

EXTRACTS FROM THE ODISHA ZILLA PARISHAD ACT, 1991

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EXTRACTS FROM THE ODISHA ZILLA PARISHAD ACT, 1991*

CHAPTER I

PRELIMINARY

Definition.

2. (f) “Ordinary resident in any area” with all its grammatical variations and cognate expression shall have reference to a person whose name finds place in the Electoral Roll for the time being in force prepared under Representation of People Act, 1950 (43 of 1950) in so far as the roll relates to such area;

(g-1) “Parishad area or area of Parishad” shall mean the territorial area of a district excluding any Municipal areas defined in the Odisha Municipal Act, 1950 and any other area which is specified for the time being to be an industrial township under that Act or to which the provisions of the Cantonments Act, 1924 is extended;

(j-1) “ Scheduled Areas” means the Scheduled areas as referred to in clause (1) of Article 244 of the Constitution.

CHAPTER II

CONSTITUTION OF ZILLA PARISHADS AND THEIR FUNCTION

Constitution and function of Parishad.

3. (1) The Government may, by notification, constitute a Parishad for every district.

(2) Every Parishad shall, by the name of the district for which it is constituted, be a body corporate having perpetual succession and a common seal and subject to any restriction and qualification imposed by or under this Act or any other enactment shall have the power to acquire and hold property, both movable and immovable, to transfer any such property held by it, to enter into contracts and to do all other things as may be considered necessary, proper or expedient for the purposes of this Act and may sue and be sued in its corporate name.

Members of Parishad.

6. (1) The Parishad shall consist of the following member, namely :—

- (a) one member elected directly on the basis of adult suffrage from every constituency within the Parishad area;
- (b) Chairman of each Samiti situated within the district;
- (c) every member of the House of the People and of the State Legislative Assembly representing Constituencies which comprise wholly or partly the area of the Parishad;
- (d) members of the Council of States who are registered as electors within the area of the Parishad.

*As amended by Orissa Act, 17 of 1993, Act 22 of 1994, Act 21 of 1995, Act 17 of 1997 and Acts 4 and 13 of 2001. There might be omissions and commissions : for authenticity reference must be made to the published Act in the Official Gazette.

Explanation—For the purpose of clause (a), “Constituency” shall mean a Constituency as may be determined under sub-section (3-A) subject to Article 243-C of the Constitution.

(2) The names of the members of the Parishad shall be published in Gazette

(3) (a) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Parishad 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 up by direct election in that Parishad as the population of the Scheduled Castes in that Parishad area or of the Scheduled Tribes in that Parishad area bears to the total population of that area and such seats shall be allotted on rotation to different Constituencies in a Parishad :

Provided that where the population of the Scheduled Castes or, as the case may be, the Scheduled Tribes in a Parishad area is not sufficient for reservation of any seat, one seat for the Scheduled Castes or, as the case may be, one seat for the Scheduled Tribes shall be reserved in that Parishad 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; and

(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 the Scheduled Castes or, as the case may 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 the Scheduled Castes 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 Parishad 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 Parishad, 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 Parishad;

(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 citizens :

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

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

(c) As nearly as may be, but not less than one-half including the number of seats reserved for women belonging to the Scheduled Castes, and the Scheduled Tribes and the backward class of citizens of the total number of seats to be filled up by direct election in every Parishad shall be reserved for women and such seats shall be allotted by rotation to different constituencies in the Parishad.

(3-A) The manner in which the Parishad area shall be divided into constituencies for the purpose of clause (a) 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 (3) shall be as follows :

- (a) The Collector shall divide the Parishad area into constituencies in such a manner that—
 - (i) every constituency shall, as far as practicable, have a population of forty thousand or part thereof;
 - (ii) a constituency does not extend beyond the territorial limit of the Block;
 - (iii) the territorial area of a Grama is not bifurcated; and
 - (iv) a constituency is compact with due regard to geographical feature :

Provided where a Parishad area comprises any Scheduled area in it, the Parishad area shall be divided into constituencies in such manner that the Constituencies comprising the Scheduled Area do not extend beyond the limit of such Scheduled Area.

- (b) The Constituencies in which the density of population of the Scheduled Castes and the Scheduled Tribes is higher shall be reserved by the Collector 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 the prescribed manner.
- (c) (i) the constituencies in every district shall bear the names of the respective Blocks and be arranged serially in Oriya alphabetical order;
- (ii) the name of every constituency so arranged serially shall include its serial number in the district.

*As amended by Orissa Act, 6 of 2016. There might be omission and commissions : for authenticity reference must be made to the published Act in the Official Gazette.

- (d) After the names of constituencies are so arranged in Odia alphabetical order, the Collector shall reserve the required number of constituencies for women in the following manner :—
- (i) reservation of constituencies for women shall be made of the Scheduled Castes at the first instance, and then for the Scheduled Tribes, and thereafter for the backward class of citizens. In computing one-third of the total number of constituencies, the constituencies reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and backward class of citizens shall be taken into account;
 - (ii) out of the constituencies left in the list of Odia alphabetical order for candidates other than the Scheduled Castes, the Scheduled Tribes and the Backward class of citizens, the constituency which appears first and thereafter, every second* constituency shall be reserved for women until the required quota is completed.
 - (iii) as nearly as may be, but not less than one-half* of the constituencies reserved for the members of the Scheduled Castes and the Backward class of citizens, the Scheduled Tribes shall be reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the Backward class of citizens in the manner herein before provided.
- (e) The Collector shall prepare a draft statement showing the division of the Parishad area into constituencies and the seats to be reserved therein and shall publish it in his office notice board and in the notice boards of the Sub-Collectors, Tahasildars, Executive Officers of Municipalities and Block Development Officers concerned in the prescribed manner and for the prescribed period, inviting objections and suggestions from all persons interested within the said period.
- (f) The Collector shall after considering the objections and suggestions so received and making such further enquiry as he may deem fit, cause such alternations as may be necessary to be made in the draft statement referred to in clause (e) and shall, thereafter, prepare a final statement showing the division of the Parishad area into constituencies and the seats to be reserved therein and submit the same to the Government for approval.
- (g) On receipt of the final statement from the Collector under clause (f), the Government shall, if it is satisfied that the division and reservation shown therein have been made in accordance with the procedure provided herein before, accord its approval and publish the same in the Gazette whereupon, the division of the Parishad area into constituencies and reservation of seats therein shall become final.

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

(3-B) The reservation of seats under clauses (a) and (b) of sub-section (3) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.

(4) (a) The election of members specified in clause (a) of sub-section (1) shall be held in the prescribed manner :

Provided that where such election is contested on political party basis, the candidate contesting such election shall use their respective party symbols.

(b) In the absence of any provision in this Act or the rules, the provisions of the Representation of the People Act, 1950 and Representation of the People Act, 1951 shall *mutatis mutandis* apply for the purposes of election to Parishads in the following matters, namely :—

- (i) preparation, revision and updating of Electoral Rolls;
- (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.

(c) Unless the 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 Parishad Constituency shall, subject to such revision or updating as may be necessary, be the Electoral Roll of the Parishad Constituency for the purpose of election to the Parishad.

Explanation—For the purposes of this sub-section—

(a) “candidates” means candidates duly sponsored by respective political parties;

(b) “party symbol” means the symbol allotted to a particular political party under the Elections Symbols (Reservation and Allotment) Order, 1968; and

(c) “political party” means “National Party” or, as the case may be, a State Party within the meaning of paragraph 7 of the Order referred to in clause (b).

(5) All the members of the Parishad including the President and the Vice-President thereof shall have the right to vote in the meetings of the Prishad.

(6) Notwithstanding anything contained in this section, the Government may nominate to a Parishad in the Scheduled Areas persons belonging to such Scheduled Tribes as have no representation in the Parishad :

Provided that such nomination shall not exceed one-tenth of the total members to be elected under clause (a) of sub-section (1).

Superintendence, direction and control of elections to vest in State Election Commission.

6-A. (1) The superintendence, direction and control of the preparation of Electoral Rolls for, and the conduct of, all elections to Parishad, shall be vested in the Election Commission.

(2) The conditions of service and tenure of office of the State Election Commissioner constituting the Election Commission shall be such as the Governor may, by rule, determine under clause (2) of Article 243-K of the Constitution.

(3) The Governor shall, when so requested by the Election Commission, make available to the Election Commission such staff as may be necessary for the discharge of its functions.

(4) The Election Officers, Presiding 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.

Duration of Parishad.

7. (1) Every Parishad, unless sooner dissolved under this Act, shall continue for five years from the date appointed from its first meeting referred to in Section 8, and no longer.

(2) An election to constitute a Parishad shall be completed—

- (a) before the expiry of its duration specified in sub-section (1), or
- (b) where a Parishad is dissolved 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 Parishad would have continued is less than six months, it shall not be necessary to hold an election under this sub-section for constituting the Parishad for such period.

(3) The Parishad constituted upon the dissolution of a Parishad before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Parishad would have continued under sub-section (1) had it not been so dissolved.

Election of President and Vice-President.

8. (1) The members of the Parishad specified in clause (a) of sub-section (1) of Section 6 shall—

- (a) at its first meeting which [shall be convened within twenty-two days but not before the expiry of seven days from the date of]² publication of the names under sub-section (2) of Section 6 elect in the prescribed manner, a President from among them;

- (b) at a subsequent meeting, which shall be specially convened for the purpose within thirty days from the date of the election of the President, elect the Vice-President of the Parishad from among them :

Provided that where the office of the President is not reserved under this Act for women or where a President elected under this Act is not a woman, office of the Vice-President of the Parishad shall be reserved for women.

(2) Notwithstanding anything to the contrary in sub-section (1)–

- (a) offices of the President in the Parishads 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 areas, offices of Presidents of all the Parishads shall be reserved for the Scheduled Tribes.

- (b) as nearly as may be but not less than one-half* of the total number of offices of Presidents reserved under clause (a) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes;
- (c) as nearly as may be, twentyseven percentum of the offices of Presidents in Parishads shall also be reserved in favour of backward class of citizens as referred to in clause (6) of Article 243-D of the Constitution;
- (d) as nearly as may be, one-half* of the total number of offices of Presidents reserved under clause (c) shall be reserved for women belonging to the backward class of citizens; and
- (e) 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 Presidents in Parishads shall be reserved for women.

(3) Reservation of offices of Presidents under sub-section (2) for the Scheduled Castes, the Scheduled Tribes, backward class of citizens and women shall be made by Government by rotation among different Parishads and the reservation so made shall be publilshed in the Gazette.

(4) The procedure provided in sub-section (3-A) of Section 6 relating to reservation of seats in the Parishads for the Scheduled Castes, the Scheduled Tribes, backward class of citizens and women shall, as far as may be, applicable for the purposes of reservation of offices of Presidents to be made by the Government under sub-section (3).

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

(5) The reservation of offices of Presidents under Clauses (a) and (b) of sub-section (2) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.

President to
be executive
authority.

9. (1) The resolutions of a Parishad shall be given effect to by the President in whom the executive powers of the Parishad shall vest. In cases of emergency, he may take necessary action which shall be subject to the approval of the Parishad at its next meeting.

(2) When the office of the President is vacant, the Vice-President of the Parishad shall, for all the purposes of this Act, exercise the powers and perform the functions of the President until the new President is elected.

(3) When the office of the President is vacant or the President has been continuously absent from the district for more than fifteen days or is incapacitated for more than fifteen days and there is either a vacancy in the office of the Vice-President, or the Vice-President has been continuously absent from the district for more than fifteen days or is incapacitated for more than fifteen days, the powers and functions of the President shall devolve on an elected member of the Parishad from out of a panel of three such members in order of priority nominated by the President in that behalf who shall be the officiating President and shall exercise the powers and perform the functions of the President, subject to such restrictions and conditions as may be prescribed until the President or Vice-President assumes office on being duly elected or as the case may be, taken charge of his office.

(4) The President shall nominate the panel as referred to in sub-section (3) within a period of one month from the date of the first meeting of the Parishad, failing which the Parishad shall nominate the panel in its first meeting held after the expiry of the aforesaid period of one month.

Chief
Executive
Officer and
his functions.

13. (1) The Collector of the district shall be the Chief Executive Officer of the Parishad who shall, subject to the provisions of this Act, exercise such powers and perform such functions as may be prescribed.

(2) The State Government may appoint such number of Executive Officers to the Parishad as may be expedient, who shall remain under the administrative control of the Chief Executive Officer and shall exercise such powers and perform such functions as may be prescribed.

(3) The Project Officer, District Rural Development Agency shall be the *ex officio* Secretary of the Parishad.

“(4) The Chief Executive Officer and the Secretary of the Parishad shall attend all meetings thereof and may take part in the discussions therein, but shall not have the right to move for resolution or to vote”.

CHAPTER III

ZILLA PARISHAD FUND

Review of
finance.

18. (1) It shall be the duty of the Finance Commission to review the financial position of Parishads and to make recommendations to the Governor as required under Article 243-I of the Constitution.

(2) The Commission may, for the purpose of maintaining sound financial position of Parishads, make such recommendations including measures needed for improvement of the financial position thereof, as it may deem fit.

(3) The Governor shall cause every such recommendation made by the Financial Commission together with an explanatory Memorandum as to the action taken thereon to be laid before the Legislative Assembly.

CHAPTER IV

CONTROL

Extraordinary
powers of
Director.

24. (1) In cases of emergency the Director may, subject to the approval of the Government, direct or provide for the execution of any work, or the doing of any act which a Parishad or its President is empowered to execute or do, and the immediate execution or doing of which is in his opinion necessary for the implementation of developmental plans or safety of the public and may direct that the expense of executing such work or doing such act shall be paid out of the fund of the Parishad.

(2) If the expenses is not so paid, he may make an order directing the person having the custody of the fund to pay it in priority to any other charge against such fund. Such person shall, so far as the funds to the credit of the Parishad admit, be bound to comply with such order.

Government's
power to
take action in
default of a
Parishad
member or
its President.

25. (1) If at any time, it appears to the Government that a Parishad or its President has made default in performing any duty imposed by or under this Act or any other law for the time being in force, they may, by order in writing, fix a period for the performance of such duty.

(2) If such duty is not performed within the period so fixed, the Government may appoint some persons to perform it and may direct that the expense of performing it shall be paid from the Fund within such time, as they may fix, to such person by the Parishad.

(3) If expenses which the Government have directed under sub-section (2), to be paid from the Fund, are not so paid, the Director, with previous sanction of the Government, may make an order directing the person having the custody of the Fund to pay it in priority to any other charge against such Fund.

(4) Such person shall, so far as the Fund to the credit of the Parishad admit, be bound to comply with such order.

Removal of
President and
Vice-
President of
Parishad.

26. (1) If, in the opinion of the Government, the President or Vice-President of the Parishad 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 the Government are satisfied that further continuance of such person in office would be detrimental to the interest of the Parishad, they may, by order published in the prescribed manner, remove such President or Vice-President 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 President or Vice-President under this section shall, for a period of four years from the date of removal, be eligible to hold any of the said offices.

Revival of
removal
proceedings.

27. (1) Where any proceeding which was initiated under Section 26 against any person holding office as President or Vice-President of a Parishad could not be finalised due to the vacation of the office by the President or Vice-President, as the case may be, by resignation or otherwise and the said person is found to be holding office as President or Vice-President of that Parishad during the term in which he so vacated or during the succeeding term, the State Government may direct revival of the said proceedings whereupon, the said proceedings shall be proceeded with from the stage it had reached by the date of vacation of the office by the President or the Vice-President, as the case may be, and disposed of in accordance with the provisions of the said section.

(2) No person removed from the office of President or Vice-President as a result of the proceedings so revised 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 Parishads.

28. (1) If in the opinion of the Government, a Parishad is not competent to perform or persistently makes default in performing the duties imposed on it by law or exceeds or abuses its powers they may, by notification published in the prescribed manner, direct that the Parishad be dissolved and immediately reconstituted. The notification shall specify the time within which the Parishad shall be reconstituted :

Provided that for the purpose of completing the elections to a Parishad which has been dissolved, the Government may, from time to time, extend the time fixed by them under this sub-section not exceeding six months in the aggregate for its reconstitution.

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

(3) Upon the publication of such a notification all the members of the Parishad including its President and Vice-President shall forthwith be deemed to have vacated their offices as such and fresh elections shall be held in the prescribed manner.

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

(5) For all or any of the reasons specified in sub-section (1) the Government may, by notification published in the prescribed manner, instead of dissolving a Parishad and reconstituting it, supersede it for any period which they may deem fit, whereupon, the relevant provisions of Section 29 shall *mutatis mutandis* apply.

Supersession
of Parishad.

29. (1) If after the fresh election held under Section 28, the Parishad continues to be incompetent to perform or abuse its powers for all or any of the reasons specified in sub-section (1) of the said section the Government may, by notification published in the prescribed manner, supersede it for a specified period, not exceeding 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 28.

(3) The supersession of a Parishad 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 Parishad including the President and Vice-President shall forthwith be deemed to have vacated their offices.

(4) The provisions of sub-section (5) of Section 28 shall apply so far as may be in regard to the exercise and discharge, during the period of supersession of a Parishad under sub-section (1), of all or any of the powers and duties of the Parishad and its President.

The Government may reconstitute the Parishad before the expiry of the period notified under sub-section (1).

CHAPTER V ELECTION DISPUTES

Election
disputes.

32. (1) No election of a person either as a member or as the President or Vice-President of a Parishad held under this Act shall be called in question except by an election petition presented before the District Judge having jurisdiction over the place at which the office of the Parishad is situated.

(2) For the purposes of sub-section (1), the provisions contained in Chapter VI-A (hereinafter referred to in this section to the said Chapter) of the Orissa Panchayat Samiti Act, 1959, shall *mutatis mutandis* apply except as hereunder provided :—In the said chapter—

- (i) the reference to the expressions “Samiti” and “Election Commissioner” wherever they occur, shall be construed as reference to “Parishad” and “District Judge” respectively;
- (ii) an election petition presented before a District Judge may, either *sou motu* or on application be transferred to any Additional District Judge;
- (iii) for sub-section (3) of Section 44-J, the following sub-section shall be substituted, namely :—
“(3) In the event of the District Judge declaring a casual vacancy to have been created, it shall direct the appropriate authority to take steps for filling the vacancy”; and
- (iv) for Section 44-Q, the following section shall be substituted, namely :—
“44-Q. Any person aggrieved by an order passed by the District Judge may prefer an appeal before the appropriate court of law exercising civil appellate jurisdiction over the District Judge in preferring such appeal the provisions of the Indian Limitation Act, 1963 shall apply”.

CHAPTER VI MISCELLANEOUS

Disqualification
for becoming
a member
and
continuing as
a member.

33. (1) A person shall not be eligible to stand for election under Clause (a) of sub-section (1) of Section 6, if he—

- (a) is not ordinarily residing within the Parishad area; or
- (b) is of unsound mind; or
- (c) is an applicant to be adjudicated as an insolvent or is an undischarged insolvent; or
- (d) Omitted;
- (e) is convicted of an election offence under any law for the time being in force; or
- (f) is not a citizen of India; or
- (g) is convicted of an offence involving moral turpitude; or
- (h) holds any office of profit under the State or Central Government or any Local Authority; or
- (i) is a teacher in any School recognised under the provisions of the Orissa Education Act, 1969 (Odisha Act 15 of 1969) for the time being in force; or
- (j) holds the office of a Minister either in the Central or in the State Government; or
- (k) Omitted;

- (l) has been dismissed from service of the State or Central Government or any Local Authority; or
- (m) has been in arrears of any (tax, fee or rate) due by him to any Grama Panchayat for a continuous period of two years; or
- (n) being a member of any Society registered under the Odisha Co-operative Societies Act, 1962 (Odisha Act 217 of 1969) 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
- (o) is in the habit of encouraging litigation in villages and has been declared to be so on enquiry by the Prescribed Authority in the prescribed manner; or
- (p) is interested in a subsisting contract made with, or any work being done for, the Parishad or any Government except as a shareholder other than a Director in a company or except as may be prescribed; or
- (q) is a paid and retained legal practitioner on behalf of the Parishad; or
- (r) is disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State; or
- (s) is disqualified by or under any law made by the Legislature of the State; or
- (t) is less than twenty-one years of age; or
- (u) is not able to read and write Odia; or
- (v) has more than one spouse living; or
- (w) has more than two children :

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

Provided further that the disqualification under clause (w) shall not apply to a person who has more than two children on the date of commencement of the Odisha Zilla Parishad (Amendment) Act, 1993 or, as the case may be, within a period of one year of such commencement, unless he begets an additional child after the said period of one year.

(2) an elected member of a Parishad including the President and Vice-President shall cease to be a member if he—

- (i) is not ordinarily residing within the district 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 district for more than six months without prior intimation in writing–
 - (a) in the case of a President to the Parishad;
 - (b) in the case of any other member or Vice-President to the President; or
- (iii) has absented himself without permission from three consecutive ordinary meetings of the Parishad on passing a resolution by the Parishad to that effect in the manner hereinafter specified, namely :–
 - (a) any member including the President and Vice-President desiring to absent himself from a meeting of the Parishad shall submit his written application to the Parishad through the Chief Executive 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 Parishad may be accepted for consideration, if the Parishad is satisfied that there was sufficient reason for which the applicant failed to submit the application in time;
 - (c) the Chief Executive Officer shall place the application in the immediately following meeting of the Parishad for consideration, and the Parishad may grant or refuse permission;
 - (d) where such refusal of permission shall result in absence from three consecutive meetings, the Parishad shall specify in the resolution whether the applicant shall cease to continue as a member, President or Vice-President, as the case may be, of the Parishad;
 - (e) any absence without an application required under sub-clause (a) or (b) shall be deemed to be an absence without permission.

Explanation–The meeting which are adjourned without transacting any business shall not be reckoned as ordinary meeting of the Parishad; or

- (iv) being a legal practitioner, appears or acts as such against the Parishad.
- (v) has been disqualified under Section 33-B.

(3) Where a person ceases to be member under clause (e) 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 hold more than one elected office.

33-A. (1) Notwithstanding anything contained in any other law, an elected member of the Parishad including the President and the Vice-President thereof shall not hold simultaneously—

- (i) an elected office in any Samiti or Grama Panchayat; or
- (ii) an office as a member of the House of the People or of the Council of States or of the State Legislature.

(2) Where a person is elected as a member of the Parishad—

- (i) while holding an elective office under any Samiti or Grama Panchayat, he shall be deemed to have ceased to hold the first elected office; or
- (ii) while continuing as a member of the House of the People or of the Council of States or of the State Legislature, he shall be deemed to have ceased to hold the elected offices in the Parishad on and from the expiry of a period of seven days from the date of publication of his name under sub-section (2) of Section 6, unless he submits within that period his resignation in the prescribed manner, from one of such offices.

Disqualification on the ground of defection.

33-B. Subject to the provisions of Section 33-C,—

- (i) if an elected member of the Parishad belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction issued by the political party to which he belongs or by a person or authority authorized by it in this behalf, votes or abstains from voting, without obtaining prior permission of such political party, person or authority, in a meeting of the Parishad, in an election of its President, Vice-President, a member of a Standing Committee, or the Chairman of a Standing Committee, or in a voting on a no confidence motion against any one of them; and
- (ii) if an independent member joins any political party after becoming a member of the Parishad;

he shall be disqualified for being a member of that Parishad.

Explanation.—For the purpose of this section an elected member or an independent member of the Parishad shall be deemed to be the member referred to in Clause (a) of sub-section (1) of Section 6.

Disqualification on ground of defection not to apply in case of merger.

33-C. (1) A member of a Parishad shall not be disqualified under Section 33-B where his original political party merges with another political party and he claims that he and any other members of his original political party—

- (a) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or
- (b) have not accepted the merger and opted to function as a separate group,

and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purpose of Section 33-B and to be his original political party for the purpose of this sub-section;

(2) For the purpose of sub-section (1) of this section, the merger of the original political party of a member of a Parishad shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the party concerned have agreed to such merger.

Decision on
question of
disqualification
on ground
of defection.

33-D. (1) Notwithstanding anything contained in Section 34, if any question arises as to whether a member of the Parishad has become disqualified under Section 33-B, such member or the political party concerned or a person authorised by it in that behalf may file a petition before the Election Commission for his decision.

(2) The Election Commission shall, after making such inquiry as it may deem necessary, decide whether such member has become disqualified or not and its decision shall be final.

(3) Where the Election Commission decides that a member has become disqualified under sub-section (2), he shall notify the same in the official Gazette and the said member shall be deemed to have ceased to be the member of the Parishad with effect from the date of such notification and shall be disqualified for contesting as a candidate in an election to any Parishad, Panchayat Samiti or Grama Panchayat for six years from that date.

Powers of
the Election
Commission.

5 of 1908

33-E. (1) Every petition under sub-section (1) of Section 33-D shall be disposed of by the Election Commission in accordance with the procedure as applicable while trying a suit under the Code of Civil Procedure, 1908 and for that purpose the Election Commission shall have the powers of a Civil Court in respect of the following matters,—

- (i) summoning and enforcing the attendance of any person and examining him on oath;
- (ii) requiring the discovery and production of any document or other materials that may be produced as evidence.
- (iii) receiving evidence on affidavit;
- (iv) requisitioning any public record or copy thereof; and
- (v) issuing commission for taking evidence from witness or document.

45 of 1860

(2) The proceeding before the Election Commission under sub-section (1) shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1860.”.

District Judge
to decide
question of
disqualifica-
tion.

34. (1) Whenever it is alleged that any member of a Parishad 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 President at the request of the Parishad shall, apply to the District

Judge, having jurisdiction over the place where the office of the Parishad is situated, for a decision on the allegation or doubt.

(2) The District Judge shall, after holding an enquiry in the prescribed manner 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
dereservation
in certain
cases.]²

35. (1) If for any reason whatsoever the electorate fails to return a member in accordance with the provisions of clause (a) of sub-section (1) and sub-section (3) of Section 6, 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 after such fresh election, the 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 33 be deemed to have been validly and properly elected.

(2) Where the seat of any member is reserved under sub-section (3) of Section 6 for any particular category and the Government fails to nominate under sub-section (1) a person to such 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.

Oath of
allegiance.

36. (1) Every elected member including the President and the Vice-President of the Parishad shall, before taking his seat, make at a meeting of the Parishad an oath or affirmation of his allegiance to the Constitution of India in the following form, namely :—

“I,having become a member/the President/the Vice-President of the Parishad swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established that I will faithfully discharge the duty upon which I am about to enter.”

(2) Any such member, President or Vice-President who fails to make, within three months of the date with effect from which he holds office or at any one of the first three meetings of the Parishad whichever is later, the oath or affirmation as aforesaid, shall cease to hold office as such and thereupon the seat shall become vacant.

(3) No such member, President or Vice-President shall take his seat at a meeting of the Parishad or do any act as such unless he has made the oath or affirmation as provided in this section.

Resignation
of President,
Vice-
President
and
members.

37. The President, Vice-President or any member of the Parishad may resign his office as such President, Vice-President or member by giving notice in writing to the Parishad, except in a case where the person resigning delivers the notice of resignation personally to the Chief Executive Officer, such officer shall, on receipt of a notice of resignation, obtains 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.

Ceasation
of
membership
of Chairman
in the
Samiti.

38. (1) Notwithstanding anything contained in any law for the time being in force, the Chairman of a Samiti shall cease to be the Chairman with effect from the date on which he ceases to be a member of the Parishad by tendering his resignation or otherwise.

(2) In the case of dissolution or supersession of a Samiti the Revenue Divisional Commissioner shall nominate a person to represent the Samiti in the Parishad during the period of such dissolution or supersession, if such person is otherwise eligible to be elected as a member of such Samiti and the person so nominated shall, for all purposes, be deemed to be a member of the Parishad.

Vote of no
confidence
against
President
and Vice-
President.

39. (1) Where at a meeting of the Parishad specially convened in that behalf a resolution is passed, supported by a majority of not less than two-thirds of the total members having a right to vote, recording want of confidence in the President or Vice-President of such Parishad, 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 President or Vice-President, 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 following, 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 Revenue Divisional Commissioner;
- (c) the Revenue Divisional Commissioner, 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 Revenue Divisional Commissioner or when he is unable to attend, any other Gazetted Officer not below the rank of a Class I Officer of the State Civil Service, authorised by him, shall

preside over and conduct the proceedings of the meetings;

- (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 President or the Vice-President shall be taken up for consideration at the meeting;
- (g) 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;
- (h) 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;

- (i) where the President or, as the case may be, the Vice-President 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;
- (j) the Presiding Officer may fix the time within which each member, including the President and the Vice-President, shall conclude his speech;
- (k) 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;
- (l) if the resolution is passed at the meeting supported by a majority of two-thirds of members having a right to vote, the Revenue Divisional Commissioner 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 President or Vice-President, as the case may be, no fresh requisition for a meeting shall be maintainable—

- (a) in cases falling under clauses (k) and (l) 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 Parishad has already been published under in pursuance of sub-section (2) of Section 7.

(4) Without prejudice to the provisions of sub-section (3) no requisition under sub-section (2) shall be maintainable in the case of a President or Vice-President, as the case may be, before the expiry of two years and six months from the date on which such President or Vice-President enters office.

Casual vacancies.

40. Where a vacancy occurs in the office of an elected member or of the President or Vice-President of a Parishad by reason of death, resignation or otherwise of the person holding such office, the vacancy shall be filled up, so far as may be, in same manner as provided for that office in Section 6 or 8, as the case may be, and the member or the President or Vice-President so elected shall hold office for the remainder of the term of office of the member or, as the case may be, the President or Vice-President in whose place he has been elected.

Vacancy not to invalidate proceedings.

41. No act or proceeding of the Parishad shall be invalidated 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.

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

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

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

Protection of action taken under the Act.

45. 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.

51. (1) The Government may, after previous publication, make rules consistent with the provisions of this Act to carry out all or any of the provisions 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 powers 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 Parishad;
- (ii) regulating the duties, functions and powers of a Parishad;
- (iii) generally determining the relations between Grama Panchayat Samitis and the Parishad for the guidance of Parishads in all

matters connected with the carrying out of the provisions of this Act.

- (iv) regulation of all elections under this Act, including deposits to be made by candidates at an election to the office of the President, the conditions for forfeiture or refund of such deposit and the qualifications of a proposer or seconder;
- (v) specifying the responsibility of the District Level Officers of the Government to the Parishads;
- (vi) any other matter which has to be, or may be, prescribed under this Act.

Power to make bye-laws.

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

(2) The Government shall have power to make rules regarding the procedure for making bye-laws under this section, the publication thereof and the date on which they shall come into effect.

Issue of order and removal of difficulties.

53. (1) The Government may, from time to time, with a view to ensuring the proper functioning of the Parishads 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 Parishads.

(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, by order, do anything which appears to them necessary for the purpose of removing the doubt or difficulty :

Provided that no order shall be issued under this sub-section after the expiration of a period of two years from the date of commencement of Section 1 of this Act.