
FAQ ON ELECTION PETITION

1. What is an election petition?

An Election petition is a procedure for inquiring into the validity of the election results of Parliamentary or local government elections. In other words, it is a means under law to challenge the election of a candidate in a Parliamentary, Assembly or local election.

2. Where can we file an election petition?

Election petitions are filed in the High Court of the particular state in which the election was conducted. Therefore, only the High Courts have the original jurisdiction on deciding on election petitions. Such jurisdiction shall be exercised ordinarily by the Single Judge of the High Court and Chief Justice shall from time to time assign one or more Judges for that purpose.

3. Who can file an election petition?

An election petition can be filed by any candidate, or an elector¹ relating to the election personally, to the authorized officer of the High Court

4. What is the limitation period of an election petition?

An election petition calling in question an election shall be filed within the time period of forty-five days from the date of declaration of results.

5. What is the cost for filing an Election Petition?

The petitioner shall have to deposit a sum of Rs. 2000/= in accordance with rules of the concerned High Court. However, the fees may vary according to the individual rules of a particular High Court.

6. What are the contents of an election petition?

An election petition should consist of –

- a) A concise statement of the material facts on which the petitioner relies
- b) Full particulars of any corrupt practice that the petitioner alleges, including the names of the parties alleged to have committed such corrupt practice and date and place of the commission of each such practice in the form of an affidavit.
- c) Any schedule or annexure to the petition shall be signed by the petitioner and verified.

¹ An elector is a person who was entitled to vote at the election to which the election petition relates, whether he/she has voted at such election or not

- d) The petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice (Form 25, <http://lawmin.nic.in/legislative/election/volume%202/conduct%20of%20election%20rules,%201961.pdf>).

7. What relief can be claimed by the petitioner in an election petition?

A petitioner may, in addition to claiming that the election of a particular candidate is void, can also claim that he/she himself/herself has been duly elected.

8. What are the grounds for filing an election petition or declaring an election void?

The election of a particular candidate can be declared void under section 100 of the Representation of People Act, 1951, if the High Court is of the opinion that -

- a) On the date of his election a returned candidate was not qualified or was disqualified to be chosen to fill the seat.
- b) Any corrupt practice (as explained below) has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent.
- c) By improper acceptance of any nomination.
- d) By any improper reception, refusal or rejection of any vote or the reception of any vote which is void.
- e) By any non-compliance with the provisions of the Constitution or RPA or any rules or orders made under this act.

9. What constitutes corrupt practices?

Under Section 123 of the Representation of People Act, 1951, following are considered corrupt practices:

- a) Bribery (any gift, offer, promise or gratification of any sort by the candidate or his/her agent to the voter or to another candidate contesting elections)
- b) Undue influence: direct or indirect influence exercised by the candidate or his/her agent; includes threats, attempts to induce voters or other candidates, declaration of public policy or action or the mere exercise of a legal right etc.
- c) Use of Force/coercion
- d) Appeal by a candidate or his election agent to refrain from voting on grounds of religion, race, caste, community or language. This also includes the promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person

with the consent of a candidate or his election agent to improve prospects of the election of that candidate or for affecting the election of any other candidate.

- e) Use of national symbols, national emblem, national flag to further the prospect of the election of the candidate or for prejudicially affecting the election of any other candidate.
- f) Publication by the candidate or his election agent of any false statement of fact which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any other candidate, or in relation to his/her candidature. Such a statement can also include a statement which is reasonably calculated to prejudice the prospects of that candidate's election.
- g) Use of/hiring/permanent fixing of vehicles by a candidate or his election agent prohibited under Section 25 and 29(1) of the Representation of People Act, 1951.
- h) Making false statements relating to elections expenditure.
- i) Abetting or attempting to obtain the service of government servants for the furtherance of the prospects of elections. These government servants can be gazetted officers, magistrates, members of the armed forces, police officers, excise officers, revenue officers other than the village revenue officers e.g. lambardars, desh mukhs etc.
- j) Booth capturing by a candidate or his/her election agent.

(For the detailed list of corrupt practices please see section 123 of the Representation of Peoples Act: <http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act,%201951.pdf>)

10. What is the position in the Court of Law when more than one election petition is presented to the High Court in respect of the same election?

Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same judge who may, in his discretion, try them separately or in one or more groups.

11. What is the timeline for a trial in an election petition?

The Representation of Peoples Act recommends every election petition shall be tried as expeditiously as possible and as far as practicable for the interests of justice. Every endeavor, its suggests, should be made on the part of the High Court to conclude a trial for an election petition within six months from the date on which the election petition is presented to the High Court for trial.

12. What happens to the acts/activities done by an elected representative during the course of his/her membership, after his/her election is declared void?

When the election of a candidate is declared void, any of his acts or proceedings in which that candidate has participated as a Member of Parliament or State Legislature, shall not be invalidated by reason of that order, nor shall such candidate be subjected to any liability or penalty on the ground of such participation.

13. How can an election petition be withdrawn?

Any election petition may be withdrawn only by leave of the High Court. Where an application for withdrawal is made, notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the official gazette.

14. How and when does an election petition abate?

An election petition can abate only on the death of the sole petitioner or of several petitions. The High Court shall, thereafter, publish the same in such a manner as it may deem fit.

15. Where should the High Court communicate its final orders as against an election petition?

The High Court shall as soon as after the conclusion of the trial of an election petition, intimate the substance of the decision to the Election Commission of India and the Speaker of the House or Chairman of the State Legislature as the case may be. The High Court shall also send an authenticated copy of the decision to the ECI.

16. Where can one appeal against an order of the High Court?

An appeal shall lie to the Supreme Court on any question (whether of law and fact) from every order made by a High Court.

17. What is the limitation period for filing an appeal in the Supreme Court against an order of the High Court?

Every appeal shall be preferred within a period of thirty days from the date of the order of the High Court. Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period.

18. When does an election petition stand infructuous?

An election petition usually stands infructuous by reasons of efflux of time, expiry of the membership of the concerned candidate, death of the party related to the petition.

Examples of election petitions that have been filed.

- An election petition was filed against Ashok Chavan and Madhu Koda for understating his election expenses on newspaper advertisements during the 2009 elections. Now as per the Supreme Court ruling dated 5th of May, 2013 in the matter of both Mr. Ashok Chavan and Mr. Madhu Koda, the Election Commission has been ordered to conduct an enquiry and decide on the matters within a period of 45 days.
- Election Commission of India had disqualified Umlesh Yadav (woman MLA from Uttar Pradesh) for filing an incorrect amount of expenses incurred by her during the elections.
- An election petition had been filed against Indira Gandhi for corrupt electoral practices and she was disqualified from contesting elections for a period of six years.
- An election petition had been filed against Chidambaram on the grounds of corrupt practices and manipulation of votes.