**ELECTORAL OFFENCES IN INDIA**

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**ABSTRACT**

The essence of a democratic election is freedom of choice. In modern times elections have been primarily associated with the system of representative form of government. In all democratic countries of the world the electoral systems were established on the basis of the natural right of the individuals. This followed freedom of candidate and universal franchise. For putting the system into action, we find that since the 19th century states have been relying upon political parties for the choice of candidates in accordance with the principles and methods of the party machinery. With the passage of time laws were enacted to regulate the entire electoral system. Once the candidates jump into fray, their prime objectives is to win the election, so that his desire to represent the electorate is fulfilled. Winning an election has not been so easy a task and since the candidate, his party followers and workers, as well as his agent, want victory and this desire too often causes them to adopt undesirable tactics. Laws have, therefore, been made restraining prohibited activities which may not only regulate the conduct of the candidate at elections but declare certain activities as electoral offences.

**INTRODUCTION**

In every democratic country election of particular person of their choice among the other candidates for discharging certain duties is considered to be natural right of individual.  

**PART XV** Article 324 of the Constitution of India empowers Election Commission to superintendence, direction and control of election.  

Corrupt practices and offences related to election are those which interfere in the free exercise of right to vote and includes bribery, undue influence etc. In India the first law related to corrupt practice was the Government of India Act, 1919. Later, The Indian Election Offence and Inquiry ACT, 1920 was enacted which also bring certain amendment in Indian Penal Code as a result of which person found guilty of corrupt practice is disqualified. The first statute enacted by our parliament against corrupt practice and offence related to election was the Representation of the People Act, 1951.  

**Concept of Free and Fair Election**  

“Free and Fair” in matters of election connotes that no one, under the electoral process, is in bondage of another, having his personal rights, social and political liberty, free thinking and choice subjected to a legal discipline. While exercising his right to vote one is not under undue influence of party discipline, religion, caste, creed, sex, language and also one is not under the strain of corrupt practices and so on. Thus, free and fair elections are the foundations of democratic form of government. Justice HR. Khanna observed that the principle of free and fair election is an essential postulate of democracy which in turn is a part of the basic structure of the Constitution of India. This leads us to pursue the provisions of the Constitution in the light of established principles of free and impartial election.  

**Election Offences in India**  

Chapter IXA, Section 171A to Section 1711 of the Indian Penal Code 1860 deal with offences relating to elections. This Chapter of the Indian Penal Code, 1860 was inserted in the year 1920. It was enacted with a view to Provide for the punishment of malpractices in an elections and for the conduct of inquiries in disputed Election. The electoral offences are also provided under part VII of the Representation of People Act, 1951.  

In the case of Indira Nehru Gandhi vs Shri Raj Narain & Anr., the court held that the word "candidate" in relation to various electoral offences shows that he must be a candidate at the time of the offence. Time is necessary for fixing the offences. A significant distinction arises between the electoral offences under the 1951 Act and the offences under Sections 171-A to 171-I of the Indian Penal Code, namely, that the 1951 Act uses the word "candidate" or his election agent with reference to

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various offences whereas the Indian Penal Code does not use the word "candidate" in relation to commission of any offence.

In R.Thirumavalavan vs Sumathi Udayakumar, the court held that Chapter-VII of the 1951 Act deals with electoral offences and under Section 136 (d), a person shall be guilty of electoral offence if he without due authority supplies to any person or receives any ballot paper. Under Section 62, no person who is not entered in the electoral roll of a Constituency shall be entitled to vote in that Constituency.

List of Electoral Offences

Corrupt Practices

Section 2(c) of the Representation of People Act, 1951 simply says that —corrupt practices means any of the practices specified in Section 123 of the Act.

Bribery: Section 123(1) of RP Act and Sections 171B/171E of IPC define bribery as corrupt practices. Bribery is considered as inducement affecting electoral work. The offence of bribery is considered to be committed by a person who provide gratification as well as by a person who accept such gratification. Gratification to any person for inducing him or any other person to exercise electoral right, or gratification as a reward for exercising electoral right is a corrupt practice punishable with 1 year imprisonment, or fine, or both.

In the case of S. B. Adityan vs S. Kandaswami And Others, the Court held that the term gratification in s. 123 is very wide and includes the withdrawal of candidature by a candidate to induce another candidate to stand at an election. Affording of such gratification amounts to a corrupt practice within s. 123(Further, s. 123(1) does not include the acceptance of a gift as a corrupt practice.

The Supreme Court observed in Rajendra Prasad Jain vs Sheel Bhadra Yajee,when considering the scope of the words "offer of bribery" in the Election Law, we should not place a narrow construction on that expression. In fact, the scope of that expression should be extended in order to ensure, that elections are held in an atmosphere of absolute purity, and a wide meaning should be given to the expression "offer of bribery".

In Ghasi Ram vs Dal Singh & Others, it was pointed out that the promise was not made to any particular voter or voters but to the general body of residents without distinguishing between those who were favourably inclined and those not. The gist of the corrupt practice, therefore, lay in attempting to do something for those opposed to the candidate with a view to changing their votes, and as a bargain for votes.

Undue Influence at Election: Section 123(2) of RP Act and section 171C/171F of IPC talks about undue influence at election. Any person who directly or indirectly interfere or attempt to interfere with the free exercise of any electoral right commits the offence of undue influence and shall be punished with 1 year imprisonment or fine or both as per provision of IPC.

In Jujhar Singh v. Bhairon Lall & Others, the Election Tribunal held that "an attempt to interfere by the method of compulsion is not necessary and that even the method of inducement may be sufficient, provided it be of such a powerful type as would leave no free, will to the voter in the exercise of his choice. In other words, actual physical compulsion is not necessary, but, positive mental compulsion may be enough to give rise to an undue influence".

In Jeetmohinder Singh Sidhu vs Amarjit Singh Sidhu, the court held that in the case N.Sankara Reddi Vs. Yashoda Reddi, the Election Tribunal held that "a political party is entitled to issue a manifesto to the voters requesting them to vote only for the candidate set up by the party. The fact that the leader of the Congress Legislature Party who was also the Chief Minister of the State had written letters to the members of the Congress Party to support the candidates set up by the party would not amount to undue influence within S.123 (2) of the Representation of the People Act.". It was added that it was only where a Minister abused his position for furthering the prospects of the candidate belonging to his party that undue influence might arise; but where a leader merely used his influence in the form of canvassing for candidates of his party there would be no question of undue influence.

It is not necessary that there must be actual threat or physical compulsion but the method of threat or inducement must convey to the person concerned that the threat or inducement may result in injury to him or a person in whom he may be interested. Thus, some fear of injury as a result of non-compliance of what is desired by such threat or inducement is essential ingredient of undue influence.

Booth Capturing: Booth capturing by a candidate or his agent or other person is also a corrupt offence under section 123(8) of RP Act. 'Booth capturing' includes —

- seizure of a polling station or a place fixed for the poll by any person making polling authorities surrender the ballot papers or voting machines;
- or allowing only his or their own supporters to exercise their right to vote and prevent/coerce others from free exercise of their right to vote;
- seizure of a place for counting of votes.

The aforesaid offence is punishable with 3to5 yrs imprisonment and fine, if committed by person in government service, and 1to 3 yrs and fine for others under sec 135A of RP Act.

In Basanagouda vs Dr. S. B. Amarkhed And Ors, Booth-capturing wholly negates the election process and subverts the democratic set up which is the basic features of our constitution. The Parliament used words of width with generality to lug in or encompass diverse acts or omissions innovated with ingenuity to escape from clutches of law. Diverse ways would be innovated to capture booths and rigging. The allegation of booth capturing and rigging, if proved, is a corrupt practice under s.100(1)(b) and materially affects the result of the election under clause.(1)(d) and also is a disqualification.

In Markio Tado vs Takam Sorang, the court held that "Booth capturing involves use of force, whereas impersonation or double voting is on the basis of deception. This was apart from the fact that impersonation or double voting would lead to improper reception of votes, which is another ground for declaring an election to be void."

Promoting Enmity Between Classes: Any person who in connection with an election, under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between
different classes of the citizens of India shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees or with both. This is given under Section 125 of the Representation of the People Act, 1951. The punishment is provided under Sec.505 (2) of the Indian Penal Code.

In Subash Desai v. Sharad J Rao, the Court held that when the Framers of the Constitution guaranteed every citizen, right to freely profess, practice and propagate his religion, that right does not extend to creating hatred amongst two groups of persons, practicing different religions.

In Pravasi Bhalai Sangathan vs U.O.I. & Ors, the court held that "Hate speech is an effort to marginalise individuals based on their membership in a group and it seeks to delegitimise group members in the eyes of the majority, reducing their social standing and acceptance within society. Hate speech is beyond causing distress to individual group members. It can have a societal impact. Hate speech lays the groundwork for later, broad attacks on vulnerable that can range from discrimination, to ostracism, segregation, deportation, violence and, in the most extreme cases, to genocide".

**Publication of False Statement:** The publication by a candidate or his agent or by any other person [with the consent of a candidate or his election agent], of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election is a major corrupt practice under Section 123(4) of RP Act, 1951.

Section 171G of IPC provides Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false in relation to the personal character or conduct of any candidate commits a crime and is punishable with fine.

In Inder Lal vs Lal Singh, the court held that Circulation of false statements about the private or personal character of the candidate during the period preceding elections is likely to work against the freedom of election itself inasmuch as the effect created by false statements cannot be met by denials in proper time and so the Constituency has to be protected against the circulation of such false statements which are likely to affect the voting of the electors. That is why it is for the protection of the constituency against acts which would be fatal to the freedom of election that the statute provides for the inclusion of the circulation of false statements concerning the private character of a candidate amongst corrupt practices. Dissemination of false statements about the personal character of a candidate thus constitutes a corrupt practice.

**Concerning Election Expenses:** Section 123(6) of the Representation of the People Act, 1951 makes the incurring or authorising of expenditure in contravention of section 77, a corrupt practice. Section 77(1) makes it mandatory for every candidate at an election to the House of the People or a state legislative assembly to keep a separate and correct account of all expenditure incurred or authorised by him or by his election agent, between the date on which he was nominated.

Section 171I of IPC provides that Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.

In Mast Ram v State of Punjab and Anr., the court held that Sec 171I of IPC applies to non-maintenance of account by a candidate who contested election and not to irregular maintenance of account.

**Free Conveyance of Voters:** Sec 123(5) of the Representation of the People Act, 1951 provides if any person illegally hires or procures any vehicle for the free conveyance of any elector other than the candidates himself, member of his family or his agent, to or from any polling station commits an offence and is punishable with 3 months imprisonment and fine under section 133.

In Ch. Razik Ram vs Ch. Jaswant Singh Chouhan And Ors., the court held that On analysis Clause (5) of Section 123 falls into two parts. The requirements of the first part are: (i) The hiring or procuring whether on payment or otherwise, of any vehicle or vessel for the free conveyance of voters (ii) Such hiring or procuring must be by a candidate or his election agent or by any other person with the consent of a candidate or of his election agent. The second part envisages the "use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family, or his election agent) to or from any polling station". The two parts are connected by the conjunction "or" which is capable of two constructions. In one sense, it is a particle coordinating the two parts of the Clause and creating an alter native between them. In the other sense - which is akin to the sense of "and" - it can be construed as conjoining and combining the first part of the clause with the second. The latter construction appears to comport better with the aim and object of the amendment of 1966.

**Obtaining Services of Government Servant:** Since the Government servants have a pivotal role in the public administration and in the implementation of policies made by the ruling political party, a Government servant should not take part in any election campaign or canvassing and that he should take scrupulous care not to lend his name, official position or authority to assist one political party or candidate as against any other. Rule 5(1) of the Central Civil Services (Conduct) Rules, 1964 expressly prohibits Government servants from taking part in politics and elections. Breach of official duty in connection with elections, acting as an election agent and influencing votersare electoral offences punishable under the Representation of People Act, 1951. In addition to this, procuring or obtaining of assistance of Government servants in elections is a corrupt practice defined under Section 123(7) of the same Act.The role of Shri Yashpal Kapoor in the election of INDIRA GANDHI’S election is a living example of Obtaining Services of Government Servant in Indian election history.

In Raj Krishna Bose vs Binod Kanungo And Others, the court held that "The policy of the law is to keep Government servants aloof from politics and also to protect them from being imposed on, by those with influence or in positions of authority and power, and to prevent the machinery of Government from
being used in furtherance of a candidate's return. But at the same time it is not the policy of the law to disenfranchise them or to denude them altogether of their rights as ordinary citizens of the land”.

**Propogation of Sati:** Section 123(3B) provides the propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.”Sati” and “glorification” in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987 (3 of 1988). Sati is an age-old tradition and practice followed by the Hindus in certain parts of India, more prominently by the Rajputs in the State of Rajasthan. Sati means self-immolation by the wife on the death of her husband, normally by burning herself alive on the funeral pyre of the husband.

**Other Electoral Offences**

**Personation at Election:** Any person at election applies for a voting paper or votes in the name of another person, whether living or death, or applies for voting at same election in which he has already voted shall be punished with imprisonment for 1 year imprisonment or fine or both under section 171D/171F of IPC.

**Denying Someone Right to Vote:** As per section3 (1) (vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 any person who forces or intimates a member of SC/ST note to vote or to vote a particular candidate or to vote in a manner other than provided by law commits an offence.

Under section 135B of RP Act employer shall be liable for fine upto Rs. 500 for not granting of paid holiday to the employees who are entitled to vote.

The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate, Corrupt practices can be agitated in an Election Petition before the High Court. This is provided under Section 123(3) of the Representation of the People Act, 1951.

In Ziyauddin Burhanuddin Bukhari vs Brijmohan Ramdass Mehra & Ors, the Supreme Court observed that Our Constitution-makers certainly intended to set up a Secular Democratic Republic the binding spirit of which is summed up by the objectives set forth in the preamble to the Constitution. No democratic political and social order, in which the conditions of freedom and their progressive expansion for all make some regulation of all activities imperative, could endure without an agreement on the basic essentials which could unite and hold citizens together despite all the differences of religion, race, caste, community, culture, creed and language. Our political history made it particularly necessary that these differences, which can generate powerful emotions, depriving people of their powers of rational thought and action, should not be permitted to be exploited lest the imperative conditions for the preservation of democratic freedoms are disturbed.

**Removal of Ballot Paper:** If any person remove EVM/ Ballot Paper or the presiding officer has reason to believe the same, he may arrest that person or order search of that person. The offender will be punished with 1yr imprisonment or fine or both under section 135 of RP Act.

A journalist found a ballot paper lying on the road thrown by miscreants and published a report in the newspaper. It was held that the journalist could not be said to have stolen or unlawfully removed the ballot paper, nor could any dishonest intention be attributed to him thereby. Sec 135 was not held to be attracted in this case.

**Destruction of Ballot Paper:** If any person fraudulently defaces or fraudulently destroys any ballot paper or EVM or the official mark on any ballot paper or EVM or puts into any ballot box anything other than the ballot paper, or pastes any paper, tapes etc. on the symbol/names/ballot button of EVM for the purpose of the election commits an offence. If the offence is committed by any officer or clerked employed on election duty, he shall be punished with 2 yrsimprisonment or fine or both and 6 month imprisonment or fine for other under section 136 of RP Act.

**Possession of Armed Weapons:** Section 134B of RP Act prohibits any person to go armed with weapons of any kind at or near polling station other than presiding officer, police officer and any person appointed to maintain peace and order. Any person who contravenes the provision shall be punished with imprisonment upto 2 yrs or fine or both.

**Harming Public Servant on Duty:** Whoever voluntarily causes simple or grievous hurt or assaults to deter a public servant from discharging his duty shall be punished with an Imprisonment from 2 to 10 years and fine under Section 332/333/353 of the Indian Penal Code.

**Concerning pamphlets and posters:** Whoever prints or publishes any election pamphlets, poster, handbills or placards which does not bear on its face the name and the address of the printer and the publisher commits an offence under Section 127A of the Representation of the People Act, 1951 and shall liable to six months imprisonment or fine upto Rs.2000/- or both.

The Supreme Court observed in Rahim Khan v. Khurshid Ahmed & Ors and Kanwar Lal Gupta vs Amar Nath Chawla & Ors that "there is no agency of the law which takes prompt action after due investigation of a complaint of breach of Sec 127A. The court desired that there should be some independent semi-judicial instrumentality set up by law, which would immediately investigate as to how the offending handbills and posters have come into existence, who has printed them and who is responsible for getting them printed. But no such agency seems to have been set up and the offences under Sec 127A are investigated in the normal course by the police authorities as in the case of other criminal offences.

**Prohibition of Public Meetings:** No person shall convene, hold or attend any public meeting within a constituency; display to the public any election matter by means of cinematograph,
television or other similar apparatus; or propagate any election matter to public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto, in any polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for an election in that constituency. Any person who contravenes Sec 126 of the Representation of the People Act, 1951 shall be punishable with imprisonment for a term which may extend to 2 years or fine or both.

**Canvassing in near polling station:** Section 130 of RP Act

Prohibits on date of poll

- Canvassing in or near polling station; or
- Soliciting the vote of any elector; or
- Persuading any elector not to vote for any particular candidate or at election; or
- Exhibiting any notice or sign related to the election other than official notice. Any person who contravenes the provision shall be punished with fine upto Rs. 250. This offence is cognizable in nature.

**Disorderly conduct in or near polling station:** Section 131 of RP Act provides that any person on the date of poll shouting in disorderly manner or using loudspeakers, megaphones etc. in order to disturb poll can be arrested and apparatus can be seized. Police officer can arrest such person on the order of Presiding Officer. The offence is punishable with 3 month imprisonment, or fine, or both.

**Misconduct at the polling station:** Under Section 132 of RP Act any person who misconduct himself, or fail to obey lawful directions during the hour, fixed for the poll at any polling station may be removed by the presiding officer or police officer or other authorised person. Further, if the person re-enter the polling station without permission of the presiding officer, he shall be punished imprisonment upto 3 month, or fine, or both if the offence is cognizable.

**Maintenance of Secrecy of voting:** It is offence under Section 128 of RP Act if any officer, clerk, agent, or other person who perform any duty in connection with recording or counting votes at election doesn’t maintain secrecy of the voting and shall be punished with 3 month imprisonment or fine or both.

In Raghbir Singh Gill vs Gurcharan Singh Tohra & Ors.,\(^{xxi}\) the court held that Secrecy of ballot subserves a very vital public interest in that an elector or a voter should be absolutely free in exercise of his franchise untrammeled by any constraint which includes constraint as to the disclosure. A remote or distinct possibility that at some point a voter may under a compulsion of law be forced to disclose for whom he has voted would act as a positive constraint and check on his freedom to exercise his franchise in the manner he freely chooses to exercise. Therefore, it can be said with confidence that this postulate of constitutional democracy rests on public policy.

**CONCLUSION**

The conclusion emerges that free and fair election is the basis of democratic form of government. To ensure free and fair elections many laws were also made in past like the Representation of the People Act, 1951, The Election Commission Act, 1991 etc. The most of the amendment curtails the scope of corrupt practices. It is the main statute which makes provision for controlling corrupt practices and offence related to election. The Tarkunde Committee of 1976 made recommendation to check the misuse of power by Ministers and Political parties. The decision of the Court in Indira Nehru Gandhi v Raj Narain,\(^{xiii}\) clearly establishes that in India the guardian of democracy is not the legislative wisdom but the wisdom of the highest Court of the land.

**Suggestion**

Election commission should not solely be responsible for free and fair election, government as well as electorates should all be made responsible for free and fair election.Citizens of India should not only make aware of right to vote but also of right to elect freely and fairly and of bad consequences if involving in corrupt practices at election.

Penalty in case of electoral offences or corrupt practices related to election is very less which is the main reason of increase in offence is related to election. Penalty should be increase so that before committing such offence, people think twice.

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