connection with any election. No notification has yet been issued under this rule, and in any case the maximum scale of election expenses will not be fixed until after the holding of the first elections. For the present, therefore, there is no scale of election expenditure fixed, and the corrupt practice defined in rule 5 of Part I is to that extent a dead letter; and, until a notification is issued prescribing the number and description of persons whom the candidate may employ, there is no prohibition against a candidate's employing any number he pleases. The subsidiary Regulations of the United Provinces (regulation 13) provide, however, that only one authorized representative of each candidate shall be allowed into any polling station. The corresponding provisions of the English law are exceedingly strict. Under section 17 of the Corrupt and Illegal Practices Prevention Act, no person can be employed for the purpose of promoting or procuring the election of a candidate, except for the purposes, or in the capacities mentioned in the first schedule of the Act. He may employ in a borough one polling agent in each polling station; one clerk and one messenger; or, if the electors exceed five hundred, one clerk and one messenger for every five hundred electors, and the same for any number in excess of this standard.

In a county, he may employ one election agent; one sub-agent for each polling district; one polling agent in each polling station; one clerk and one messenger for the central committee room; or, if the electors exceed five thousand, then one clerk and one messenger for every five thousand electors, and the same for any number in excess, although not amounting to a complete five thousand. Special provision is made

to meet cases where the number of electors in any polling district exceeds five hundred.

Part II of Schedule IV deals with corrupt practices when committed by a person who is not the candidate or his agent or a person acting with the connivance of either. The mere commission of a corrupt practice as defined in Part I is sufficient to avoid an election, independent of its effect on the result, while the commission of an offence specified in Part II would not invalidate it unless it is proved to have exercised a material effect on the result.

Any act specified in Part I when committed by a person who is not a candidate or his agent, is declared to be a corrupt practice, and a person who personates a voter is guilty of personation, whether he acts with the cognizance of the candidate or his agent or not, while a person who receives a bribe or attempts to obtain any gratification is declared to be guilty of a corrupt practice just as much as the giver of the bribe.

Under rules 4 and 5 of this Part, payment or promise of payment for the conveyance of electors to the poll or the hiring or use of public conveyances for the purpose of the election are declared corrupt practices. A candidate can therefore, in no circumstances hire or use public conveyances for conveying electors to the poll. There is nothing, however, to prevent an elector from hiring conveyances to convey himself to the poll, nor is there any rule which prohibits a candidate or his friends or supporters from using his own carriages and their carriages for this purpose, provided there is no payment or contract for payment for their use. Rule 7 prohibits the hiring of liquor shops for the purpose of committee rooms or for the purpose of any meeting to which electors are admitted. Rule 8 prohibits the issue of any circular, placard or poster having reference to the election which does not bear on its face the name and address of the printer and publisher.

Rule 6 prohibits "the incurring or authorization of expenses by any person other than a candidate or his election agent on account of holding any public meeting or upon any advertisement, circular or publication, or in any other way whatsoever, for the purpose of promot-

ing or procuring the election of such candidate, unless he is authorised in writing so to do by the candidate." There has been always some difficulty in distinguishing between acts done for the conduct and management of an election, and things done merely for the promotion of the success of a particular candidate. It was held in the *Cockermouth* case,\* that if a person interested in the success of a particular candidate, chose to do things on his own account, which do not go to relieve the candidate from any portion of his election expenses, and incurred expenses on printing and literature and doing various other things, in support of his candidature, such expenditure should not be included in the expenses of the election. Obviously, however reasonable this finding may have been in a particular case, it leaves a loophole for candidates who wish to escape from the irksome provisions regarding maximum expenditure on elections, while in certain cases it might enable candidates to escape responsibility for other corrupt or illegal practices by disclaiming any knowledge of the facts. Under the provisions of section 34 of the Representation of the People Act, 1918, the question appears to have been definitely settled, and no person other than the election agent of the candidate can now incur any expenses on account of holding public meetings or issuing advertisements, circulars or publications for the purpose of promoting or procuring the election of a candidate, unless he is authorised in writing to do so by the election agent. If any person acts in contravention of this section, he is guilty of a corrupt practice. This important addition to the election law has been embodied in rule 6 of Part II of Schedule IV of the Indian rules; but the expenses referred to are not confined to those incurred on meetings, publications and circulars, but include expenses incurred in any other way whatsoever, for promoting the candidature. Only the candidate, however, can authorise the expenditure, and not the agent as under the English law. From the provisions of the rule, it is not clear whether the intention is that all expenditure incurred in this way shall be included in the election expenditure or not.

Under sub-section 3 of section 34 of the Representation of the People Act, all such expenses incurred in this manner and authorized by the election agent of the candidate, must be returned as part of the election agent's expenditure. There is no corresponding provision in the Indian rules. It is submitted, however, that this is the intention of the authors of the rule: if the candidate authorizes the expenditure, it should be reckoned as *bona fide* election expenditure. If he does not authorize it, the person or persons who expend the money for the purpose of promoting his election take the responsibility and commit a corrupt practice. A prudent candidate will be reluctant to authorize such expenditure by associations, leagues or persons. By doing so, he makes them his agents and becomes directly responsible for their conduct; and must include the expenditure in his return. There is no necessity for voluntary helpers, who do not expend money in this process, to obtain the candidate's authorization. Lectures may be given by associations or individuals, and meetings may be held, provided no expenditure is incurred.

When the Corrupt and Illegal Practices Prevention Act was being discussed in 1883, there were not wanting prophets who declared that the provisions were so stringent and so open to abuse that an honest man could not stand as a candidate for election. "Under this Bill," said one of these, "an honest man will be afraid to stand, while the dishonest man will triumph." The working of the Act has since shown how groundless were these forebodings. After the general election of 1892, there were eleven petitions alleging offences under the Act. In six, the petitions were successful; in one the Judges differed; in another the offences were condoned; and in three the Judges dismissed the petition. Since then, there has been no lack of honest candidates at elections, and the persons most competent to judge have no hesitation in affirming the excellent effect which the legislation of 1883 has had.

"Corrupt practices of every kind and sort," says Jeff— "alike that of the pulpit and the public-house—under the

\* 5 O. and H. 157. The Corrupt and Illegal Practices Act, page 59.



present law are doomed." The fact is a candidate may win a few votes by corrupt practices—he may even win an election—but the risk is great. In India the Government of India will not seek to avoid his election; but his rivals may—they will not lack the will, if they have the means to lodge a petition,—and, if they do, if a single corrupt practice is proved to have been committed with the consent or connivance of his agent or himself, he loses the seat. In addition the money spent on the election is lost, and he will generally have to pay the costs of the election petition. In England, election petitions cost thousands of pounds. These are risks—apart altogether from questions of morals, or good conduct, or fair play—which a prudent man should not take, and we have little doubt that the rules regarding Corrupt Practices will have the same wholesome effect in India as they have had in England.

It is not always understood why it should be necessary to limit the election expenses of the candidate, and why excess expenditure should be a corrupt practice. A rich candidate, if unrestrained in this matter, can frequently win an election in England. By profuse liberality in the conduct of the election he may easily win large numbers of voters without actual bribery and create an impression of generosity, which should materially aid his cause. By advertisements of every kind he can become the "popular" candidate in a short time. The West, it is said, is material; but, who can say that in this respect India is superior? Do Indians despise liberality, generosity, and lavish expenditure by others, even when the motives are mixed? The answers are in the negative. It is obviously necessary to make the conduct of an election as cheap as possible, so that all persons who are competent and willing to represent the people may have the opportunity of doing so, and not merely the richer members of the community.

Prior to the Reform Act of 1832, very large sums of money were spent in English elections. As late as 1880, a special commission reported that bribery and corruption were rife in certain boroughs, and two boroughs Macclesfield and Sandwich were entirely disfranchised. Since

that time—the Corrupt and Illegal Practices Prevention Act was passed in 1883—the state of affairs has greatly improved, and election expenditure has decreased enormously. Thousands of pounds were spent formerly on the conveyance of electors to the poll; now conveyances cannot be hired, though partisans may lend their carriages for the purpose. From the parliamentary returns, it appears that election expenditure in the United Kingdom was £1,736,781 in the general elections of 1880. After the enactment of the Corrupt Practices Act in 1883, it fell in 1885 to £1,026,645 and in 1900 it was £777,429 only, and since the passing of the Representation of the People Act of 1918, it is expected that expenditure will be further diminished.

#### CHAPTER V.

#### FINAL DECISION OF DISPUTES AS TO THE VALIDITY OF ELECTIONS.

The rules under Part VII provide for the disposal of election petitions questioning the validity of an election. No election shall be called in question save in the manner provided by these rules; a petition may be presented to the Governor of a province by a candidate or by an elector against any returned candidate within fourteen days from the date of the publication of the result of the election. The petition must contain a statement of the facts on which the petitioner relies, and the particulars of any corrupt practice alleged; and the petitioner may claim a declaration that he himself or any other candidate has been duly elected. At the time of the presentation of the petition, he must, however, deposit one thousand rupees in cash or in Government promissory notes. When the amount has been deposited, the Governor appoints three Election Commissioners for the trial of the petition from the list of persons who are or have been, or are eligible to be appointed, Judges of a High Court.

The Election Commissioners so appointed may recommend to the Governor that the election of the returned candidate shall be declared void. The Governor is bound to issue orders in accordance with Commissioners' report, and his orders are final.

[rule 43 (2)]. In case of a difference of opinion amongst the commissioners, the opinion of the majority prevails, and their report is expressed in terms of the views of the majority. The grounds on which an election may be declared to be void are contained in rule 42 which is as follows:

"(i) Save as hereinafter provided in this rule, it is in the opinion of the Commissioners—

- (a) the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by a corrupt practice, or
- (b) any corrupt practice specified in Part I of Schedule IV has been committed, or
- (c) the result of the election has been materially affected by any irregularity in respect of a nomination paper, or by the improper reception or refusal of a vote, or by any non-compliance with the provisions of the Act or the rules and regulations made thereunder, or by any mistake in the use of any form annexed thereto,

the election of the returned candidate shall be void.

(2) If the Commissioners report that a returned candidate has been guilty by an agent (other than his election agent) of any corrupt practice specified in Part I of Schedule IV which does not amount to any form of bribery, other than treating as hereinafter explained, or to the procuring or abetment of personation, and if the Commissioners further report that the candidate has satisfied them that—

- (a) no corrupt practice was committed at such election by the candidate or his election agent, and the corrupt practices mentioned in the report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent, and
- (b) such candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at such election, and
- (c) the corrupt practices mentioned in the said report were of a trivial,

unimportant and limited character, and

- (d) in all other respects the election was free from any other corrupt practice on the part of such candidate or any of his agents,
- then the Commissioners may find that the election of such candidate is not void.

*Explanation.*—For the purposes of this sub-rule "treating" means the incurring in whole or in part by any person of the expense of giving or providing any food, drink, entertainment or provision to any person with the object, directly or indirectly, of inducing him or any other person to vote or refrain from voting or as a reward for having voted or refrained from voting."

A seat is forfeited on proof of a corrupt practice committed by the candidate, his agent, or other person with the connivance of either; the election is also void, if it is proved that the result has been procured or materially affected by a corrupt practice committed by other persons; and thirdly, it is void if the result has been materially affected by irregularities or by non-compliance with the provisions of the rules and regulations, or of the Government of India Act itself. The rules, which have been discussed in the previous chapter, contain many stringent provisions regulating the conduct of an election by a candidate and his agent. There are many traps and pitfalls into which the unwary may fall, and it is difficult even for a strictly honest candidate to avoid transgressing them in one way or in another. The provisions of sub-rule (2) quoted above are meant to provide relief for candidates who, through inadvertence or insufficient acquaintance with the provisions of the rules or for other similar reasons, have failed to observe them in every particular. It will be observed that no relief whatsoever is extended to any candidate who himself is, or whose election agent is, guilty of a corrupt practice; nor can he obtain any relief if he or his agent has known of the existence of the offences or connived at them. Both must, in fact, take all reasonable means to prevent their commission. In addition before relief can

be obtained, it must be proved that the corrupt practices committed were of a trivial and unimportant character, and that the election was otherwise free from malpractices on the part of the candidate or any of his agents.

The sub-rule is modelled on section 22 of the Corrupt and Illegal Practices Prevention Act, 1883, and, following the principle of the English law, limits the relief to those cases in which the more serious forms of corrupt practices, viz., bribery and personation have not been committed. The following are instances of cases in which a candidate has been exempt from the consequences of a corrupt practice in England, in the special circumstances of each case: where licensed premises were utilized for meeting; where the names of the printer and publisher were omitted from bills, placards, etc.; and where the maximum election expenditure had been exceeded.

An election may also be voided on account of the commission of an irregularity, or a breach of any of the rules or regulations, if, for instance, a candidate has been elected who is disqualified from standing for election.

Material irregularities in the methods of conducting the election by the Returning Officer or any of his subordinates may also cause the seat to be forfeited. Trivial departures from the provisions of the rules or regulations, or mishaps of any kind which have clearly not affected the result will be condoned; but, if the departure from the prescribed method of election is so great as to make it clear that the election was not an election under the existing rules and regulations, it will be invalidated if the principles laid down in English cases are adhered to. The English law is stated in the *Islington* case\* as follows:

"It appears to us to be convenient at this point, to state our view of the law in regard to this matter. Our opinion is that an election ought not to be held void by reasons of transgression of the law committed without any corrupt motive by the Returning Officer or his subordinates in the conduct of the election, where the court is satisfied that the election was, notwithstanding these transgressions, an election really and in substance

conducted under the existing election law, and that the result of the election, i.e., the success of the one candidate over the other, was not, and could not have been, affected by those transgressions. If, on the other hand, the transgressions of the law by the officials being admitted, the court sees that the effect of the transgressions was such that the election was not really conducted under the existing election laws, or it is open to reasonable doubt whether these transgressions may not have affected the result, and it is uncertain whether the candidate who has been returned has really been elected by the majority of persons voting in accordance with the laws in force relating to election, the court is then bound to declare the election void. It appears to us that this is the view which has generally been recognized, and acted upon, by the tribunals which have dealt with election matters." And again in the *Warrington* case†: "A judge to upset an election ought to be satisfied beyond all doubt that the election was void; . . . the return of a member is a serious matter, and not lightly to be set aside."

Section 13 of the Ballot Act of 1872 itself lays down the provision that no election shall be declared invalid by reason of non-compliance with the rules or by reason of any mistake in the use of the forms, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of the Act, and that such non-compliance or mistake did not affect the result. It is submitted that the same principle applies to Indian elections carried out under the similar rules and regulations prescribed under the Government of India Act.

Where, however, serious mistakes or departures from the methods prescribed by law have occurred, elections have been usually voided in England, as in the following cases: where two polling stations were not opened; where the Returning Officer printed the name of a candidate on the ballot paper, although he had withdrawn from the contest; where the polling went on for an hour after the fixed time.

By section 11 of the Corrupt and Illegal Practices Prevention Act, the

\* 5 O. and H. 125.

† 1 O. and H. 44.

election court is bound to report whether any corrupt or illegal practices have been proved to have been committed, and whether they have been extensively committed. Election Judges in England have, therefore, frequently held that it is their duty to report as to the prevalence of corrupt or illegal practices so that, even if the respondent admits his inability to defend his case, it is still the duty of the court to proceed with the case until it has collected sufficient evidence to enable it to come to a conclusion on the question of the existence of corrupt or illegal practices. Thus, in the *Monmouth* case\* it was said: "Our functions are primarily judicial and not inquisitorial. . . . It is our duty now to report to the Speaker as to the prevalence of corrupt or illegal practices. It is, however, a duty which in my judgment, and speaking for myself, we must discharge upon evidence properly adduced before us, and not upon conjecture. Now, at the same time, where the evidence before us does furnish a clue to the detection of some serious charge and as to the prevalence of corrupt or illegal practices in the constituency the court has, in my view, both the power, and speaking generally, the duty, to follow the case up further so far as it can."

Rule 45 makes it obligatory on the Election Commissioners, in case any charge is made in an election petition of the existence of any corrupt practice, to come to a finding and to report whether a corrupt practice has, or has not, been proved to have been committed by the candidate or his agent or by any other person with the connivance of either, and also to report the names of any other persons who have been proved to have been guilty of a corrupt practice. Under rule 41 the Government Advocate may be asked to attend, and take such part in the case as the Election Commissioners may direct. An application for withdrawal of the petition can be granted only if the Commissioners are of opinion that it has not been induced by any improper bargain or consideration. Prior to the framing of the rules, in 1917 the Government of India affirmed their determination "not to tolerate anything in the nature of a collusive compromise of an election dispute, and to emphasise the fact that the bringing of false charges by a defeated

candidate against his rival would be regarded as discreditable conduct."†

In addition to depositing a sum of one thousand rupees by the petitioner, the President of the commission may call upon him to execute a bond in such amount and with such sureties as he may require for the payment of any further costs.

In Part VII and in Schedule IV, "unless there is anything repugnant in the subject or context,—

- (a) "agent" includes an election agent and any person who is held by Commissioners to have acted as an agent in connection with an election with the knowledge or consent of the candidate;
- (b) "candidate" means a person who has been nominated as a candidate at any election or who claims that he has been so nominated, or that his nomination has been improperly refused, and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate at such election, provided that he is subsequently nominated as a candidate at such election; and
- (c) "returned candidate" means a candidate whose name has been published under these rules as duly elected.

## CHAPTER VI.

### ELECTION AGENTS AND RETURNS OF EXPENSES

A candidate must appoint either himself or some other person to be his election agent on or before the date of the nomination. No person can be appointed an election agent who is himself ineligible for election having been disqualified under sub-rules (3) or (4) of rule 5, i.e., for having committed a corrupt practice or having failed to lodge a prescribed return of election expenses, or for having lodged a return which is proved to be false in any material particular. The appointment of an agent may be revoked by a candidate, in which case, as also in the case of the death of an election agent, the candidate must appoint another in his place, and declare his name in writing to the Returning Officer.

The very important question of the

\* 5 O. and H. 167.

† Resolution dated 20th April, 1917, published in "Gazette of India," April 21, 1917.

return of election expenditure is dealt with by rule 17 which is as follows:

"(1) Within one month or such longer period as the Governor may allow after the date of the declaration of the result of the election every candidate, either personally or through his election agent, shall cause to be lodged with the Returning Officer a return of his election expenses containing the particulars specified in Schedule III.

"(2) Every such return shall contain a statement of all payments made by the candidate or by his election agent or by any person on behalf of the candidate or in his interests for expenses incurred on account of or in respect of the conduct and management of the election, and further a statement of all unpaid claims in respect of such expenses of which he or his election agent is aware.

"(3) The return shall be accompanied by declarations by the candidate and his election agent which shall be in the form contained in the said Schedule and shall be made on oath or affirmation before a Magistrate.

"(4) The Local Government shall cause to be prepared in such manner, and maintained for such time, as it may direct, a record showing the names of all candidates at every election under these rules and the date on which the return of election expenses of each candidate has been lodged with the Returning Officer."

The incurring of any expenditure in excess of the maximum prescribed for the constituency by the candidate or his agent, is a corrupt practice (Rule 5 of Part I of Schedule IV). It has been shown in the chapter on corrupt practices that the commission of a single corrupt practice by the agent or by any other person with his connivance may avoid an election. The relation between the candidate and his election agent is not unlike that of master and servant, and the master, in this case the candidate, is held responsible for the acts of his servant, even if the latter acts contrary to his express wishes or orders in matters connected with the elections. In the *Westminster* case\* the Judge said: "The law is a stringent law, a harsh law, a hard law; it makes a man responsible who has directly forbidden a

thing to be done when that thing is done by his subordinate agent. It is in point of fact making the relation between a candidate and his agent the relation of master and servant, and not the relation of principal and agent. But I think I am justified, when I am about to apply such a law, in requiring to be satisfied beyond all reasonable doubt that the act of bribery was done, and that unless the proof is strong and cogent—I should say, very strong and very cogent—it ought not to affect the seat of an honest well-intentioned man by the act of a third person." And again in the *Blackburn* case,† it was said: "No matter how well the member may have conducted himself in the election, no matter how clear his character, may be from any imputation of corrupt practice in the matter, yet if an authorized agent of his, a person who has been set in motion by him to conduct the election, or canvass voters on his behalf, is in the course of his agency guilty of corrupt practices, an election obtained under such circumstances cannot be maintained. As it has been expressed from early times, no person can win and wear a prize upon whose behalf the contest has not been legitimately and fairly carried on, or, as it was expressed upon the occasion to which I refer *non coronabitur qui non legitime certaverit*."

In another case the Judge declared the law to be cruel and hard, because a candidate may be penalized through what would appear to be no fault of his own. In the *Plymouth* case‡ the Judge declared "that he had never unseated an innocent member for the act of his agent without feeling that the law, which so punished both the member and the constituency for a single illegal act of the agent, was unduly severe." It will thus be seen that persons of judicial eminence in England have freely criticised the severity of this particular election law, which has now been introduced in India. It is certain, however, that if the responsibility of the candidate were not insisted on, in India as in England, the rules regarding corrupt practices would for the most part be a dead letter. Few candidates, it has been said, undertake the practice of corruption by their own hand, and in the excitement and

\* 1 O. and H. 95. † 1 O. and H. 201. ‡ 3 O. and H. 108.



turmoil of an election in India, few can doubt that persons other than the candidate would\* be prepared to take the necessary responsibility, if the candidate is not held responsible for their actions. The real remedy for the candidate is to see that his election agent is reliable; that he is a person of good repute; and that he is a person of some capacity who will not easily fall a victim to the snares of the election code. There should be many such persons available in every part of India.

The question when election expenses begin has been the subject of various decisions under the English electoral laws. They begin evidently from the date from which a person becomes a candidate for election. Of course, a person who has been nominated, or who claims to have been nominated, is a candidate; but the definition of candidate in Part VII also includes "a person who, when an election is in contemplation, holds himself out as a prospective candidate, . . . provided that he is subsequently nominated." The definition appears to follow the principles of law laid down in the English rulings as applicable to English cases. A person may be a candidate for months before the election, or the date of the nomination. In the *Lichfield* case\* it was held that—"As soon as a candidate begins to hold meetings in the constituency to advance his candidature—in other words, as soon as he begins to take measures to promote his election the election commences." On the other hand it was held that it would be unreasonable to hold that a person became a candidate for election several years before the date of the election. Thus in the *Walsall* case† the Judge said: "I cannot help thinking that the period during which a candidate can be held responsible for the illegal and injudicious acts of his recognized supporters must be confined within reasonable limits. It would not be reasonable to say that a man who contemplates in the year 1892 becoming a candidate in the year 1896, could not legally employ a person to do for him a variety of acts to ingratiate him with those whose votes and suffrages he intended to seek in some future year.

Upon the present occasion, I think, the limit of time to which we ought fairly to apply our minds is a period commencing from the time when it was first known that the respondent announced his intention to present himself as a candidate for election at the next ensuing election."

The words "an election" must refer to a definite election which is in contemplation and not in *nubibus* (Elgin, 5 O. & H. 5). The time at which a corrupt practice is committed is immaterial if its effect is operative on the election; but a rule less wide applies to election expenses: they commence from the period when it was first known that the candidate intended to contest the seat.

Closely connected is the question what expenditure should be entered in the return of election expenses prescribed in Schedule III. The return must be lodged with the Returning Officer within one month or such longer period as the Governor or Governor-General may allow after the date of the declaration of the election. In sub-rule (2) of rule 17 of Part IV, it is stated that the return must contain "a statement of all the payments made by the candidate or by his election agent or by any persons on behalf of the candidate or in his interests for expenses incurred on account of or in respect of, the conduct and management of the election," together with an account of all unpaid claims. The return must be accompanied by a declaration by the candidate and his election agent in the form contained in Schedule III which must be made on oath or affirmation before a Magistrate. The items referred to in Schedule III afford a guide to the expenditure which may be lawfully incurred by a candidate or in his behalf; but there is still a class of expenditure which may further indirectly to some extent the interests of the candidate which may not be included in the return. The expenditure entered in the return would appear to be limited to sums spent in connection with the management and conduct of the election itself. In England, for instance, it has been held that registration expenses need not be entered in the election return as they are not incurred in the

\* 5 O. and H. 36

† 4 O. and H. 126.

conduct and management of the election. A great deal of expenditure may be incurred in what is known as "nursing the constituency," with the object of promoting the personal popularity of the candidate. Such expenses need not necessarily be regarded as part of the expenses of the election, although they might amount to corrupt practices which would invalidate the whole election. In the *East Dorset* case\* the Judge discussed the law as follows. "Now the next question, and the most difficult one of all is, what are the expenses of a candidate? It is very difficult and very dangerous to give a definition. . . . I should say they were expenses which are incurred, which have no connection with the association or anything of that kind, or the promotion of the political side to which the candidate belonged, but were expenses which belonged to him personally in the course of his election."

In the *Cockermouth* case† it was said. "If a person interested for some reason . . . in the success of a particular candidate chooses to do things on his own account which do not go to relieve the candidate from any portion of his election expenses, that is not doing anything in reference to 'the conduct or management of the election,' and it would be perfectly impossible for elections to be conducted if it was so; but no candidate can prevent any people who think they would like him to be elected, because they think him more in accordance with their own special view, either upon vaccination or upon temperance, or any of the other things which people have strong opinions about, incurring expenses, printing literature and doing various things in support of the particular candidature; and none of these things come into the candidate's expenses." These decisions of the courts evidently gave a loophole to candidates and their friends who were prepared to spend sums largely in excess of the maximum amounts prescribed, in election campaigns. The result has been that it has been found extremely difficult to keep the *real* expenditure, as opposed to the nominal, within reasonable limits. The law has been altered materially by the provisions of section 34 of the Representation of the People Act, 1918, which prohibits

persons other than the election agent of the candidate from incurring any expenses on account of holding public meetings, advertisements, circulars or publications for the purpose of promoting the election of a candidate, unless he is authorized in writing to do so by the election agent; and all such expenses incurred must be entered as part of the candidate's election expenses. Rule 6 of Part II of Schedule IV is modelled on this provision of the English law, but is much wider, inasmuch as it prohibits the expenditure of any sums of money in any way whatsoever for the purpose of promoting the election of a candidate, unless it is authorized by the candidate himself. It appears from the terms of this rule and those of sub-rule (2) of rule 17 referred to above that all expenses incurred, not only by the candidate and his agent, but by his friends and supporters for the promotion of his candidature must be entered in the return of expenditure, provided they were incurred with his authority in connection with "the conduct and management of the election." These include all expenses incurred for the promotion of the candidate's interest after the election campaign commences, or from the date on which the candidature commenced.

The "conduct and management of an election" would appear to be at an end as soon as the result of the poll is declared, and expenditure incurred subsequent to the date need not be entered in the return, e.g., telegrams, letters of thanks, fees to counsel to advise regarding the return, etc.

The question is one of academic interest only at present, as, until the Governor-General-in-Council fixes maximum scales of expenditure under rule 18 of Part III, there is no limit to the expenditure which may be incurred by any candidate. The maximum scales of expenditure for each constituency will not be fixed until after the first elections under the rules have been held. It is also evidently intended to prescribe the number of persons who may be employed for payment in connection with elections; but it is obviously useless to do this until the maximum scales of expenditure are also fixed. At present the candidate is obliged to employ one election agent.

who will be responsible for the expenditure; and in addition he may employ as many sub-agents as he wishes. The election agent is, however, bound under rule 19 of Part III to keep regular books of account in which he must enter all items of expenditure, whether incurred by himself or by the candidate, or by any other person under the direction of either. From the considerations discussed above it would appear that the expenses incurred in the registration of voters need not be entered in the election return of expenses, and it has been held in England that such payments are not election expenses.

The expenses which may be incurred in an election in the United Kingdom are set out in Schedule IV of the Representation of the People Act, 1918, which is as follows: "The expenses mentioned above in Parts I, II and III of this schedule other than personal expenses and the fee, if any, paid to the election agent (not exceeding in the case of a county election seventy-five pounds and of a borough election fifty pounds, without reckoning for the purposes of that limit any part of the fee which may have been included in the expenses first above mentioned) shall not exceed an amount equal—

in the case of a county election to seven pence for each elector on the register;

in the case of an election for a borough to five pence for each elector on the register.

Where there are two or more joint candidates at an election, the maximum amount of expenses mentioned in Parts III and IV of this schedule shall, for each of the joint candidates, be the amount produced by multiplying a single candidate's maximum by one-and-a-half and dividing the result by the number of joint candidates."

The expenses referred to in Parts I, II and III of the schedule relate to expenditure on persons legally employed for payment (Part I); legal expenses in addition to expenses under Part I (Part II); and miscellaneous expenditure (Part III). Part II includes the personal expenditure of the candidate, expenses of printing, stationery, postage, cost of public meetings and of committee rooms. Miscellaneous expenditure must

not exceed £200. The total expenditure, excluding the personal expenditure of the candidate and fees paid to election agents, if any, must not exceed the amount calculated as above as the maximum scale for any constituency.

## CHAPTER VII.

### THE INDIAN ELECTIONS OFFENCES & INQUIRIES BILL, 1920

We have explained in Chapter IV the various rules which have been framed with the object of maintaining electoral purity and checking what are known as corrupt practices. These rules ensure, in case an aggrieved party lodges an election petition, that there shall be an enquiry into the conduct of candidates and their agents, and into the question whether general corruption exercised a material effect on the result of the election. The only persons, however, who are likely to be affected by the results of such proceedings, are the candidates and their agents, and a few persons who may be disqualified as a consequence from standing as candidates or voting at elections for a period of a few years. The cost entailed in the trial of an election petition will be heavy, so that only comparatively wealthy persons or associations can afford to spend the amount of money required to bring the proceedings to a successful issue. Law courts are frequently dilatory, and even Judges are sometimes inclined to forget that justice delayed is justice denied. To maintain, therefore, electoral purity and to provide prompt and adequate punishment for persons guilty of serious offences in connection with elections, the Indian Elections Offences and Inquiries Bill has been introduced. The Joint Select Committee on the Government of India Act recommended that a complete and stringent Corrupt Practices Act should be brought into operation before the first elections to the Legislative Councils, as they were convinced that it would be not less required in India than it is in other countries. The Government of India Act itself, however, empowers the Government of India, with the sanction of the Secretary of State in Council, to make rules for the registration of voters and for the conduct of elections, including the final decision of doubts and disputes as



to the validity of an election. Provision has accordingly been made for the decision of doubts and disputes through the medium of rules; but, to crown the edifice, it was necessary to enact penal provisions providing for the punishment of offenders, which could only be effected by special legislation, as rules empowering any authority to inflict imprisonment or fines cannot be framed under the powers conferred by the Government of India Act. The objects of the proposed enactment are stated as follows in the statement of objects and reasons published with the Bill itself:

"Rules have been framed prescribing the qualification of electors and members of the Indian Legislature and of Governor's Legislative Councils and for the final decision of doubts and disputes as to the validity of any election. These rules empower the Governor-General or Governor, as the case may be, to appoint Commissioners to try all such disputes, and to report to the Governor-General or Governor, as the case may be, the result of their enquiry. Under these rules an election must be declared void if a corrupt practice of a serious nature is found to have been committed by a candidate or any agent of his, whether with the knowledge of the candidate or not. Such corrupt cases are bribery, undue influence, personation, or abetment of personation and deliberate false statements about a candidate at an election. The rules also provide that malpractices of a less serious nature will only render an election invalid if they materially affect the result. Persons found guilty of malpractices are disqualified for varying periods from being candidates for election to the Councils or voting as agents at elections. The rule-making power under the Government of India Act does not enable provision to be made except for these matters.

"It is clear that the rules need to be supplemented by legislation if effect is to be given to the recommendations of the Joint Committee. The Government of India think it desirable that advantage should be taken of this opportunity to make election offences part of the general law of the land, not only in respect of Legislative bodies, but also in the case of elections to

public bodies generally. Sporadic legislation has been undertaken in certain provinces but the major offences, at any rate should, it is thought, be dealt with in the Penal Code.

"The objects of the present Bill are, therefore, two-fold. Firstly, it seeks to make punishable under the ordinary penal law bribery, undue influence and personation and certain other malpractices at elections not only to the Legislative bodies, but also to membership of public authorities where the law prescribes a method of election; and, further, to debar persons guilty of such malpractices from holding positions of public responsibility for a specified period. Secondly, it proposes to empower the Commissioners appointed under the rules referred to above to exercise judicial powers of investigation in respect of elections to legislative bodies in India. As regards other bodies, the matter is one which, in the opinion of the Government of India, may be left to be dealt with by local legislation.

"Accordingly Part 1 of the Bill inserts a new Chapter in the Indian Penal Code, and makes the necessary amendments in the Code of Criminal Procedure.

"Election" is defined as including election to all classes of public bodies where such a system is prescribed by law. All persons who have to deal with the preparation of electoral rolls and the like and to conduct any part of an election are declared public servants. The effect of this provision is that Chapters IX and X of the Indian Penal Code, which deal with offences relating to or by public servants or contempt of their lawful authority will become applicable to these persons."

The definitions of the offences of bribery, undue influence, personation, false statements of fact regarding the personal character and conduct of a candidate are necessarily similar to, if not identical with, the definitions of the same offences in the rules regarding corrupt practices.

No prosecution in respect of the offences created can be instituted, except with the sanction of the Governor-General in Council, the Local Government or some other officer empowered by

the Governor-General in Council in this behalf.

The second part of the Bill comprises legislation ancillary to the rules, and gives statutory powers to the Commissioners appointed to hold enquiries. They are given the powers of a court under the Civil Procedure Code to enforce the attendance of witnesses and to record evidence. The Indian Evidence Act is made applicable to all enquiries; and lastly provision is made for appearance by pleaders, for paying expenses of witnesses, for costs, and for their realization.

At the time of going to Press, this important Bill has just been passed by the Imperial Legislative Council, with a few modifications of minor importance.

#### CHAPTER VIII. RETURNING AND PRESIDING OFFICERS

THE Returning Officer is the pivot on which the election revolves from the date of the nomination to the declaration of the result. He is responsible for making the necessary arrangements for the taking of the poll, the counting of the votes and for notifying the result. Amongst the duties of his office, the following are the most important: He must before the election—supply nomination papers; receive the nominations and decide all objections; publish the names of the persons nominated; provide ballot boxes, ballot papers, official stamps, copies of the electoral rolls; appoint Presiding and Deputy Presiding Officers and clerks for each polling station; arrange for the collection and despatch of ballot boxes to his headquarters; count or have the votes counted in his presence on the date fixed; and report the result to the Local Government or the Government of India, as the case may be. On the date of the poll, a Returning Officer has practically no work to do, so that he may himself act as a Presiding Officer.

It is a matter of considerable importance that all Returning Officers and Presiding Officers should make themselves thoroughly acquainted with the rules and regulations which prescribe their duties. If they fail to do so, mistakes are certain to occur, or possibly the whole election scheme may collapse. If a material irregularity occurs, the

election may be voided, and as will be seen below they may be held responsible, to a greater or less extent, for the result, and for the loss which the returned candidate may sustain in consequence. The duties of Returning Officers are prescribed in Part IV of the main rules (rules 11 to 17), and the regulations framed by each Local Government and Administration under rule 13, and in the corresponding rules and regulations for the election of members to the chambers of the Indian Legislature. Only those officers, who are appointed Returning Officers for the constituencies of the Indian Legislative Assembly and the Council of State, are concerned with the latter. They are the same as those in force for the local Councils, with certain minor modifications which have been made in the latter to adapt them for the purpose.

A Returning Officer is not expected to perform all the ministerial duties himself, and provision is accordingly made in the rules and regulations for the delegation of some of his duties. Thus the Returning Officer cannot count all the votes, if they are numerous, in a short period. Rule 12 (5) accordingly provides that the votes may be counted by, or under the supervision of, the Returning Officer, who can, therefore, appoint clerks for the purpose, provided the work is done under his supervision. Similarly the regulations provide for the appointment by the Returning Officer of another officer to perform his duties for the time being, *vide* regulation 3 of the Punjab, and regulation 1 of Bihar and Orissa, and similar regulations in other provinces. He may, therefore, appoint another officer to take his place in case of illness or for any other adequate reason for some hours, or, in case of absolute necessity, for some days.

The most important duty of a judicial character performed by the Returning Officer is the hearing of objections to the nomination paper. Mistakes made at this stage can only be remedied by an election petition, and the Returning Officer, if he is to escape responsibility for any such mistake, must adhere strictly to the rules and regulations, which are discussed in the chapter on the nomination of candidates. The

most important point for the Returning Officer to remember is that he is not entitled to decide the eligibility of a candidate for election, whether an objection is made or not. This must be decided by the Election Commissioners appointed to hear election petitions. A candidate who gets himself nominated, though he is ineligible, must take the consequences, and will, no doubt, be mulcted in heavy costs, in case he is successful at the poll, for having put other candidates and the constituency to so much trouble.

The objections which a Returning Officer may entertain at the scrutiny vary in different provinces. In the Punjab, the Returning Officer can apparently only decide the question whether the nomination form "has been duly presented," or not. He may not enquire into the identification or qualification of any signatory or the accuracy of any entry in the form. In other provinces, the Returning Officer exercises wider powers. In the United Provinces, for instance, he must reject a nomination paper, if it does not comply with the conditions laid down in regulation 7, i.e., it must be subscribed by two electors, as proposer and seconder; it must be signed by the candidate, or it must be shown that he consented to the candidature in writing; and it must be properly attested.

The duties of Presiding Officers are defined in the regulations. Generally, the Presiding Officer takes the place of the Returning Officer at each polling station. He is responsible for keeping order and for making all necessary arrangements at the station, and in case a material irregularity occurs, he will, no doubt, be held responsible for the result. Amongst the duties of the Presiding Officer are: the regulation of the number of electors to be admitted at a time; the identification of voters, where this procedure is prescribed; the giving of the ballot papers to voters; the marking of the ballot paper with an official mark; the sealing up of the ballot boxes and the packets at the close of the election; their despatch to the Returning Officer; and the opening and closing of the poll at the appointed hours.

As in the case of the Returning Officer, the Presiding Officer may appoint

another officer to perform his duties for the time being, where necessary.

Various provisions have been made by statute law in England to ensure that persons charged with the duty of carrying through elections shall discharge their functions with due care. By section 76 of the Representation of the People Act, 1832, a Returning Officer or any other person charged with performing a duty under the Act, who wilfully contravenes or disobeys any of its provisions with respect to any matter which he is required to do, is liable to a penalty of £500: provided that the action shall be brought either by an elector or a person claiming to be an elector, or a candidate or a member actually returned, or an aggrieved party. Under section 11 of the Ballot Act, 1872, every Returning Officer, Presiding Officer, and clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of the Act, is liable to a penalty of £100 on the complaint of the person aggrieved; and by section 4 of the same Act, any office clerk or agent present at the counting of the votes, who infringes the secrecy of the ballot, is liable, on summary conviction, to six months' imprisonment. The penalties prescribed by law do not supersede any remedies which the aggrieved party may have at common law for any omission or neglect of duty by a Returning Officer or Presiding Officer or any other person appointed to perform any ministerial duty in connection with elections.

It is a question of some importance to themselves and to the public to what extent Returning Officers and others are liable to penalties for neglect of their duties in connection with elections in India. There are no provisions either in the rules or the regulations or in the statute law which provide any penalties for neglect. It seems, however, clear, if an election is voided on account of the commission of a material irregularity by the Returning Officer or any of his assistants, that the aggrieved party has a remedy at common law in India as in England, and he may make the Returning Officer or other person responsible a respondent. In that case, there is no reason in law or in equity why the Returning Officer

or other person charged with neglect should not bear a portion of the cost of the petition; if the election is invalidated wholly or partly on account of his laches. His liability to pay the costs or part of them, no doubt, depends on the precise character of the action or inaction impugned. In the performance of judicial functions, it has been held by the English Judges that no action will lie against him merely because he has made a mistake or has wrongly interpreted a section of the law. If he gives a wrong decision wilfully, i.e., contrary to good conscience or his own convictions, he is, of course liable. If, however, he makes a mistake or a material omission in exercising ministerial duties he is liable, even though he is proved to have acted without malice. These principles have been affirmed in several cases. The question what is a ministerial and what is a judicial function has given rise to much difference of opinion in the English courts. It has been decided that a Returning Officer in rejecting or admitting votes performs a judicial function. It is quite clear, however, that for the most part his functions are ministerial, e.g., in such matters as the issuing of notices; the provision of polling stations; the appointment of clerks; the counting of the votes; the preserving of the election packets; and the declaring the results. The rejection or acceptance of a nomination is, it is submitted, without any doubt a judicial function; whereas the determination by lot of the candidate who is to be declared elected under sub-rule (7) of rule 12 is a ministerial function. Similar considerations apply in the case of the Presiding Officer. The following rulings illustrate the principles applied in English election cases: The Ballot Act, it has been held, imposes upon the Presiding Officer or upon the clerk appointed for the purpose, the duty of making over the voting papers duly marked with the official mark to the elector, and, the duty being a ministerial one, if he fails to perform it, he is liable to an action for any loss that may be sustained in consequence (*Pickering v. James*, L. R. 8 C. P. 489). In the *Hallifax* case (4 O. & H. 205), it was held that where an election petition has been caused by the neglect

of the Returning Officer, he may be made to pay the cost; and in several cases Returning Officers have been obliged to pay their own costs.

The following extract taken from "Rogers on Elections" further illustrates these principles: "Where the name of a candidate who had withdrawn was inadvertently printed on the ballot papers, *Day, J.*, intimated that if he had been satisfied that there had been gross negligence, he would not have hesitated to mulct the Returning Officer in costs. And in *Islington* (1901), 5 O. & H. 132, it was held that a Returning Officer might be joined where there was conduct by himself, or his deputies, not amounting to wilful misconduct or wilful misfeasance. In that case complaint was made that polling stations were kept open too long, that the seals of a ballot box were improperly broken to allow the inspection of a ballot paper, and that the numbers on the back of certain ballot papers were made known to an agent" (Rogers on Elections, Volume II, page 267). In the following cases the Returning Officer has been held not liable by the English courts: where he made a mistake, on a point of law, in the absence of malice; where he wrongly rejected a vote; and where he decided an objection to a nomination paper wrongly.

No person can be employed by a Returning Officer in England in connection with an election, who has been employed by any other person in the election.

When the Ballot Act of 1872 was passed by the Houses of Parliament, an abstract of its principal provisions was sent to all Returning Officers at Parliamentary and Municipal elections in England and Wales. The abstract, it was stated by the Home Office did not relieve Returning Officers from the necessity of making themselves acquainted with the provisions of the law itself, nor did it override the directions of the Act itself, nor could it be considered an authoritative interpretation of it. It is not less necessary in India for Returning Officers to study the provisions of the regulations and the rules which take the place of the English Ballot Act; and, it is hoped that the summary of their duties contained in this chapter may be of some

assistance to them, and may direct their attention to the necessity of making themselves fully acquainted with the details.

It may be of interest to note that previous to the enactment of the Parliamentary Elections Act, 1868, which provides for the trial of election petitions by Judges, the House of Commons dealt with complaints against Returning Officers. Thus (in the *Winchelsea* case, 1623), the House ordered that the Returning Officer "should be committed to prison under the custody of the Serjeant-at-arms for certain days; and then, upon his humble submission, and acknowledgment of his fault at the bar of the House, upon his knees, to be enlarged from thence, and to make acknowledgment of his fault at Winchelsea, in the presence of the jurats and the freemen there, before the writ for a new election should be executed." As late as 1804, sheriffs were committed to Newgate for misconduct by order of the House.

In England it is customary for all Presiding Officers to meet before the date of the poll and receive instructions from the Returning Officer regarding their duties. We commend this practice for general adoption. The rules and regulations are novel and varied, and, unless the Returning Officer sees that the Presiding Officers and his assistants understand them, serious mishaps may occur. The duties of each class of officer may be fully discussed at the meeting, with a view to perfecting the organisation and attaining a degree of uniformity. It would also be useful if a model election were held, and the working of the ballot system were fully illustrated and explained. Above all necessary arrangements should be made in time, and dilatory officers eliminated.

#### CHAPTER IX.

#### THE TAKING OF THE POLL

DIFFERENT systems of taking the poll have been adopted in different provinces. In Bengal, the Punjab, the United Provinces and Assam, the system prescribed in the regulations is much the same as the system in vogue in the United Kingdom: The ballot paper

contains the names of the candidates arranged alphabetically in the prescribed form. The elector after signing his name, or affixing his thumb impression, if he is illiterate, is entitled to receive a voting paper bearing on each side an official mark. On receiving the ballot paper he proceeds to a place set apart for the purpose and marks a cross against the name of the candidate for whom he intends to vote. He then folds the ballot paper and places it in the ballot box, and, as soon as he does so, quits the polling station. If the voter is unable to read the ballot paper or to make a cross on it to indicate his choice of a candidate, the Presiding Officer marks it for him, and he then places it in the ballot box as before. In Bombay, Bihar and Orissa, and the Central Provinces, the Returning Officer supplies a ballot box with a different colour or combination of colours or symbol for each candidate, and the voter places the ballot paper or voting paper in the box painted with the colour or combination of colours or marked with the symbol of the candidate for whom he wishes to vote.

Each system has obvious merits and demerits. With a literate, well drilled, and intelligent electorate, the English system is preferable: All the votes are placed in one large box; there is complete secrecy; and the Presiding officials have little trouble, so that the voting should go through quickly. If, however, as in India, the electorate is for the most part illiterate, the signing of the rolls by the voter, or the taking of thumb impressions, if he is illiterate, may prove a very tedious process. The marking of the votes by the Presiding Officer is also a serious drawback; the secrecy of the voting becomes to that extent impossible; and, if the Presiding Officer is not reliable, he has the power to transfer the votes of illiterate electors to any candidate whom he favours. Should several such cases occur or be suspected, public confidence in this system of election would rapidly break down. In addition, it may be anticipated that the marking of the votes of the illiterate voters and the ascertainment of their wishes will inevitably cause much delay. The coloured boxes are a simple device to enable the illiterate voters to record their votes without the



assistance of the Presiding Officer, which has met with considerable success in municipal elections in various parts of India. The candidate and his agent are informed beforehand of the colour of the box assigned to him, and, if they instruct their supporters, the latter should have little trouble in distinguishing the simple colours which will, no doubt, be used. In any case the Presiding Officer is bound to give them such assistance as is required: in Bihar and Orissa a Deputy Presiding Officer is placed in the polling room for this express purpose. This system also impairs to some extent the secrecy of the voting, though not to the same extent as the other. Ordinarily it would seem to be quite suitable in the conditions which prevail throughout India; but, if numerous candidates stand at each election, the provision of numerous ballot boxes may lead to confusion, while their collection and despatch to the offices of various Returning Officers may prove troublesome.

Every Presiding Officer must be supplied by the Returning Officer with an extract from the register of voters for the polling station in which he presides. The electoral roll is final as regards the right of any person to vote at an election. The orders passed by the Revising authority under sub-rule (3) of rule 9 are final, and the roll as republished after the decision of objections and claims remains in force for a period of three years. Every person registered on the electoral roll of a constituency is entitled to vote, but no person is permitted to vote in more than one general constituency (rule 10 of Part III), and, if he attempts to do so he may be held guilty of personation as defined in rule 2 of Part II of Schedule IV. A general constituency means any constituency which is not a special constituency, and the special constituencies are the University, Landholders, Planting, Mining, or Commerce and Industry constituencies. Thus, a person cannot vote at an election unless his name is on the register, even though he has a right to be registered and a person whose name is on the register is entitled to vote, even if his name ought not to be on the electoral roll. The duty of the Presiding Officer is to deter-

mine the identity of the person who presents himself to vote, and to see whether he is the person whom he represents himself to be; if he is authorised to refuse to give a ballot paper or a voting paper to a person whose identity is not established to his satisfaction, he must do so, but, he can in no case question the right of a person whose identity is established and whose name is on the roll, to vote at the election.

The Presiding Officer is expressly prohibited in England from refusing a ballot paper to any person presenting himself to vote who answers satisfactorily the questions required of him by law; but, he may, if an agent of the candidate charges the person voting with personation, cause the latter to be arrested forthwith, and he is required to do so immediately after such person has voted. When enquiry into the voter's title ceased to be made at the poll, the opportunities for fraud and personation increased, and special provisions were made to deal summarily with the practice. Who can say that personation is likely to be less rife in India than in England? No provisions for summary arrests have, however, been made in the statute law; but, precautions have been taken in various ways to diminish or prohibit personation as far as possible. In Bengal (regulation 31) no objection is taken by the Presiding Officer or his staff; but, if the candidate or his agent alleges personation against any elector who appears to vote, the Presiding Officer must decide on the validity of the objection. If he decides that the voter is entitled to vote, the vote is recorded. If, however, he decides that the voter is not entitled to vote, the latter is given "a tendered ballot paper." The same procedure is adopted as in the case of tendered votes, that is, the ballot paper is marked by the voter; but, instead of being placed in the ballot box, it is set aside in a separate packet and is preserved by the Returning Officer. It becomes effective as a vote only on a scrutiny and on proof of personation. The procedure laid down in these regulations will certainly contribute to the elimination of personation, but it may be doubted, especially in the case of rural electors, whether the candidate or his agent will

ever be able to identify any but a small percentage of the electors. In that case personation may be rife, or frivolous objections may be made against *bonâ fide* voters, which will delay the progress of voting and cause annoyance. In the neighbouring province of Bihar and Orissa, the regulations (regulation 22) prescribe that each elector shall be identified by a member of the rural police or *panchayat* or by some other person to the satisfaction of the Presiding Officer, who must refuse to give a ballot paper to any person whose identity is not established. This procedure appears to postulate the inability of the candidates or agents to look after their own interests in the matter of identification of voters: The constituencies are large, and the rural voters are scattered. The system will, however, entail considerable organization and will put a strain on the Presiding Officer and his staff, though it should have the effect of eliminating personation altogether.

Under the Bombay regulations, an elector is apparently entitled to receive a voting paper, if he answers the questions which may be put to him under regulation 4; but in regulation 6 it is stated that the Presiding Officer must decide any dispute as to the identity of any person claiming to be an elector. It seems, however, that he has no power to refuse to give a voting paper, in case he decides that the person who presents himself to vote is not the person whose name is entered on the roll.

In the United Provinces also, provided the person who presents himself to vote answers the prescribed questions (regulation 17), he is entitled to get a voting paper, that is, if he states he is the person enrolled and that he has not voted previously at the election. There is no independent identification of the voter. The Presiding Officer has no authority to arrest persons caught *flagrante delicto* in the act of personation, and there is thus a wide field for the commission of this offence. Once a person has voted and left the polling station, it may be very difficult to find him and to prove that he was the person who personated another elector. In the great majority of

cases, the offence will, therefore, go unpunished.

The Central Provinces regulations regarding identification are similar; but, if any candidate or his agent take objection to any voter, the Presiding Officer takes evidence of identification. If the voter is not identified—apparently to his satisfaction—the Presiding Officer will nevertheless permit him to vote, if he answers the questions put to him and persists in his claim, but will take a note of the circumstances [regulation 10 (14)]. The Assam regulations are similar, but no special note is made of the circumstances, if objection is taken to the vote by the candidate or his agent.

In the Punjab, the voter gets an identity voucher after he has signed his name, or affixed his thumb impression if he is illiterate, and obtains a voting paper without further investigation unless he is challenged. If he is challenged, and answers the questions put to him regarding his identity satisfactorily, "the first in the affirmative and the second in the negative," he will get his voting paper and deposit it in the ballot box.

Section 15 of the Ballot Act enacts that any person applying for a ballot paper under the Act shall be deemed "to tender his vote" or "to assume to vote." When a voter upon applying for a voting paper finds that another person has voted in his name, he applies for what is known as "a tendered ballot paper." Upon answering certain questions, he is entitled to receive a ballot paper of a different colour from the other ballot papers which he may mark in the same manner as other voters; but, instead of being put into the box, the ballot paper so marked is placed in a separate packet which is sent to the Returning Officer by whom it is preserved. It becomes an effective vote only in case of a scrutiny. The name of the voter with his number on the roll is entered by the Presiding Officer on a separate list called "the tendered votes list."

This expedient has been adopted with slight variations all over India: In Bengal (regulation 31) the voter's thumb impression is taken against the

entry of his name, in the tendered votes list, and the Presiding Officer endorses the voter's name and number, after the voter has placed his cross against the name of the candidate for whom he wishes to vote, on the ballot paper itself; in Bombay the voter, or the Presiding Officer, if the voter is illiterate, writes on the reverse of the voting paper the names of the candidates for whom the voter desires to vote, before it is placed in the tendered votes packet; and in Bihar and Orissa, the Presiding Officer endorses on the tendered ballot paper the name of the candidate for whom the elector desires to vote, together with the name and number of the voter on the electoral roll.

In olden days there was no limit to the duration of the poll in English elections; in the reign of George III the maximum number of days was fixed at fifteen. Now at a general election all the polls must be held in one day [section 21 (1) of the Representation of the People Act, 1918], and the hours for the poll, which have been also fixed by law, are 8 A.M.—8 P.M. It is apparently proposed to take the poll in Indian elections for each constituency on one day; but, whether the English practice be followed or not, the dates and hours are fixed once for all by the regulations, or a special notification in the gazette. In the Punjab, the hours fixed are 8 A.M.—4 P.M. and in Bihar and Orissa 7 A.M.—5 P.M. The fixed hours must be strictly adhered to. An infringement of the regulation or order may not void the election; but, if it can be shown that the result was materially affected by the irregularity, the Election Commissioners will on petition declare it void, in which case the person responsible for the irregularity may be mulcted with a part of the costs of the case. In the *Islington* case,\* it was held that any voters who had received ballot papers for voting before the hour fixed for the close of the poll should be permitted to mark them and place them in the ballot box. When a definite time is fixed for the closing of the poll, it is, no doubt, intended that all persons who have received ballot papers before the time so fixed should be allowed to vote. In Bombay [regulation 4 (5)] the rule is that no voting paper shall be issued after the closing hour appointed

for the election, but any person who has before the closing hour received his voting paper shall be allowed to vote [regulation 5 (2)]. The United Provinces and the Central Provinces have adopted the same rule. In Bengal, the rule is that any voter who is present at the polling station before it is closed shall be entitled to have his vote recorded (regulation 22).

Cases will sometimes occur which are not covered by the provisions of any regulation or rule, and the Presiding Officer may have much difficulty in deciding what course of action he should pursue in the circumstances of each case. Whatever be his decision, it will probably be open to attack. The safest course is to endeavour in such cases to carry out the intention of the regulations and the rules under which he exercises his functions, though he may not be able to give effect to them in the manner prescribed. What should a Presiding Officer do if the ballot box or one of the ballot boxes is filled with voting papers some hours before the close of the poll? If a lunatic or a person who is drunk presents himself to vote, what procedure should be adopted? Or, if a person appears to vote who is deaf, dumb and blind? This latter case occurred at an English election in 1908, and the Presiding Officer settled the question by ascertaining from the man's wife for whom he wished to vote.

In case of a riot or open violence of such a character as to render it difficult to proceed with a poll, the Presiding Officer at elections in England may under section 70 of the Representation of People Act, 1832, adjourn the proceedings from day to day until such obstruction or interruption ceases, when he shall again proceed to take the poll; and the declaration of the result of the election must be postponed by the Returning Officer accordingly.

Votes must be given in all cases by ballot and in general and Landholders' constituency in person. Voting by proxy is not allowed [rule 12 (5)]. The elector in a single member constituency records his vote in favour of one candidate; in a multiple member constituency, he may vote for as many candidates as are to be elected; but, he cannot give more than one vote to any



one candidate save in the Bombay Presidency where the system known as the cumulative vote has been adopted. In Bombay, he can accumulate his votes in favour of one candidate. The voting paper is divided into as many parts as there are members to be elected, one part representing one vote, and the voter can record all the votes in favour of one candidate, or he may distribute them as he thinks fit; if he does not wish to record all his votes, he must hand over the parts unused to a polling officer who stands within the voting partition, who will deposit them in an uncoloured ballot box. The polling officer must see that the voter surrenders them, so that they may not pass into the hands of some zealous voter who might utilize them in addition to his own.

The following decisions of the English Courts or other authorities in regard to the poll are of importance to Returning and Presiding Officers: Once the ballot box is sealed, it cannot on any account be reopened until the Returning Officer reopens it for counting the votes; and during the poll it must not be taken out of the polling station in any circumstances whatsoever; if a voter marks his paper for A, whereas he intended to mark it for B, he may treat it as spoilt and ask for another; the voting papers of persons, who are illiterate or incapacitated from marking their voting papers, should be marked secretly, steps being taken to prevent other voters from seeing the marking; if the Presiding Officer is satisfied as to the identity of the voter, he should not refuse to give him a voting paper, merely because of an inaccuracy in the spelling of his name or address or description; a voter must answer a question which the Presiding Officer is authorised to put him substantially and without reservations, and, if he refuses to do so he should not get a ballot paper; the poll must not be closed before the fixed hour, nor can it be adjourned for a temporary purpose, such as taking lunch; the supply of ballot papers must cease at the hour appointed for closing (unless the regulation otherwise directs).

Various Local Governments and Administrations have made special regulations for the election of members to re-

present the Universities, Commerce and Industry constituencies and the special seats. Voters cannot be expected to come long distances to record their votes at one or two polling centres in a province. The Returning Officer, therefore, sends to each elector by registered post a ballot paper together with an intimation of the date appointed for the counting of the votes. In the case of a University constituency, the elector has his signature attested by an Attesting Officer to whom he is known or to whom he is identified. The elector indicates his choice of a candidate by marking his ballot paper in the usual way and then sends it to the Returning Officer. This is in outline the plan described in the Bengal regulations 39—45.

Electors of Landholders' constituencies in Bengal are also not required to come to the polling booths. Voting papers are sent to them by the Returning Officer: they get their signature attested before an Attesting Officer, and after marking the ballot paper deliver it to him (regulation 49) for despatch to the Returning Officer.

The election of members to represent the Presidency and Burdwan constituency in Bengal and the non-Muhammadan Council of State constituency in Madras is carried through under the system of proportional representation by means of the single transferable vote. For the election of members to represent the European, Landholders' and University constituencies in the Bombay Presidency, the English system of voting is prescribed. In Bihar and Orissa, members to represent Landholders' seats are elected in the same way as the members for the general seats; but, ballot papers are sent by the Returning Officer to the electors of the University and Planting constituencies, and the representatives of the two Mining seats are elected at a special general meeting of the respective associations held for the purpose.

The elaborate electoral regulations of the United Provinces prescribe a different system of voting for Europeans in the European constituency: Landholders; Taluqdars; members of the Upper India Chamber of Commerce; the United Provinces Chamber

of Commerce; and the University seat. For the University, there are two methods of voting prescribed: the ordinary elector, after getting his voting paper attested, places it in the envelope provided, and delivers it to the Attesting Officer who is directed to forward it to the Returning Officer. These electors are, therefore, saved the trouble of sending in their votes; but a member of the Senate or an Honorary Fellow of the University may deliver his vote to the Returning Officer; but, if he is not desirous of recording his vote in the presence of the Returning Officer, he may send his voting paper by registered post. His signature is not attested by any authority; whereas the ordinary graduates attend at a centre in each district for the attestation of their signatures.

## CHAPTER X.

### COUNTING OF THE VOTES AND DECLARATION OF THE RESULTS

On the date appointed for the counting of the votes, the Recruiting Officer opens the ballot boxes and proceeds to count the votes or to get them counted by clerks working under his supervision, marking, as the scrutiny of votes proceeds, the votes which he considers to be invalid or spoilt, with the word "rejected." After verifying the ballot paper accounts given by each Presiding Officer, he prepares and certifies a return setting forth the result of the election, and declares the candidate or candidates to whom the largest number of votes has been given to be elected [rule (12) (6)], and reports the result immediately, if the election appertains to a local Council, to the Secretary to the Council, for publication in the gazette, and, if the election appertains to either chamber of the Indian Legislature, to the Secretary to the Government of India, Legislative Department.

When an equality is found to exist between any candidates, he decides by casting lots [rule 12 (7)].

The most important function which a Returning Officer has to discharge in connection with the counting of votes is the decision on the validity of voting papers. The candidate, or, in his absence, a representative duly authorized by him in writing, is entitled to be present at the time of counting [rule 12 (5)].

The Returning Officer must examine the ballot papers himself and apply the principles of the rules and regulations laid down for his guidance and of the rulings of the Election Courts in England. Owing to variations in the systems of election adopted in different parts of India, the rules and regulations dealing with the question of invalid votes are not absolutely uniform. The principles applicable are, however, everywhere the same. The grounds on which a vote are declared to be invalid or spoilt are summarized in regulation 30 of the Bengal regulations and are applicable with minor variations in all the provinces of India. Under this regulation, the following classes of ballot papers are declared to be invalid: (1) any ballot paper which is not duly marked with the official mark; (2) any ballot paper on which more than one cross is placed against any candidate's name; (3) any ballot paper on which votes are given to more candidates than there are members to be elected; (4) any ballot paper on which a cross is marked in such a manner as to make it doubtful to which candidate the vote has been given; (5) any ballot paper on which any mark is made by which the voter may afterwards be identified.

It has been held in England that where a ballot paper is marked on one side with the official stamp, it should not be declared invalid. Regulation 28 of the Bihar and Orissa regulations specifically provides that, if the ballot paper is marked on the front with the official mark, it shall be counted. The placing of an official mark on each ballot paper is a safeguard against fraud, and the kind of stamp that is to be used should be kept secret by the Recruiting Officer. In England the same stamp cannot be used in successive elections, and an interval of not less than seven years must intervene

between the use of the same official mark at elections of the same county or borough. In case the impression made by the stamp is not clear or only a portion of the mark is visible, the Returning Officer should consider whether there is clear evidence of an intention to make the official mark; if the mark is recognizable, the vote is valid.\*

A voter can give only one vote to each candidate [rule 12 (5)]; in plural member constituencies he has as many votes as there are members to be elected; but, he cannot accumulate his votes on one candidate save in Bombay where the cumulative system of voting is permitted; and, if he attempts to do so by placing two crosses or more against the name of one candidate, or by placing more crosses on the ballot papers than there are members to be elected, his vote is spoiled and cannot be counted. In Bihar and Orissa, a voter in a plural member constituency is given as many ballot papers as there are members to be elected; but, he is obliged to place one voting paper and not more in the box assigned to each candidate for whom he wishes to vote. If he places two or more in a ballot box, his votes are spoilt. Each ballot paper which is given to one voter has the same number on the reverse, and if two or more ballot papers with the same number are found in one box, the votes are invalid. It is not stated what happens to a ballot paper which the voter does not place in any ballot box: He may vote for one candidate only and in that case he may discard the other ballot papers.

If a ballot paper is marked in such a way that the Returning Officer is not certain for whom the vote is intended, the vote is, of course, invalid.

A more difficult question for decision is the fifth ground of invalidity. If the voter writes his name or his initials on any ballot paper, it is clear that he may be identified from either, in which case his vote is spoilt. It is immaterial whether the writing is on the front or on the back of the paper. In the *Wigtown* case†, it was held that a line on the back of the voting paper, or a cross, or a circle, or an oval on the front renders the vote invalid, the ground taken being that such marks

might possibly lead to the identification of the voter. It is submitted that this ruling is unduly strict, and it was not followed in subsequent cases. In the *Exeter* case‡, the Judge said: "It is obvious to begin with that the mistakes that illiterate and unskilled persons may make in filling up their ballot papers are almost infinite, but it is equally true that the devices for identification are also infinite; and it seems to me that what you have to do. . . is to look at the paper and to form your own opinion on looking at it whether what is there is put there by the voter for the purpose of indicating for whom he votes. . . . If you come to the conclusion on looking at the paper that the real thing that the man has been doing is to try badly and mistakenly, not understanding the Act of Parliament, to give his vote, and to make it clear whom he votes for. . . then these marks are not to be considered to be marks of identification unless you have positive evidence of some agreement to show that it was so. . . . But, I think that the statute makes void all ballot papers which have on them marks other than those which indicate the intention to vote for a particular person, and which may be indications of the identity of the voter." The voter in this case, after placing his cross against the candidate's name, added the words "up Duke." The vote was disallowed.

The following opinion is taken from *Rogers on Elections*, page 152, Vol II: "The question as to whether a voter can be identified or not must in the first instance be determined by the Returning Officer. As the judge of fact, he must draw such inferences as he can from the ballot paper, having regard to the nature and position of the mark or writing. The authorities given above are conflicting in some respects, and seem to contemplate the possible existence of evidence of connivance or pre-arrangement. In practice the only evidence before the returning officer at the time of counting the votes will be the ballot paper in question and, perhaps, a copy of the register of voters. It is suggested that in coming to a decision, he should be guided by the principles laid down in *Cirencester*,

\* 4 O. and H. 194.

† 2 O. and H. 215.

‡ 6 O. and H. 231.

*Woodward v. Sarsons*, and *Exeter, supra*. He should not hold a vote void unless the ballot paper itself affords the means of identifying the voter, i.e., contains marks by which he can—not possibly may—be identified. Names and initials do *per se* constitute such marks, but crosses, lines, stars, etc., do not.”

In 1876 a Select Committee appointed by the House of Commons to inquire into the working of the existing machinery of parliamentary and municipal elections recommended that the Home Office should send to every Returning Officer a copy of the case and judgment of the Court of Common Pleas in *Woodward v. Sarsons*. In this case the court held that any mark which indicates without doubt for whom the voter intended to vote is valid, provided it does not enable the voter to be identified. A ballot paper which bears a voter's signature is void, and must be disallowed, as also a ballot paper which has the name of the candidate written by the voter instead of a cross opposite his name. The mere fact of two crosses being put, or of the cross being of a peculiar form, or of there being another mark with the cross, or there being a straight line instead of a cross, or of the cross being put on the left hand side of the candidate's name instead of on the right hand side, will not vitiate the ballot paper, and it should not be rejected on any of these grounds, unless there is evidence of an arrangement that these peculiar marks were to be indications of identity. The learned Judge in his judgment stated the law as follows: “By section 2 (of the Ballot Act) any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything except the said number on the back is written by which the voter can be identified, shall be void, and not counted. It is not every writing or every mark, besides the number on the back, which is to make the paper void, but only such a writing or mark as is one by which the voter can be identified. So in Rule 36, ‘The returning officer shall report, etc., the number of ballot papers rejected, and not counted by him under the

several heads of, first, want of official mark; secondly, voting for more candidates than entitled to; thirdly, writing or mark by which voter could be identified; fourthly, unmarked or void for uncertainty.” And then in Schedule 2 in the note to the form above referred to, we have this warning, “if the voter votes for more than (?) candidates, or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.” The result seems to be, as to the writing or mark on the ballot paper, that if there be substantially a want of any mark, or a mark which leaves it uncertain whether the voter intended to vote to all, or for which candidate he intended to vote, or if there be marks indicating that the voter has voted for too many candidates, or a writing, or a mark by which the voter can be identified, then the ballot paper is void, and is not to be counted. Or, to put the matter affirmatively, the paper must be marked so as to show that the voter intended to vote. It must not be marked so as to show that he intended to vote for more candidates than he is entitled to vote for, nor so as to leave it uncertain whether he intended to vote at all, or for which candidate he intended to vote, nor so as to make it possible, by seeing the paper itself, or by reference to other available facts, to identify the way in which he has voted.

If these requirements are substantially fulfilled, then there is no enactment and no rule of law by which a ballot paper can be treated as void, though the other directions in the statute are not strictly obeyed. If these requirements are not substantially fulfilled, the ballot paper is void, and should not be counted: and if it is counted, it should be struck out on a scrutiny. The decision in each case is upon a point of fact to be decided, first, by the Returning Officer, and afterwards, by the election tribunal on petition?

In the following cases the vote was disallowed by English election courts: where the cross was placed on the candidate's name, it being considered that it was doubtful whether the elector meant to strike out the name of the candidate or to vote for him; where three lines were scored through a can-

candidate's surname, but crosses were put on his names and description; where the cross mark was placed on the back of the ballot paper; where a cross was placed on the left hand side of the respondent's name and a straight line on the right hand side of the petitioner's name, on the ground that the cross in one case and the line in the other made it doubtful for which candidate the voter meant to vote; where the cross was put opposite the words "ballot paper"; where the voter wrote his name instead of a cross opposite the candidate's name; and where he wrote any name or initial, on the ground that he might be identified by his handwriting. On the other hand, in the following cases the vote was allowed: where the ballot paper was marked with a circle instead of a cross opposite the candidate's name; where a cross was put opposite the candidate's name and another was put in the same compartment as the name; where only a portion of the cross was placed in the compartment opposite the candidate's name; where the mark was placed outside the space provided for the purpose, but there was no difficulty about deciding what was the intention of the voter.

It is not necessary that the mark should be made with the pencil provided in the compartment or polling booth, or with a pencil at all. A mark made with ink, a piece of burnt stick or a mark made in any other way, if the intention is clear, will be valid (2. O. & H. 219).

The decision of the Returning Officer regarding the validity of a vote is final, subject to reversal on a petition questioning the validity of election. The Returning Officer has, of course, no authority at this stage, or at any other stage, to consider the question of the eligibility of any candidate or of the returned candidate.

The Returning Officer must during the counting take all necessary steps to ensure secrecy. Thus, candidates or their agents should not be allowed to see the numbers on the back of the ballot or voting papers. They are entitled, however, to see the back of the voting papers, and the Returning Officer must himself examine each

voting paper before it is counted to see that there are no marks on it which render it invalid and to see that it bears the official mark. The inference is that his finger should be placed on the number, or that the paper should be so folded that the candidate or his agent cannot note the number, while he views the paper itself. The voting papers should be counted face upwards.

Where there is only one vacancy to be filled, the counting of votes is a simple matter. The voting papers in favour of each candidate are placed in heaps and counted. Spoilt votes should first be separated from the valid ones, preferably according to the head and classes of spoilt votes under which they fall. The method of counting recommended *mutatis mutandis* in case there are two vacancies to be filled, is detailed in the "Instructions to counting Assistants" in English elections, which are printed in the Appendices.

The following decisions of English Election Courts illustrate the duties and powers of Returning Officers under a code of procedure similar to, if not identical, with that now in force in India. The Returning Officer cannot go into the question of the legality of any votes. He can only enquire about their validity as papers and see whether they comply with the provisions of the rules and regulations; but his decision may be questioned by an election petition.

He may adjourn the counting, provided he takes necessary precautions for the safe custody of ballot papers; but, he may not adjourn for advice or for consideration.

If he thinks there has been an error in counting, he can recount the votes before he declares the result; but after the results are once declared, he cannot order a recount; if the counting was improperly made, or irregularities occur, he may be made a party to the petition and condemned in costs.

The declaration of the result should be made at once. It cannot be postponed once the counting is finished, for any reason whatsoever.



## CHAPTER XI.

**ELECTED MEMBERS AND  
NOMINATED MEMBERS**

The number of members composing the chambers of the Indian Legislature and local Legislative Councils are shown in the table placed below :

	Number of elected members.	Number of nominated members.	Maximum number of officials (nominated).	TOTAL.
Council of State	33	27	20	60
Indian Legislative Assembly	103	41	26*	144
Madras	98	20†	19	127
Bombay	86	25†	16	111
Bengal	113	26†	18	139
United Provinces	100	23†	16	123
Punjab	71	22†	14	93
Bihar & Orissa	76	27†	18	103
Central Provinces	37	33†	8	70
Assam	39	11†	7	53

Of a total of 1,023 members elected and nominated only 267 are nominated, or twenty-six per cent. The elected members, therefore, comprise seventy-four per cent. of the total number of members of all Legislative Councils and legislative bodies in India. They are for the first time in their history in an overwhelming majority. By section 17 of the Government of India Act, 1919, at least seventy per cent. of the members of Legislative Councils shall be elected and not more than twenty per cent. shall be officials.

The Southborough Committee suggested that, when more seats than one are assigned to any district, the district should, as far as circumstances permit, be divided up into the necessary number of single member constituencies. This precept has been followed in the United Provinces, the Punjab, and Bihar and Orissa in which all the constituencies are single member ones. In the Central Provinces, there is only one double member constituency, and in Assam there are only two non single member constituencies, viz., the Assam Valley Planting and the Surma Valley

Planting. Effect has been generally given to the directions in the Bombay and Bengal Presidencies, though there are some double member constituencies. In Madras Presidency, however, the districts have not been divided into single member seats, and the Non-Muhammadan constituencies return two and three and in one case as many as four members.

The general disqualifications for the appointment of nominated members are the same as those for elected members. The following classes of persons are, therefore, disqualified for nomination as members of a Council or of any other legislative body: Aliens; females; persons who are already members of the Council or any other legislative body; dismissed or suspended legal practitioners; lunatics; persons under 25 years of age; undischarged insolvents; discharged insolvents who have not obtained from the court a certificate that the insolvency was caused by misfortune and not on account of misconduct; persons against whom a conviction by a criminal court involving imprisonment for a period of more than six months is subsisting, for a period of five years from the date of the expiration of the sentence; persons convicted of an offence under Chapter 9-A of the Indian Penal Code, punishable with imprisonment for a term exceeding six months, or reported by the Election Commissioners to be guilty of a corrupt practice as specified in Part I, or in paragraph 1, 2 or 3 of Part II, of Schedule IV., for a period of five years from the date of the conviction or finding; persons reported by the Election Commissioners to be guilty of any other corrupt practice than those specified above, for a period of three years from the date of the finding; and candidates or agents who have failed to lodge prescribed returns of election expenses, or who have lodged returns found to be false in any material particular, for five years from the date of the election.

Nominated non-official members hold office for the duration of the Council or other legislative body.

The Governor-General or the Governor makes all nominations to complete the Council of State, the Legislative Assembly or the Legislative Council, as the case may be (Rule 25).

\* Twenty-six nominated members must be including the members of the Executive Legislative Council.

officials.  
Council who are *ex-officio* members of the



Under rule 3, the following classes of persons or communities are represented by nominated members in the Legislative Councils mentioned below.

Classes Represented.	Madras.	Bombay.	Bengal.	United Provinces	Punjab.	Bihar & Orissa.	Central Provinces	Assam.	Total.
Special communities Paraiyans, Pallans, etc.	5	...	...	...	...	...	...	...	5
Backward tracts ...	1	...	...	...	...	2	1	4	...
Anglo-Indians ...	1	...	1*	2	1*	1	...	...	...
Indian Christians ...	1	1	1	1	1	...	...	...	5
Labour ...	1	2	...	...	1	...	1	5	...
Depressed classes ...	1	1	1	...	2	2	...	7	...
Aborigines...	...	...	...	...	2	...	...	2	...
Cotton Trade	1	...	...	...	...	...	...	1	...
Punjabi Officers and Soldiers of His Ma- jesty's Indian Forces	...	...	...	1	...	...	...	...	1
Industrial interests other than planting and mining.	...	...	...	...	1	...	...	1	...
Domiciled Bengalis ...	...	...	...	...	1	...	...	1	...
Total ...	6	5	4	3	4	9	5	23	8

\* This constituency is for both the European and Anglo-Indian communities whose interests are apparently considered to be identical.

Anglo-Indians are represented by six nominated seats, but this community has also two elected seats in Bengal and one in Madras, so that the total representation comes to nine members.

Indian Christians have five elected in Madras, so that their total representation is ten members, or one per cent. of the total number of members in India.

The ranks of labour are represented by five nominated members only; but the depressed classes have seven nominated members, and in the Madras Presidency, twenty-eight seats are reserved for non-Brahmans. The franchise qualifications are based on property, and it is feared that labour will not be represented by any elected members, unless tenants of agricultural lands are to be regarded as labourers which for the most part they are in India. It would not, however, have been easy to

devise a suitable franchise for labour. This class is still in a far more depressed condition than people of the same status in England and in western countries generally.

The seat reserved for the domiciled Bengalis in Bihar and Orissa is a singular instance of the representation of a whole race as opposed to the representation of special classes, or communities, or religions. The domiciled Bengalis include Muhammadans as well as Hindus. They are a fragment of the Bengali race left stranded in uncongenial conditions since the formation of the new province of Bihar and Orissa and its separation from Bengal. The Bengalis are said to resemble one of the nationalities which compose the United Kingdom in the tenacity with which they maintain positions once gained and reserve appointments for their own relatives and friends of their own race. However that may be, the people of Bihar are clamant in their demands for a very full share of patronage, and the tendency has been since the province was formed to exclude the Bengalis from the fruits of office, which at one time they almost monopolized. The wheel of fortune has so far gone round that it is now necessary to give special representation to the Bengalis, and one nominated member has accordingly been assigned to them, who will look after their interests in the Reformed Council. It is evidently not thought that the freer atmosphere and more enlarged outlook of the new Council will result at once in the abolition of class and racial distinctions.

Although the Local Governments appoint all these members, it is interesting to note that in the case of Madras and Assam, the Governor is empowered at his discretion to make regulations providing for their selection by the communities concerned (rule 3).

In addition to the members nominated by Governors of Provinces to represent communities and special constituencies, various communities and interests are entitled to elect members to represent them. These constituencies are tabulated on the next page, omitting all Muhammadan and Non-muhammadan territorial seats.

## I

## COUNCIL OF STATE.

Class of Constituency.	Madras.	Bombay.	Bengal.	Burma.	Total.
Bombay Chamber of Commerce	1	1	1	1	4
Bengal Chamber of Commerce	1	1	1	1	4
Burma Chamber of Commerce	1	1	1	1	4
Total	1	1	1	1	4

## II

## INDIAN LEGISLATIVE ASSEMBLY.

Class of Constituency.	Madras.	Bombay.	Bengal.	Burma.	United Provinces.	Punjab.	Bihar and Orissa.	Central Provinces.	Assam.	Total.
European Constituency	1	2	3	1	1	1	1	1	1	9
Landholders	1	1	1	1	1	1	1	1	1	7
Indian Commerce	1	2	1	1	1	1	1	1	1	4
Total	3	5	5	3	3	3	3	3	3	20

## III

## LEGISLATIVE COUNCILS.

Class of Constituency.	Madras.	Bombay.	Bengal.	Burma.	United Provinces.	Punjab.	Bihar and Orissa.	Central Provinces.	Assam.	Total.
Indian Christians	5	1	2	5	1	1	1	1	1	19
Europeans	1	2	5	1	1	1	1	1	1	10
Anglo-Indians	1	1	1	1	1	1	1	1	1	9
Landholders	6	3	5	1	1	1	1	1	1	20
University	1	1	1	1	1	1	1	1	1	7
Planting	1	1	1	1	1	1	1	1	1	7
Commerce & Industry	5	7	13	1	3	2	1	1	1	33
Mining	1	1	1	1	1	1	1	1	1	4
Total	20	13	28	11	7	10	5	6	100	

Commerce and Industry and Landholders with 33 and 31 seats respectively take the lion's share of these special seats in the local Councils. Europeans come next with 10, while Universities and Planting interests have 7 representatives each. Although the representation reserved for the special interests is not inconsiderable, the number of members is only one-eighth of the total number of members elected to local Legislatures. Bengal has the largest quota with 28 members of these classes, Madras and Bombay coming next with 20 and 13 respectively. Of the 28 members in Bengal, half represent the great commercial and industrial interests of which Calcutta is the centre.

## APPENDIX I.

### Bengal Regulations Under Rule 13.

#### NOMINATION OF CANDIDATES.

XVI. The Local Government shall appoint, and shall notify in such manner as it thinks fit, the date by which nomination papers for any constituency, or class of constituency, shall reach the returning officer. Nomination papers which are not received by the returning officer by the date so appointed shall be rejected.

XVII (1) Nomination shall be made by means of a nomination paper in Form I annexed to these regulations, which shall be supplied by the returning officer to any elector of the constituency concerned who may apply for the same.

(2) Every nomination paper shall be subscribed by two such electors as proposer and seconder, and shall be signed by the candidate as assenting to the nomination.

(3) The same elector may subscribe as many nomination papers as there are vacancies to be filled. Each candidate shall be nominated by a separate nomination paper.

(4) Every nomination paper shall be presented for attestation before an attesting officer.

XVIII (1) A candidate who has been duly nominated for election may withdraw his candidature by a written and signed communication delivered to the returning officer not less than twenty one clear days before the date fixed for the recording of votes, or, if the period between the dates fixed for the scrutiny of nomination papers and the recording of votes is less than twenty one clear days, not later than the date fixed for such scrutiny.

XIX (1) The returning officer shall appoint and notify, in such manner as he thinks fit, a date, time, and place for the scrutiny of nomination papers.

(2) On the date, and at the time and place so appointed, every candidate and his proposer and seconder may attend, and the returning officer shall allow them to examine the nomination papers of all candidates which have been received by him as aforesaid.

(3) The returning officer shall then examine the nomination papers, and shall decide all objections which may be made to any nomination paper on the ground that it is not valid under regulation XVII, and may reject either of his own motion, or on such objection, any nomination paper on such ground. The decision of the returning officer shall in every case be endorsed by him on the nomination paper in respect of which such decision is given.

#### ELECTIONS.

XX The returning officer may divide any general constituency into as many polling areas as he thinks fit, and shall appoint polling stations for such areas.

He shall also appoint an officer, hereinafter referred to as the presiding officer, to preside at each such polling station.

XXI The local Government shall appoint, and shall notify in such manner as it thinks fit, the date on which and the hours within which the votes in any constituency or class of constituency shall be recorded.

XXII The presiding officer shall keep order at the polling station, shall see that the election is fairly conducted, shall regulate the number of electors to be admitted at one time, and shall exclude all other persons except his clerks, the candidates or any agent whom any candidate may have appointed in writing to appear in his stead at the polling station, the police on duty, and such persons as may be admitted for the purpose of identifying the electors. The presiding officer shall close the polling station at the second hour appointed by the local Government under regulation XXI, so as to prevent the admission thereto of any voter after that hour but all voters present at the polling station before it is so closed shall be entitled to have their votes recorded.

XXIII The returning officer shall provide for each presiding officer such number of clerks as he may consider desirable, and shall supply to him a copy of the electoral roll for his polling area, together with a list of the nominations and such other papers and forms as may be necessary.

XXIV The ballot paper shall contain the names of the candidates arranged alphabetically in the order of their surnames and if there are two or more candidates with the same surname, in the order of their other names. It shall be in the form set out in Form II annexed to these regulations, or as near thereto as circumstances admit, and shall be capable of being folded up.

XXV The ballot box shall be so constructed that the ballot papers can be introduced therein but cannot be withdrawn therefrom without unlocking the box. Immediately before the commencement of the poll, the presiding officer shall show the ballot box empty to such persons as may be present at the polling station, and shall then lock it up and place a seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers and keep it so locked and sealed.

XXVI (1) When a person presents himself to vote, but not afterwards, the presiding officer, or any clerk appointed to check the voters by reference to the electoral rolls, may of his own accord and shall, if so required by a candidate or his agent, put to the person either or both of the following questions—

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

(b) Have you already voted at the present election?

(2) The vote of the person required to answer either of these questions shall not be given until he has answered.

**XXVII.** Immediately before a ballot paper is delivered to an elector, it shall be marked by the presiding officer on both sides with the official mark, and the number, name, and description of the elector, as stated in the electoral roll against the number of the number of such elector in the electoral roll shall be marked on the counterfoil of the ballot paper, and a mark shall be placed in the electoral roll against the number of the elector to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

**XXVIII.** The elector on receiving the ballot paper shall forthwith proceed to the place set apart for the purpose, and there mark a cross against the name of the candidate or candidates for whom he intends to vote. He shall then fold the ballot paper so as to conceal his vote and shall put the ballot paper, so folded up, into the ballot box. He shall vote without undue delay, and shall quit the polling station as soon as he has put the ballot paper into the ballot box.

**XXIX.** If the voter is unable to read the ballot paper, or to make a cross thereon, the presiding officer shall mark the vote on a ballot paper according to the direction of the voter. The voter shall then put the ballot paper folded up into the ballot box.

**XXX.** Any ballot paper which is not duly marked, or on which more than one cross is placed against any candidate's name, or on which votes are given to more candidates than there are members to be elected or on which a cross (or mark) is placed in such manner as to make it doubtful to which candidate it has been given, or on which any mark is made by which the voter may afterwards be identified, shall be invalid.

**XXXI.** If a person representing himself to be a particular elector named on the electoral roll applies for a ballot paper after another person has voted as such elector, the applicant shall, after duly answering such questions as the presiding officer may ask, be entitled to mark a ballot paper in the same manner as any other voter. Such ballot paper (called in these rules a "tendered ballot paper") shall be of a colour different from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number on the electoral roll, and set aside in a separate packet, and shall not be counted by the returning officer. The name of the voter and his number in the electoral roll shall be entered in a list in Form III annexed to these regulations, which shall bear the heading "Tendered votes list," and his thumb impression shall be taken against the entry in that list.

**XXXII.** If an objection to the right to vote of any person presenting himself to vote is made by any candidate, or his agent, on the ground of personation the presiding officer shall decide on the validity of the objection. If the right to vote is allowed, the vote shall be recorded, provided that if the objecting candidate or his agent

requires it, the presiding officer shall take the thumb impression of the voter on the back of the ballot paper before the vote is recorded. If the right to vote be disallowed the procedure in regulation XXXI shall be followed.

**XXXIII.** The presiding officer of each polling station, as soon as practicable after the close of the poll, shall, in the presence of the candidates, or their agents, make up into separate packets and seal with his own seal and the seal of such candidates or their agent, as may desire to affix their seal—

- (1) each ballot box in use at each station unopened, but with the key attached;
- (2) the unused ballot papers;
- (3) the tendered ballot papers;
- (4) the marked copies of the electoral roll;
- (5) the counterfoils of the ballot papers; and
- (6) the tendered votes list.

**XXXIV.** The packets shall be forwarded by the presiding officer to the returning officer accompanied by a statement showing the number of ballot papers entrusted to him and accounting for them under the heads of "Ballot papers in the ballot box," "Tendered ballot papers," and "Unused ballot papers."

**XXXV.** (1) On the receipt of all the packets above referred to from all the polling stations, the returning officer shall appoint a date for the counting of votes, and shall give notice thereof to the candidates.

(2) On the day appointed the returning officer shall—

- (a) open the ballot box, and after scrutiny separate the ballot papers which he deems valid from those which he rejects, endorsing on the latter the word "Rejected" and the ground of rejection;
- (b) count, or cause to be counted, the votes given to each candidate, and declare those candidates who have obtained the largest number of valid votes to be elected;
- (c) upon the completion of the counting—

- (1) verify the ballot paper account given by each presiding officer under regulation XXXIV, by comparing it with the number of ballot papers found by him in the ballot box, the unused ballot papers, and the tendered votes list. The sealed packets of the tendered ballot papers, of the marked copies of the roll, and of the counterfoils of the ballot papers shall not be opened;
- (2) seal up in separate packets the counted and rejected ballot papers, and re-seal each sealed packet that has been opened, and record on each such packet a description of its contents, and the date of the election to which it refers;

- (d) prepare and certify a return setting forth—
- (1) the result of the verification referred to in the preceding clause,
  - (2) the names of the persons for whom valid votes were given,
  - (3) the number of valid votes given for each person,
  - (4) the names of the persons elected,
  - (5) the number of votes declared invalid, and
  - (6) the number of tendered votes given;
- (e) permit any candidate, or his agent to take a copy of or an extract from the return.

XXXVI. The returning officer shall, after reporting the result, forward the return and the packets referred to to the Secretary to the Legislative Council.

XXXVII. While in the custody of the Secretary to the Legislative Council, the packets of ballot papers, whether counted, rejected, or tendered, and of the counterfoils thereof, shall not be opened, and their contents shall not be inspected, or produced, except under the orders of a competent court or of election Commissioners. All other documents in such custody shall be open to public inspection.

XXXVIII. The Secretary to the Legislative Council shall retain the packets for a year, and shall then, unless otherwise directed by the orders of an election Court, cause them to be destroyed.

### **Special Regulations applicable to University, and Commerce and Industry Constituencies.**

XXXIX. In the case of an election for a University or Commerce and Industry constituency regulations XX, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII, XXXIV and XXXV shall not be applicable, and the following regulations shall be substituted therefor and shall apply.

XL. On or before the date fixed in this behalf by the local Government the returning officer shall send by registered post to each elector a ballot paper together with an intimation of the date appointed by him for the counting of votes, and shall enter on the counterfoil of each ballot paper the name of the elector to whom the ballot paper is sent.

The ballot paper together with such intimation shall be sent to the address of the elector as shown in the electoral roll, or in the case of a commerce and industry constituency, to the latest known address of the elector as registered in the office of the Chamber, Association or Sabha comprising the constituency.

The form of the ballot paper, in the case of a commerce and industry constituency, shall be in Form IV annexed to these regulations, and, in the case of a University constituency, in Form V annexed to these regulations.

XLI. In the case of a University constituency an elector shall obtain the attestation of his signature, but not of his vote, by a magistrate judge, subordinate judge, munsif, fellow of the University, or principal of a college affiliated to the University, to whom he is personally known, or to whose satisfaction he has been identified.

XLII. Any elector may send his ballot paper to the returning officer after recording his vote thereon: provided that voting papers which are not received by the returning officer before the date fixed for the counting of the votes shall be rejected.

XLIII. Any ballot paper which is not duly marked, or on which more than one cross is placed against any candidate's name, or on which votes are given to more candidates than there are members to be elected, or on which a cross (or mark) is placed in such a manner as to make it doubtful to which candidate it has been given, or in the case of a University constituency, on which the signature of the elector is not duly attested, shall be invalid.

XLIV. On the day appointed for the counting of the votes, the returning officer shall—

- (a) after scrutiny, separate the ballot papers which he deems valid from those which he rejects, endorsing on the latter the word "Rejected" and the ground of rejection;
- (b) count, or cause to be counted, the votes given to each candidate, and declare those candidates who have obtained the largest number of valid votes to be elected;
- (c) upon the completion of the counting seal up in separate packets the counted and rejected ballot papers and prepare and certify a return setting forth—
  - (1) the names of the persons for whom valid votes were given;
  - (2) the number of valid votes given for each candidate;
  - (3) the names of the persons elected;
  - (4) the number of votes declared invalid;
- (d) permit any candidate or his agent to take a copy of or an extract from the return.

XLV. The local Government shall appoint and notify, in such manner as it thinks fit, the date referred to in regulation XL for sending ballot papers to electors.

### Special Regulations applicable to Landholders' Constituencies.

XLVI. In the case of an election for a landholders' constituency regulations XX, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII, XXXIV, and XXXV shall not be applicable, and the following regulations shall be substituted therefor, and shall apply.

XLVII. On or before such date as may be appointed by the local Government in this behalf, the returning officer shall send by registered post to each elector a ballot paper in Form VI annexed to these regulations, together with an intimation of the date appointed by him for the counting of votes, and shall note on the counterfoil of each ballot paper the name of the elector to whom the ballot paper is sent. The ballot paper together with such intimation shall be sent to the address of the elector as shown in the electoral roll.

XLVIII. On or before such date as may be appointed by the local Government in this behalf, but not later than 5 p.m. on that date, each elector desirous of recording his vote shall sign the declaration on the back of the ballot paper in the presence of an attesting officer, and the attesting officer shall thereupon attest his signature.

XLIX. The elector shall then proceed to a place set apart for that purpose by the attesting officer, and there shall record his vote on the ballot paper in accordance with the instructions therein, and after placing the ballot paper in an envelope, and closing the same, shall deliver it to the attesting officer.

L. If an elector is unable to read or write, or by reason of some physical defect is incapacitated from recording his vote, the attesting officer shall assist him in such manner as may be necessary to mark the ballot paper and to sign the declaration thereon.

LI. The attesting officer shall at the close of the day appointed as the latest date for the attestation of ballot papers, despatch all the envelopes so delivered to him to the returning officer by registered post in a packet securely sealed with his official seal, and shall also enclose, a list, in Form VII annexed to these regulations, of the electors whose ballot papers he has attested.

LII. A ballot paper that is not duly attested, or marked, or on which more than one cross is placed against any candidate's name or on which votes are given to more candidates than there are members to be elected or on which a cross (or mark) is placed in such a manner as to render it doubtful to which candidate it has been given, shall be invalid.

LIII. On the day appointed for the counting of votes, the returning officer shall fold the lower portion of every ballot paper along the dotted line on the back so as to conceal the names of the elector and of the attesting officer, and shall seal down the portion thus folded with his official seal, and thereafter shall—

- (a) after scrutiny, separate the ballot papers which he deems valid from those which he rejects, endorsing on the latter the word "Rejected" and the ground of rejection;
- (b) count, or cause to be counted, the votes given to each candidate, and declare the election of those candidates who have obtained the largest number of valid votes;
- (c) upon the completion of the counting seal up in separate packets the counted and rejected ballot papers and prepare and certify a return setting forth—
  - (1) the names of the persons for whom the valid votes were given;
  - (2) the number of valid votes given for each candidate;
  - (3) the names of the persons elected;
  - (4) the number of votes declared invalid;
- (d) permit any candidate or his agent to take a copy of or an extract from the return.

LIV. The local Government shall appoint and notify, in such manner as it thinks fit, the date referred to in regulation XLVII for sending ballot papers to electors, and the date referred to in regulation XLVIII for the attestation of ballot papers.

### Special Regulations applicable to the Presidency and Burdwan (European) Constituency.

LV. In the case of an election for the Presidency and Burdwan (European) constituency, regulations XXVIII, XXX, and XXXIV (2) shall not be applicable, and the following regulations shall be substituted therefor, and shall apply.

LVI. In the following regulations—

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

(2) the expression "first preference" means the figure "1"; the expression

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

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

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



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

- (a) the names of two or more candidates (whether continuing or not) are marked with the same figure, and are next in order of preference; or
- (b) the name of the candidate next in order of preference (whether continuing or not) is marked—
- (i) by a figure not following consecutively after some other figure on the ballot paper; or
- (ii) by two or more figures;
- (5) the expression "original vote" in regard to any candidate means a vote derived from a ballot paper on which a first preference is recorded for that candidate;
- (6) the expression "transferred vote" in regard to any candidate means a vote derived from a ballot paper on which a second or subsequent preference is recorded for that candidate;
- (7) the expression "surplus" means the number of votes by which the total number of the votes, original and transferred, credited to any candidate, exceeds the quota.

LXVII. The ballot paper shall contain the names of the candidates arranged alphabetically in the order of their surnames, and if there are two or more candidates with the same surname, in the order of their other names. It shall be in the form set out in Form VIII annexed to these regulations.

LXVIII. (1) Every elector shall have one vote only.

(2) An elector in giving his vote—

- (a) must place on his ballot paper the figure 1 in the square opposite the name of the candidate for whom he votes;
- (b) may in addition place on his ballot paper the figure 2 or the figures 2 and 3, or 2, 3 and 4, and so on, in the squares opposite the names of other candidates in the order of his preference.

LXIX. A ballot paper shall be invalid on which—

- (a) the figure 1 is not marked; or
- (b) the figure 1 is set opposite the name of more than one candidate; or is so placed as to render it doubtful to which candidate it is intended to apply; or
- (c) the figure 1 and some other figure are set opposite the name of the same candidate;
- (d) any mark is made by which the voter may afterwards be identified.

LX. On the day appointed under regulation XXXV(1) for the counting of votes, the returning officer shall open the ballot-box, and, after scrutiny separate the ballot papers which he deems valid from those which he rejects, endorsing on the latter the word "Rejected" and the ground of rejection, and after rejecting any that are invalid, shall arrange the remainder in parcels according to the first preferences recorded for each candidate.

LXI. The returning officer shall then count the number of papers in each parcel, and credit each candidate with one vote in respect of each valid paper on which a first

preference has been recorded for him, and he shall ascertain the total number of valid papers.

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

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

LXIV. (1) If at any time the number of votes credited to a candidate is greater than the quota, the surplus shall be transferred in accordance with the provisions of this regulation to the continuing candidates indicated on the ballot papers in the parcel of the elected candidate as being next in order of the voters' preference.

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

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

(c) In either case the returning officer shall make a separate sub-paragraph of the non-transferable papers and shall ascertain the number of papers in each sub-paragraph of transferable papers and in the sub-paragraph of non-transferable papers.

(3) If the total number of papers in the sub-parcels of transferable papers is equal to or less than the surplus the returning officer shall transfer each sub-paragraph of transferable papers to the continuing candidate indicated thereon as the voters' next preference.

(4) (a) If the total number of transferable papers is greater than the surplus, the returning officer shall transfer from each sub-paragraph the number of papers which bears the same proportion to the number of papers in the sub-paragraph as the surplus bears to the total number of transferable papers.

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

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

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

(e) Each paper transferred shall be marked in such a manner as to indicate the candidate from and to whom the transfer is made.

(5) (a) If more than one candidate has a surplus, the largest surplus shall be first dealt with.

(b) If two or more candidates have each the same surplus, regard shall be had to the number of original votes obtained by each candidate, and the surplus of the candidate credited with the largest number of original votes shall be first dealt with, and, if the numbers of the original votes are equal, the returning officer shall decide which surplus he will first deal with.

(c) The returning officer need not transfer the surplus of an elected candidate when that surplus together with any other surplus not transferred does not exceed the difference between the totals of the votes credited to the two continuing candidates lowest on the poll.

LXV. (1) If at any time no candidate has a surplus (or when under the preceding rule any existing surplus need not be transferred) and one or more vacancies remain unfilled the returning officer shall exclude from the poll the candidate credited with the lowest number of votes, and shall examine all the papers of that candidate, and shall arrange the transferable papers in sub-parcels according to the next preferences recorded thereon for continuing candidates and shall transfer each sub-parcel to the candidate for whom that preference is recorded.

(2) If the total of the votes of the two or more candidates lowest on the poll, together with any surplus votes not transferred, is less than the votes credited to the next highest candidate, the returning officer may in one operation exclude those candidates from the poll and transfer their votes in accordance with the preceding regulation.

(3) If, when a candidate has to be excluded under this regulation, two or more candidates have each the same number of votes and are lowest on the poll, regard shall be had to the number of original votes credited to each of those candidates, and the candidate with fewest original votes shall be excluded, and, where the numbers of the original votes are equal, regard shall be had to the total number of votes credited to those candidates at the first transfer at which they had an unequal number of votes, and the candidate with the lowest number of votes at that transfer shall be excluded, and, where the numbers of votes credited to those candidates were equal at all transfers, the returning officer shall decide which shall be excluded.

LXVI. (1) Whenever any transfer is made under any of the preceding regulations, each sub-parcel of papers transferred shall be added to the parcel, if any, of papers of the candidate to whom the transfer is made, and that candidate shall be credited with one vote in respect of each paper transferred. Such papers as are not transferred shall be set aside as finally dealt with, and the votes given thereon shall, thenceforth not be taken into account.

(2) If after any transfer a candidate has a surplus, that surplus shall be dealt with in accordance with and subject to the provisions contained in regulation LXIV before any other candidate is excluded.

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

(2) When only one vacancy remains unfilled, and the votes of some one continuing candidate exceed the total of all the votes of the other continuing candidates, together with any surplus not transferred, that candidate shall be declared elected.

(3) When the last vacancies can be filled under this regulation, no further transfer of votes need be made.

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

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

LXIX. Upon the completion of the counting the returning officer shall—

(a) (i) verify the ballot paper account given by each presiding officer under regulation XXXIV, by comparing it with the number of ballot papers found by him in the ballot box, the unused ballot papers, and the tendered votes list. The sealed packets of the tendered ballot papers, of the marked copies of the roll, and of the counterfoils of the ballot papers shall not be opened;

(2) seal up in separate packets the counted and rejected ballot papers, and reseal each sealed packet that has been opened, and record on each such packet a description of its contents, and the date of the election to which it refers;

(b) prepare and certify a return setting forth—

(1) the result of the verification referred to in the preceding clause,

(2) the names of the persons elected, and the number of votes obtained by each,

(3) the number of votes declared invalid, and

(4) the number of tendered votes given;

(c) permit any candidate or his agent to take a copy of or an extract from the return.

## FORM I.

## Nomination paper.

(Regulation XVII.)

1. Name of candidate
2. Father's name
3. Age
4. Address
5. Constituency for which the candidate offers himself
6. Proposer—(a) Number on electoral roll  
(b) Signature
7. Seconder—(a) Number on electoral roll  
(b) Signature
8. Signature of candidate

Attesting Officer.

## Instruction.

Nomination papers which are not received by the returning officer before the day of 1920, shall be rejected.

## Decision of Returning Officer

## FORM II.

## Form of Ballot Paper.

(Regulation XXIV.)

## Form of front of ballot paper.

Counterfoil  
No. Election for Constituency 192 .  
Ballot paper No

Note.—The number on the counterfoil is to correspond with the number on the ballot paper.

Birendra Datta	..	.	
Sailendra Nath Datta	..	.	
Sasanka Ghosh	..	.	
Tarapada Gupta	...	..	
Kishori Mohan Sen	..	.	

## Instructions.

1. Not more than one vote may be given to any candidate.
2. Votes may not be given to more candidates than there are members to be elected.
3. Place a cross opposite the name (or names) of the candidate (or candidates) for whom you wish to vote.

## FORM III.

*Tendered Votes List.*

(Regulation XXXI)

Number on electoral roll	Name	Thumb impression of voter

## FORM IV

*Form of Ballot Paper*

(Regulation XL)

Election for

Constituency 102

Counterfoil  
No

Ballot paper No

Birendra Datta	
Sailendra Nath Datta	
Sasanka Ghosh	
Tarapada Ghosh	
Kishori Mohan Sen	

Signature of Elector  
Address—*Instructions*

- 1 The date appointed for the counting of votes is 192 and ballot papers must be sent to the returning officer so as to reach him before that date
- 2 Not more than vote may be given to any candidate
3. Votes may not be given to more candidates than there are members to be elected
- 4 Place a cross opposite the name (or names) of the candidate (or candidates) for whom you wish to vote

## FORM V

*Form of Ballot paper*

(Regulation XL)

Election for

Constituency 192 .

Counterfoil  
No.

Ballot paper No

Birendra Datta

Sailendra Nath Datta

Sasanka Ghosh

Tarapada Gupta

Kishori Mohan Sen

*Signature of Elector**Address—*

Signed in my presence by \_\_\_\_\_ who is personally known to me (or who has  
been identified to my satisfaction)

*Signature**Designation**Instructions*

- 1 The date appointed for the counting of votes is \_\_\_\_\_ 192 and ballot papers must be sent to the returning officer so as to reach him before that date
- 2 Not more than one vote may be given to any candidate
- 3 Votes may not be given to more candidates than there are members to be elected
- 4 Place a cross opposite the name (or names) of the candidate (or candidates) for whom you wish to vote

## APPENDIX II.

### Bihar and Orissa Regulations Under Rule 13.

1. "Returning Officer" means such officer as the Local Government may, by notification in the *Bihar and Orissa Gazette* appoint to perform all or any of the duties of the Returning Officer under these regulations and includes any officer, for the time being deputed by the Returning Officer to perform his duties.

2. "Presiding Officer" means such officer as the Returning Officer may appoint to preside at each polling station and to perform all or any of the duties of a Presiding Officer under these regulations, and includes any officer for the time being appointed by the Presiding Officer to perform his duties.

3. The Local Government shall appoint and shall notify, in such manner as they think fit, the date, time and place for the nomination of candidates, the scrutiny of nomination papers, the taking of the poll, if any, the counting of the votes, and the declaration of the result.

4. (1) Nominations shall be made by means of a nomination paper in Form 1 which shall be supplied by the Returning Officer to any elector of the said constituency asking for the same, during the usual office hours on each day intervening between the date of notice of the election and the date of the scrutiny of nominations.

(2) Every nomination paper shall be subscribed by two such electors as proposer and seconder and shall be signed by the candidate as assenting to the nomination.

(3) The same elector may subscribe as many nomination papers as there are vacancies to be filled. Each candidate shall be nominated by a separate nomination paper.

5. (1) Every nomination paper subscribed as aforesaid shall be delivered by the candidate or his proposer or seconder at the office of the Returning Officer.

(2) The Returning Officer shall, on the nomination paper being delivered to him, forthwith publish a notice of the name of the person nominated as a candidate and his proposer and seconder by causing them to be posted in a conspicuous place in his office.

6. Nomination papers which are not delivered to the Returning Officer before the time appointed for the scrutiny of nomination papers shall be rejected.

7. (1) A candidate who has been duly nominated for election may withdraw his candidature by a written and signed communication delivered to the Returning Officer

not less than fourteen clear days before the date fixed for the recording of votes; or, if the period between the dates fixed for the scrutiny of nomination papers and the recording of votes is less than fourteen clear days, not later than the date fixed for such scrutiny.

(2) The Returning Officer shall forthwith notify any such withdrawal.

8. (1) On the date and at the time appointed for the scrutiny of nomination papers, every candidate and his proposer and seconder may attend at the place appointed, and the Returning Officer shall allow them to examine the nomination papers of all candidates which have been received by him as aforesaid.

(2) Any candidate may by writing signed by him appoint a representative to attend on his behalf at the scrutiny of nomination papers but no other person except such persons as are appointed by the Returning Officer to assist him shall be permitted to attend.

(3) The Returning Officer shall examine the nomination papers and shall decide all objections which may be made to any nomination paper on the ground that it is not valid under regulation 4 and may reject, either of his own motion or on such objection, any nomination paper on such ground; the decision of the Returning Officer shall in every case be endorsed by him on the nomination paper in respect of which such decision is given.

9. The Returning Officer shall decide objections to the nomination paper itself; but he shall not determine the question whether the candidate is duly qualified or not.

10. Immediately after the scrutiny of the nominations, if the election is contested, the Returning Officer shall publish the names and addresses of the election agents of the candidates.

11. (1) If one of the candidates dies after he has been nominated and before the commencement of the poll, the Returning Officer shall countermand the poll and other proceedings for the election and fix a date and time not less than one week from the date of countermanding the poll and the proceedings within which additional nominations may be made, and shall fix a date and time for the scrutiny of such nomination papers as may be received.

(2) No fresh nomination shall be required in the case of any candidate who stood nominated at the time the poll was countermanded.



12. (1) The poll for the election of members to represent urban and rural territorial constituencies shall be held at all police-stations and at such other centres as the Returning Officer may appoint with the sanction of the Local Government.

(2) The poll for the election of members to represent the European and Landholders' constituencies shall be held at the headquarters of each district and subdivision and at such other centres as the Returning Officer may appoint with the sanction of the Local Government.

13. (1) The Returning Officer shall provide at each polling station one ballot box for each of the candidates on which his name shall be written. The box shall also be coloured and numbered, a separate serial and colour being assigned to each candidate, of which notice shall be published at each polling station at least 18 hours before the date of the polling.

(2) On the lid of each ballot box so provided, the name of the constituency and the polling station shall be printed or written in large characters.

14. The ballot boxes shall be placed in a convenient room, or, if an election is being held for more than one constituency, in convenient rooms or compartments divided or screened off one from the other. A notice shall be posted in each room or compartment which shall show the number and the colour of the box assigned to each candidate, and the name of the constituency for which the poll is being taken.

15. Every ballot box shall be so constructed that the ballot papers can be introduced therein but cannot be withdrawn therefrom without the box being unlocked. The Presiding Officer shall, just before the commencement of the poll, show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up and place his seals upon it in such manner as to prevent its being opened without breaking such seals, and shall keep it so locked and sealed.

16. The ballot papers shall be in the form annexed to these rules.

17. (1) The poll shall be taken between the hours of 7 a.m. and 5 p.m., on the day fixed for the election.

(2) Votes shall not be given before the appointed time for opening, or after the appointed time for closing the poll.

18. No person shall be admitted to vote at any polling station unless he is registered in the list of electors for the station:

Provided that where an elector is employed by the Returning Officer in connection with the election for a constituency under such circumstances as in the opinion of the Returning Officer will prevent him from voting at his proper polling station, the Returning Officer may authorize him to vote at any specified polling station by giving him a signed certificate authorizing him to do so and containing his name and

number on the electoral roll, and the name of the constituency or constituencies in which he is entitled to vote.

19. The Returning Officer shall divide the polling area into districts, where necessary, and shall arrange that the electors residing in each such district shall receive their voting papers at tables assigned for the purpose. In rural constituencies such districts shall consist of a number of chaukidari unions, or where Bengal Act VI of 1870 is not in force, such other areas as the Returning Officer may appoint.

20. The Returning Officer shall appoint a Presiding Officer to preside at each station and the officer so appointed shall keep order at such station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons, except the clerks, the candidates, the agents or sub-agents of the candidates and police officers on duty.

21. The Returning Officer shall provide for each Presiding Officer such numbers of clerks as he may consider necessary, and shall supply to him copies of the register of voters for his polling area, a list of the nominations, ballot boxes, books of ballot papers, instruments for stamping the official mark on the ballot papers, and such other papers and forms as may be necessary.

22. (1) Each elector shall be identified by a member of the panchayat of the circle in which he resides, or by a dafadar or by a chaukidar, or by some other person to the satisfaction of the Presiding Officer.

(2) A ballot paper shall not be given by the Presiding Officer to any person who declines to answer any reasonable question put to him for the purpose of establishing his identity, or to any person whose identity is not established to his satisfaction.

23. Immediately before a ballot paper is delivered to an elector, it shall be marked on both sides with an official mark, and the number, name, and description of the elector, as stated in the copy of the electoral roll, shall be called out, and the number shall be marked on the counterfoil. A mark shall be placed in the electoral roll against the number of the elector to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

If the ballot paper is not marked on the front with the official mark, the vote shall be invalid and shall not be counted.

24. The elector on receiving the ballot paper shall forthwith proceed into the room or compartment in the polling station, and, after folding up his ballot paper, shall place it in the ballot box of the candidate for whom he wishes to vote; he shall vote without undue delay, and shall quit the room or compartment as soon as he has put his ballot paper into the ballot box.

25. (1) A Deputy Presiding Officer, who shall be appointed by the Returning Officer and who shall be subordinate to the Presiding Officer, shall remain in each room or

compartment in which a poll is being taken during the hours of election. On the application of any voter who is incapacitated by blindness or other physical cause from voting in the manner prescribed, he shall place the voter's ballot paper in the ballot box on his behalf. On the application of any other voter, the Deputy Presiding Officer shall also assist him and inform him which is the box of any particular candidate for whom he desires to vote.

(2) In the absence of the Deputy Presiding Officer, the Presiding Officer may himself appoint a Deputy Presiding Officer.

26. A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the Presiding Officer the ballot paper so inadvertently dealt with and proving the fact of the inadvertence to the satisfaction of the Presiding Officer, obtain another ballot paper in the place of the ballot paper so delivered up, which shall be called "A spoilt ballot paper," and the spoilt ballot paper shall be immediately cancelled.

27. (1) When a person presents himself to vote, but not afterwards, the Presiding Officer or any person appointed to check the voters by reference to the electoral roll, may, of his own accord, and shall, if so required by a candidate or his agent, put to the person either or both of the following questions:—

(a) Are you the person enrolled as follows (reading the whole entry from the roll):

(b) Have you already voted at the present election?

The vote of the person, required to answer either of these questions, shall not be given until he answers. If such person answers that he is the person so enrolled, and that he has not voted at the present election he shall be given a ballot paper in the same manner as any other voter, provided his identity is established.

(2) If a person representing himself to be a particular elector named on the electoral roll applies for a ballot paper after another person has voted as such elector, the applicant shall, after duly answering such questions as the Presiding Officer may ask, be entitled to receive a ballot paper. The ballot paper called in these regulations a "tendered ballot paper" shall be of a colour different from the other ballot papers and, instead of being put into the ballot box, shall be given to the Presiding Officer who shall endorse on it the name of the candidate for whom such person desires to vote, with the name of the voter and his number in the electoral roll and shall set it aside in a separate packet.

The vote shall not be counted by the Returning Officer: but the name of the voter and his number on the register shall be entered in a list called "The tendered votes" list in Form 11, and the signature or thumb impression of the voter shall be taken on the list.

28. If more than one member is to be elected for any constituency, the Presiding Officer or his clerk shall give the voter as many ballot papers as there are members to be elected and shall explain to him that each ballot paper must be placed in a different ballot box.

Each such ballot paper shall bear the same serial number and book number.

If the elector places more than one ballot paper in the same box, the votes shall be invalid and shall not be counted.

29. Any ballot paper on which any mark is made, by which the voter may afterwards be identified, shall be invalid and shall not be counted.

30. The Presiding Officer of each station, as soon as practicable after the close of the poll, shall, in the presence of the agents of the candidates, make up into separate packets sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals:—

(1) each ballot box in use at the station, unopened, but with the key attached and the slit in the lid sealed up;

(2) the unused and spoilt ballot papers placed together,

(3) the tendered ballot papers;

(4) the marked copies of the register of voters and the counterfoils of the ballot papers;

(5) the tendered votes list,

and shall send such packets to the Returning Officer.

31. The packets shall be accompanied by a statement made by such Presiding Officer showing the number of ballot papers entrusted to him and accounting for them under the heads of "ballot papers in the ballot box," "unused," "spoilt," and "tendered ballot papers", which statement shall be called "The ballot paper account."

32. (1) If the Presiding Officer cannot conveniently send the sealed ballot boxes, the returns and packets forthwith to the Returning Officer, he shall deposit them in the strong room of the police-station or thana and retain himself the keys of the door and safe, if any, in which they are deposited until they are sent to the Returning Officer.

(2) If the polling station is not contiguous to a police-station or thana, the Presiding Officer shall make such arrangements for the custody of the ballot boxes until they are sent to the Returning Officer as the Returning Officer may direct.

(3) The ballot boxes and the packets shall be sent from the rural polling stations by the Presiding Officer in the custody of a guard, which shall consist of at least two police constables and two chaukidars, and from other polling stations in such manner as the Returning Officer may direct.

(4) On receipt of the ballot boxes and packets above referred to from the polling stations the Returning Officer shall deposit them for safe custody in a strong room in his office

33 The Returning Officer shall proceed to the counting of the votes on the date appointed

34 (1) The Returning Officer shall open each ballot box and taking out the papers shall count and record the number of ballot papers. While counting and recording the number of such ballot papers, he shall keep the ballot papers with their faces upwards and take all proper precautions to prevent any person from seeing the numbers printed or marked on the back of such papers

(2) The Returning Officer may appoint clerks or other competent persons to assist him in counting the votes provided that no person shall be appointed by a Returning Officer for this purpose who has been employed by a candidate or any of his agents in connection with the election or otherwise

35 The Returning Officer shall —

- (a) endorse Rejected on any ballot paper which he may reject as invalid and the grounds of such rejection,
- (b) count the ballot votes given to each candidate and declare the election of the candidates to whom most valid votes have been given,
- (c) where an equality of votes is found to exist between any candidates the Returning Officer shall decide in the manner provided in sub rule (7) of Rule 12 of Part IV of the Bihar and Orissa Electoral Rules which candidate is to be declared elected,
- (d) upon the completion of the counting seal up in separate packets the counted and rejected ballot papers, but shall not open the sealed packets of the tendered votes, the marked copies of the roll and the counterfoils, but shall proceed to verify the ballot paper account given by each Presiding Officer by comparing it with the number of ballot papers recorded by him as aforesaid and the unused ballot papers in his possession and the tendered votes list and shall reseal each sealed packet after examination and record on

each packet a description of its contents and the date of the election to which it refers;

(c) prepare and certify a return setting forth—

- (1) the result of the verification referred to in the preceding clause,
- 2) the names of the persons for whom the valid votes were given,
- (3) the number of valid votes given for each person,
- (4) the names of the persons elected,
- (5) the number of votes declared invalid and
- (6) the number of tendered votes given, and shall
- (f) permit any candidate or his agent to take a copy or an extract from the return

36 The Returning Officer shall retain the original return and the packets referred to in safe custody

37 The decision of the Returning Officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the validity of the election

38 Every Returning Officer and Presiding Officer and every other person employed by the Returning Officer and Presiding Officer in connection with the election or at the counting of the votes is prohibited from canvassing for votes, or otherwise assisting in the election of any candidate otherwise than by giving his own vote if he has one, and every such person shall be bound to secrecy with regard to the proceedings

39 While in the custody of the Returning Officer the packets of ballot papers whether counted, rejected or tendered, and of the counterfoils thereof shall not be opened and their contents shall not be inspected or produced except under the orders of a competent court or of the Election Commissioners

40 All other documents in such custody shall be open to public inspection at reasonable times, on payment of a fee of Rs. 2

41 The Returning Officer shall retain the packets for a year and shall then, unless otherwise directed by the orders of the Commissioners, cause them to be destroyed.

## FORM I.

Nomination Paper for the constituency of .....

1. Name of candidate.
2. Father's name.
3. Age.
4. Address.
5. Signature of proposer.
6. Signature of seconder.

Signature of candidate.

Returning Officer.

## INSTRUCTION

Nomination papers, which are not delivered to the Returning Officer before the day of 1920, shall be invalid.

## THE TENDERED VOTES LIST.

## FORM II.

SIGNATURE SHEET No

Number on electoral roll.	Name.	Signature of voter if literate, or thumb impression of voter if illiterate with signature of witness.
1	2	3

## FORM OF BALLOT PAPER.

Book No.

SERIAL No.

Name of constituency .....

Date of election .....

Number of elector on electoral roll .....

Name of police-station or ward .....

For the election of a member  
or members for the consti-  
tuency of.....

## BACK OF BALLOT PAPER.

Book No.

SERIAL No.

## APPENDIX III.

## Bombay Regulations Under Rule 13.

## PART III—NOMINATION OF CANDIDATES.

1 (1) Nomination shall be made by means of a nomination paper in Form

**Nomination papers.** I appended to these

Regulations which shall be supplied by the Collector to any elector asking for the same

(2) Every nomination paper shall be subscribed by two electors in the constituency as proposer and seconder and shall be signed by the candidate as assenting to the nomination

(3) The same elector may subscribe as many nomination papers as there are vacancies to be filled. Where an elector subscribes a larger number of nomination papers those first received up to the number allowed shall be deemed to be valid and the remainder invalid. Where in any such case the Returning Officer is not able to determine which nomination papers were received first, all such papers shall be deemed to be invalid.

(4) Each candidate shall be nominated by a separate nomination paper

2 (1) Save as provided in paragraph (2) below every nomination paper shall

**Nomination of Candidates.** be presented to the Returning Officer at his head-quarters office by the proposer or seconder on or before the date and at the time, if any, appointed by the local Government in this behalf

(2) A candidate may be nominated by a nomination paper sent by post so as to reach the Returning Officer before the time appointed as aforesaid. The proposer and seconder shall append to such nomination paper a certificate from a gazetted Revenue or Judicial officer that they have signed the paper in his presence and that they are electors in the constituency.

3 (1) A candidate who has been duly nominated for election may withdraw

**Withdrawal or Death of Candidate.** his candidature by a written and signed

communication delivered to the Returning Officer not less than fourteen clear days before the date fixed for the recording of votes; or if the period between the dates fixed for the scrutiny of nomination papers and the recording of votes is less than fourteen clear days not later than the date fixed for such scrutiny

(2) The Returning Officer shall forthwith publish any such withdrawal in such newspapers as he may select and where the name of the candidate has been inserted in any voting paper, shall cause the same to be cancelled.

(3) In the event of the death of a candidate between the date fixed for the presentation of nomination papers and the date fixed for recording votes, all proceedings with reference to such election shall

be commenced afresh with the exception of proceedings under Part II; and the local Government shall prescribe fresh dates for the stages of such election.

4 (1) On the date and at the time appointed by the local Government for the

**Scrutiny of Nomination Papers.** scrutiny of nomination papers, every candidate or his election agent and his proposer and seconder may attend at the head-quarters office of the Returning Officer and the Returning Officer shall allow them to examine all nomination papers which have been received by him.

(2) The Returning Officer shall examine the nomination papers and shall decide all objections which may be made to any nomination paper on the ground that it does not comply with the provisions of Regulation I of this Part, and may reject, either of his own motion or on such objection, any nomination paper on such ground or on the ground that it was not received at or before the time appointed for the nomination of candidates or that the candidate has not complied with the provisions of Rule 11 (2); the decision of the Returning Officer with the reasons therefor shall be endorsed by him on the nomination paper in respect of which such decision is given

5 (1) The Returning Officer shall forthwith publish in such newspapers as he may select the names of the candidates who have been

**Publication of Names of Candidates; Preparation of Voting Papers.** validly nominated, and the order in which the names of the candidates will appear in the voting paper or the colour or combination of colours or symbol which has been allotted to each candidate.

(2) The Returning Officer shall forthwith print and supply to the Collector, if such officer is not himself the Returning Officer, a sufficient number of voting papers in the prescribed form

## PART IV—VOTING IN MUHAMMADAN AND NON-MUHAMMADAN CONSTITUENCIES.

1. (1) The Collector shall forthwith select for each constituency wholly or partly included within his jurisdiction polling stations for the area under his jurisdiction and he and the Returning Officer shall publish in the manner prescribed in Regulation 3, Part II, lists showing the polling stations fixed and the areas for which they have been fixed.

(2) The Collector shall appoint a Presiding Officer for each polling station to perform in respect of such station the duties prescribed for such officer.

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

(4) The Presiding Officer shall appoint such number of Polling Officers as he shall deem necessary who shall, in his presence and under his supervision, perform the duties of such officers in respect of the polling station to which they are appointed.

(5) The Collector shall supply to each Presiding Officer a ballot box for each candidate, of the colour or combination of colours or with the symbol allotted to such candidate, and one uncoloured ballot box, so constructed as to allow, when locked, of the insertion, but not of the withdrawal, of voting papers; he shall also supply a sufficient number of voting papers, extracts from the electoral roll for the area under the polling station, a list of the candidates, and such other papers, forms and equipment as may be required.

2 (1) Before the commencement of the Sealing of Ballot Box: the Presiding Officer shall show the ballot boxes empty to such persons as may be present at the polling station, and shall then lock them up and seal them in such manner as to prevent the ballot boxes being opened without breaking the seal. The ballot boxes shall then be placed within a screened off partition.

(2) A Polling Officer or Polling Officers shall be placed on duty within the partition who shall be changed from time to time, the Presiding Officer shall not disclose which Polling Officer shall be on duty at any particular time.

3 The Presiding Officer shall keep order at the station, shall see that the election is fairly conducted, shall regulate the number of electors to be admitted at one time and shall exclude all persons except the Polling Officers, their staff, the candidates or any person whom a candidate may appoint in writing to appear in his stead at the polling station, the police on duty and such persons as may be admitted for the purpose of identifying electors.

4 (1) Every elector desirous of recording his vote shall attend for the purpose at the polling station for the area in the electoral roll for which he is entered, on such date and between such hours as may be appointed by the local Government in this behalf.

(2) When a person presents himself to vote, but not afterwards, a Polling Officer may of his own accord, if not satisfied as to the identity of the elector or his right to vote at such station, and shall, if so required by a candidate or his representative, put to the elector either or both of the following questions.—

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

(b) Have you already voted at the present election in this constituency? and the elector shall not be supplied with a

voting paper until he has answered the questions put.

(3) The Polling Officer shall then make a mark in the electoral roll against the name of the elector and shall enter the elector's number in the electoral roll and the area in the roll for which he is entered on the counterfoil of the voting paper. The elector shall then sign the counterfoil or, if illiterate, shall make his thumb impression. The polling officer shall then give the elector his voting paper.

(4) A Presiding Officer or a Polling Officer or any person who is under the orders of the Returning Officer or Presiding Officer on duty at a polling station, if such person or officer is entitled to vote at the election in connection with which he is employed, may vote at the polling station to which he is appointed, the name of the polling station at which he would otherwise have been entitled to vote, shall be entered in the counterfoil of the voting paper in lieu of his number in the electoral roll.

(5) No voting paper shall be issued after the closing hour appointed for the election.

(6) The voting paper shall be in Form II appended to these Regulations and shall be divisible into as many parts as the elector has votes to record. The number of the voting paper shall be printed on the foil and counterfoil on the reverse.

5 (1) The elector shall then proceed to the voting partition and shall record as many votes as he desires for any candidate by placing the requisite number of parts of his voting paper in the box painted with the candidate's colour or combination of colours or showing the candidate's symbol. If the elector does not wish to record all his votes, he shall hand over the remaining parts of his voting paper to a Polling Officer on duty within the voting partition who shall in the elector's presence place them in the uncoloured ballot box. The Polling Officers on duty shall see that if the elector does not record all his votes, the remaining parts of the voting paper are handed over by the elector. Only one elector shall be allowed in the voting partition at a time.

(2) After the closing hour appointed for the election any elector who has before the said closing hour been given his voting paper shall be allowed to vote.

6 The Presiding Officer shall decide any dispute as to the identity of any person claiming to be an elector.

7. The Presiding Officer shall give such assistance as may be required to any elector who is under any disability which incapacitates him from voting in the manner prescribed.

8 If a person representing himself to be a particular elector entered in the electoral roll applies for a voting paper after another person has voted as such elector, the applicant shall after duly answering such questions as the Presiding Officer may ask, be entitled to vote. The elector shall, however, write or if he is illiterate, the Presiding Officer shall write for him, on the reverse of the voting paper the names of the candidates for whom he desires to vote and the number of votes he desires to record.



for each, and shall tender the voting paper to the Presiding Officer who shall endorse thereon the name of the voter and his number in the electoral roll and shall enclose the voting paper in a separate packet. Such voting papers shall be termed "tendered voting papers." A list shall be maintained in Form III appended to these Regulations of the voting papers so tendered.

9. (1) The Presiding Officer, as soon as practicable after the close of the poll, shall, in the presence of any candidate or representative of a candidate in attendance, make up into separate packets, endorsing on each a description of its contents, and seal with his own seal and the seal of any candidate or representative who may desire to affix his seal—

- (a) each ballot box in use at the station, unopened but with the key attached,
- (b) the unused voting papers,
- (c) the tendered voting papers,
- (d) the marked copies of the electoral roll,
- (e) the counterfoils of the used voting papers, and
- (f) the tendered votes list.

(2) The packets shall be forwarded by the Presiding Officer to the Returning Officer accompanied by a statement showing the number of voting papers entrusted to him and accounting for them under the heads of voting papers used, voting papers tendered, and voting papers unused.

## PART V.—VOTING IN EUROPEAN, LAND- HOLDERS', AND UNIVERSITY CONSTITUENCIES.

1. (1) In European, European Landholder and Landholders' and University constituencies and in the Bombay University constituencies—

(a) the Collector shall supply the Presiding Officer with one ballot box;

(b) the ballot box shall be kept beside the Presiding Officer; the elector shall mark his voting paper in the voting partition and shall then place his voting paper in the ballot box in the presence of the Presiding Officer; more than one elector may be admitted into the voting partition at a time;

(c) the voting paper shall be in Form II-A appended to these Regulations; the names of the candidates shall be printed thereon in the published order; the number of the voting paper shall be printed on the foil and counterfoil on the reverse;

(d) the elector shall record his vote by making a cross against the name of the candidate for whom he desires to vote, and shall then place the voting paper in the ballot box;

(e) an elector voting on a tendered voting paper shall record his vote in the manner above described and shall deliver the voting paper to the Presiding Officer.

(2) Save as herein provided, the provisions of Part IV shall be applicable to elections in the aforesaid constituencies.

## APPENDIX IV.

### Schedule III.

(See rule 17.)

### Return of election expenses.

1. Under the head of receipts there shall be shown the name and description of every person (including the candidate), club, society or association from whom any money, security or equivalent of money was received in respect of expenses incurred on account of, or in connection with or incidental to, the election, and the amount received from each person, club, society or association separately.

2. Under the head of expenditure there shall be shown—

- (a) the personal expenditure of the candidate incurred or paid by him or his election agent, including travelling and all other personal expenses incurred in connection with his candidature;

- (b) the name, and the rate and total amount of the pay, of each person employed as an agent (in-

cluding the election agent), clerk or messenger;

- (c) the travelling expenses and any other expenses incurred by the candidate or his election agent on account of agents (including the election agent), clerks or messengers;

- (d) the travelling expenses of persons, whether in receipt of salary or not, incurred in connection with the candidature, and whether paid or incurred by the candidate, his election agent or the person so travelling;

- (e) the cost whether paid or incurred of—

- (i) printing,
- (ii) advertising,
- (iii) stationery,

- (iv) postage,
- (v) telegrams, and
- (vi) rooms hired either for public meetings or as committee-rooms;

(f) any other miscellaneous expenses whether paid or incurred.

- NOTE.**—(1) All expenses incurred in connection with the candidature whether paid by the candidate, his election agent, or any other person, or remaining unpaid on the date of the return are to be set out.
- (2) For all items of Rs. 5 and over, unless from the nature of the case (e.g., travel by rail or postage) a receipt is not obtainable, vouchers are to be attached.
- (3) All sums paid but for which no receipt is attached are to be set out in detail with dates of payment.
- (4) All sums unpaid are to be set out in a separate list.

3. The form of affidavit referred to in rule 17 shall be as follows:—

#### Affidavit.

I, \_\_\_\_\_ being the appointed election agent for \_\_\_\_\_ a candidate for election in the \_\_\_\_\_ constituency (or I, \_\_\_\_\_ being a candidate for election in the \_\_\_\_\_ constituency), do hereby solemnly affirm that the above return of election expenses is true to the best of my knowledge and belief, and that, except the expenses herein set forth, no expenses of any nature what ever have to my knowledge and belief been incurred in, and for the purposes of, \_\_\_\_\_ a candidature.

my candidature

(Sd.)

Election agent or candidate

Solemnly affirmed before me,

(Magistrate.)

## APPENDIX V.

### Instructions to Counting Assistants in English Elections.

#### RECORDING THE BALLOT PAPERS.

1. Sit in couples with an empty chair between you.
2. On receiving the ballot box and Form B, place the box on the chair between you.
3. Break the seal (or covering) over the keyhole, unlock and open the ballot box and take out, open, and count the ballot papers. Keep the ballot papers with their faces upwards; the numbers on the backs must not be inspected. Count the ballot papers in heaps of twenties, and range these heaps in rows of five each. Leave the ballot papers so counted and arranged on the table.
4. Record the total number of ballot papers in the box on Form B, and sign it. Raise your hand as a signal to the messenger, who will take Form B, for comparison with the ballot paper account.
5. If found correct, the messenger will return and take the ballot papers from you, and will give you another box, which proceed to deal with in like manner.
6. If found incorrect, the messenger will return the Form B, and you will then recount the ballot papers, and correct Form B, if necessary. If on a re-count the number previously recorded is verified, a note to that effect must be added to Form B, and signed. Then raise your hand for the messenger, who will then take the form and subsequently the ballot papers from you.

#### Counting the Votes.

7. On receiving from the messenger a number of ballot papers and Form C, count them, and record the number in the space left for that purpose at the foot of Form C.
8. Sort the ballot papers into (six) heaps, arranged as follows\* :—
 

1	2	3	4
A. & B.	B. & C.	A. & C.	D. & E.
5			
Single votes and ballot papers not included in the above combinations.		6	
		Doubtful Votes.	
9. The doubtful votes are:—
  - (1) Those without the official mark.
  - (2) Marked for more than (two) candidates.
  - (3) Containing any writing or mark other than the (two) crosses.
  - (4) Unmarked, or so marked that you cannot tell for whom the votes are given.
  - (5) Objected to by any of the candidate's agents.
10. Place the four heaps crosswise on the top of each other in the top left-hand corner of the table; heap No. 1 at the

\*The case here dealt with is that of five candidates for two vacancies, and the four first-named heaps are the combinations which are expected to be the most frequent. A. B and C are supposed to be of one side in politics; D and E of the other. In other cases, the arrangement must be altered as may be necessary.

bottom, No. 2 crosswise upon it, and so with Nos. 3 and 4. Then:—

11. Take heap No. 4 and sort it into seven other heaps in the following order:—

1	2	3	4
A. & D.	A. & E.	B. & D.	B. & E.
5	6	7	
C. & D.	C. & E.	Single votes.	

12. Place the first six of these heaps crosswise on the top of each other as before.

13. Take heap No. 7 (the single votes) and sort it into five different heaps, thus:—

1	2	3	4	5
A	B	C	D	E

14. Count the number of single votes for each candidate and record them separately in the blank squares on Form C.

15. Count and record the cross votes and the party combinations in like manner. (In counting the large heaps, count them in

heaps of twenty each, and place these heaps in rows of five heaps in each row.)

16. Cast up each column in Form C and sign it.

17. Raise your hand as a signal to the messenger, who will take the ballot paper and Form C from you, and will then hand you another lot of papers, and proceed to sort, count, and record in like manner.

GENERAL.

18. The candidates' counting agents are not to interfere with your duties, but you are to allow them to inspect any ballot paper they may desire to see, but not the numbers on the backs.

19. You are not to leave the table, except in a case of urgent necessity, and your companion must not proceed in your absence.

B

County (or borough or division) of

Parliamentary Election. 19

Number of Ballot Box.....

Number of Ballot Papers found therein

Counted by us,

Counting Assistants.

County (or borough or division) of

## PARLIAMENTARY ELECTION.

19

No.

STATEMENT of Number of Ballot Papers received and counted, and of Number of  
of votes therein given for each Candidate.

	A	B	C	D	E	Doubtful Votes.
A			...			
B						
C						
D						
E						
A & B						
A & C						
A & D						
A & E				..		
B & C	.			.	...	
B & D	...					
B & E	..			.		
C & D	.	..			.	
C & E	...	...		...		
D & E		..				
Total						

Table No.

Number of ballot papers received,

Signed

Counting-Assistants.

## INSTRUCTIONS TO CHIEF COUNTING ASSISTANT.

### Arrival of the Presiding Officers.

1. As each presiding officer arrives, the chief assistant will direct the ballot paper account (packet No. 6), the packet containing the tendered votes list (packet No. 5), and the packet of unused and spoilt ballot papers (packet No. 2) to be separated from the other packets, and to be placed on the top of the ballot box to which they belong, and these packets and the ballot boxes he will retain under his own care. The others will be dealt with as follows:—

2 The following packets will be placed in the post office mail bags (No. 1) provided for the purpose, unopened and without breaking the seals.—

Packets No. 3.—The tendered ballot papers used.

Packets No. 4.—The marked copies of the registers of voters and the counterfoils of the ballot papers used.

3 The following packets will be placed in the boxes provided for the purpose —

Packets No. 7.—The appointment of the presiding officers, poll clerks, and candidates' polling agents.

Packets No. 8.—The unused forms, cards, paper and stationery, and the Pentateuchs and Testaments.

Packets No. 9.—The stamping instruments.

### Recording of Ballot Papers.

4 On the day of the count, when the ballot boxes have arrived and arrangements for the commencement of the count have been completed, the chief assistant will, by the messengers, send one ballot box with one Form B to each pair of counting assistants in order that they may count and record the number of ballot papers therein.

5 On receiving by the messengers from each pair of counting assistants Form B duly filled up and signed by both assistants the chief assistant will compare the number of ballot papers therein recorded with that appearing in the ballot paper account, and if they agree, he will direct the messenger to bring the ballot papers to the box appointed for mixing, and to take another ballot box to the two counting assistants. If the number on Form B does not agree with that on the ballot paper account, the chief assistant will return Form B to the counting assistants. If on a recount a discrepancy is found to exist, the chief assistant will make a memorandum to that effect on the back of the ballot paper account.

### Verifying the Ballot Paper Account.

6. While the counting assistants are counting and recording the number of ballot papers in the ballot boxes, the chief assistant will open each Packet No. 6 (the ballot paper account), also each Packet No. 2 (the unused and spoilt ballot papers), and also each Packet No. 5, from which

last named packet he will take the tendered votes list. He will then proceed to verify the ballot paper account by comparing it with the unused and spoilt ballot papers and the tendered votes list. He will fasten up and re-seal with the returning officer's seal each Packet Nos 2 and 5, and will place same in the post office mail bags (No. 2) provided for the purpose.

7 When the ballot paper account has been thus fully verified as required by the last two articles (5 & 6) of these instructions, the chief assistant will sign it, will replace it in its packet, will re-seal such packet with the returning officer's seal, and will place it in the post office mail bags, No. 2.

### MIXING THE BALLOT PAPERS.

8 The whole of the ballot papers coming from all the boxes, including absent voters' ballot boxes, will be mixed together in one box, and in so doing care must be taken to keep them, as far as practicable, with their faces upwards.

### COUNTING THE VOTES.

9 The chief assistant will then select indiscriminately from the mixed heap a quantity of ballot papers, which he will send by the messengers with one of the Forms C to each pair of counting assistants. No one but the returning officer or the chief assistant is to be allowed to take any ballot papers from the mixed heap.

10 The chief assistant will keep a register of the number of Forms C originally in his possession, and will number them consecutively. As each form or sheet is given out, he will record its number and the names of the assistants to whom it is given, and on its return he will mark it off in his register as returned. The greatest care must be taken that each form issued by the chief assistant is returned to him, and no second form must be issued to any pair of counting assistants until that already in their possession has been returned.

11 The chief assistant will see that the messengers place the counted ballot papers in a different box from that in which are placed the mixed and uncounted ballot papers.

12 As each Form C is brought completed and signed to the chief assistant, he will transfer the several totals to the transfer sheets (Form D). As each transfer sheet is filled up he will cast and transfer the several totals appearing thereon to the final transfer sheet (Form E).

### DOUBTFUL VOTES.

13 The whole of the doubtful votes will be submitted, one by one, to the returning officer for his decision who will hear any arguments that the candidates' agents have to submit.

14 The chief assistant will attend the returning officer upon his adjudication on the doubtful votes with one of the Forms C and the Statement of Votes Rejected (Form F). He will enter in Form C each doubtful ballot paper allowed, by making a

mark (the figure 1) in the appropriate blank space. He will similarly enter each rejected vote in the appropriate column of the Statement of Votes Rejected (Form F).

15. When the whole of the doubtful votes have been adjudicated upon, the chief assistant will cast up and sign his sheet C, and will get it checked and countersigned by some other assistant. He will then transfer the total of that sheet G to the

final transfer sheet, and will get the totals of each transfer sheet, and of the final transfer sheet, checked by some other assistant. These last named totals will show the final result of the counting.

16. The counted and rejected ballot papers will then be made up into separate packets, sealed with the returning officer's seal, endorsed, and placed in one of the post office mail bags.

D.

County (or borough or division) of

PARLIAMENTARY ELECTION, 19

TRANSFER SHEET, NO.

Table No.	Sheet No.	A	B	C	D	E	

E

County (or borough or division) of

PARLIAMENTARY ELECTION, 19

FINAL TRANSFER SHEET.

Transfer sheet No.	A	B	C	D	E	





## APPENDIX XI.

### First Report.

FROM THE SELECT COMMITTEE APPOINTED TO JOIN WITH A COMMITTEE OF THE HOUSE OF COMMONS TO REVISE THE DRAFT RULES MADE UNDER THE GOVERNMENT OF INDIA ACT.

#### ORDERED TO REPORT—

*That the Committee have met and concluded their consideration of those of the draft rules framed by the Government of India to give effect to the provisions of the Government of India Act, 1919, which relate to the composition of and elections to the new Legislative Councils and to the regulation of their procedure. The enactment of these rules is a matter of urgency, and the Committee have reserved for a separate report their observations on the remaining rules under the Act.*

#### PART I.—GENERAL.

1. The Committee desire in the forefront of their Report to express their appreciation of the great care and ability which are displayed in the drafts, and of the remarkable expedition with which this heavy task has been achieved by the Government of India and the Local Governments. As will be seen from the Report the Committee have made but few alterations in the rules as drafted by the authorities in India, and they desire to record their considered opinion that the rules, with these few alterations, are an accurate, but at the same time liberal, interpretation both of the general recommendations contained in their Report on the Bill and of the intentions of Parliament in framing the Act.

2. The Committee have taken no further oral evidence in connection with these rules, but they have had before them many communications forwarded by various individuals and associations interested in the subject, and have taken them into their consideration. They were placed so fully in possession of all classes of opinion on the general principles at issue in their consideration of the Bill, that the hearing of further evidence on the matters arising out of the rules would have served no useful purpose more especially as the rules so largely represent the conclusions on the main points of principle which the Committee themselves put forward in their Report on the Bill, and on which their views remain unchanged; for the drafting of these rules, though it raises broad issues of great importance, is, in the main, a matter of detail, and the Committee are satisfied that in the working out of these details the Local Governments and the Government of India have omitted consideration of no claim, interest or argument which was relevant to a decision.

3. The Committee consider it unnecessary to explain at length or in detail the scope or substance of the rules generally.

which to a large extent are based, as they have already observed upon recommendations made in their Report on the Bill. Their remarks will be confined to an explanation of the changes which they have made in the rules as drafted by the Government of India, and to a brief statement of the reasons for them. The Committee understand that the draft rules as provisionally presented to Parliament have been reprinted as amended by themselves, with the addition of a number of amendments (chiefly of a technical nature) recommended by the Government of India since the drafts were framed, and they recommend that the drafts in this revised form should receive the assent of Parliament at the earliest possible date, in order that arrangements for holding elections to the new Councils may be set in train in due time.

#### PART II.—ELECTORAL RULES FOR PROVINCIAL COUNCILS.

4. **Reservation of Seats for non-Brahmans in Madras and Mahrattas in Bombay.**—The communities concerned having failed to arrive at agreement by mutual consent, this question was remitted in accordance with the Committee's recommendation to arbitration by independent persons appointed by the Government of India. The awards of the arbitrators have been embodied in the rules. The committee recognise (as was inevitable from the nature of the conflicting claims made) that these awards have not satisfied all parties, but they consider that the awards are in substance eminently reasonable, and they attach importance to recognition of the principle that the award of an arbitrator must be treated as final. They would have greatly preferred for this reason to leave the awards unchanged, but they have felt it impossible to disregard the considered opinion of the Bombay Government that in one respect the Mahratta award should be amended, namely the proposed reservation for Mahrattas of one of the two seats as

signed to a Non-Muhammandan constituency described as Bombay City South. The Bombay Government do not regard the Mahratras in this constituency as sufficiently numerous to justify the allocation to that community of one of these two seats, and fear that the effect of reservation in this constituency will inevitably be to prejudice the chances of the important and influential Parsi community in Bombay City. The Committee have decided therefore to omit this one seat from the list of eight seats proposed for reservation in the Bombay Presidency, thereby reducing the number of reserved seats to seven. In other respects they uphold the awards in both cases.

5. The Committee have further considered the method proposed by the Government of India for working the reservation of seats, and the objections advanced—particularly by Madras Non-Brahmans—against this proposal. They endorse the proposals of the Government of India. The Committee's intention in recommending the reservation of seats for the non-Brahman and Mahratra communities was to ensure that (granted sufficient candidates were forthcoming) there should be at least as many non-Brahman (or Mahratra) representatives returned by a constituency as there were seats reserved. The claim advanced by non-Brahmans that, should a non-Brahman head the poll in a two-member constituency in which one seat is reserved, the 'reserved' seat should remain reserved for a second non-Brahman, and that the latter should be elected to it in preference to a Brahman candidate who was second in the poll, is entirely inconsistent with the Committee's intentions.

6. **Representation of Wage-Earners.**—In response to the Committee's recommendation that an effort should be made to secure the better representation of the wage-earning classes, the Government of India in drafting the rules included provision for the creation of a special constituency in Calcutta consisting of workers in factories in receipt of wages between Rs 25 and Rs 35 a month, and in Bombay City, for the enfranchisement in the ordinary City Constituencies of workers in textile factories in receipt of a monthly wage of not less than Rs 40 a month. It was estimated that these measures would have enfranchised some 40,000 workers in all. The Committee have given their best consideration to the observations of the Government of India and of the Bombay and Bengal Government on these proposals. They agree with these authorities that in the present state of labour organisation in India no other scheme than that presented for their consideration would in practice be workable, but that an extension of this scheme to other localities would be impracticable. They further agree that the proposals as they stand represent a very incomplete and, in theory, wholly indefensible solution of the problem, and they cannot disguise from themselves the danger that even this limited experiment would result in an administrative breakdown. They feel, moreover, no assurance that it would result in securing for labour the best and most useful representatives available. They have decided therefore without hesitation, though with some regret, that it would be impolitic to

persist in an experiment which these best qualified to judge regard with considerable misgivings, and they have therefore added to the list of seats to be filled by nomination on the Bengal Legislative Council the two seats which it was proposed to assign to a labour constituency, and have provided that the persons to be nominated to fill these seats shall be chosen as representing labour interests. The scheme for the Bombay Council already provided a nominated seat to be allotted to a labour representative. The abandonment of the proposal, therefore, to enfranchise wage-earners in the Bombay City constituencies necessitates no change in the distribution of seats, since there is no certainty that a labour vote in Bombay City would have secured the return of a candidate specially qualified to represent that interest.

In arriving at this decision the Committee share the belief of the Government of India that the steady rise in prosperity of manual workers in India, and the rapid improvement of their housing conditions will automatically and without undue delay result in qualifying the great majority of their numbers for an ordinary vote in the ordinary constituencies. No other solution than this could be regarded as satisfactory.

7. **Restrictions on Candidature.**—The rules as drafted by the Government of India require that candidates for general constituencies shall be registered as electors in a general constituency. In some provinces the candidate must be registered as an elector in the constituency for which he proposes to stand. In others he must, if not registered as an elector in that constituency, be registered in another of the same communal description as that for which he proposes to stand. The Committee recognise the force of the arguments in favour of securing some real connection with, and knowledge of, his constituency on the part of a candidate, and also that it is a logical corollary on the system of communal representation that the candidate should be of the same community as those whose interests he seeks to voice. But so long as these two conditions are fulfilled in those provinces in which importance is attached to them, the Committee see no reason to exclude from candidature for general constituencies those who are registered as electors in special constituencies. They recommend therefore that any person who is registered as an elector in any constituency in his province should, subject in certain cases to fulfilment of residential and communal tests, be eligible to be elected by any general constituency. They have redrafted the Rule (6) for each council accordingly, and in doing so have given effect to the desire expressed by the Government of Bihar and Orissa, since the draft rules were originally framed, that the communal test should apply in that province also, as in all others with the exceptions of the United Provinces and Assam.

8. **Rules Relating to Corrupt Practices.**—The Committee endorse these rules as in the main a satisfactory fulfilment of the policy they recommended in their Report on the Bill, and they note that the Government of India intend to introduce in the next session of their Legislature the Bill which is re-

quired to supplement their provisions. In four respects they have made changes in these rules.

(a) While agreeing with the Government of India that it is impracticable at the outset in the absence of any data to lay down a limit to election expenditure by candidates which would work fairly and adequately in every constituency with their very varied conditions, they think that the absence of such limits cannot remain a permanent feature of the rules, and that limits can and should be laid down as the result of experience gained at the first elections. They have accordingly added a rule giving power to the Governor General in Council to prescribe limits after the first election, and have made, by a consequential addition to the list in Schedule IV, the non-observance of limits so laid down a "corrupt practice," commission of which will render an election void.

(b) The Committee have supplied an omission which in their view rendered the Government of India's draft defective, by including as a "corrupt practice" the employment of paid canvassers in excess of a maximum which they trust will be rigidly limited.

(c) The Committee have redrafted Rule 2 of Schedule IV, Part I of the rules in a manner which accords more closely than the original draft with the terms of the English law.

(d) A slight change has been made in Rule 32, rendering Ex Judges of High Courts eligible to be appointed Commissioners to inquire into disputed elections, and thereby extending the field of choice.

9 The second proviso to Rule 7 for all Councils carries out the recommendation of the Committee in connexion with the Bill relating to Women's Franchise. Without in any way modifying their views on this subject the Committee think it essential that a constitutional change of this importance should be effected only as the result of a genuine and considered opinion of the majority of the Council and they have therefore provided that before a resolution on the subject can be moved, the mover must give not less than one month's notice of his intention to move.

10 The Committee are glad to observe that the rules in a few selected constituencies contain provision for election by the system of proportional representation. They do not question the decision of the Government of India that a wider extension of the system is at the outset impracticable, but they think it possible that experience may show that an extension is both feasible and desirable before the next revision of these Rules as the result of the Parliamentary Commission contemplated by the Act. They have therefore added a provision to Rule 13 for all Councils enabling (but not requiring) a local Government to extend the system, if a resolution (safeguarded in the same manner as in the case of Women's Franchise) is carried in the Council recommending an extension.

11. A change has been made in the definition of "European" throughout the

rules, which gives the word a somewhat less restricted meaning.

12 This concludes the list of changes in rules affecting all councils. The following changes relate only to the provinces mentioned:—

(a) Madras and Assam—Rule 3, (§) (b).—The Committee have added words at the end of this rule, enabling (but not requiring) the Governor to make rules in accordance with which the communities specified in the rule as to be represented by nomination may select persons from whom the Governor may make his choice. A similar provision was made in the Indian Councils Act of 1892, which may be said to have initiated the process of election to legislatures in India, and the Committee think that such a provision, if the Governor finds it possible to act upon it may pave the way for election proper by educating backward communities in the advantages and responsibilities it involves.

(b) Rule 4 (Madras)—A formal change has been made in this rule.

(c) Bengal—The Bengal Government have agreed to the splitting up of many of the plural member constituencies proposed for that province into single member constituencies, with a view to securing smaller areas and closer contact between voters and candidates, and to the renaming of certain constituencies so as to avoid the use of letters of the alphabet. Schedule 1 for this province has been amended accordingly.

(d) European and Anglo-Indian representation on the Bengal Council.—While fully conscious of the importance of the interests of the non-official European Community in Bengal generally and particularly in Calcutta and of the necessity for allowing adequate representation to the Community on the new Legislature, the Committee are inclined to think the proposal to allot so many as 21 elected seats to Europeans and Anglo-Indians out of a total of 115 elected seats is excessive. The Franchise Committee proposed 15 seats for Europeans and Anglo-Indians out of a total of 100 elected seats. It appears to the Committee that this is a reasonable proportion and that an allotment of 18 seats to these communities on the larger Council now contemplated should amply satisfy all requirements. They have accordingly reduced the 3 seats proposed for Anglo-Indians to 2, the 4 seats proposed for the European Constituency consisting of the Presidency and Burdwan Divisions to 3, and the 2 seats proposed for the Calcutta Trades Associations to 1. In allocating the 3 seats thus obtained they have adopted the suggestion of the Government of India, namely, that one seat should be added to each of the three following constituencies, the Bengal National Chamber of Commerce, the Hooghly-Howrah non-Muhammadan Constituency, and the Rangpur non-Muhammadan Constituency.

(e) Rule 3 for all provinces other than Madras, Bombay and Bengal.—A formal change has been made in this rule for all provinces other than the three Presidencies.

which leaves the number of members of the Executive Council unspecified.

(f) Punjab.—The Committee have thought it desirable to increase slightly the number of seats proposed to be allotted to the Punjab Legislative Council with two objects, firstly, to increase the representation of the Sikh community, and secondly, to provide separate representation for the cities of Lahore and Amritsar. For these purposes the Committee, after consulting the Government of India and the Punjab Government, have provided six additional seats, two of which will be allotted to Sikhs, one to Hindus, and three to Muhammadans, this latter number being required in order to preserve the proportions laid down by the Lucknow Compact. There will now be two separate constituencies for each of the cities of Lahore and Amritsar, each returning two members, and the Sikhs inhabiting urban areas will return a member separate from those inhabiting rural areas.

The reasons which have led the Committee to make these changes are their desire to accord as favourable treatment as is possible to the claims which have been advanced on behalf of the Sikhs, to correct the position, which they feel to be anomalous, that the capital city of the province, and a city of such importance as Amritsar, should lack separate representation, and also because they consider that the strength of the Punjab Council can with advantage be approximated more nearly to that of the councils of the other major provinces.

### PART III.—ELECTORAL RULES FOR THE INDIAN LEGISLATURE.

13. *Restrictions on Candidature.*—In the case of the Legislative Assembly, the Committee have made the same alteration in Rule 6, which regulates the conditions of candidature as they have made for the provincial legislature, so as to render eligible for election by a general constituency in any province any person who is registered as an elector in any constituency in that province (whether "general" or "special") prescribed for the provincial legislature. But they think it unnecessary to maintain for either chamber of the Central Legislature any residential restriction other than residence within the Province. The arguments in favour of residential restrictions for the Provincial Legislature do not, it appears to them, apply to the central body. In the latter, what is required primarily is representation of provincial interests as a whole, and not, as in the pro-

vincial councils, representation of the interests of particular areas of a province.

The Committee's redraft of Rule 6 for the Council of State differs in form from that for the Legislative Assembly, but the effect will be the same in both cases—namely, to require only that a candidate shall be a resident of his province.

### 14. *Corrupt Practices.—Women's Franchise and Proportional Representation.*—

Changes have been made in the rules for the Indian Legislature similar to those described in Paragraphs 8, 9 and 10. But with regard to women's franchise the Committee have thought it desirable to safeguard their original intention that the decision of this question for each province should rest with the provincial legislature, and they have accordingly provided that a resolution by either Chamber of the Indian Legislature in favour of enfranchising women as voters for that Chamber shall have effect in a province only if the province has itself already taken this step for its own Council.

15. *Representation of Delhi.*—The Committee felt great difficulty in agreeing to the proposal of the Government of India that the Province of Delhi should be represented on the Legislative Assembly by means of occasional nomination. They realise that it is impossible to allot seats on the Assembly to all the minor provinces, but they think that there are two circumstances which give Delhi peculiar claims. In the first place Delhi is now the capital of India, and apart from that, holds a very important position amongst the cities of Upper India by reason of its commercial interests. In the second place, the constitution of the area contained in the city and neighbourhood of Delhi as a separate province has necessarily involved the loss by its inhabitants of representation on any provincial council. It is impossible to provide such representation now on the Punjab Provincial Council, and the Committee recommend, in view of all circumstances, that the proposal of the Franchise Committee should be adopted, and that an elective seat should be added to the Legislative Assembly, to be filled by a constituency consisting of the inhabitants of the Delhi Province with the requisite qualifications. They have, therefore, embodied in the rules detailed amendments with which they have been furnished by the Government of India in order to give effect to these recommendations.

16. A formal change has been made in Rule 3 for the Legislative Assembly in order to bring its provisions into conformity with section 19 (2) of the Act of 1919.

