

THE MUMBAI MUNICIPAL CORPORATION ACT, 1888.

CHAPTER

Preliminary

1. Short title and extent.-- this Act may be cited as the Mumbai Municipal Corporation Act, 1888

It extends only to Brihan Mumbai.

3. Definition of terms.-- In this Act, unless there be something repugnant in the subject or context,

- (a) "the city" means the area specified in Part of Schedule A to the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945;
- (aa1) "extended suburb" means the area specified in the Part IV of Schedule A to the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945;
- (a1) Brihan Mumbai means the areas specified in Parts I,II and III of Schedule A to the Greater Bombay Laws and the Bombay High Court (Decollations of Limits) Act, 1945 and on from, the date of commencement of the Bombay Municipal [Further Extension of Limits and Schedule BBA(Amendment) Act, 1956, includes the extended suburbs i.e. the area specified in Part IV of this Schedule] [specified as the larger urban area in the notification issued in respect thereof under clause (2) of article 243-4 of the Constitution of India]
- (a2) "the suburbs" means the area specified in Parts II and III of Schedule A to the Greater Bombay Laws and the Bombay High Court (Declaration of Limits)Act, 1945]
- (a3) "Backward Class of Citizens" means such classes or parts of or groups within such classes as are declared as are declared from time to time, by the State Government to be Other Backward classes and *Vimukta Jatis and Nomadic Tribs*;
- (b) the corporation"means the Municipal corporation of Brihan Mumbai constituted or deemed to have been constituted under this Act;
- (c) "Councilor" means a person duly elected as a member of the Corporation; and includes a nominated Councilor who shall not have the right;
 - (i) to vote at any meeting of the Corporation and Committee of the Corporation; and

- (ii) to get elected as a mayor of the Corporation or a Chairperson of the Committees of the corporation;
- [(cc) "Commission" means the public Service Commission constituted for the State of Bombay under the Constitution of India]
- (d) "the commissioner" means the municipal Commissioner [Brihan Mumbai] appointed under section 54 and includes [an Additional Municipal Commissioner appointed under sub-section (3) of Section 59;
- (h) "election" means an election to fill a seat of seals of a councillor or councillors under this Act];
- (i) "Assembly constituency" means a constituency provided bylaw for the purpose of elections to the Maharashtra Legislative Assembly or any part thereof, which is for the time being comprised in [Brihan Mumbai];
- (j) "Assembly roll" means the electoral roll prepared for any Assembly Constituency, in accordance with the provisions of the Representation of the People Act, 1950];
- (k) "licensed plumber' and 'licensed surveyor" means respectively, a person licensed by the Commissioner of the purpose of this Act as a plumber or surveyor under section 355;
- [(ka) "Scheduled Tribes" means such tribes or tribal communities or parts of, or groups within, such casts, races or tribes as are deemed to be Scheduled Castes in relation to the State of Maharashtra under Article 341 of the Constitution of India;
- (kb) "Scheduled Tribes" means such tribes o tribal communities or parts of, of groups within, such tribes or tribal communities as are deemed to be Scheduled Tribes in relation to the State of Maharashtra under Article 342 of the Constitution of India;]
- (I) "Small Cause Court" means the Court of Small Causes of Bombay;
- [(la) "State Election Commission" means the State Election Commission consisting of the State Election Commissioner appointed in accordance with the provisions of clause (1) of Article 43-K of the Constitution of India;]
- (m) "Owner" when used in reference to any prmises, means the person who receives the rent of the said premises, or who would be entitled to receive the rent thereof if the premises were let, and includes---
 - (i) an agent or trustee who receives such rent on account of the owner; and

- (ii) an agent or trustee who receives the rent of, or is entrusted with, or concerned for, any premises devoted to religious or charitable purposes; and
- (iii) a receiver, sequestrate or manager, appointed by nay court or competent jurisdiction to have the charge of, or to exercise the rights of an owner of the said premises;

[5. Composition of Corporation.-- (1)The Corporation shall consist of,--

- (a) [two hundred and twenty-seven] councillors elected at ward election; and
- (b) five nominated councillors having special knowledge or experience in Municipal Administration to be nominated by the Corporation in the prescribed manner:

Provided that nothing in this sub-section shall have effect until the expiry of the existing term of the Corporation.

- (2) The Corporation shall, by the name of "The Municipal Corporation of [Brihan Mumbai] be a body corporate and have perpetual and a common seal and by such name may sue and be sued.]

Notes

Section 5(2), 217 and 165 - Appeal against decision under section 165 has to be filed against corporation and not against Municipal Commissioner. M.L.Pittie Vs. Municipal Corporation, Greater Bombay. 1973 Mah. L.J.337:75 Bom. L.R.96.

[5A. Reservation of seats. - (1) Notwithstanding anything contained in clause (a) of sub-section (1) of section 5 or in section 19, for the purpose of any general election held after the commencement of the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994, such member of seats out of the total number of seats to be filled in by direct election, shall be reserved for the members belonging to the Scheduled Caste, Scheduled Tribes, Women and the Backward Class of Citizens, as provided in sub-section (2) to (5), both inclusive.

(2) (a) The number of seats to be reserved for the members belonging to the Scheduled Castes shall bear, as nearly as may be, the same proportion to the total number of seats to be filled in by direct election in the Corporation as the population of the Scheduled Castes in Brihan Mumbai bears to the total population of Brihan Mumbai;

- (c) One-third of the total number of seats reserved under clause (a) shall be reserved for women belonging to the Scheduled Castes:

Provided that, where only one seat is reserved for the Scheduled Castes, then no seat shall be reserved for women belonging to the Scheduled Castes and where only two seats are reserved for the Scheduled Caste, one of the two seats shall be reserved for women belonging to the Scheduled Castes.

(3) (a) The number of seats to be reserved for the members belonging to the Scheduled Tribes shall bear, as nearly as may be, the same proportion to the total number of seats to be filled in by direct election in the Corporation as the population of the Scheduled Tribes in Brihan Mumbai bears to the total population of Brihan Mumbai;]

(b) one-third of the total number of seats reserved under clause (a) shall be reserved for women belonging to the Scheduled Tribes:

Provided that, where only one seat is reserved for the Scheduled Tribes, then no seat shall be reserved for women belonging to the Scheduled Tribes, and where only two seats are reserved for the Scheduled Tribes, one of the two seats shall be reserved for women belonging to the Scheduled Tribes.

(4) (a) [Twenty-seven per cent] seats out of the total number of seats to be filled in by direct election shall be reserved for the members belonging to the Backward Class of citizens;

(b) one-third of the total number of seats reserved under clause (a) shall be reserved for women belonging to the Backward class of citizens.

(5) one-third (including the number of seats reserved for women belonging to the Scheduled Castes, Scheduled Tribes and the Backward Class of citizens) of the total number of seats to be filled in by direct election shall be reserved for woken.

(6) The seats reserved under sub-section (2), (3), (4) and (5) shall be allotted by the State Election Commissioner by rotation to different wards.

(7) The reservation of seats under sub-section (2) and (3) for the Scheduled Castes and the Scheduled Tribes other than the reservation for women in sub-section (5), shall cease to have effect after the period specified in Article 334 of the Constitution of India.

5B. Person contesting election for reserved seat to submit Caste Certificate and Validity Certificate: Every person desirous of contesting election to a seat reserved for the Scheduled Castes, Scheduled Tribes, or, as the case may be, Backward Class of Citizens, shall be required to submit, along with the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

Provided that, a person who has applied to the Scrutiny Committee for the verification of his Caste Certificate before the date of filing the nomination paper but who has not received the validity certificate on the date of filing of the nomination paper shall submit along with the nomination paper,-

- (i) a true copy of the application preferred by him to the Scrutiny Committee for the verification of his Caste Certificate before the date of filing the nomination paper but who has not received the validity certificate on the date of filing of the nomination paper shall submit, along with the nomination paper,-
- (ii) an undertaking that he shall submit, within a period of four months from the date of his election, the validity certificate issued by the Scrutiny Committee;

Provided further that, if the person fails to produce the validity certificate within a period of four months from the date of his election, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor.”.

[6. Duration of Corporation.-- The corporation shall continue for a period of five years from the date appointed for its first meeting and no longer.

6A. Terms of office of councillors.-- The terms of office of the councillors shall be co-terminus with the duration for the Corporation.

6B. Election to constitute Corporation.-- The election to constitute the Corporation shall be completed before the expiry of its duration specified in section 6.

7B. Councillors to vacate all offices if he ceases to be a Councillor.-

[Notwithstanding anything contained in section 47, 49G, 50B or 50M or any other provisions of this Act, a person] who ceases to be a Councillor shall, ipso facto, vacate any office held by him on any Committee of the Corporation by virtue of his being a Councillor]

8. Re-eligibility of persons ceasing to be councillors.-- any person who ceases to be a councillor shall, unless disqualified, be re-eligible.

9. Casual vacancies how to be filled up.-- In the event of non-acceptance of office by a person elected to be a councillor, or of the death, resignation or disqualification of a councillor, or of his becoming incapable of acting [during the term of his office] there shall be deemed to be a casual vacancy in the office and such vacancy shall be filled up, as soon as it conveniently may be, by the election of a person thereto, who shall hold office so long only as the councillor in whose place he is elected would have been entitled to hold it if the vacancy had not occurred.

[The casual vacancy in the office of an elected councillor shall be filled up in the manner provided in Section 34:]

[Provided that no election shall be held to fill up such vacancy [if it occurs within six months preceding the date on which the term of office of the Councillor expires under section 6A].

10. Publication of names of councillors in the Official Gazette.- The names of all persons elected to be councillors shall be published by [the State Election Commissioner] in the [Official Gazette].

11. [Persons qualified to vote].- (1) A person shall not be entitled to vote at a ward election unless he is enrolled in the municipal election roll as a voter of the ward for which such election is held.

11A. [qualifications of voters at election of delegates].-- Repealed by Bom.48 of 1950, S. 6.

14. Qualification for election as a councillor at a ward election.- A person shall not be qualified to be elected at a ward election to be a councillor [unless he is [not less than twenty-one years of age on the last date fixed for making nominations for any general election or bye-election and is] enrolled in the municipal election roll as a voter of some ward].

16. Disqualification for being a councillor.--(1) A person shall be disqualified for being elected and for being a councillor if such person [(a-1) has been so disqualified by or under any law;

(i) for the time being in force for the purpose of elections to the legislative of the State :

Provided that no person shall be disqualified on the ground that he is less than twenty five years of age, if he has attained the age of twenty one years;

(ii) made by the Legislative of the State of Maharashtra; or]

[(a) has, at any time after the commencement of section 2 of the Maharashtra Municipal Corporation (Amendment) Act, 1970, been convicted of an offence punishable under section 153 A, or sub-section (2) or(3) of section 505, of the Indian Penal Code:

Provided that, such disqualifications shall be for a period of six years from the date of such conviction; or]

[(b) has been convicted by a Court in India of any offence involving moral turpitude, unless a period of six years has elapsed since the date such conviction; or]

[(ba) has more than two children

Provided that, a person having more than two children on the date of commencement of the Maharashtra Municipal Corporations and the Municipal Councils, Nagar Panchayats and Industrial Township (Second Amendment) Act, 1995 (hereinafter in this clause referred to as "the date of such commencement"), shall not be disqualified under this clause so long as the number of such children does not increase :

Provided further that a child or more than one child born in single delivery within the period of one year from the date of such commencement

shall not be taken into consideration for the purpose of disqualification mentioned in this clause;

Explanation.-- For the purposes of this clause.--

- (i) *where a couple has only one child on or after the date of such commencement, any number of children born out of a single subsequent delivery shall be deemed to be one entity;*
- (ii) *"child does not include an adopted child or children"*

If and while such person-

[(c) having been adjusted or re-adjusted an insolvent, is under any disqualification imposed by section 103 A of the Presidency-towns Insolvency Act,1909; or section 73 of the Provincial Insolvency Act, 1920; or]

(d) is the Commissioner [the Director a Deputy Commissioner] or a municipal officer or servant, or a licensed surveyor or plumber[or a member of a firm of which a licensed surveyor or plumber is member];or

(e) is the Chief Judge of the Small Cause court or is acting in that capacity;

[(ee) fails to pay any arrears of any kind due by him (otherwise than as a trustee) to the corporation within three month after a special notice in this behalf has been served directly upon him; or]

(f) has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by or on behalf of the corporation;[or]

[(fa) having been elected a Councillor, during his term of office as Councillor, has directly, by himself or his partner, any share or interest in any lease including any leave or license(but excluding any official residence provided by the Corporation), sale or purchase of land or any agreement for the same, by or on behalf of the Corporation; or]

[(fa) having been elected a councillor is retained or employed in any professional capacity either personally or in the name of a firm in which he is partner or with who he is engaged in a professional capacity in connection with any cause of proceeding in which the corporation or the Commissioner is interested or concerned:

Provided that this disqualification shall not apply to a councillor who renders free services for securing the enforcement of civic rights or removal or legitimate public grievances.]

[(ff) having been elected a councillor is retained or employed in any professional capacity either personally or in the name of a firm in which he is partner or with whom he is engaged in a professional capacity in connection with any cause or proceeding in which the corporation or the Commissioner is interested or concerned :

Provided that this qualification shall not apply to a councillor who renders free services to securing the enforcement of civic rights or removal of legitimate public grievances.]

[(g) is a member of the State Legislative or of Parliament

Provided that, nothing in this clause shall affect the membership of a sitting councillor till the expiry of his current term of office as such Councillor :

Provided further that, any action taken by such Councillor during the period from 7th October 2001 till the date of publication of the Maharashtra Municipal Corporations and Municipal Councils (Amendment)(Amendment) Act, 2001, shall be deemed to have been validly taken and shall not be challenged in any Court of law only on the ground that during the said period he had incurred disqualification under this clause.]

[Explanation I.-- For the purpose of clause(f)--

- (i) a municipal pensioner shall not not be deemed to have any share or interest in any employment with, by or on behalf of the corporation by reason only of his pension;
- (ii) a person shall not be deemed to have any share or interest in any employment with, by or on behalf of the corporation by reason only of any relation of his being employed with, by or on behalf of the corporation, as an officer or servant, thereof.]

[Explanation II.-- For the purpose of clause (fa)

- (i) a Councillor shall not be deemed of have any share or interest in any lease including any leave or license, sale or purchase of land or any agreement for the same, by or on behalf of, the Corporation if such share or interest is not acquired by him directly or indirectly by use of, his position or office as a Councillor;
- (ii) the expression "leave" of "license as defined in section 52 of the Indian Easement Act. 1882.]

[(1A) A person who at any time during the term of his office is disqualified under the Maharashtra Local Authority Members' Disqualification Act, 1986 for being a councillor shall cease to hold office as such councillor.]

2) But a person shall not be disqualified or be deemed to have any share or interest in such a contract or employment by reason only of his receiving fee for attendance at meetings of the [Brihan Mumbai Electric Supply and Transport Committee or of] his having any share or interest in-

[(g) subject to the provisions for clause (fa) of sub-section (1), any lease including, any leave or licence, sale or purchase of land or any agreement for the same. by or on behalf of the Corporation; or]

(h) any agreement for the loan of money or any security for the payment of money only; for

(i) any newspaper in which any advertisement relating to the affairs of the corporation is inserted; or

(j) any joint stock company which shall contract with or be employed by the Commissioner on behalf of the corporation; or

(k) the occasional sale to the Commissioner on behalf of the Corporation to a value not exceeding in any official year two thousand rupees, of any article in which he regularly trades.

17. A person becoming disqualified to cease to be a Councillor.--

Any councillor who:-

(a) becomes disqualified for being a councillor for any reason mentioned in the last preceding section, or

(b) absents himself three successive months from the meeting of the corporation, except from temporary illness or other cause to be approved by the corporation

(d) absents himself from or is unable to attend the meetings of the corporation during twelve successive months from any cause whatever, whether approved by the corporation or not,

shall cease to be a councillor and his office shall thereupon be vacant.

18. Questions as to disqualifications to be determined by Chief Judge of the Small Cause court.-- Whenever it is alleged that any councillor or has become disqualified for office for any reason aforesaid, and such councillor does not admit the allegation, or whenever any councillor is himself in doubt whether or not he has become disqualified for office, such councillor or any other councillor may, and the Commissioner, at the request of the corporation shall apply to the Chief Judge for the Small Cause court; and the said Chief Judge, after making such inquiry as he deems necessary, shall

determine whether or not such councillor has become disqualified for being a councillor, and his decision shall be conclusive.

Municipal Election Roll

18A. State Election Commission.-- (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Corporation shall vest in the State Election Commission.

(2) The State Election Commissioner may, by order, delegate any of his powers and functions to any officer of the State Election Commission or any officer of the State Government not below the rank of Deputy Collector or any officer of the Corporation not below the rank of the Ward Officer.

(3) All the officers and members of the staff appointed or deployed for preparation of electoral rolls and conduct of elections of the Corporation under this Act or the rules shall function under the superintendence, direction and control of the State Election Commissioner.

(4) Notwithstanding anything contained in this Act and the rules, the State Election Commissioner may issue such special or general orders or directions which may not be inconsistent with the provisions of the Act and the rules for fair and free elections.]

18AA. Power of State Election Commissioner to issue directions to prevent impersonation.-- The State Election Commissioner may, with a view to prevent impersonation of electors at the time of election, issue such directions, as he thinks fit, to the presiding officers and such directions may include instructing the electors to produce, at the time of polling, the photo identity cards issued to them under the provisions of the Representation of the Peoples Act, 1951.

19. Division of Brihan Mumbai into single member wards and prevention of municipal election roll therefor.-- (1) For the purposes of elections to the Corporation,--

- (a) The State Election Commissioner shall, from time to time, by notification in the Official Gazette, divide the area of Brihan Mumbai into wards and specify the boundaries thereof, so that as far as practicable, all wards shall be compact areas and the number of persons in each ward according to the latest census figures shall approximately be the same. Each of the wards shall elect only the councillor;

Provided that, before such notification is published, a draft thereof shall be published in the Official Gazette and in such other manner as in the opinion of the State Election Commissioner is best calculated to bring the information to the notice of all persons likely to be affected thereby, together with a notice specifying the date on or before which any objections or suggestions will be received, and the date after which the draft will be taken into consideration.

- (b) The Assembly roll for the time being in force, on such date as the State Election Commissioner may, be general or special order notified, shall be divided by the State Election Commissioner into different sections corresponding to the different wards in Brihan Mumbai; and a printed copy of each section of roll so divided and authenticated by the State Election Commissioner or an officer authorised by him, shall be the ward roll for each ward;

- (2) Only the councillor shall be elected at each ward election.

21. Right to vote.-- Subject to the provisions of this Act, every person whose name is in the municipal roll shall be deemed to be entitled to vote at a ward election and every person whose name is not in the said roll be deemed to be not entitled so to vote.

22. Dates of election.-- The dates of general ward election of councillors and elections to fill casual vacancies shall be fixed by the State Election Commissioner.

23. Consequences of Extension of term of office of councillors or appointment of Administrator and holding of general ward elections anytime thereafter.--

- 24. [Division of the city into wards for purposes of elections.]**
- 25. Notice to be given of day fixed for ward elections.--**[(1)] [Seven days] at least before the day fixed for a ward election notice of such election shall be given by [State Election Commission]. Such notice shall be given by advertisement in the [*Official Gazette*] and in the local newspapers, and by posting place cards in conspicuous places in the ward for which election is to take place.
- (2) The notice referred to in sub-section (1) shall, in addition to the day fixed for election, specify the day which the poll shall, if necessary, which shall be a day not earlier than the twenty-first day after the day fixed for the election.]
- 26. Candidates at ward elections must be nominated Provisions regarding nominations.--**(1) Candidates for elections at ward elections must be duly nominated in writing in accordance with the provisions hereinafter contained.
- (2) With respect to such nominations, the following provisions shall have effect, namely:-
- (a) [The State Elections Commissioner] shall provide printed forms of nomination papers and any person entitled to vote at the elections shall be supplied \, at any time, within seven days previous to the day fixed for the election [and upto 4 p.m. on the date of election] with as such forms as may be required , free of charge;
- (b) each nomination-papers must state the name, abode and description of the candidate in full, and be subscribed by two persons entitled to vote at the election as proposer and seconder, [and must bear the signature of the nominated in token of his willingness to be so nominated;]
- (c) every nomination paper subscribed [and signed] as aforesaid must be delivered at the [the office of the State Election Commissioner] before five o'clock in the afternoon of the day fixed for the election;
- (d) Each candidate must be nominated by a separate nomination paper, and a candidate may be nominated by more than one nomination-paper, but any person entitled to vote shall not subscribe, whether as proposer or seconder, more than one nomination-paper.
- [(dd)if any person subscribes more than one nomination paper, the nomination paper or papers received after receipt of the first nomination paper shall be invalid;]
- (e) if any person nominated-

- [(i) is not qualified to be elected as a councillor under section 14, or]
- [(ii) has not made or caused to be made the deposit referred to in section (1) of section 26A, or]
- (iii) is disqualified for being a councillor for any of the reasons set forth in section 16.;

[the State Election Commissioner] shall declare such person's nomination invalid.

[(f) if there is no valid nomination, it shall be deemed that no councillor has been elected and proceedings for filling the vacancy or vacancies shall be taken under section 34;

[(h) if there is only one valid nomination, the person nominated shall be deemed to be elected;]

(j) if the number of valid nomination exceeds one, the election of councillor shall be made from among the persons nominated, and such elections shall be termed 'a contested election'

Provided that, if any candidate validly nominated dies or signifies in writing to the State Election Commissioner not later than [three days] after the date of election his intention not to contest the election, then, if there remains only one valid nomination, the remaining candidate validly nominated shall be deemed to be elected :

Provided further that, a candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to be renominated as a candidate for the same election.

(k) if, when two or more ward elections are held simultaneously in different wards, any person is deemed, under clause (h), to be elected a councillor for more than one ward, he shall within twenty-four hours after receipt of written notice thereof from the State Election Commissioner, choose, by writing signed by him and delivered to the State Election Commissioner or, in his default, the State Election Commissioner shall, when the time for choice has expired, declare for which one of those wards he shall serve. The choice or declaration so made shall be conclusive, and such person's nomination for the ward or wards for which he is not to serve shall be deemed to be null and void;

(1) if, when ward elections are held as aforesaid, any person who is deemed under clause (h), to be elected a councillor for any one or more wards, has also been duly nominated for any one or more wards for which the number of nominations exceeds that of the vacancies, he

shall within twenty four hours after receipt of written notice thereof from the State Election Commissioner choose, by writing signed by him and delivered to the State Election Commissioner whether he shall serve for the ward, or for any one of the wards for which he is elected, or will stand as a candidate at the contested election or elections for the other wards or wards. In this default, the State Election Commissioner shall, when the time for choice has expired, declare that he shall serve for the ward or for someone of the wards for which he is elected, and his nomination for any other ward shall be deemed to be null and void. If such person chooses, by writing as aforesaid, to stand as a candidate at the contested election or elections, his nomination for the ward or wards for which he is elected shall be deemed to be null and void. Any choice or declaration made under this clause shall be conclusive.

26A. Deposit by candidates.-- (1) On or before the date appointed for the nomination of candidates for a ward election each candidate shall deposit or cause to be deposited with an officer of the State Election Commissioner in cash a sum of two hundred rupees or, where a candidate is a member of a Scheduled Caste, Scheduled Tribe or Backward class of citizens a sum of one hundred rupees, and no candidate shall be deemed to be duly nominated unless such deposit has been made.

- (2) The deposit shall be returned if-
 - (a) the candidate is declared or is deemed to be duly elected or,
 - (b) the candidate signifies in writing to an officer of the State Election Commissioner not later than three days after the day of election his intention not to contest the election, or
 - (c) the nomination of the candidate is declared invalid, or
 - (d) the candidate dies, after the scrutiny of the nomination-papers and before the commencement of the poll or
 - (e) the candidate fails to be elected but secures valid votes in excess of the number specified in sub-section (4).
- (3) The deposit shall be returned to the person by whom it was made. If a candidate dies before the day fixed for the poll, the deposit, if made by him shall be returned to his legal representative or, if not made by the candidate shall be returned to the person by whom it was made.

(4) If a candidate is not elected and if the number of valid votes polled by him does not exceed one-eighth of the total number of valid votes polled the deposit shall be forfeited to the corporation.

(5) The deposit shall if it is not forfeited be returned as soon as may be after the declaration of the result of the election under section 32;

Provided that if a candidate is duly nominated at a general election in more than one ward, not more than one of the deposits made by him or on his behalf shall be returned and the remainder shall be forfeited to the corporation.

27. Poll to be taken when a ward election is contested.-- (1) When a ward election is contested a poll shall be taken on any day, being a day not earlier than the twenty-first day, after the day fixed for election. At such poll, the municipal election roll, which was in operation on the day fixed for the election, shall be deemed to be the roll to which reference must be made for the purposes of the election.

(2) Names of candidates validly nominated to be published.-- At least three day before the day of the poll, the State Election Commissioner shall cause the names of all the persons validly nominated, with their respective abodes and descriptions, to be published in the Official Gazette and by displaying the names of persons to be published in the Official Gazette and by displaying the names of persons so nominated ward wise, on the notice-board of each respective ward-office.

27A. Prohibition of canvassing in or near polling stations.-- (1) No person shall, on the date or dates on which a poll is taken at any polling station, commit any of the following acts within the polling station or in any public or private place within a distance of one hundred yards of the polling station, namely:-

- (a) canvassing for votes; or
- (b) soliciting the vote any voter; or
- (c) persuading any voter not to vote for any particular candidate; or
- (d) persuading any voter not to vote at the election; or
- (e) exhibiting any notice or sign (other than an official notice) relating to the election.

(2) Any person who contravenes the provisions of sub-section (1) shall on conviction, be punished with fine which may extend two hundred and fifty rupees.

(3) Any offence punishable under this section shall be cognizable.

27AA. Prohibition of public meetings on the day preceding the day of poll and on the day of poll.- (1) No person shall convene, hold or attend any public meeting in any polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

(2) Any person who contravenes the provision of sub-section (1) shall, on conviction, be punished with fine which may extend to five hundred and fifty rupees.

27B. Penalty for disorderly conduct in or near polling station.-- (1) No person shall, on the date or dates on which a poll is taken at any polling station-

- (a) use or operate within or at the entrance of the polling station, or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice, such as megaphone or a loudspeaker, or
- (b) shout, or otherwise act in a disorderly manner, within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof,

so as to cause annoyance to any person visiting the polling station for the poll, or so as to interfere with the work of the officers and other persons on duty at the polling station.

(2) Any person who contravenes, or wilfully aids or abets the contravention of, the provisions of sub-section (1) shall, on conviction, be punished with fine which may extend to two hundred and fifty rupees.

(3) If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under this section, he may direct any police officer to arrest such person, and thereupon the police officer shall arrest him.

(4) Any police officer may take such steps and use such force as may be reasonably necessary for preventing any contravention of the

provisions of such-section (1) and may seize may apparatus used for such contravention.

27C. Penalty for misconduct at polling stations.--(1) Any person who during the hours fixed for the poll at any polling station misconducts himself or fails to obey the lawful directions of the presiding officer may be removed from the polling station by the presiding officer or by any police officer on duty or by any person authorised in this behalf by such presiding officer.

(2) The powers conferred by sub-section (1) shall not be exercised so as to prevent any voter who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

(3) If any person who has been so removed from a polling station re-enters the polling station without the permission of the presiding officer, he shall, on conviction, be punished with fine which may extend to two hundred and fifty rupees.

(4) An offence punishable under sub-section (3) shall be cognizable.

28. Provisions respecting contested ward elections.- With respect to the contested ward elections the following provisions shall effect, namely:

(a) [votes shall be given by ballot in such manner as may be prescribed by the rules made under section 29] No votes shall received by proxy;

(b) no votes shall be received for any candidate whose name has not been published by the State Election Commissioner under sub-section(2) for section 27 as having been validly nominated;

(c) no person shall vote at a general election in more than one ward and if a person votes in more than one ward his votes in all such wards shall void;

(ca) no person shall at any election vote in the same ward more than once notwithstanding that his name may appear in the municipal election roll for that ward more than once and if person votes in the same ward more than once all his votes in that ward shall be void;]

[(g) the person who has the greatest number of valid votes shall be deemed to be elected;]

- (h) where an equality for votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected the determination of the person to who such additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the State Election Commissioner in such manner as he shall determine;
- (i) if a candidate is elected councillor or more than one ward, he shall, within three day after receipt of written notice thereof from the State Election Commissioner, choose by writing designed by him and delivered to the state Election Commissioner or in his default the State Election Commissioner shall, when the time for choice has expired , declare for which of the wards he shall serve and the choice or declaration shall be conclusive;
- (j) when any such choice or declaration has been made, the votes recorded for the candidate aforesaid in any ward for which he is not to serve shall be deemed not to have been given and the candidate, if any, who but for the said voter would have been declared to have been elected for such ward shall be deemed to have been elected for the same;
- (k) The State Election Commissioner shall, as soon as may be, declare the result of the poll, specifying the total number of valid votes given for each candidate, and the number of valid votes given to each candidate. In accordance with such rules as the State Election Commissioner may frame for the purpose and on payment of such fee as may be prescribed by him a copy of such list shall be supplied to any candidate of the ward and shall be available for inspection to any voter of the ward.

28A. Maintenance of secrecy of voting.-(1) Every officer, clerk agent or other person who performs any duty in connection with the recording or counting of votes and election shall maintain and aid in maintaining the secrecy of the voting and shall not (Except for some purpose authorised by or under any law) communicate to any person any information calculated to violated such secrecy.

- (2) any person who contravenes the provisions of sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine or with both.

28B. Officers, etc. at elections not to act for candidates or to influence voting.--(1) NO person who is a presiding or polling officer at any election or an officer or, an employee appointed , designed or empowered by the State Election Commissioner or such presiding officer to perform any duty in connection with an election shall, in the conduct or management of teh election do any act, other than the giving of vote, for the furtherance of the prospects of the election of a candidate.

(2) No such person as aforesaid and no member of a police force shall endeavour-

- (a) to persuade any person to give his vote at an election; or
- (b) to dissuade any person form giving his vote at an election; or
- (c) to influence the voting of any person at an election in any manner.

(3) Any person who contravenes the provisions of sub-section(1) or sub-section(2)shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both.

28C. Breaches of official duty in connection with election.--(1) If any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall on conviction, be punished with fine which may extend to five hundred rupees.

(2) No suit or other legal proceedings shall lie against any such person for damages in respect of any such act of omission as afresaid.

(3) The persons to whom this section applies are presiding officers, polling officers and any other person or officer appointed designed or empowered to perform any duty in connection with the preparation of a municipal election roll, the receipt of nominations or withdrawal of candidatures or the recording or counting of votes at an election; and the expression "official duty" shall for the purposes for this section be constructed accordingly, but shall include duties imposed otherwise than by or under this Act.

28B. Romoval of ballot papers from polling stations to an offence.--(1) Any person, who at any election tradulently takes, or attempts to take, a ballot papers out of a polling station, or wilfully aids or abets the doing of any such act, shall on conviction. be punished with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.

(2) If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under

sub-section(1), such officer may, before such person leaves the polling station, arrest or direct a police officer to arrest such person and may search such person or cause him to be searched by a police officer:

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

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

(4) An offence punishable under sub-section (1) shall be cognizable.
28E. Other offences and penalties therefor.--(1) A person shall be guilty of an offence if at any election be-

- (a) fraudulently defaces or fraudulently destroys any nomination paper; or
- (b) fraudulently defaces, destroys or removes any list, notice or other document affixed by or under the authority of the State Election Commission; or
- (c) fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper; or
- (d) without due authority supplies any ballot paper to any person; or
- (e) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or
- (f) without due authority destroys, takes, opens or otherwise interferes with any ballot box or ballot papers then in use for the purposes of the election; or
- (g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such acts.

(2) Any person guilty of an offence under this section shall-

- (a) if he is a presiding officer at a polling station or any other officer or clerk employed on official duty in connection with the election, on conviction, be punished with imprisonment for a term which may extend two years or with fine or with both;
- (b) if he is any other person, on conviction be punished with imprisonment for a term which may extend to six months or with fine or with both.

(3) For the purpose of this section, a person shall be deemed to be on official duty if his duty is to take part in the conduct of an election or part of such election including the counting of votes or to be responsible

after such election for the used ballot papers and other documents in connection with such election; but the expression "official duty" shall not include any duty imposed otherwise than by or under this Act.

- (4) An offence punishable under clause of (b) of sub-section(2) shall be cognizable.

28F. What is a corrupt practice.-- A person shall be deemed to have committed corrupt practice within the meaning of Section 33;

- (i) who, with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit or holds out any threat of injury, to any person; or
- (ii) who gives procures or abets the giving of a vote in the name of a voter who is not the person giving such vote; or
- (iii) who hires or procures, whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter to, or from, any polling station:

Provided that-

- (a) the hiring of a vehicle or vessel by a candidate for himself or his family or an election agent shall not be deemed to be a corrupt practice under this section;
- (b) the hiring of a vehicle by a voter or by several voters at their joint cost for the purpose of conveying him or them, to, or from any such polling station shall not be deemed to be corrupt practice under this section, if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power;
- (c) the use of any public transport vehicle or vessel or any tram-car or railway carriage by any voter at his own cost for the purpose of going to, or coming from, any such polling station shall not be deemed to be a corrupt practice under this section. And a corrupt practice shall be deemed to have been committed by a candidate if it has been committed with his knowledge and consent with reference to the election.

28G. Corrupt practices, criminal offences and procedure.- (1) (a) Whoever in any election directly or indirectly, by himself or by any other person on his behalf, shall with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offer or give any money or valuable consideration or hold out any promise of individual profit or hold out any threat of injury to any person, or

(b) whoever shall give, procure or abet the giving of a vote in the name of a voter, who is not the person giving such vote, or

(c) whoever hires or procures any vehicle or vessel for the conveyance of any voter, to or from, a polling station in the circumstances described in clause (iii) of section 28F,

shall be liable to a fine not exceeding two hundred rupees for every such offence.

(2) Whoever, being qualified to vote at any election claiming to be so qualified accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person any money or valuable consideration or any individual profit as a motive or reward for giving or forbearing to give his vote in any such election shall be liable to a fine not exceeding one hundred rupees for every such offence.

[(2A) Whoever in connection with any election, or directly or indirectly, by himself or by any other person on his behalf, promotes or attempts to promote feelings of enmity or hatred, between different classes of the citizens of India on grounds of religion, race, caste, community or language, shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.]

(3) Every person convicted under sub-section (1) or sub-section (2) of sub-section (2A) shall, for such period not exceeding seven years from the date of the conviction as the Court may direct, be disqualified from voting at any election.

(4) No court shall take cognizance of any offence under this section except on the complaint of the Judge who has held an enquiry under section 33 or before whom such inquiry is pending.

(5) No prosecution for an offence under this section shall be instituted except within six months next after the date of the declaration of the result of the election.

(6) An appeal shall lie to the High Court against any sentence or order passed by a Magistrate under sub-section (1), sub-section (2) sub-section(2A) or sub-section(3).

28H. Adjournment of poll in emergencies.--(1) If at an election the proceedings at any polling station are interrupted or obstructed by any riot or open violence, or if at election it is not possible to take the poll at any station

on account of any natural calamity; of any other sufficient cause, the State Election Commissioner, or subject to such directions as the State Election Commissioner may issue in this behalf, the presiding officer for such polling station as the case may be, shall announce an adjournment of the poll to a date to be notified later, and where the poll is so adjourned by the presiding officer, he shall forthwith inform the State Election Commissioner

(2) Whenever a poll is adjourned under sub-section (1) the State Election Commissioner shall as soon as may be, appoint the day on which the poll shall recommence and fix the polling station, at which, and the hours during which, the poll will be taken and shall not count the votes at such election until such adjourned poll shall have been completed.

(3) The notice of the polling station and the date and hours fixed under sub-section (2) shall be published by the State Election Commissioner in the *Official Gazette* and in the local newspapers at least three days before the date of the fresh poll.

28I. Fresh ballot in the case of destruction, etc., of ballot boxes.-(1) If at any election any ballot box or boxes is or are unlawfully taken out of the custody of the State Election Commissioner or any presiding officer or is or are in any way tampered with, or is or are with or accidentally or intentionally destroyed or lost, the election to which such ballot box or boxes relate shall be void, but only in respect of the polling at the polling station or stations at which such ballot box or boxes was or were used and no further.

(2) whenever the polling at any polling station or stations shall become void under sub-section (1) the State Election Commissioner shall as soon as practicable after the act or event causing such voidance has come to his knowledge appoint a day for the taking for a fresh poll in such or every such polling station and fixed the hours during which the poll will be taken and shall not count the votes cast at such election until such fresh poll shall have been completed.

(3) the notice of the polling station and the date and hours fixed under sub-section (2) shall be published by the State Election Commissioner in the *Official Gazette* in all local newspapers at least three days before the date of the fresh poll

29. State Government may make rules for the conduct of election.- Subject to the provisions of this Act the State Government may in consultation with the State Election Commissioner make rules for the conduct of election and in particular providing.

- (a) For the appointment of polling stations for each ward;
 - (b) for the appointment of presiding officers and polling officers and other persons to assist at the poll and for the remuneration of such presiding officers and polling officers and other persons for their services;
 - (c) for the hours during which polling stations shall be open for the recording of votes;
 - (d) for the printing and for the issue of voting papers;
 - (e) for the checking of voters by reference to the municipal election roll;
 - (ee) with a view to preventing personation, of the marking with indelible ink of the including the provision for the withdrawal of the issue of a ballot paper to any voter who refuses to allow indelible ink mark to be put on his left fore-finger or any other finger or who has been found to have such indelible ink mark on his left fore-finger or any other finger;
 - (f) for the manner in which votes are to be given and in particular for the case of illiterate voters or of voters under physical or other disability;
 - (g) for the procedure to be followed in respect of challenged votes, or tender of votes by persons representing themselves to be electors, after other persons have voted as such electors;
 - (h) for the scrutiny of votes;
 - (i) for the safe custody of ballot and other election papers, for the period for which such papers shall be reserved and for the inspection and production of such papers;
- any may make such other rules regarding the conduct of the elections as it thinks fit;

32. Declaration of result of elections.--(1) The result of every election shall be declared in such manner as the State Election Commissioner may think fit certifying the names of the persons, if any elected and, in the case of a contested election, the number of voter recorded for each candidate.

33. Elections petitions to be heard and disposed of by Chief Judge of the Small Cause Court.--(1) If the qualification of any person declared to be elected for being a councillor is disputed, or if the validity of any election is questioned, whether by reason of the improper rejection by the State Elections Commissioner of a nomination or of the improper reception

of refusal of a vote, or for any other cause or if the validity of the election of a person is questioned on the ground that he has committed a corrupt practice within the meaning of section 28F any person enrolled in the municipal election roll may, at any time, within (ten days) from the date, on which the list prescribed under clause (k) of section 28 was available for sale or inspection apply to the Chief Judge of the Small Causes Court. If the application is for a declaration that any particular candidate shall be deemed to have been elected, the applicant shall make parties to his application all candidates who although not declared elected, have, according to the results declared by the State Election Commissioner under section 32, a greater number of votes than the said candidate, and proceed against them in the same manner as against the said candidate.

(1A) The applicant shall whenever so required by the Chief Judge, deposit in the Court a sum of Rs.500 in cash or Government securities of equivalent value at the market rate of the day as security costs which the applicant, may be ordered to pay to other parties to the said applications.

(2) If the said Chief Judge, after making such inquiry as he deems necessary, finds that the election was valid election and that the person whose election is objected to is not disqualified he shall confirm the declared result of the election. If he finds that the person whose election is objected is to disqualified for being a councillor he shall declare such person's election null and void. If he finds that the election is not a valid election he shall set it aside. In either case he shall direct that the candidate, if any, in whose favour the next highest number of valid votes is recorded after the said person. and against whose election no cause of objection is found, shall be deemed to have been elected.

(3) the said Chief Judge's order shall be conclusive.

(5) Every election not called question in accordance with the foregoing provisions shall be deemed to have been to all intents a good and valid election.

34. Procedure if election fails or is set aside.-(1) If any general election or on election held to fill a casual vacancy, no councillor is elected, or the election of any councillor is set aside under sub-section (20 of section 33 and there is no other candidate who can be deemed to be elected in his place under the said sub-section the State Election Commissioner shall appoint

another day for holding a fresh election and a fresh election shall be held accordingly.

(2) A councillor elected under this section shall be deemed to have been elected to fill a casual vacancy under section 9

37. Mayor and Deputy Mayor.

(1) The Corporation shall, subject to the provisions of sub-section(2), at its first meeting after the general elections, elect from amongst the Councillors one of its members to be the Mayor and another to Deputy Mayor. The tenure of the Mayor and the Deputy Mayor shall be two and a half years:

Provided that, the term of the Mayor and the Deputy Mayor in office on the date of coming into force of the Maharashtra Municipal Corporations (Amendment) Act, 2000 shall be extended to, and be co-terminus with, the term of the office of the elected Councillors:

Provided further that, the roster relating to the reservation of the officer of the Mayor shall be deemed to have been amended to provided for the extended tenure of the Mayor;

- (2) There shall be reservation for the office of the Mayor in the Corporation, by rotation, for the Scheduled Castes, the Scheduled Tribes, Women and the Backward Class and citizens, in the prescribed manner.
- (3) The Mayor and the Deputy Mayor shall hold office until a new Mayor and a new Deputy Mayor have been elected under sub-section (1) and, in a year in which general elections have been held, shall do so notwithstanding that they have not been returned as councillors on the results of the elections.
- (4) Notwithstanding anything contained in sub-section (1) on the date of commencement of the Mumbai Municipal Corporation (Amendment) Act, 1999, the term of officer of the Mayor, who is in office on the said date, shall be deemed to have come to an end and he shall have vacated his office on the said date. The Mayor in office having so vacated his office, the first meeting for the purpose of election of the new Mayor, after the said date, shall be held by the Commissioner. within a period of seven days from the said date and all other provisions of this Act relating to such election shall, *mutatis mutandis*, apply : the new Mayor enters the office.]

- (5) A retiring Mayor or Deputy Mayor shall be eligible for re-election to either office.
- (6) The Deputy Mayor may resign his office at any time by notice in writing to the Mayor and the Mayor or may resign his office at any time by notice in writing to the Corporation.
- (7) If any vacancy occurs in the office of the Mayor or the Deputy Mayor the Corporation shall, as soon as convenient after the occurrence of the vacancy choose one of its number to fill the vacancy and every Mayor or Deputy so elected shall hold office so long only as the person in whose place he is appointed would have been entitled to hold if the vacancy had not occurred.