

EXTRACTS FROM THE ODISHA PANCHAYAT SAMITI ACT, 1959

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EXTRACTS FROM THE ODISHA PANCHAYAT SAMITI ACT, 1959*

CHAPTER I

PRELIMINARY

Definitions.

3. In this Act, unless the context otherwise requires—

- (a) 'Block' means the Block notified under Section 15;
- (a-1) "Director of Panchayat Samiti" (hereinafter referred to in this Act as Director) means the Director of Grama Panchayats appointed under the Orissa Grama Panchayats Act, 1964;
- (b) 'District Board' means a District Board, Local Board, Union Board or Union Committee constituted for the local administration of the district or any part thereof under the Bihar and Orissa Local Self-Government Act, 1885, the Madras Local Boards Act, 1920 as applied to the district of Koraput or the Sambalpur Local Self-Government Act, 1939;
- (b-1) "Election Commission" means the State Election Commission consisting of a State Election Commissioner appointed by the Governor under Article 243-K of the Constitution;
- (b-2) "Finance Commission" means the Finance Commission constituted by the Governor under Article 243-I of the Constitution;
- (c) "Government" means the State Government of Orissa;
- (d) "Grama" and "Grama Panchayat" shall respectively mean the "Grama" and "Grama Panchayat" constituted under the Orissa Grama Panchayats Act, 1964;
- (d-1) "official" shall have reference to Government servants and the word "non-official" shall be construed accordingly;
- (d-2) "ordinary resident in any area" with all its grammatical variations and cognate expressions shall have reference to a person whose name finds place in the electoral roll for the time being in force prepared under the Representation of People Act, 1950 in so far as the roll relates to such area;
- (e) "Panchayat Samiti" hereinafter referred to as the "Samiti" means the Panchayat Samiti constituted under Section 16;
- (e-1) "Population" means population as ascertained in the last preceding census of which the relevant figures have been published;

* As amended by Orissa Acts, 7 and 21 of 1994, Act 20 of 1995, Act 16 of 1997 and Acts 5 and 12 of 2001. There might be omissions and commissions : for authenticity reference must be made to the published Act in the Official Gazette.

- (f) "Prescribed" means prescribed by rules made under this Act;
- (f-1) 'Samiti area' or 'area of the Samiti' shall mean Block;
- (f-2) "Scheduled Areas" means the Scheduled Areas as referred to in clause (1) of Article 244 of the Constitution;
- (g) "Year" means the financial year.

CHAPTER III

CONSTITUTION OF PANCHAYAT SAMITIS AND THEIR FUNCTIONS

Constitution of Block.

15.(1) The Government shall, by notification, divide each district into such number of local areas as they deem fit. Each such area shall be known as a Block and be given such name as may be specified in the said notification.

(2) Government may from time to time, by notification, redelimit any local referred to in sub-section (1) by—

- (i) excluding from such local area any Grama; or
- (ii) including in such local area any Grama contiguous thereto and may alter the name given to such local area.

(3) On the issue of a notification under sub-section (2), the duties and responsibilities for the execution of development works and all assets and liabilities in respect of such works within the Grama shall, subject to the rules, if any, made in that behalf be adjusted and apportioned as between the concerned Samitis in such manner as the Collector may direct and in the case of any dispute, the decision of Government thereon shall be final.

Provided the Government may, while issuing a notification under sub-section (2), make such temporary orders or give such temporary directions as they consider necessary for the aforesaid purpose.

(4) Upon the transfer of a Grama from one Block to another in pursuance of a notification under sub-section (2), the members of the Samiti ordinarily residing in such Grama shall, with effect from the date of the notification, cease to be member of the Samiti in which the Grama was represented and without prejudice to the provisions of sub-section (3) of Section 16, become members of the Samiti of the Block to which the Grama is transferred.

Constitution of Panchayat Samiti.

16.(1) Every Block shall have a Samiti consisting of the following members, namely :—

- (a) the Chairman and the Vice-Chairman of the Samiti elected in the manner provided in sub-section (3);

- (b) one member elected directly on the basis of adult suffrage from every constituency within the Block in the prescribed manner;
- (c) Sarpanches of the Grama Panchayats situated within the Block;
- (d) Every member of the House of the People and of the Legislative Assembly representing constituencies which comprise wholly or partly the area of the Samiti; and
- (e) Every member of the Council of States who is registered as an elector within the area of the Samiti;

Provided that a Sarpanch suspended from office under the provisions of the Odisha Grama Panchayats Act, 1964 shall cease to be a member of the Samiti during the period of his suspension and the Naib Sarpanch or, in his absence, the person elected or nominated under Section 21 of the said Act to exercise the powers and perform the functions of the Sarpanch shall be deemed to be a member of the Samiti in place of the Sarpanch so suspended.

Explanation—For the purpose of clause (b), ‘constituency’ shall mean a constituency as may be determined under sub-section (2-A) subject to Article 243-C of the Constitution.

- (2)(a) Seats shall be reserved for the Scheduled Castes and Scheduled Tribes in every Samiti and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election under clause (b) of sub-section (1) in that Samiti as the population of Scheduled Caste and the Scheduled Tribe in that Samiti area bears to the total population of that area and such seats shall be allotted by rotation to different constituencies in the Samiti area.

Provided where the population of Scheduled Caste or, as the case may be, the Scheduled Tribe in a Samiti area is not sufficient for reservation of any seat, one seat for the Scheduled Caste, or as the case may be, one seat for the Scheduled Tribe shall be reserved in that Samiti area.

Provided further that in the Scheduled Areas, not less than one-half of the total number of seats to be filled by such direct election shall be reserved for the Scheduled Tribes.

- (b) As nearly as may be, but not less than one-half* of the total number of seats reserved under clause (a) shall be reserved for women belonging to Scheduled Caste or, as the case may

* As amended by Orissa Acts, 8 of 2011. There might be omission and commissions : for authenticity reference must be made to the published Act in the Official Gazette.

be, the Scheduled Tribes :

Provided that where only two seats are reserved for the Scheduled Castes or, as the case may be, the Scheduled Tribes, one of the two seats shall be reserved for women belonging to Scheduled Caste or, as the case may be, the Scheduled Tribes.

- (b-1) As nearly as may be, but not less than twenty-seven percentum of the total number of seats to be filled up by direct election in every Samiti shall be reserved in favour of backward class of citizens as referred to in clause (6) of Article 243-D of the constitution in the prescribed manner and shall be allotted by rotation to different constituencies thereof :

Provided that where, after reservation of the required number of seats for the Scheduled Castes and the Scheduled Tribes in a Samiti, the remaining seats are found to be insufficient for the purpose of reservation in favour of Backward Class of Citizens, as nearly as may be, but not less than twenty-seven percentum of the remaining seats shall be reserved in favour of such citizens in that Samiti.

- (b-2) As nearly as may be, but not less than one-half of the total number of seats reserved under clause (b-1) shall be reserved for women belonging to the backward class of citizen :

Provided that where only two seats are reserved for the backward class of citizen, one of the two seats shall be reserved for women belonging to the backward class of citizen; and

- (c) As nearly as may be, but not less than one-half* (including the number of seats reserved for women belonging to Scheduled Caste), Scheduled Tribe and Backward Class of Citizen of the total number of seats to be filled by direct election in every Samiti shall be reserved for women and allotted by rotation to different constituencies in a Samiti.
- (2-A) The manner in which the Samiti area shall be divided into constituencies for the purpose of clause (b) of sub-section (1) and the seats therein shall be reserved for the purpose of clauses (a), (b) (b-1) (b-2) and (c) of sub-section (2) shall be as follows :
- (a) The Collector shall divide the Samiti area into constituencies in such a manner that –
- (i) every constituency shall, as far as practicable, have a population of not less than two thousand and more than ten thousand; and
- (ii) the territorial area of a Grama is not bifurcated.

* As amended by Orissa Acts, 8 of 2011. There might be omission and commissions : for authenticity reference must be made to the published Act in the Official Gazette.

- (b) The constituencies in which the density of the Scheduled Castes and the Scheduled Tribes is higher shall be reserved for the Scheduled Castes and the Scheduled Tribes respectively and shall rotate in descending order at every general election* and in case of Backward Class of Citizens, such reservation and rotation shall be in prescribed manner.
- (c) Every constituency shall bear the same name as of the Grama and the names of the constituencies shall be arranged serially in Oriya alphabetical order :

Provided that where a constituency comprises more than one Grama, the constituency shall bear the name of the Grama of which the population is higher or, as the case may be, the highest.

- (d) After the names of the constituencies are so arranged, the Collector shall reserve the required number of constituencies for women in the following manner :—
 - (i) reservation of constituencies for women shall be made for the Scheduled Castes at the first instance then for the Scheduled Tribes and thereafter for the Backward Class of Citizen and in computing one-half of the total number of constituencies, the constituencies reserved for women belonging to the Scheduled Castes [the Scheduled Tribes and Backward Class of Citizen]² shall be taken into account;
 - (ii) out of the constituencies left in the list of the Oriya alphabetical order for candidates other than the Scheduled Castes, the Scheduled Tribes and the Backward Class of citizens, the constituency which appears first and there after, every second constituency shall be reserved for women untill the required quota is completed; and
 - (iii) as nearly as may be, but not less than one-half of the constituencies reserved for the members of the Scheduled Castes, the Scheduled Tribes and the Backward Class of Citizens shall be reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and Backward Class of citizens in the manner herein before provided.
- (e) The Collector shall after previous publication in the prescribed manner inviting objections and suggestions from all persons interested within the prescribed period, and after considering all such objections and suggestions, publish a statement showing the division of the Samiti area into constituencies and the seats to be reserved herein in his noticeboard, which shall be final.

* As amended by Odisha Act 6 of 2016.

(3) The members of the Samiti elected under clause (b) of sub-section (1) shall elect in the prescribed manner from among themselves—

- (a) the Chairman of the Samiti at their first meeting which shall be convened within twenty two days but not before the expiry of seven days from the date of publication of their names under sub-section (6); and
- (b) the Vice-Chairman of the Samiti at a meeting convened for that purpose within thirty days from the date of election of the Chairman under clause (a) :

Provided that in the case of every Samiti of which the Chairman elected in accordance with this sub-section or nominated under Section 45-C is not a woman, the office of the Vice-Chairman in respect of this Samiti shall be deemed to have been reserved for women.

(3-a) Notwithstanding anything to the contrary in sub-section(1)—

- (i) offices of Chairman in the Samiti shall be reserved for the Scheduled Castes and the Scheduled Tribes and the number of offices so reserved for the Scheduled Castes and the Scheduled Tribes shall bear, as nearly as may be, the same proportion to the total number of such offices as the population of the Scheduled Castes and the Scheduled Tribes respectively in the State bears to the total population of the State :

Provided that in the Scheduled Area, offices of Chairman of all the Samitis shall be reserved for the Scheduled Tribes; and

- [(ii) as nearly as may be, but not less than one-half of the total number of offices of Chairmen reserved under clause (i) shall be reserved for women belonging to the Scheduled Castes, or as the case may be, the Scheduled Tribes;
- (ii-a) as nearly as may be, twenty-seven percentum of the offices of Chairmen in Samitis shall also be reserved in favour of Backward Class of Citizens as referred to in clause (6) of Article 243-D of the Constitution.
- (ii-b) as nearly as may be, one-half of the total number of offices of Chairmen reserved under clause (ii-a) shall be reserved for women belonging to the Backward Class of Citizens; and

- (ii-c) as nearly as may be, but not less than one-half* (including the number of offices reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Class of citizens) of the total number of offices of Chairman in Samitis shall be reserved for women; and
- (iii) reservation of offices of Chairman under this sub-section shall be made by the Collector by rotation among different Samitis and, for that purpose, the procedure of reservation as provided for the members of the Samiti in sub-section (2-A) shall, as far as may be, applicable.
- (3-b) The reservation of seats under clause (a) and (b) of sub-section (2) and the reservation of offices of Chairman (other than reservation for women) and Backward Class of citizens under sub-section (3-a) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.
- (3-c) Notwithstanding anything contained in this section, the Government may nominate to a Samiti in the Scheduled Areas persons belonging to such Scheduled Tribes as have no representation in the Samiti :
 Provided that such nomination shall not exceed one-tenth of the total members to be elected under clause (b) of sub-section (1).
- (4) The term of office of elected members of the Samiti including the Chairman and the Vice-Chairman shall be five years commencing on the date of the first meeting referred to in sub-section (3).
- (5) The meetings of the Samiti shall be presided over by the Chairman or, in his absence, by the Vice-Chairman.
- (6) The Collector of the District shall cause the names of the members elected under clause (b) of sub-section (1) of the Samiti to be published in the prescribed manner.

No person to hold more than one elected office.

- 16-A Notwithstanding anything contained in the Orissa Panchayat Samiti Act, 1959 or in the Orissa Grama Panchayats Act, 1964, a person elected as a member of a Samiti and as the Sarpanch or a member of a Grama Panchayat shall, unless he submits to the Collector his resignation from one of the offices to which he has been so elected within a period of seven days from the date of publication of the notification under sub-section (6) of Section 16, be deemed to have ceased to hold the office of the Sarpanch or, as the case may be, the member of the Grama Panchayat on and from the expiry of the said period.

* As amended by Orissa Acts, 8 of 2011. There might be omission and commissions : for authenticity reference must be made to the published Act in the Official Gazette.

Superintendence,
direction and
control of
Elections to vest
in the Election
Commission.

- 16-B.**(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all elections of Samitis shall be vested in the Election Commission.
- (2) in the absence of any provision in this Act or the rules made thereunder, the provisions contained in the Representation of the People Act, 1950 and the Representation of People Act, 1951 shall *mutatis mutandis* apply for the purposes of election to Samitis in the following matters, namely :—
- (i) preparation, revision and updating of electoral roll;
 - (ii) appointment of Electoral Registration Officers, Presiding Officers and Polling Officers;
 - (iii) qualifications and disqualifications for registration as voter;
 - (iv) such other matters which have to be or may be required to be dealt with for the purpose of conducting free and fair election.
- (3) Unless the State Election Commission, by order published in the Gazette, directs otherwise, so much of the electoral roll of the Assembly Constituency for the time being in force as relates to a Samiti constituency shall subject to such revision or updating, as may be necessary, be the electoral roll of the Samiti Constituency for the purpose of election to the Samiti.
- (4) The Election Officers, Presiding Officers, Polling Officers and any other Officers appointed or designated for the time being for the conduct of elections under this Act shall be deemed to be on deputation to the Election Commission for the period commencing on the date of the notification calling for such election and ending with the date of declaration of the results of such election and, accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.

Chairman of the
Samiti to be the
Executive
Authority.

- 19.**(1) The executive authority of the Samiti shall vest in the Chairman and it shall be his duty to have the resolution of the Samiti implemented through the Executive Officer of the Samiti.
- (2) The Block Development Officer shall be the Executive Officer of the Samiti and subject to such rules as may be prescribed in this behalf shall function under the control of the Chairman of the Samiti.
- (3) The Executive Officer of the Samiti shall exercise such other powers and perform such other functions as may be prescribed.

CHAPTER VI

CONTROL

Removal of
Chairman and
Vice-Chairman
of the Samiti.

40-A(1) If in the opinion of the Government the Chairman, the Vice-Chairman or any member elected under clause (h) of sub-section (1) of Section 16 or nominated under Section 45-C of the Samiti wilfully omits or refuses to carry out or, violates the provisions of this Act or any rules, bye-laws or orders made or issued thereunder or abuses the powers vested in him and Government are satisfied, that further continuance of such person in office would be detrimental to the interest of the Samiti they may, by order, published in the prescribed manner, remove such Chairman or Vice-Chairman or member, as the case may be, from office :

Provided that no such order for removal shall be made without giving the person concerned a reasonable opportunity of being heard.

(2) No person removed from the office of Chairman, Vice-Chairman or an elected member under this section shall, for a period of four years from the date of the removal, be eligible to hold any of the said offices.

Dissolution and
reconstitution of
Samiti.

41.(1) If in the opinion of the Government a Samiti is not competent to perform or persistently makes default in performing the duties imposed on by law or exceeds or abuses its powers they may by notification published in the prescribed manner, direct that the Samiti be dissolved.

(2) Before publishing a notification under sub-section (1) the Government shall communicate to the Samiti the grounds on which they propose, to-do-so fix a reasonable period for the Samiti to show cause against the proposal and consider the explanation and objections, if any, of such Samiti.

(3) Upon the publication of such a notification, all the members of the Samiti including it's Chairman shall forthwith be deemed to have vacated their offices as such and fresh election shall be held in the prescribed manner.

(4) Omitted.

(5) During any interval between the dissolution and reconstitution of Samiti directed under sub-section (1) all or any of the powers and duties of the Samiti and its Chairman may be exercised and discharged as far as may be and to such extent as the Government may determine by such person or persons as they may appoint in that behalf.

Supersession of
Samiti.

- 42.**(1) If after the fresh election held under the last preceding section, the (**) Samiti continues to be incompetent to perform or abuse its powers for all or any of the reasons specified in sub-section (1) of Section 41 the Government may, by notification published in the prescribed manner, supersede it for a specified period and may, in like manner by stating reasons therefor, extend such period from time to time so that the total period of supersession does not exceed six months.
- (2) Before publishing a notification under sub-section (1) the Government shall follow the procedure laid down in sub-section (2) of Section 41.
- (3) The supersession of a Samiti shall, if no other date and time are fixed in the said notification, take effect from the date of publication thereof and thereupon all the members of the Samiti including its Chairman shall forthwith be deemed to have vacated their offices.
- (4) Omitted.
- (5) The provisions of sub-section (5) of Section 41 shall apply so far as may be in regard to the exercise and discharge during the period of supersession of a Samiti under sub-section (1) or of all or any of the powers and duties of the Samiti and its Chairman.
- (6) Omitted.
- (7) Omitted.

CHAPTER VI A

ELECTION DISPUTES

Election
petitions.

44-A No election of a person as a member of a Samiti held under this Act shall be called in question except by an election petition presented in accordance with the provisions of this Chapter.

Presentation of
petitions.

44-B(1) The petition shall be presented on one or more of the grounds specified in Section 44-L before the Civil Judge (Senior Division) having jurisdiction over the place at which the office of the Samiti is situated together with a deposit of two hundred rupees as security for costs within fifteen days after the day on which the result of the election was announced ;

Provided that if the office of the Civil Judge (Senior Division) is closed on the last day of the period of limitation as aforesaid the petition may be presented on the next day on which such office is open ;

Provided further that if the petitioner satisfies the Civil Judge (Senior Division) that sufficient cause existed for the failure to present the petition within the period aforesaid the Civil Judge (Senior Division) may in his discretion condone such failure :

Provided also that in cases where the result of the election was announced prior to the 26th January 1961, the aforesaid period of limitation shall be computed from the said date.

- (2) Omitted.
- (3) An election petition presented before a Civil Judge (Senior Division) may either *suo motu* or on application, be transferred by the District Judge to any other Civil Judge (Senior Division) subordinate to him.
- (4) Omitted.
- (5) No candidate who has been elected to be a Member, Chairman or Vice-Chairman of a Samiti shall be debarred from holding office as such Member, Chairman or Vice-Chairman merely by reason of any election petition having been filed against him unless his election has been declared void by the Civil Judge (Senior Division).
- (6) Omitted.

Parties to the petitions.

- 44-C.** (1) An election petition may be presented by any candidate at such election.
- (2) A person whose election is questioned and where the petition is to the effect that any other candidate is to declared elected in place of such person every unsuccessful candidate who has polled more votes than such candidate shall be made opposite party to the petition.

Contents of petition.

- 44-D.** (1) An election petition—
- (a) shall contain a concise statement of the material facts on which the petitioner relies;
 - (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
 - (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings.
- (2) Any Schedule or Annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

Relief that may
be claimed by
the petitioner.

Procedure
before the Civil
Judge (Senior
Division).

44-E. A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.

44-F. (1) Subject to the provisions of this Act and of any rules made thereunder every election petition shall be tried by the Civil Judge (Senior Division) as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits.

- (2) The Civil Judge (Senior Division) shall not be required to record or to have the evidence recorded in full but shall make a memorandum of the evidence sufficient in his opinion for the purpose of deciding the case.
- (3) The Civil Judge (Senior Division) for the purpose of deciding any issue, shall receive so much evidence, oral or documentary, as he considers necessary and may require the production of any evidence.
- (4) The Civil Judge (Senior Division) may, at any stage of the proceedings require the petitioner to give further security for the payment of all costs incurred or which is likely to be incurred by any opposite party and if within the time fixed by him or within such further time as he may allow such security is not furnished, he may dismiss the petition.
- (5) No witness or other person shall be required to disclose the name of the person for whom he has voted at an election.
- (6) The provisions of the Indian Evidence Act, 1872, shall subject to the provisions of this Act, be deemed to apply in the trial of an election petition.
- (7) Notwithstanding anything in any enactment to the contrary no document shall be inadmissible in evidence on the ground that it is not duly stamped or registered.
- (8) Reasonable expenses incurred by any person in attending to give evidence may be allowed to such person which shall unless the Civil Judge (Senior Division) directs be deemed to be part of the costs.
- (9) Any order as to costs passed by the Civil Judge (Senior Division) shall be executed by him in application made in that behalf in the same manner and by the same procedure as if it were a decree for the payment of money passed by himself in a suit.

Appearance
before Civil
Judge (Senior
Division).

44-G. Any appearance, application or act before the Civil Judge (Senior Division) may be made or done by the party in person or by a pleader duly appointed to act on his behalf :

Provided that it shall be open to the Civil Judge (Senior Division) to direct any party to appear in person whenever the Civil Judge (Senior Division) considers it necessary.

Powers of Civil
Judge (Senior
Division).

44-H. The Civil Judge (Senior Division) shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely :—

- (a) discovery and inspection;
- (b) enforcing the attendance of witness, and requiring the deposit of their expenses;
- (c) compelling the production of documents;
- (d) examining witness on oath;
- (e) granting adjournments;
- (f) reception of evidence taken on affidavit; and
- (g) issuing commissions for the examination of witness;

and may summon and examine *suo motu* any person whose evidence appears to it to be material and shall be deemed to be a Civil Court within the meaning of Sections 480 and 482 of the Code of Criminal Procedure, 1898.

Recrimination
when seat
claimed.

44-I. (1) When in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had be presented calling in question his election :

Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of commencement of the trial, given notice to the Civil Judge (Senior Division) of his intention to do so and has also given the security and the further security referred to in Sections 44-B and 44-F respectively.

(2) Every notice referred to in sub-section (1) shall be accompanied by the statement and particulars required by Section 44-D in the case of an election petition and shall be signed and verified in like manner.

Decision of Civil
Judge (Senior
Division).

- 44-J.** (1) If the Civil Judge (Senior Division), after making such enquiry, as he deem necessary, finds in respect of any person whose election is called in question by a petition that his election was valid, he shall dismiss the petition as against such person and may award costs at his discretion.
- (2) If the Civil Judge (Senior Division) finds that the election of any person was invalid, it shall either—
- (a) declare a casual vacancy to have been created; or
 - (b) declare another candidate to have been duly elected;
- whichever course appears, in the circumstances of the case to be more appropriate and in either case, may award costs at his discretion.
- (3) In the event of the Civil Judge (Senior Division) declaring a casual vacancy to have been created, it shall direct the Collector of the district or other authority prescribed in this behalf to take proceedings for filling the vacancy.
- (4) All order of the Civil Judge (Senior Division) shall, subject to the order passed in an appeal, if any, be final and conclusive :

Provided that the Civil Judge (Senior Division) may, on application presented within one month from the date of any of the orders made under this section or under Section 44-K by any person aggrieved, review such order on any ground and may, pending decision in review, direct stay of operation of such order.

Other orders to
be made by the
Civil Judge
(Senior
Division).

- 44-K.** At the time of making an order under Section 44-J the Civil Judge (Senior Division) shall also make an order—
- (a) declaring any candidate found to have committed any corrupt practice to be disqualified for any period not exceeding five years for being elected as a member of the Samiti or for being appointed to or retained in any office or employment in the Samiti; and
 - (b) fixing the total amount of cost payable and specifying the persons by and to whom costs shall be paid.

Grounds for
declaring
election void.

- 44-L.** (1) The Civil Judge (Senior Division) shall declare the election of a returned candidate void, if he is of the opinion—
- (a) that such person committed during or in respect of the election proceedings a corrupt practice as specified in Section 44-N;

- (b) that such person was declared to be elected by reason of the improper rejection or admission of one or more votes or for any other reason was not duly elected by a majority of lawful votes;
- (c) that such person was disqualified for election under the provisions of this Act;
- (d) that any nomination paper has been improperly rejected; or
- (e) that there has been any non-compliance with, or breach of any of the provisions of, this Act or the rules made thereunder.

(2) The election shall not be declared void merely on the ground of any mistake in the forms required thereby or of any error, irregularity or informality on the part of the Officer or Officers charged with carrying out the provisions of this Act or of any rules made thereunder unless such mistake, error, irregularity or informality has materially affected the result of the election.

Grounds for which a candidate other than the returned candidate may be declared to have been elected.

44-M. If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Civil Judge (Senior Division) is of opinion—

- (a) that in fact the petitioner or such other candidate received a majority of the valid votes; or
- (b) that but for the votes obtained by the returned candidate by a corrupt practice the petitioner or such other candidate would have obtained a majority of the valid votes;

the Civil Judge (Senior Division) shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

Corrupt practices.

44-N. The following shall be deemed to be corrupt practices for the purpose of this Chapter, namely :—

- (1) bribery, that is to say, any gift, offer or promise by a candidate or by any other person on his behalf or any gratification to any person whomsoever—

- (i) with the object, directly or indirectly or inducing—
 - (a) a person to stand or not to stand as or to withdraw from being a candidate; or to retire from contest at such election; or
 - (b) an elector to vote or refrain from voting at such election; or
- (ii) as a reward to –
 - (a) a person for standing or refraining from standing as a candidate, or for having withdrawn his candidature or for having retired from contest; or
 - (b) an elector for having voted or for refraining from voting.

Explanation—For the purposes of this clause, the term “gratification” includes all forms of entertainment and all forms of employment for rewards; but it does not include the payment of any expenses bonafidely incurred for the purposes of such election;

- (2) under influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or any other person on his behalf, with the free exercise of the electoral right of any person :

Provided that—

- (a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein, who—
 - (i) threatens any candidate or any elector or a person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or of expulsion from any caste or community; or
 - (ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause; and
- (b) a declaration of public policy, or a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause;
- (3) the systematic appeal by a candidate or by any other person on his behalf to vote or refrain from voting on grounds of

caste, race, community or religion or of the use of national symbols, such as, the National Flag or the National Emblem, for the furtherance of the prospects of the candidate's election;

- (4) the publication by the candidate or by any other person on his behalf of any statement of fact which is false and which he either believes to be false or does not believe to be true in relations to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal or retirement from contest of any candidate, being a statement reasonably calculated to prejudice the prospect of that candidate's election;
- (5) the hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or any other person on his behalf for the conveyance of any elector, other than the candidate or any member of his family to or from any polling station or place fixed for the poll :

Provided that the hiring of vehicle or vessel by an elector or by several electors at their joint cost for purpose of conveying him or them to or from any such polling station or place fixed for the poll, shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power :

Provided further that the use of any public transport vehicle or railway carriage by any elector at his own cost for the purpose of going to or coming from any polling station or place, shall not be deemed to be a corrupt practice under this clause.

Explanation—In this clause the expression “Vehicle” means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise ;

- (6) the obtaining or procuring or abetting or attempting to obtain or procure by a candidate or by any other person on his behalf of any assistance, other than the casting of a vote for the furtherance of the prospects of the candidate's election from any person in the service of the Government or in the employ of any Local Authority.

Withdrawal of
petitions.

- 44-O.** (1) The petitioner may, at any time withdraw the election petition filed by him on payment to the respondent such cost as he might have incurred or such portion thereof as the Civil Judge (Senior Division) may direct :

Provided that if there are more petitioners than one, no application to withdraw the election petition shall be made except with the consent of all the petitioners.

- (2) No application to withdraw an election petition shall be granted if in the opinion of the Civil Judge (Senior Division), such application has been induced by any bargain or consideration which ought not be allowed.
- (3) If the application is granted—
 - (a) the Civil Judge (Senior Division) shall direct that the notice of withdrawal shall be published in the Official Gazette and in such other manner as he may specify and thereupon the notice shall be published accordingly;
 - (b) a person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and upon compliance with the conditions, if any, as to the security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Civil Judge (Senior Division) may deem fit.

Abatement of petition.

- 44-P.** (1) An election petition shall abate only on the death of the petitioner or where there are more than one petitioner on the death of all the petitioners and such abatement shall be communicated to the concerned Block Development Officer by the Civil Judge (Senior Division).
- (2) Where the election petition abates under sub-section (1) the Civil Judge (Senior Division) shall cause the fact to be published in such manner as he may deem fit.
 - (3) Any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Civil Judge (Senior Division) may deem fit.

Appeal.

- 44-Q.** Any person aggrieved by an order passed by the Civil Judge (Senior Division) under sub-section (1) or sub-section (2) of Section 44-J, may, within such period as may be prescribed, prefer an appeal before the District Judge having jurisdiction.

CHAPTER VII
MISCELLANEOUS

Disqualification
for becoming a
member and
continuing as
member.

- 45.(1)**(a) A person shall not be eligible to stand for election under sub-section (1) of Section 16 if he—
- (b) is not ordinarily residing within the Block; or
 - (c) is of unsound mind; or
 - (d) is an applicant to be adjudicated as an insolvent or is an undischarged insolvent; or
 - (e) Omitted;
 - (f) is convicted of an election offence under any law for the time being in force; or
 - (g) is not a citizen of India; or
 - (h) is convicted for an offence involving moral turpitude; or
 - (i) holds any office of profit under the State or Central Government or any Local Authority; or
 - (j) is a teacher in any school recognised under the provisions of the Orissa Education Code for the time being in force; or
 - (k) holds the office of a Minister either in the Central or in the State Government,
 - (k-1) is a member of the House of the people or of the Council of States or of the State Legislature; or
 - (l) has been dismissed from service of the State or Central Government or any Local Authority; or
 - (m) has been in arrears of any dues payable by him to the Grama Panchayat; or
 - (m-1) being a member of any Society registered under the Orissa Co-operative Societies Act, 1951 has failed to pay any arrears of any kind accrued due by him to such Society for a continuous period of two years or more; or
 - (n) is in the habit of encouraging litigation in the villages and has been declared to be so on enquiry by the prescribed authority in the prescribed manner; or
 - (o) is interested in a subsisting contract made with or any work being done for the Samiti or any Government except as a share holder other than a Director in a Company or except as may be prescribed; or

- (p) is a paid and retained legal practitioner on behalf of the Samiti; or
- (q) is disqualified by or under any law for the time being in force for the purpose of election to the Legislature of the State; or
- (r) is disqualified by or under any law made by the Legislature of the State; or
- (s) is less than twenty-one years of age; or
- (t) is not able to read and write Odia; or
- (u) has more than one spouse living; or
- (v) has more than two children :

Provided that the disqualification under clause (h) or (i) may be removed by the Government in the prescribed manner :

Provided further that the disqualification under clause (v) shall not apply to a person who has more than two children on the date of commencement of the Odisha Panchayat Samiti (Amendment) Act, 1994 or, as the case may be, within a period of one year of such commencement, unless the begets an additional child after the said period of one year.

- (2) An elected member of a Samiti including the Chairman and Vice-Chairman shall cease to be a member if he –
 - (i) is not ordinarily residing within the Block or ceases to so reside or is or becomes subject to any of the other disqualifications specified in sub-section (1); or
 - (ii) has been continuously absent from the Block for more than six months without prior intimation in writing–
 - (a) in the case of a Chairman, to the Samiti;
 - (b) in the case of any other member or Vice-Chairman to the Chairman; or
 - (iii) has absented himself without permission from three consecutive ordinary meetings of the Samiti on passing a resolution by the Samiti to that effect in the manner hereinafter specified, namely :–
 - (a) any member including the Chairman and Vice-Chairman desiring to absent himself from a meeting of the Samiti shall submit his written application to the Samiti through the Block Development Officer prior to the date of such meeting;

- (b) an application received after the date of the meeting and before the next meeting of the Samiti, may be accepted for consideration, if the Samiti is satisfied that there was sufficient reason for which the applicant failed to submit the application in time;
- (c) the Block Development Officer shall place the application in the immediately following meeting of the Samiti for consideration and the Samiti may grant or refuse permission;
- (d) where such refusal of permission shall result in absence from three consecutive meetings, the Samiti shall specify in the resolution whether the applicant shall cease to continue as a member, Chairman or Vice-Chairman, as the case may be, of the Samiti;
- (e) any absence without an application required under clause (a) or (b) shall be deemed to be an absence without permission.

Explanation—The meetings which are adjourned without transacting any business shall not be reckoned as ordinary meetings of the Samiti; or

- (iv) being a legal practitioner appears or acts as such against the Samiti.

(3) Where a person ceases to be member under clause (f) of sub-section (1), he shall be restored to Office for such portion of the term of Office as may remain unexpired at the date of such restoration, if the sentence is reversed or quashed on appeal or revision or the offence is pardoned or the disqualification is removed by an order of the Government and any person filling the vacancy in the interim period shall, on such restoration, vacate the Office.

No person to stand for more than one Samiti.

45-A No person shall be eligible to stand for election under Section 16 for more than one Samiti.

District Judge to decide question of disqualification.

45-B.(1) Whenever it is alleged that any member of a Samiti is or has become disqualified, or whenever any such member is himself in doubt whether or not he is or has become disqualified such member or any other member may and the Chairman at the request of the Samitis, shall apply to the District Judge, having jurisdiction over the place where the office of the Samiti is situated, for a decision on the allegation or doubt.

- (2) The District Judge after holding an enquiry in the prescribed manner shall determine whether or not such member is or has become disqualified and his decision shall be final.

- (3) Pending such decision the member shall be entitled to act as if he was not disqualified.

Nomination on failure of election and de-reservation in certain cases.

45-C.(1) If for any reason whatsoever any of the electorates fails to return a candidate in accordance with any of the provisions of this Act a fresh election shall be held in respect of the vacancy on such date and in such manner as may be prescribed and in case the electorate still fails to return a member at such fresh election, the State Government shall nominate a person who is otherwise eligible to be elected and the person so nominated, shall, subject to the provisions of sub-section (2) of Section 45 be deemed to have been validly and properly elected.

- (2) Where the seat of any member is reserved under sub-section (2) of Section 16 for any particular category and the Government fails to nominate under sub-section (1) a person to such seat for seat for non-availability of any eligible person belonging to that category, such seat shall, on recommendation being made to that effect by the Collector, be dereserved by the Government after such enquiry as it may deem fit and shall, thereafter, be filled up by fresh election.

Resignation of Chairman, Vice-Chairman and Members.

46. The Chairman, Vice-Chairman or any Member of the Samiti may resign his office as such Chairman, Vice-Chairman or Member by giving notice in writing to the Samiti. Except in a case where the person resigning deliver the notice of resignation personally to the Block Development Officer, such officer shall, on receipt of a notice of resignation, obtain confirmation from the person concerned as to its genuineness. A resignation delivered personally or confirmed as aforesaid, shall take effect on and from the date on which the notice was received.

Vote of no confidence against Chairman and Vice-Chairman of Samiti.

46-B.(1) Where at a meeting of the Samiti specially convened in that behalf a resolution is passed, supported by a majority of not less than two-thirds of the total number of members having a right to vote, recording want of confidence in the Chairman or Vice-Chairman of such Samiti, the resolution shall forthwith be published by such authority and in such manner as may be prescribed and with effect from the date of such publication the Chairman or Vice-Chairman, as the case may be, shall be deemed to have vacated office.

- (2) In convening a meeting under sub-section (1) and in the conduct of business at such meeting the procedure herein specified shall be followed, namely—
- (a) no such meeting shall be convened except on a requisition signed by at least one-third of the members with a right to vote, along with a copy of the resolution proposed to be moved at the meeting;
 - (b) the requisition shall be addressed to the Subdivisional Officer;
 - (c) the Subdivisional Officer, on receipt of such requisition shall fix the date, hour and place of such meeting and give notice of the same to all the members with a right to vote, along with a copy of the requisition and of the proposed resolution at least seven clear days before the date so fixed;
 - (d) the Subdivisional Officer or when he is unable to attend, any other gazetted officer not below the rank of a Class-II Officer of the State Civil Service, authorised by him, shall preside over and conduct the proceedings of the meeting;
 - (e) the voting at all such meetings shall be by secret ballot;
 - (f) no such meeting shall stand adjourned to a subsequent date and no item of business other than the resolution for recording want of confidence in the Chairman or the Vice-Chairman shall be taken up for consideration at the meeting;
 - (f-1) no such resolution shall be taken up for consideration unless it has been proposed by one member and has been seconded by another member at meeting;
 - (f-2) after the resolution is taken up for consideration, the member proposing the resolution may open the discussion thereon and other members may speak on the resolution in the order in which they are called upon by the Presiding Officer :

Provided that no member shall, unless so permitted by the Presiding Officer have the right to speak more than once and if any member who is called upon does not speak he shall not be entitled, except by the permission of the Presiding Officer, to speak at a later stage of the discussion;
 - (f-3) where the Chairman or, as the case may be, the Vice-Chairman against whom the resolution has been tabled, is present, he shall be given an opportunity to speak by way of reply to the resolution and the discussion made at the meeting;

- (f-4) the Presiding Officer may fix the time within which each member, including the Chairman and Vice-Chairman, shall conclude his speech;
- (g) if the number of members present at the meeting is less than a majority of two-thirds of members having a right to vote the resolution shall stand annulled; and
- (h) if the resolution is passed at the meeting supported by a majority of two-thirds of members having a right to vote, the Subdivisional Officer shall forward the resolution to the authority prescribed in pursuance of sub-section (1).
- (3) When a meeting has been held in pursuance of sub-section (2) for recording want of confidence in the Chairman or Vice-Chairman, as the case may be, no fresh requisition for a meeting be maintainable—
 - (a) in cases falling under clauses (g) and (h) of the said sub-section or where the resolution is defeated after being considered at the meeting so held, before the expiry of one year from the date of such meeting; or
 - (b) where the notification calling for general election to the Samiti has already been published under or in pursuance of sub-section (2) of Section 49.
- (4) Without prejudice to the provisions of sub-section (3) no requisition under sub-section (2) shall be maintainable in the case of a Chairman, Vice-Chairman, as the case may be, before the expiry of two years and six months from the date on which such Chairman or Vice-Chairman enters office :

Provided that all requisitions received under sub-section (2) prior to the date of commencement of the Orissa Panchayat Samiti (Second Amendment) Act, 1993, on which no meeting for recording want of confidence has been held by the said date, shall stand abated.

Casual
vacancies.

- 47. (1)** If the elected member of the Samiti ceases to be a member by reason of his death, resignation or otherwise the vacancy so caused shall be filled up, so far as may be, in the manner provided under clause (b) of sub-section (1) of Section 16 and the member so elected shall hold office for the unexpired term of the member in whose place he has been elected.

- (2) If the Chairman or the Vice-Chairman of the Samiti ceases to be such Chairman or as the case may be, Vice-Chairman by reason of his resignation or otherwise the vacancy so caused shall be filled up, so far as may be, in the manner provided under sub-section (3) of Section 16 and the person filling up such vacancy shall hold office for the unexpired term of the Chairman or as the case may be Vice-Chairman in whose place he has been elected.
- (3) Notwithstanding anything contained in sub-section (1) or sub-section (2) where a vacancy occurs under any of the said sub-section and the term of office of the Member or the Chairman, as the case may be, would, in the ordinary course of events have expired within six months of the occurrence of the vacancy, the State Government may direct that the vacancy be left unfilled until the next general election.

Vacancy not
to invalidate
proceedings.

- 48.** No act or proceeding of the Samiti shall be questioned on account of any vacancy in the membership or any defect or irregularity in any such Act or proceeding not affecting the merits of the case.

Duration of
Samiti and
elections
thereto.

- 49. (1)** Every Samiti, unless sooner dissolved or superseded under this Act shall continue for five years from the date appointed for its first meeting referred to in clause (a) of sub-section (3) of Section 16, and no longer :

Provided that a Samiti constituted on the dissolution or supersession of a Samiti before the expiration of its duration shall continue only for the remainder of the period for which the dissolved or, as the case may be, superseded Samiti would have continued under this sub-section had it not been so dissolved or, as the case may be, superseded.

- (2) An election to constitute a Samiti shall be completed—
 - (a) before the expiry of its duration specified in sub-section (1); or
 - (b) where a Samiti is dissolved or superseded before the expiry of its duration, before the expiration of a period of six months from the date of its dissolution :

Provided that where the remainder of the period for which the dissolved or, as the case may be, superseded Samiti would have continued is less than six months, it shall not be necessary to hold any election under this sub-section for constituting the Samiti for such period.

Chairman,
Vice-Chairman
and employees
to be public
servants.

52.(1) The Chairman, the Vice-Chairman and the employees of the Samiti shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

(2) The employees of the Samiti shall be governed by the Orissa Government Servants' Conduct Rules, 1959.

Protection of
action taken
under the Acts.

53. No suit, prosecution or other legal proceeding shall lie against any person in respect of anything done or intended to be done in good faith under this Act or the rules made thereunder.

Power to make
rules.

57.(1) The Government may, after previous publication, make rules consistent with the provisions of this Act to carry out all or any of the purposes of this Act and prescribe forms for any matter for which they consider that a form should be provided.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(i) the conditions subject to which property may be acquired or transferred by sale, mortgage, lease, exchange or otherwise by a Samiti;

(ii) regulating the duties, functions and powers of a Samiti;

(iii) generally determining the relations between Grama Panchayats and Samitis and for the guidance of Samitis in all matters connected with the carrying out of the provisions of this Act;

(iii) (a) regulation of all elections under this Act including deposits to be made by candidates at an election to the office of the Chairman, the conditions for forfeiture of refund of such deposit and the qualifications of a proposer or seconder; and

(iv) any other matter which has to be or may be prescribed under this Act.

(3) All rules made under this section shall be laid before the Legislative Assembly as soon as possible after they are made for a total period of fourteen days which may be comprised in one or more sessions and shall be subject to such modifications as the Assembly may make during the said period.

Power to make
bye-laws.

57-A.(1) Subject to such rules as may be made, a Samiti may, with the approval of the Collector, make bye-laws for carrying out any of the purposes for which it is constituted.

Issue of order
and removal of
difficulties.

- (2) The Government shall have power to make rules regarding the procedure for making of bye-laws under this section, the publication thereof and the date on which they shall come into effect.
- 58.**(1) The Government may, from time to time, with a view to ensure the proper functioning of the Samitis and the proper implementation of the provisions of this Act issue such administrative orders, directions and instructions as they deem fit not inconsistent with the aforesaid provisions and the rules made thereunder for the guidance of the Samitis.
- (2) Without prejudice to the provisions of sub-section (1) if any doubt or difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, do anything which appears to them necessary for the purpose of removing the doubt or difficulty.