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## EXTRAORDINARY

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### PART V

Bills introduced in the Gujarat Legislative Assembly

(To be translated into Gujarati and the translation to be published in the *Gujarat Government Gazette*. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to rule 127A of the Gujarat Legislative Assembly Rules:-

### THE GUJARAT LOCAL AUTHORITIES LAWS

(AMENDMENT) BILL, 2009.

GUJARAT BILL NO. 23 OF 2009.

### A BILL

*further to amend the Bombay Provincial Municipal Corporations Act, 1949, the Gujarat Municipalities Act, 1963 and the Gujarat Panchayats Act, 1993.*

It is hereby enacted in the Sixtieth Year of the Republic of India as follows:-

1. (1) This Act may be called the Gujarat Local Authorities Laws (Amendment) Act, 2009.

Short title and commencement.

(2) This section shall come into force at once and the remaining provisions shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint and different dates may be appointed for different provisions of the Act.

Amendment of section 5 of Bom.LIX of 1949. 2. In the Bombay Provincial Municipal Corporations Act, 1949 Bom.LIX of 1949, (hereinafter referred to as "the Municipal Corporations Act"), in section 5, -

- (1) in sub-section (5), for the word "One-third", the words "As nearly as may be one-half" shall be substituted;
- (2) in sub-section (6), for the words "one third", the words "as nearly as may be one-half" shall be substituted;
- (3) in sub-section (7), for the word "One-third", the words "As nearly as may be one-half" shall be substituted.

Insertion of new sections in Bom. LIX of 1949. 3. In the Municipal Corporations Act, after section 16, the following sections shall be inserted, namely:-

#### "OBLIGATION TO VOTE

Obligation to vote. 16A. (1) It shall be the duty of a qualified voter of the Municipal Corporation to vote at the election of the Municipal Corporation, however, he will be free to cast his vote in favour of none of the candidates contesting election as indicated in sub-section (2).

(2) The qualified voter shall cast his vote in favour of none of the candidates contesting election, in the manner as may be prescribed by rules, in case where he does not want to cast his vote in favour of any candidate.

Declaration of a voter to be a defaulter voter. 16B. (1) The election officer, as may be designated by the State Election Commission, may declare the voter to be the defaulter voter who failed to vote at the election of a Municipal Corporation after giving him a notice in the form prescribed by rules.

(2) The State Government shall be competent to prescribe by rules to be laid before the State Legislature, the disadvantages or consequences to be suffered by a defaulter voter.

Valid and sufficient reasons for not voting. 16C. A qualified voter shall be exempted to vote at the election of the Municipal Corporation -

- (1) if he is physically incapable due to illness to vote or other bodily infirmity to come and discharge his obligation, or
- (2) if he is absent on the date of election from the country or State of Gujarat, or
- (3) for such other valid and sufficient reasons as may be prescribed by rules by the State Government in consultation with the State Election Commission.



**16D.** (1) An election officer shall issue a notice to the voter who failed to vote at the election of the Municipal Corporation. Notice.

(2) The election officer shall by a notice inform the voter that he appears to have failed to vote at the election and that it is the duty of voter to vote at election. The voter may within a period of one month inform the valid and sufficient reasons, if any, for not voting alongwith supporting documents such as medical certificate, a copy of passport, etc.

(3) If no reply to the notice referred to in sub-section (1) is received within a period of one month or where the voter writes to the election officer reasons for not voting and where the election officer is not satisfied with the reasons given by voter as valid and sufficient, the election officer shall by an order in writing containing reasons declare him a defaulter voter.

**16E.** (1) The voter who is aggrieved by the order of the election officer under section 16D may prefer an appeal in the form prescribed by rules, within a period of one month, to the Appellate Officer designated as such by the State Election Commission. Appeal.

(2) The Appellate Officer after providing an opportunity of being heard to the appellant may pass an appropriate order. The order of the Appellate Officer shall be final."

Guj. 34 of 1964. 4. In the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Municipalities Act"), in section 6,--

Amendment of section 6 of Guj. 34 of 1964.

- (1) in sub-section (2), -
  - (i) in clause (a), for the figure "21", the figure "24" shall be substituted;
  - (ii) in clause (b), for the figure "27", the figure "28" shall be substituted;
  - (iii) in clause (d), for the figure "42", the figure "44" shall be substituted;
  - (iv) in clause (e), for the figure "51", the figure "52" shall be substituted,
- (2) in sub-section (3),-
  - (i) in clause (b), for the word "One-third", the words "As nearly as may be one-half" shall be substituted;
  - (ii) in clause (c), for the word "one-third", the words "as nearly as may be one-half" shall be substituted;
  - (iii) in clause (d), for the word "One-third", the words "As nearly as may be one-half" shall be substituted.

Insertion of new sections in Guj. 34 of 1964,

5. In the Municipalities Act, after section 15, the following sections shall be inserted, namely:-

#### “OBLIGATION TO VOTE

**Obligation to vote.** 15A. (1) It shall be the duty of a qualified voter of the Municipality to vote at the election of the Municipality, however, he will be free to cast his vote in favour of none of the candidates contesting election as indicated in sub-section (2).

(2) The qualified voter shall cast his vote in favour of none of the candidates contesting election, in the manner as may be prescribed by rules, in case where he does not want to cast his vote in favour of any candidate.

**Declaration of a voter to be a defaulter voter.** 15B. (1) The election officer, as may be designated by the State Election Commission, may declare the voter to be the defaulter voter who failed to vote at the election of a Municipality after giving him a notice in the form prescribed by rules.

(2) The State Government shall be competent to prescribe by rules to be laid before the State Legislature, the disadvantages or consequences to be suffered by a defaulter voter.

**Valid and sufficient reasons for not voting.** 15C. A qualified voter shall be exempted to vote at the election of the Municipality –

- (1) if he is physically incapable due to illness to vote or other bodily infirmity to come and discharge his obligation, or
- (2) if he is absent on the date of election from the country or State of Gujarat, or
- (3) for such other valid and sufficient reasons as may be prescribed by rules by the State Government in consultation with the State Election Commission.

**Notice.** 15D. (1) An election officer shall issue a notice to the voter who failed to vote at the election of the Municipality.

(2) The election officer shall by a notice inform the voter that he appears to have failed to vote at the election and that it is the duty of voter to vote at election. The voter may within a period of one month inform the valid and sufficient reasons, if any, for not voting along with supporting documents such as medical certificate, a copy of passport, etc.



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(3) If no reply to the notice referred to in sub-section (1) is received within a period of one month or where the voter writes to the election officer reasons for not voting and where the election officer is not satisfied with the reasons given by voter as valid and sufficient, the election officer shall by an order in writing containing reasons declare him a defaulter voter.

15E. (1) The voter who is aggrieved by the order of the election officer under section 15D may prefer an appeal in the form prescribed by rules, within a period of one month, to the Appellate Officer designated as such by the State Election Commission. Appeal.

(2) The Appellate Officer after providing an opportunity of being heard to the appellant may pass an appropriate order. The order of the Appellate Officer shall be final."

6. In the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Panchayats Act"), in section 9,-  
Guj. 18 of 1993. Amendment of section 9 of Guj. 18 of 1993.

(1) in sub-section (4), for the word "seven", occurring at two places, the word "eight" shall be substituted;

(2) in sub-section (5),-

- (i) in clause (b), for the words "One third", the words "As nearly as may be one-half" shall be substituted;
- (ii) in clause (c), for the words "One third", the words "As nearly as may be one-half" shall be substituted.

7. In the Panchayats Act, in section 10,-

(1) in sub-section (4), for the word "fifteen", occurring at two places, the word "sixteen" shall be substituted; Amendment of section 10 of Guj. 18 of 1993.

(2) in sub-section (5),-

- (i) in clause (b), for the words "One third", the words "As nearly as may be one-half" shall be substituted;
- (ii) in clause (c), for the words "One third", the words "As nearly as may be one-half" shall be substituted.

8. In the Panchayats Act, in section 11,-

(1) in sub-section (4), for the word "seventeen", occurring at two places, the word "eighteen" shall be substituted; Amendment of section 11 of Guj. 18 of 1993.

(2) in sub-section (5),-

- (i) in clause (b), for the words "One third", the words "As nearly as may be one-half" shall be substituted;
- (ii) in clause (c), for the words "One third", the words "As nearly as may be one-half" shall be substituted.

(u)

Insertion of new sections in Guj. 18 of 1993. 9. In the Panchayats Act, after section 34, the following sections shall be inserted, namely:-

#### “OBLIGATION TO VOTE

**Obligation to vote.** 34A. (1) It shall be the duty of a qualified voter of the Panchayats to vote at the election of the Panchayat, however, he will be free to cast his vote in favour of none of the candidates contesting election as indicated in sub-section (2).

(2) The qualified voter shall cast his vote in favour of none of the candidates contesting election, in the manner as may be prescribed by rules, in case where he does not want to cast his vote in favour of any candidate.

**Declaration of a voter to be a defaulter voter.** 34B. (1) The election officer, as may be designated by the State Election Commission, may declare the voter to be the defaulter voter who failed to vote at the election of a Panchayat after giving him a notice in the form prescribed by rules.

(2) The State Government shall be competent to prescribe by rules to be laid before the State Legislature, the disadvantages or consequences to be suffered by a defaulter voter.

**Valid and sufficient reasons for not voting.** 34C. A qualified voter shall be exempted to vote at the election of the Panchayat –

(1) if he is physically incapable due to illness to vote or other bodily infirmity to come and discharge his obligation, or

(2) if he is absent on the date of election from the country or State of Gujarat, or

(3) for such other valid and sufficient reasons as may be prescribed by rules by the State Government in consultation with the State Election Commission.

**Notice.** 34D. (1) An election officer shall issue a notice to the voter who failed to vote at the election of the Panchayats.

(2) The election officer shall by a notice inform the voter that he appears to have failed to vote at the election and that it is the duty of voter to vote at election. The voter may within a period of one month inform the valid and sufficient reasons, if any, for not voting alongwith supporting documents such as medical certificate, a copy of passport, etc.



(3) If no reply to the notice referred to in sub-section (1) is received within a period of one month or where the voter writes to the election officer reasons for not voting and where the election officer is not satisfied with the reasons given by voter as valid and sufficient, the election officer shall by an order in writing containing reasons declare him a defaulter voter.

34E. (1) The voter who is aggrieved by the order of the election officer under section 34D may prefer an appeal in the form prescribed by rules, within a period of one month, to the Appellate Officer designated as such by the State Election Commission. Appeal.

(2) The Appellate Officer after providing an opportunity of being heard to the appellant may pass an appropriate order. The order of the Appellate Officer shall be final."

10. In the Panchayats Act, in section 51, in sub-section (2), in clause (b), in sub-clauses (i) and (ii), for the words "One third", the words "As nearly as may be one-half" shall be substituted. Amendment of section 51 of Guj. 18 of 1993.

11. In the Panchayats Act, in section 63, in sub-section (2), in clause (b), in sub-clauses (i) and (ii), for the words "One third", the words "As nearly as may be one-half" shall be substituted. Amendment of section 63 of Guj. 18 of 1993.

12. In the Panchayats Act, in section 77, in sub-section (2), in clause (b), in sub-clauses (i) and (ii), for the words "One third", the words "As nearly as may be one-half" shall be substituted. Amendment of section 77 of Guj. 18 of 1993.

13. Notwithstanding anything contained in this Act, the Municipal Corporation, the Municipality or, as the case may be, the Panchayat constituted immediately before the commencement of the provisions of this Act, amending the Bombay Provincial Municipal Corporations Act, 1949, the Gujarat Municipalities Act, 1963 and the Gujarat Panchayats Act, 1993 shall continue till the expiration of its duration or till it is dissolved before its duration. Continuance of existing municipal corporations, municipalities and panchayats.

Bom. LIX of 1949.  
Guj. 34 of 1964.  
Guj. 18 of 1993.



## STATEMENT OF OBJECTS AND REASONS

In any developed, modern, futuristic and civilized society, the role of women in all walks of life in general and in the sphere of administration of local self-governments in particular, can neither be denied, underestimated nor delayed. The State Government is committed to achieve the high ideals enshrined in the Constitution of India by empowering women in all walks of life to ensure emergence of a better social, cultural, institutional, economical and political scenario. To achieve the aforesaid high constitutional ideals, the State Government has decided to make legislative provisions to ensure more participation of women in the administration, functioning and management of the local self-governments since such bodies inevitably deal with the core issues like water supply, health, education, sanitation, solid waste management, etc. with which women are either directly concerned and/or affected. Therefore, to enable the women population of the State to effectively contribute in the decision making process of the local self-governments, the present Bill proposes to amend the Bombay Provincial Municipal Corporations Act, 1949, the Gujarat Municipalities Act, 1963 and the Gujarat Panchayats Act, 1993.

It is absolutely inevitable for strengthening the democratic fabric of the country which is the basic feature of the Constitution of India that each and every citizen discharges his obligation to the nation by exercising his pious right to vote at elections. It is observed that due to the low turnover of voters to discharge their duty by exercising their right to vote, the true spirit of the will of the people is not reflected in the electoral mandate. This scenario has a very serious potential to weak the fabric of democratic governance which the people of the country has given to themselves under the Constitution. It is, therefore, with an object to achieve the goal of reflection of the true democratic will in the elections of the local self-Governments and to ensure to achieve the object, purpose and ideals contained in Part IX and Part IX-A of the Constitution of India, proposed in the present Bill to make legislative provisions to make the duty to exercise the right to vote in the elections of the local self-Governments a statutory obligation.

The Bill seeks to achieve the aforesaid objects.

The following notes on clauses explain, in brief, the important provisions of the Bill, namely:-

*Clause 2* of the Bill proposes to amend sub-sections (5), (6) and (7) of section 5 of the Bombay Provincial Municipal Corporations Act, 1949 to provide for reservation of, as nearly as may be one-half of the total number of seats including the seats reserved for Scheduled Castes, Scheduled Tribes and Backward Classes, for women in the Municipal Corporations of the State.



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*Sub-clause (2) of clause 4* of the Bill proposes to amend sub-section (3) of section 6 of the Gujarat Municipalities Act, 1963 to provide for reservation of, as nearly as may be one-half of the total number of seats including seats, reserved for Scheduled Castes, Scheduled Tribes and Backward Classes for women in the Municipalities of the State.

*Sub-clause (1) of clause 4* proposes to amend sub-section (2) of section 6 of the said Act, to increase the seats of the municipalities so as to make it easy to calculate the 50% reservation of seats for women.

In clauses 3, 5 and 9 of the Bill, it has made obligatory for a voter of the respective institute of local self-Government to cast his vote in favour of none of the candidates where he does not want to cast his vote in favour of any candidate contesting election. The election officer designated by the State Election Commission may declare such voter as defaulter voter who failed to vote at such election. A provision for appeal against the order of the election officer is also provided. Power is taken to the State Government to prescribe by rules, the disadvantages or consequences to be suffered by the defaulter Voter. //

*Clauses 6, 7 and 8* of the Bill, respectively propose to amend sub-sections (4) and (5) of section 9, sub-sections (4) and (5) of section 10 and sub-sections (4) and (5) of section 11 of the Gujarat Panchayats Act, 1993 to provide for reservation of as nearly as may be one-half of the total number of seats including seats reserved for Scheduled Castes, Scheduled Tribes and Backward Classes for women in all the three tiers of panchayats of the State and also to increase the seats of the village panchayats from 7 to 8, in taluka panchayats from 15 to 16 and in district panchayat, from 17 to 18 so as to make it easy to calculate the 50% reservation of seats for women.

*Clauses 10, 11 and 12* of the Bill, respectively proposes to amend section 51(2)(b)(i) and (ii), section 63(2)(b)(i) and (ii) and section 77(2)(b)(i) and (ii) of the Gujarat Panchayats Act, 1993 to provide for reservation of as nearly as may be one-half of the total number of seats of office bearers of the panchayats in the State for women.

It is provided in *clause 13* that the proposed increase in reservations of seats for women would not affect to existing municipal corporations, municipalities and panchayats which are constituted before the commencement of this amending Act. Clause 13 of the Bill provides for the same.

NITIN PATEL,



**MEMORANDUM REGARDING DELEGATED LEGISLATION**

This Bill involves delegation of legislative power in the following respects:-

**Clause 1.** - Sub-clause (2) of this clause empowers the State Government to appoint, by notification in the *Official Gazette*, the date on which the remaining provisions of the Act shall come into force and also empowers to appoint different dates for different provisions of the Act.

**Clause 3.** - (i) Sub-section (2) of new section 16A proposed to be inserted in the Bombay Provincial Municipal Corporations Act, 1949 by this clause empowers the State Government to prescribe by rules, the manner in which the qualified voter shall require to cast his vote in favour of none of the candidates contesting election;

(ii) sub-section (1) of new section 16B proposed to be inserted in the said Act by this clause empowers the State Government to prescribe by rules, the form in which the Election Officer shall give a notice to the voter declaring him to be the defaulter voter;

(iii) sub-section (2) of new section 16B proposed to be inserted in the said Act by this clause empowers the State Government to prescribe by rules, the disadvantages or consequences to be suffered by a defaulter voter;

(iv) clause (3) of new section 16C proposed to be inserted in the said Act by this clause empowers the State Government in consultation with the State Election Commissioner, to prescribe by rules, the other valid and sufficient reasons under which a qualified voter shall be exempted from voting;

(v) sub-section (2) of new section 16E proposed to be inserted in the said Act by this clause empowers the State Government to prescribe by rules, the form of appeal in which the aggrieved voter shall prefer an appeal to the Appellate Officer.

**Clause 5.** - (i) Sub-section (2) of new section 15A proposed to be inserted in the Gujarat Municipalities Act, 1963 by this clause empowers the State Government to prescribe by rules, the manner in which the qualified voter shall require to cast his vote in favour of none of the candidate contesting election;

(ii) sub-section (1) of new section 15B proposed to be inserted in the said Act by this clause empowers the State Government to prescribe by rules, the form in which the Election Officer shall give a notice to the voter declaring him to be the defaulter voter.

(iii) sub-section (2) of new section 15B proposed to be inserted in the said Act by this clause empowers the State Government to prescribe by rules, the disadvantages or consequences to be suffered by a defaulter voter;

(iv) clause (3) of new section 15C proposed to be inserted in the said Act by this clause empowers the State Government in



consultation with the State Election Commissioner, to prescribe by rules, the other valid and sufficient reasons under which a qualified voter shall be exempted from voting;

(v) sub-section (2) of new section 15E proposed to be inserted in the said Act by this clause empowers the State Government to prescribe by rules, the form of appeal in which the aggrieved voter shall prefer an appeal to the Appellate Officer.

*Clause 9.* -(i) Sub-section (2) of new section 34A proposed to be inserted in the Gujarat Panchayats Act, 1993 by this clause empowers the State Government to prescribe by rules, the manner in which the qualified voter shall require to cast his vote in favour of none of the candidate contesting election;

(ii) sub-section (1) of new section 34B proposed to be inserted in the said Act by this clause empowers the State Government to prescribe by rules, the form in which the Election Officer shall give a notice to the voter declaring him to be the defaulter voter;

(iii) sub-section (2) of new section 34B proposed to be inserted in the said Act by this clause empowers the State Government to prescribe by rules, the disadvantages or consequences to be suffered by a defaulter voter;

(iv) clause (3) of new section 34C proposed to be inserted in the said Act by this clause empowers the State Government in consultation with the State Election Commissioner, to prescribe by rules, the other valid and sufficient reasons under which a qualified voter shall be exempted from voting;

(v) sub-section (2) of new section 34E proposed to be inserted in the said Act by this clause empowers the State Government to prescribe by rules, the form of appeal in which the aggrieved voter shall prefer an appeal to the Appellate Officer.

The delegation of legislative power as aforesaid is necessary and is of a normal character.

Dated the 14<sup>th</sup> December, 2009.

NITIN PATEL.

By order and in the name of the Governor of Gujarat,

H. D. VYAS,

Gandhinagar, Secretary to the Government of Gujarat,  
Dated the 14<sup>th</sup> December, 2009. Legislative and Parliamentary Affairs  
Department.