

Bill No. 308 of 2016

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 2016

By

SHRI FEROZE VARUN GANDHI, M.P.

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BILL

further to amend the Representation of the People Act, 1951.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Representation of the People (Amendment) Act, 2016. Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

43 of 1951. 2. In section 2 of the Representation of the People Act, 1951 (hereinafter referred to as the principal Act), in sub-section (1),— Interpretation.

(a) after clause (bb), the following clause shall be inserted, namely:—

10 “(bc) “constituency” means the Parliamentary constituency or the Assembly constituency, as the case may be;”;

(b) after clause (e), the following clause shall be inserted:—

“(ea) “member” in reference to PART VB means member of the House of the People or the Legislative Assembly of a State, as the case may be;”;

(c) after clause (h), the following clause shall be inserted:—

‘(ha) “recall petition” means a petition calling for vacation of seat of a Member of Parliament of the House of the People or the Legislative Assembly of a State, as the case may be;’; and

(d) after clause (i), the following clause shall be inserted:—

‘(ia) “Speaker” means the Speaker of the House of the People or the Legislative Assembly of a State, as the case may be;’, and

Insertion of
new Part VB.

3. After PART VA of the principal Act, the following PART and sections thereunder shall be inserted, namely:—

“PART VB

Recall of Representatives

Initiation of
the recall
process for a
member.

78C. (1) Any elector of a particular constituency, may, if not satisfied with the performance of elected member of that constituency, file a recall petition, signed by not less than one-fourth of the total number of electors of that constituency, with the Speaker in such manner as may be prescribed.

(2) Subject to the provisions of sub-section (1), no process of recall of a member shall be initiated—

(i) within a period of two years from the date of election of that member; or

(ii) if that member was elected in a bye-election and one-half of the period of tenure of such member has not expired; or

(iii) before the expiry of a period of six months from the date of submission of an earlier recall petition; or

(iv) within a period of six months prior to the polling day for the next general election for the purpose of constituting a new House of the People or a new State Legislative Assembly, as the case may be; or

(v) if that member is already subject to a recall petition process.

Explanation.—For the purpose of this section, the expression “member is already subject to a recall petition process” means the period beginning with the reference of the recall petition by the Speaker to the Election Commission and ending with the notification by the Speaker of the outcome of the petition.

Verification
of signatures
in recall
petition.

78D. (1) The Speaker shall, as soon as possible, after confirming the genuineness of the recall petition filed under section 78C refer the recall petition to the Election Commission for verification and signing by electors of the constituency from where the member whose recall petition has been filed got elected.

Explanation.—For the purpose of this section, it is clarified that the Speaker shall not entail a review of the merit of the recall petition or decide as to whether that member should be recalled but shall instead limit his review to decide whether the petition has been filed by an eligible person, whether it bears the requisite number of signatures and whether it sets out in detail reasons for recall of the member and that the recall petition is not *prima facie* frivolous.

(2) The Election Commission shall, on receipt of recall petition from the Speaker, initiate the verification process for authentication of the signatures on the recall petition in such manner as may be prescribed:

Provided that the verification process for authentication of signatures shall be completed within a period of ninety days from the date of receipt of the recall petition from the Speaker.

78E. (1) The Election Commission shall, if satisfied about the genuineness of signatures on the recall petition, designate one of its officials to be Chief Petition Officer in relation to that recall petition.

Chief Petition Officer and other employees.

(2) The Chief Petition Officer shall be responsible for the conduct of the recall petition.

(3) The Election Commission shall provide the Chief Petition Officer such number of employees and funds as may be necessary for the conduct of recall petition.

78F. (1) The Chief Petition Officer shall, within ten days of the receipt of recall petition, specify—

Procedure for signing recall petition.

(a) a place or places where the recall petition shall be made available for signing by the electors; and

(b) the days on which the recall petition shall be made available for signing to the electors:

Provided that the Chief Petition Officer shall not specify more than ten places within the constituency for signing the recall petition:

Provided further that, in extraordinary circumstances, the Chief Petition Officer may specify more than ten places within the constituency for signing the recall petition after presenting in writing detailed reasons thereof to the Election Commission and the Speaker:

Provided also that in specifying the number of places where the recall petition shall be made available, due consideration shall be given to the size and population of the constituency in respect of whose member, the recall petition has been filed.

(2) The Chief Petition Officer, while specifying the place or places under clause (a) of sub-section (1), shall ensure that—

(a) all electors entitled to sign the recall petition have such reasonable facilities for signing it as are practicable in the circumstances; and

(b) as far as practicable, every place where the recall petition is made available for signing is accessible to persons with disabilities.

78G. (1) The Chief Petition Officer shall, within a period of ten days after specifying the places and the days under sub-section (1) of section 78F,—

Notice of signing on the petition.

(a) issue a public notice containing details of the designated places and days on which every elector eligible to vote in the constituency may sign on recall petition;

(b) cause such notice to be printed in all the leading newspapers circulated in the constituency; and

(c) cause such notice to be put up on the notice board of all the Courts, Government offices and institutions in the constituency.

78H. Every elector of the constituency, in respect of whose member the recall petition has been filed, shall be eligible to sign the recall petition.

Persons eligible to sign recall petition.

78I. (1) Every recall petition shall be signed by means of electronic voting machines.

Manner of signing the recall petition.

(2) For the purposes of this Act, every voting on recall petition by electronic voting machines shall be deemed to be a signature of an elector on the recall petition.

78J. (1) The Chief Petition Officer shall, within a period of not more than fifteen days after the end of the signing period, cause the signatures to be counted and forward the result of counting to the Speaker.

Counting of signatures and declaration of result.

(2) A recall petition of a member shall be deemed to be a successful recall petition for the purposes of this Act, if it is signed under section 781 by electors whose number is not less than three-fourth of the member of valid votes which that member was polled in his election.

(3) The Speaker shall, within twenty-four hours of the receipt of the result of counting under sub-section (2), notify the result to the general public in such manner as may be prescribed. 5

Vacation of
seat upon
recall.

78K. The member, in respect of whom the recall petition was filed, upon notification of the successful recall petition under sub-section (3) of section 78J, shall be deemed to have vacated his seat in the House of the People or Legislative Assembly of a State, as the case may be. 10

Conduct of a
bye-election.

78L. When as a result of a successful recall petition, a seat in the House of the People or the Legislative Assembly of a State, as the case may be, is duly vacated under section 78K, the Election Commission shall cause a bye-election to be held to fill the vacant seat in such manner as may be prescribed. 15

Penalties.

78M. Whoever,—

(a) tampers with or forges any of the signatures including on the initial recall petition submitted to the Speaker; or

(b) signs the same recall petition more than once; or

(c) either directly or through an agent, gives bribe by way of gift, offer or promise any gratification to any person with a view to directly or indirectly induce such person to sign or refrain from signing a recall petition; or 20

(d) receives, either directly or through an agent, by way of gift, offer or promise any gratification, either himself or through an agent, from any person in respect for signing or refraining from signing a recall petition, 25

shall be punishable with imprisonment for a term which may extend upto five years or with a fine which may extend upto rupees ten lakh or with both.

Explanation—For the purposes of this section the term “gratification” shall not be restricted to pecuniary gratifications or gratifications estimable in money and shall include all forms of entertainment and all forms of employment for reward.”. 30

STATEMENT OF OBJECTS AND REASONS

True democracy envisages a government that is of the people, for the people and by the people. Unfortunately oftentimes, in a first past the post system not every elected representative truly enjoys the mandate of the people. Logic and justice necessitate that if the people have the power to elect their representatives, they should also have the power to remove these representatives when they engage in misdeeds or fail to fulfil their duties.

At present there exists no recourse to the electorate if they are unhappy with their elected representative. The Representation of the People Act, 1951 only provides for vacation of office upon the commission of certain offences and does not account for general incompetence of the representatives or dissatisfaction of the electorate as a ground for vacation.

Countries all over the world have experimented with the concept of Right to Recall. The system exists at the State level in many States of the United States and at the Cantonal Level in Switzerland as well as at the national level in Venezuela. In India too attempts have been made at the local level to incorporate recall provisions in the cases of mayors, sarpanchs and other local government officials in certain states.

Whereas it is necessary to ensure that a recall process is not frivolous and does not become a source of harassment to elected representatives by preventing them from exercising their duties, the process for recall has several safeguards incorporated in it such as an initial recall petition to kick start the process and electronic based voting to finally decide its outcome.

The Bill provides for verification of signatures and first review by the Speaker of the concerned House. Furthermore, to ensure that a representative cannot be recalled by a small margin of voters and that the recall procedure truly represents the mandate of the people, the threshold for success of a recall petition is accordingly high. To ensure transparency and independence, Chief Petition Officers from within the election commission have been designated to supervise and execute the process. Furthermore, the Bill, recognizing the potential for abuse of certain provisions has accordingly provided more than adequate punishment for such abuses.

A free and fair election is right of the citizens of the country and in the event that their elected representatives no longer enjoy the confidence of the people, the people must have a right to remove them. It is on this edifice of accountability of politicians that the true idea of democracy can be achieved.

Hence this Bill

NEW DELHI;
November 3, 2016.

FEROZE VARUN GANDHI

FINANCIAL MEMORANDUM

Clause 3 of the Bill *vide* proposed section 78E(3) provides that Election Commission shall provide the Chief Petition Officer with such number of employees and funds as may be necessary for the conduct of recall petition. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. As the expenditure to be incurred would depend upon the number of recall petitions filed, it is not possible at this stage to give the exact amount of recurring expenditure which would be involved out of the Consolidated Fund of India.

No non-recurring expenditure is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill *vide* proposed section 78C provides that any elector may file a recall petition with the speaker in such manner as may be prescribed. The proposed section 78D empowers the Election Commission to initiate verification process for authentication of signatures on the recall petition in such manner as may be prescribed. The proposed section 78J empowers the Speaker to notify the result of counting of signatures on recall petition within 24 hours of the receipt of result in such manner as may be prescribed. The proposed section 78K empowers the Election Commission to hold a bye-election to fill the vacant seat on a successful recall petition in such manner as may be prescribed. As the rules with relate to matters of detail only, the delegation of legislative power is of a normal character.

ANNEXURE

EXTRACTS FROM THE REPRESENTATION OF PEOPLE ACT, 1951

(43 OF 1951)

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2. (I) In this Act, unless the context otherwise requires,—

Interpretation.

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(bb) “chief electoral officer” means the officer appointed under section 13A of the Representation of the People Act, 1950 (43 of 1950);

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(e) “elector” in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950);

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(h) “public holiday” means any day which is a public holiday for the purposes of section 25 of the Negotiable Instruments Act, 1881 (26 of 1881);

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further to amend the Representation of the People Act, 1951.

(Shri Feroze Varun Gandhi, M.P.)