



ELECTORAL OFFENCES IN INDIAN LAWS

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ABSTRACT- Electoral offence implies prima facie, violation of the law or an unlawful act relating to the election law, the election process, or say, an unlawful act applicable to the election law, the conduct of election rules and the election process during the period of the election. The election process begins on the day the election program is announced by the Election Commission of India and ends on the day the results are announced by the designated authority of ECI.

Keywords: Electoral offence, ECI, election law

I. INTRODUCTION:

Respected guide and director, Dr PurviMa'am, learned members of the expert committee, respected faculties Madhuri ma'am, Moilasir, Ganguli Ma'am, others faculties and my co-research scholars of Nirma Law University:

Namaste,

Today, I am here to present on '**Electoral offences in Indian Law**' as part of my PhD research program.

To start with, the offence as understood: '**A breach of law or rule; an illegal act**'.

Thus, electoral offence implies prima facie, violation of the law or an unlawful act relating to the election law, the election process, or say, an unlawful act applicable to the election law, the conduct of election rules and the election process during the period of the election. The election process begins on the day the election program is announced by the Election Commission of India and ends on the day the results are announced by the designated authority of ECI. (*clarification: date of announcement of the election and not from the day on which notification of election is issued.*)

Offences are undesirable and often result in punishment only when proved; the penalty's quantum depends on the offences' gravity.

The election is the only censorious and essential foundation process in a democracy. Electoral offences undermine the foundation of democracy and ultimately hurt the soul of democracy and the Nation's political, social, economic and welfare structure.

In a democracy, people elect their representatives using the applicable electoral law, rules and process. In meaning, democracy founded on the people's desire and will. It is also a well-known fact that democracy is a liberal structure of governance. In the context of the current scenario and the notion of human rights, offences are growing in the democratic election process. Innovation and daily updating technology are often misused to deploy different electoral offences in various new shapes and design.

In laying down the concrete base of a democratic system, free and fair elections are critical. For free and fair elections, the most essential aspect is to curb electoral offences or restrict electoral offences to the tune of **Zero tolerance**. The election conducting body (ECI), legislature, administrators, and Judiciary is responsible for the free and fair elections. A political party, contesting candidates, and we, the electors, are essentially responsible and must abstain from any act of electoral offences. Simultaneously, maintain the purity of an election. Electors and ordinary people must be well informed about the forms, methods and means of electoral offences to fortify the democracy of our country. Electoral offences are undesirable, severe and adversely affect the roots of democracy. It is rightly said by our Hon. Prime Minister Shri Narendra bhai Modi: '*The election is a pious festival of democratic culture and celebrated with full joy and responsibilities in a pious, free and fair manner. To cast a vote legitimately as per the prescribed process is one's*

constitutional right and electors' basic and inherent duty. Every single vote of electors only leads India to become 'Bhavya Bharat.'

An election in common means to achieve the power and hunger of power is the origin of electoral offences. Power is gained in a democracy only by winning an election and procuring a required majority. It is a thumb-rule of democracy that the majority is needed to form the government as per our constitution, and for the majority, **heads are counts**. Any act placed in achieving required heads for a majority, illegal or corrupt root gives birth to electoral offences. The primary crunch of electoral offence is **corrupt practices**.

The corrupt practice is a noun, and as described in the Oxford dictionary, *is a fraudulent activity, an attempt to rig the election*. In any democratic structure to uphold the purity of the electoral process, which inevitably results in the free and fair elections, the people's real will and free desire and as a result, the people's government is formed, which is the soul of democracy. It is rightly said by someone that *'A ballot is much stronger than a bullet.'*

II. BRIBERY:

Introduction

Bribery is a corrupt practice for the purpose of the R P Act 1951 in terms of subsection (1) of section 123.

Statutory Provision

(1) "Bribery is to say-----

(A) Any gift, offer or pledge from a candidate or his representative or from anyone else with the approval of the candidate or his elected officer with any gratification for the purpose of inducing him directly or indirectly ----

(a) A individual standing or not standing or [retreating or not withdrawing from becoming a political candidate, or

(b) An election elector, who votes or who refrains from voting, or who sits or does not stand, or who [has withdrawn or has not withdrawn their nomination as a favour to someone; or

(i) an elector who has voted or abstained;

(B) The receipt or acceptance of some incentive, reward, whether as a motive or as a reward ---

(i) an individual to stand or not to stand as a candidate or to [retire or not retire from becoming a candidate; or

(ii) by any individual who is voting or abstaining or causing or trying to encourage or inducing any voter to vote or to abstain, or by any other person [to remove or not withdraw his candidacy] or by some other nominee.

Explanation; for the purposes of this provision, the word "gratification" is not restricted to pecuniary or monetary gratification and does not cover all modes of amusement and all types of work, nor does not require payment of any *bonafide* expenditures incurred in or for any election or properly entered in the electoral spends register.

General Principles:

As mentioned above. It is a grave allegation that needs dishonest evidence. The spirit of Bribery's dishonest practice is to want to achieve something with the nominee contrary to him in the name of election and voting bargaining.

Section 123 of the R. P. Act 1951 notes that "corrupted practice of bribery" implies that a gratification is obtained or accepted to be received by either individual (either as a reason or as a reward) by: -

(a) by voting, whether by refraining from voting or

(b) by causing or threatening to encourage voters or abstaining; or

(c) by withdrawing or not withdrawing their applications.

Sector 123(1)(A) of the Act describes the Bribery Act as any donation, presentation or pledge of the nominee, or of his representative, or of anyone else with the consent of the candidate and the consent of the election agent to any person who is, for the purpose of inducing a person to vote, to stand as a candidate, or to withdraw or do not withdraw from becoming a candidate, directly or indirectly.

Section 143 of the Legislation of 1951, Chapter I, Part VII; certain sections must be found in accordance with the clarification of paragraphs (1) and (6) of Article 123 of that Statute. 'Bribery' is one form of corrupt activity as described in paragraph (1) of paragraph 123. The Act of Bribery does not, however, apply to expenditures incurred by bona fide for every election and appropriately contained in the account of election expenses referred to in Article 78 of that Act; that is to say, the provision under which the candidate in question directed the lodge to copy the electoral expenses within the period laid down by the candidate in question.

III. UNDUE INFLUENCE:

Introduction

In simple language that "unfavourable influence is intended to impair the right of anyone to stand or not stand up or abstain from voting or vote, and to cover all threat of harm to a person or property, and all illegal methods of persuasion, and all injury to the freedom of candle. The definition of "unfair influence" The law has generally struggled to describe the ways of intervention. The ingenuity of human minds is infinite, and there must therefore be endless performement of intervention.

Statutory Provision

Any actual or indirect action or intention to intervene with the free practice of any electoral law on the part of the candidate or of its representative, or of anyone else (with the permission of the candidate or his electoral agent):

(a) Any individual referred to therein without regard to the generality of the provisions of this clause—

(i) A candidate or elector, or any individual involved in the candidate or elector, is punished with harm of any sort, including social ostracism and the exclusion from any caste or group; or

(ii) Causes or threatens to cause a nominee or a voter to conclude that he or anyone with which he or she is involved is an object of religious contempt or moral censure,

The free exercising of the voting privileges of such an individual or elector within the scope of this provision shall be treated as interfering;

(b) A public policy announcement, a guarantee of release, or the plain exercising of the rule without any purpose to intervene with the electoral right is not treated as intrusion within the scope of this clause.

General Principles

Undue influence.

It impairs the free exercise of the right to vote.

That may be with the permission or agent of an applicant, his agent or some other entity.

The hazard lies to any nominee, agent or another individual or electoral person or electoral organization in which a candidate or an elector is involved in any harm, social ostracism, ex-communication, expulsion and/or induction of his religion or conviction.

However, this doesn't mean/include a statement of public policy or public benefit and health commitments and exercising of a civil right without intervention.

Comprehensive construction of Article 123(2) of the People's Representative Act, 1951 It has been pointed out that in Section 123(2) of the RPC Act (1951), the term "indeed control" is broadly used and, at first glance, it seems as if it covers any possible act that impedes or attempts, explicitly or indirectly, the free exercise of electoral law. Also election advertising has become robust in one way. In the practice of their franchise the individual volition of people is messed with and modelled by a blaring and systemic method by charismatic politicians and broad media for a nominee, by saying the glories and successes of a candidate, or by the implementation of an administrative or political faction. It was said that such an all-encompassing system does not correspond with the Legislature's purpose. This is clear in accordance with Section 123(2) of the People's Act, 1951.

Amended the actions of the elector or his election officer are referred to in Article 123(2). The actions of a candidate or his or her election agent or of any other party with the permission of the candidate or his or her election officer are referred to in paragraphed 123(2), as amended in Act 40 of 1970. In Section 79(b), the alternate concept of a nominee excludes the conduct of a **candidate prior to the day on which he or she is named.**"³

IV. APPEAL ON THE GROUND OF HIS RELIGION, RACE, CASTE ETC:

Introduction

Any appeal to vote or abstain on the basis of faith, ethnicity, caste, culture or language during the election process is deemed a corrupt activity in the secular cornerstone of our own constitution.

Statutory Provision

123(3) The invitation to vote or to refrain from voting by any individual on the grounds of their religion, ethnicity, caste, culture and/or language, or by using or calling for religious symbols, or by using or recalling domestically symbols, such as national flag and national emblems to support the application p p or by any other person with the permission of the applicant and the electoral agent

However, for the purposes of Section 123(3) of the People's Representation Act of 1951, no emblem allocated to the applicant shall be considered a religious symbol or a national symbol.¹

123(3-A) The promotion or attempt by a candidate and his agent or someone else, with the consent from a candidate and his agent, to promote or to promote a feeling of hatred between the various classes of the citizens of India on the grounds of religion, race, caste, community or language, for the sake of supporting or prejudicing the choice of any candidate.

123(3-B) the spread of a practice or commission by a candidate or his representative or someone else with his permission to promote the chances of the elections of that candidate or to prejudice the election of another candidate the dissemination of the practice or commission of 'Sati'.

Explanation--- The definition of the "sati", and "glorification" referring to Sati, in the Commission of Sati (Prevention) Act 1987 is attributed to the purposes of this section.

General Principals:

The said provision as it exists was inserted in the R.P.Act,1951 in 1961. A proviso to this section added to the Act by (Amendment) Act pf 1975 and intension is to the elected office must match with preamble .i.e. citizens must be fair and dignified by secular and voting.

Definition of corrupt practice.It is forbidding the appeal of voting or refraining from voting for any person on the grounds of faith, caste, colour, community or language to show the corrupt procedure set forth in section 123(3) of the RPA Act, 1951. Faith or national icons shall therefore not be used or appealed for. The cases-laws relating to this corrupt practice are given in the various paragraphs of this submission.

Ingredients of corrupt practice on ground of religion.It must be created, before an accusation of the corrupt activity is proven in compliance with Section 123(3) of RPA Act 1951, that the appeal against which the case was brought was centered on the grounds of faith, caste, etc.² (*Hemdhon Mohan v. J. B. Hagjer, 1964*)

V. JUDGMENTS RELATED TO APPEAL ON THE GROUND OF HIS RELIGION, RACE, CAST ETC.:

Harmohinder Singh Pradhan v. Ranjeet Singh Talwandi, 2005 Indlaw SC 332

FACTS- The appeal of the Supreme Court is focused on the removal of an election request by the High Court Electoral Judge, according to Section 116A of the Representative Act, 1951. The sole reason for the difficulty of selecting the respondent was that the respondent had performed unethical practice within the scope of Section 123(3) of the Act, the said the corrupt practice is said to have been committed by respondent in the public meeting followed by publication in daily newspapers carrying on with them the names of the religious leaders making the appeal.

JUDGMENT- The Court considered that the term "his" used in section 123 (3) of the Act must have value, and it cannot be overlooked or equated to "any" to be included in the net of sub-section (3). The faith that forms the base of the call to vote for any individual for whom an appeal to vote or refrain from voting is rendered shall belong to that candidate. The simple language of subsection (3) is obvious, and this is the only way to understand the term 'his' used in it. Where the request is to vote in favour of the possibility of the candidate's choice on the grounds of his or her faith, this appeal shall be rendered on the basis of the religion of the candidate on which votes are needed. In the absence of any person's vote for reasons of 'his' faith for having prejudicial consequences on the election of any candidate, the appeal is focused on the beliefs of the party whose election is intended to be harmful.

Therefore, the appeal prohibited for the request of votes for a candidate is for the sake of the faith of the applicant for which the votes are sought; and if the appeal is to withhold from the vote for another candidate, an appeal for any other candidate on the basis of the religion is forbidden. The first is an optimistic reminder and the second is a pessimistic reminder. The specific faith is specifically stated in section 123, Sub-Section (3).

Any faith figures allegedly made the appeals. The distinction must be established between a simple request by religious leaders, which can benefit some specific applicant, to vote or withdraw from voting on religious grounds, which emanates from religious leaders and which is attributable to the applicant within the scope of Section 123. (3). The former, although the latter is not vulnerable. Everything that is claimed in the election petition is that certain faith figures admired by the electorate and called for the vote for the

respondent. The appeals that constitute the strain of unethical practice do not constitute an invitation to vote in support of any person based on faith. The Supreme Court affirmed the judgment of the High Court.

Kanti Prasad JayshankerYagnik v. PurshottamdasRanchhoddas Patel, AIR 1969 SC 851.The call Under Section 116-A of the People's Law Representation Act 1951, a request for a setting aside Kanti Prasad JayshankarYagnik was brought against the High Court of Gujarat judgment and order in an Election Petition.

The High Court held that the speeches issued by the appellant by ShambhuMaharaj with the permission of the appellant were "corrupt activities," as referred to in Article 123(2) of the Act, subsection 123(3). The first details of the prosecution are as follows:

On 21 February 1967, the election results were held, and on 22 February 1967 the election results announced. There were many reasons, including the fact that, on 18 February 1967, in different villages in Mehsana, the appellant and his agents held public meetings for ShriShambhuMaharaj. In his speeches, ShambhuMaharaj made a systematic call to a vast range of voters to vote in faith, caste and culture for the appellant. They said that voting for an applicant, a nominee in Congress, when the Congress requires cows and bullocks to be slaughtered will be an irreligious act. ShriShambhuMaharaj was also rumored to have exerted excessive power and impeded free democratic voting privileges through induction or induction to believe that through his words they would become objects of God's spiritual disapproval. The complainant wanted to demonstrate the speeches in seeing officers of the police.

JUDGMENT- The K.S. Hegde Justice I accept that the declarations are a dishonest procedure In accordance with Section 123(2) and recognize that certain representations have been rendered with the approval of the returning applicant. This call must therefore be rejected, however I cannot subscribe to the idea that a declaration should have been taken by an individual who is a religious leader of the plurality of electors in the specific circle until the elector may be seen to assume that he would, if he behaves in a particular way, become a target of divine censure. Section 123(2) calls for "the voter" - meaning even a single elector - to be censured if he exercises or declines to practice in a certain way his or her electoral privilege. There can, without question, be an overt or indirect intervention or attempt to hinder the freedom to practice electoral law, as encourage or aim to induce the lawsuit to be lodged. It is based on different aspects, including the form of document, the man who created it, and the person to whom it is addressed, whether or not a specific declaration falls under Section 123(2). The essence of the declarations in dispute is undoubtedly extremely important. They should use recognized moral views, although it is not the only thing about Section 123. (2). A respected religious preacher can inductee or attempt, if he does not exercise his franchise in a particular way, the illiterate and superstitious voters who constitute the bulk of our voters to become objects of divine displeasure. His declarations do not favour theological texts, but they do reflect a fraudulent rule of law. It is not in the public interest to reduce the reach of Section 123(2), However, I cannot believe that an appeal to vote in favour of the appellant since he is most definitely a minister, as at least one Brahmin minister in the cabinet should be according to ShambhuMaharaj, is to call for votes on the grounds of the appellant's caste. The fact that communal and geographic positions have become a necessity in all our democratic structures is needless. This was simply expressed from public forums by ShambhuMaharaj. One does not appreciate his campaign for this opinion, but I cannot believe that his comments are like unethical procedure in this regard. In accordance with Article 123 (3), such declarations cannot be deemed an appeal to vote on the basis of the caste of the appellant. The applicant's caste has by the way been shown.

VI. FALSE STATEMENT:

Statutory Provision

Publishing any statement of evidence which is false and which he or she believes to be false or does not consider correct in relation to or in regard to the personal nature or conduct of the candidate or with relation to the nomination of any candidate or the withdrawal from the candidate is a statement r [1] by any candidate or by a representative of his or her agent any other individual.

General Principles

Ingredients for False Statement

1. The publishing of the declaration with regard to the specific character, actions or candidate's application or resignation,
2. Is a fairly measured assertion to the disadvantage of the election,
3. By elector, his officer or any other with a candidate's or agent's permission.
4. Either believe to be false or does not believe

General principles

Constitutionality

Section 123(4) of the 1951 Act: Corrupt practice of false statement is not *ultra vires*. The act which creates a corrupt practice for false declarations of a candidate's personal nature and actions does not contravene any clause of the Indian Constitution or of the Constitution, since no fundamental right is restricted by Article 19(1)(a). Section 123(4), which was repealed by Act 27, 1956, had earlier been numbered under Section 123(5). Subsequent questioning was made of the fairness of the clause. Parts 123(4) and 123(5) of the Act of 1951 were considered not to be ultra-vires in the context of the clauses of Article 19(1)(a) of the Constitution of India. These parts should not impair the constitutional right of a person to free expression. These laws do not prevent an individual from practicing his right to speak. You clearly recommend requirements that must be complied with if a person wishes to join the Indian Parliament.¹

Higher level of electioneering is expected at the highest level of political leadership. There was no proof of the magnitude of the liability and anticipated election standard of the top leadership. To retain popular truth and to uphold election purity, it is not a fallacy or just an expression, at least at the highest level of political leadership a strong electoral turnout is anticipated.²

Democracy will be a farce if interested person can freely indulge in character assassination during election. The Representation of the Citizens Act, 1951, Clause 123(4), includes two concepts. Any unfounded accusation is not part of the maliciousness of Article 123(4) of the People's Law of 1951. In the event that a fraudulent claim of truth penetrates the politician and hits the candidate, Article 123(4) of the law of 1951 shall be violated.³ The purpose of Section 123(4) of the Reporters Without Borders Act, 1951, is not only to shield a nominee from assassination or slander but also to ensure that election integrity and cleanness are preserved.⁴

VII. THE HIRING OR PROCURING OF VEHICLE/S:

Statutory Provision

Recruitment or supply of any vehicle or vessel, whether charged or not to a candidate or agent, 4[with the permission of a candidate or of his electoral officer; 6[or the use of certain vehicles or vessels for free transmitting from or to any polling station given under sect, other than the candidate, the family or his officer; 4[with the consent of the candidate and his election officer].

When the hire by a voter of a vehicle or vessel for transportations to or from a polling station by many voters, or the location of the elector, is considered to be a corrupt practice under this clause whether the vehicle or vessel so hired is a vehicle or a vessel not driven by mechanical force. It is considered not to be a corrupt practice under this clause

Provided that, with a view to heading to or originating from some other polling station or polling place or other public transit vehicle or vessel or tramcar or rail transport, by an elector, at his/her own costs, no unethical practice under this provision shall be considered to be so.

Explanation: The term 'vehicle' used or capability for usage, whether or not powered by mechanical force or otherwise, for road transport purposes and whether or not used for the drawing of any other vehicle.

Ingredients:

1. To procure vehicle or vessel whether on payment or by otherwise,
2. To use a vessel or car for free travel by either voter (other than the nominee, the representatives of his family or his representative, to and from the polling stations)
3. by a candidate or his agent or by any person with the permission of the candidate or his agent.
4. If a vehicle or vessel's cost is bared by the elector or jointly by electors, it is not covered under corrupt practice.
5. Vehicle or vessel must be mechanically propelled.

General Principles

If a sympathizer or advocate of the candidate drives electors to the polling station free of charge in a single car, it shall be corrupt if the vehicle is not received with the permission of the candidate or his electoral department through a supporter sympathizer.¹(*Shri Umed v. Raj Singh*)

The burden of proving the consent is on the petitioner. It was held in *Din Dayal v. Beni Prasad*² that the mere proof of the candidate, in general, having his consent for the general of hiring waiters for conveying voters will not be sufficient to prove the corrupt practice. Similarly, if only a stray faction in a number of them engaged on the same day agrees, the nominee that the agents and staff conveyed voters might not show approval. However, in the absence of anything other than knowledge of such actions by the applicant, if such

acts be multiple and will be performed many days, the candidate's agreement as held shall be *Sheapat Singh v. Harish Chandra*³.

VIII. EXPENDITURE AS IN SECTION 77:

Statutory Provision

Incurring or authorizing of expenditure in contravention of section 77 of the R.P.Act,1951.

Ingredients:

1. Expenditure incurred by a candidate for his election,
2. if it is in contravention to the provision of section 77 of the R.P.Act that
 - (a) accounts are not maintained
 - (b) if maintained but not as prescribed and
 - (c) it exceeds the limit of maximum expenditure as prescribed

Section 77 of the R.P.Act

(1) Each electoral nominee, whether by himself or by the agent for his or her election, shall maintain, between the date on which he or she was elected and the date on which the result is declared, a separate and proper record of all expenses in relation to election incurred or approved by that candidate or by that agent.

(2) The account shall contain, as may be prescribed, such information.

(3) The sum gross shall not surpass the amount prescribed for that expenditure.

General Principles

123(6) the incurring or authorizing of expenditure in contravention with section 77.

Incurring or authorizing expenditure in contravention of section 77(1) of the R.P.Act is a corrupt practice.¹(*AIR 1970 SC110*)

Expenditure exceeding the permissible amount: when a candidate incurred expenditure exceeding the amount permissible under section 77 of the Act, he would be guilty of corrupt practise under section 123(6), and it would render his election invalid under section 100(1)(b) of the same Act.(*D.P.Mishrav.Kamal Narayan*)

In case of any expenditure by a political party which is of the nature of general propaganda of the political party and is not for mainly for the promotion or furtherance of the candidate sponsored by the political party shall not amount to expenditure under section 77 as per the explanation provided in section 77(1) of the Act.

Irregularities in the account are not corrupt practice and cannot affect the decision of election petition unless it is established that it had materially affected the result of election³.(*Sheopal Singh v. Harish Singh*)

The language of section 123(6) clarifies that Expenditure accrued or allowed above the specified number. It cannot, in any way, be said to fall within the limits of Section 123(6) of the RPAct1951 that subsections (1) and (2) were not complied with(*L.R. Shivramagowda Etcv.T.M.Chamdrashekhar Etc.*)

IX. OBTAINING THE ASSISTANCE OF GOVERNMENT OFFICE:

Statutory Provision:

Sec.123(7) Obtaining or procuring or encouraging a candidate or his agent or attempting to acquire or obtain assistance for promoting opportunities of the choice of that candidate, or for any other person with the approval of a candidate or his results and agent, other than giving the vote and belonging to any group of the following groups -

- (a) gazetted officers;
- (b) stipendary judges and magistrates;
- (c) members of the Armed Forces of the Union;
- (d) members of the police forces;
- (e) excise officers;
- (f) village income officers known as Lambardars, Malguzars, Patels, Deshmukhs or any of the biennials who have the responsibility to earn income and are compensated for the balance of the income collected by them by a share or commission without performing any police functions; and;
- (g) Such other class of individuals could be prescribed for use by the governments;
- (h) Class of people served by, or deputed to the Election Commission in conjunction with, the electoral election actions by a local government, university, government corporation, or entity or enterprise.

Ingredients

1. Purchasing or procuring, or seeking to acquire or obtain
2. By a candidate or his representative or, with the permission of the applicant or his results and his or her agent, by some other party (other than the giving of the vote)
3. To promote the chances for the election of that nominee,
4. belonging to any class of the eight classes mentioned in the provision.

Proviso and General principle

Provided any individual, serving the Government and belonging to the classes mentioned above, makes any modification or provides facilities to, or does some other act or thing for, any candidate or representative or other person acting with the consent of the candidate or its election officer (whether b) in respect thereof, or in relation to any other person acting with the consent of a candidate or an election officer. (*Raj Naaiyan v. Smt. Indira Nehru Gandhi*)

The word 'to procure' in this section implies that the candidate should do the act consciously to bring about the result of receiving assistance.

casting a vote on asking for it does not amount to obtaining any assistance.

for the purpose of section 123 (7), if any person as mentioned/defined of the category from (a) to (h) of the said section as an election agent of that candidate, a person shall be deemed to assist in the furtherance of the prospects of the candidate's election and shall be covered as corrupt practice as per the provision of this section.

if any governments environment put his name and signature in the nomination form of a candidate as a proposer, the law, can't force a privilege governments servants who voters to propose any of the candidates and this does not have not a corrupt practice.

X. BOOTH CAPTURING

Statutory Provision: Under section 123(8), for the purpose of clause (8), "Booth Capturing" shall have the same meaning in section 135-A of the R.P. Act, 1951.

Sec.123(8) Capture by a nominee or his lawyer or someone else.

Explanation---

- In this segment the term "agent" covers an electoral officer, a polling officer, and anybody who is held to have become agents with the permission of a nominee in relation to the election.
- 'Shooting' has the same definition as under section 135-A for the purposes of clause (8).

Section 135A-Offence of booth capturing. Where an offence is committed by the arrest warrant, a jail sentence not shorter than a year, but extending up to three years, and with fine, would be punished. If the crime is performed by an individual representing the nation, a period not less than three years, although it can stretch to five years and is fined, shall be liable to incarceration.

GENERAL PRINCIPLES

Duty of the Presiding Officer to keep order at his polling station. The Chairman must hold his order at the polling station and he can be automatically removed by order of the Chairman if an individual misbehaves in the polling station or does not comply with the lawful ordinances of the Chairman or returning officer. Such are the parliamentary election Rules in United Kingdom and the position remains the same even in India,

Damaging of ballot papers. A glaring instance akin to booth capturing would be found reflected when the facts in the case of *Mohinder Singh Gill v. The Chief Election Commission, New Delhi*,¹ are taken note of. After the voting was over and the ballot papers were being taken to the headquarters, there was disturbance and even though no damage was done to the ballots, the returning officer found justification to refer the matter to the Election Commission, which in turn cancelled the poll. An election was re-held. The victory of the person in the first count got converted into a defeat. The Supreme Court of India did express its anguish, but as re-poll had been ordered, the bar of Article 329 of India's Constitution was found to be like a Great Wall of China, which led to relief is not granted. The allegation was about the booth capturing. The witnesses who supported this claim could not say that the elected candidate was on the polling day at the booth. The argument was deemed unsustainable.² Booth capturing involves the use of force and intimidation. The pleadings should be clear.³

Tampering with electronic voting machines, booth capturing. The allegations of corrupt practice consisted of distributing cash to voters, tampering with electronic voting machines, booth capturing, and casting bogus votes. The allegation was that many students were used for voting purposes. It was maintained that the charges were not proven. The accusation of unethical activity was considered to be confirmed in the same form in a court prosecution. This burden, it was held, was not discharged by the election petitioner.⁴

XI. SUGGESTIONS TO MINIMIZE THE ELECTORAL OFFENCES AND CONCLUSION

The Election Commission of India is the only constitutional autonomous institution that conducts and monitor the entire election process. Plenary powers are given to the Election Commission of India through the constitution, but more powers as needed by time are given to strengthening critical institute.

The election being the only way to capture power, and political parties are power-hungry to form their government. The political parties' absolute duty is to follow the Model Code of Conduct, honestly and strictly. Every political party is fully aware of tactics that lead to electoral offences; even though they win the contest, they moved for electoral offences. It is the pious duty of all contesting political parties to be away from any offences and mainly from any corrupt practice and take care that all these norms are also followed by their leaders, officially setting up candidates and workers. The electors are the only decisive factor for election results. Their vote elects the rulers for whom the future of the country and welfare and development of both the citizen and country depend. The first and utmost duty is to cast their vote freely without unduly influenced, accepting any gratification (Bribery) involving any offences. The legislature is the instruments that make the laws relating to an election; hence, it should always reform the law to curb the new realities and tactics coming to their knowledge of corrupt practices and other offences' nature. The facts that even after the judiciaries suggestion and Law Commission reports, our Parliament is not amending or inserting require amendments in the People Representation Act, 1951 and Conduct of Election Rules, 1961. Judiciary is no doubt playing its role as a watch dog in the election process. Still, the time wasted in the election petition is much more than the concerned House's tenure or the returned candidate. Such tenure often gets over, and still, the petition is not disposed of by the Court. No doubt the Supreme Court has directed all the lower courts to dispose of the election dispute within one year from its filing, but the result of this direction is not in any way satisfactory. In totality, we all legislature, administrators, judiciary, political parties, and voters are should jointly and equally perform our statutory and moral duty and responsibility to curb the evil of electoral offences, which will strengthen the foundation of the world largest democracy and ultimately result into the real welfare of the country and citizen and fulfil the object of democracy, i.e. of the people, by the people and for the people in real sense.

Over and above regular awareness programme by the ECI to educate the voters are to be arranged. Unfortunately, after 1967 the country has faced so many elections, and as a result, the concept of the One Nation One Election is emerging speedily and is now the talk of the town. In this scenario, the legislature must make necessary efforts to implement the same, which will curb the evil of electoral offences.

Thank you all.

Jay Bharat.

REFERENCES

1. *S.K. Singh v. Giri*, (1970) 2 SCC 567: AIR 1970 SC 2097. **Quoted in** *Krishnamoorthy v. Shivkumar*, 2015 (2) SCALE 1: (2015) 3 SCC 467.
2. *Krishnamoorthy v. Shivkumar*, 2015 (2) SCALE 1: (2015) 3 SCC 467.
3. *D.P. Mishra v. Kamal Narayan* AIR 1970 SC 1477
4. *L.R. Shivramagowda Etc v. T.M. Chamdrashekhar Etc* AIR 1999 SC 252: (1999) SCC 666