

INFRACTIONS DURING THE INDIAN POLLS: A CRITICAL ANALYSIS

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ABSTRACT

Election-related crimes are addressed under Section 171 of Chapter IXA of the Indian Penal Code. The Indian election season is a national holiday and a source of great anxiety for the population. Section 2 of the Indian Elections Offences and Inquiries Act, 1920, which establishes penalties for crimes including bribery, impersonation, undue influence, and making false claims to harm someone's reputation in connection with an election, etc., introduced this document. The primary goal of this section is to protect the integrity of elections and the right of all eligible citizens to cast ballots without interference.

KEYWORDS: Offences, Corrupt Practice, Bribery, Undue Influence, Booth Capturing.

INTRODUCTION

Election of a specific person from among the other candidates for executing specified obligations is regarded as a natural right of individual in every democratic democracy. PAGE XV As stated in Article 324 of the Indian Constitution, the Election Commission is in charge of overseeing, guiding, and controlling the voting process. Bribery, undue influence, and other forms of election-related corruption all make voting more difficult for eligible citizens. The Government of India Act of 1919 was the country's first anti-bribery statute. A person found guilty of corrupt practice is disqualified as a consequence of later legislation, The Indian Election Offence and Inquiry ACT, 1920, which also brought significant amendments to the Indian Penal Code. The Representation of the People Act, 1951 was the first law passed in Britain to criminalize election-related corruption.

The purpose of the Election Offences Act 1954 (Malay: Akta Kesalahan Pilihan Raya 1954) is to prevent electoral offenses and corrupt and illegal practices at elections, as well as to establish enforcement teams and for matters connected therewith, to establish procedures for the appointment of election agents and the control of election expenses, and to establish procedures for filing election petitions.

Elections are a crucial part of every democracy's foundation and upkeep, and are often seen as a means to that end. The Constitution of India ensures its people that they live in a republic based on democratic principles. The Indian Constitution establishes a system of democratic entities and positions, including the Election Commission, an autonomous constitutional entity charged with ensuring the conduct of free and fair elections. In order to maintain the integrity of India's democracy, free and fair elections are crucial. Bribery, undue influence, and other forms of election-related corruption all

violate voters' fundamental right to cast a ballot without interference. There are a number of serious electoral offenses that might result in disqualification, and it is crucial that we learn about them. The article therefore addresses the several electoral offenses included in the Indian Penal Code and the Representation of the People Act, 1951. Additionally, we examine the variations between electoral offenses and corrupt behaviors.

Democracy's 'freedom of choice' is often cited as its fundamental tenet. It is generally agreed that in all democracies, citizens have the inherent right to elect or pick a candidate of their choosing from among those running for office in order to fulfill a specific responsibility. Bribery, undue influence, and other forms of electoral corruption all make voting less secure and hence less likely to occur.

LITERATURE AND REVIEW

Shah Mohammad Omer Faruqe Jubaer (2021) The Constitution forbids any and all forms of criminal conduct that prevent voters from freely exercising their franchise, including but not limited to those who use force or other methods that interfere with the normal functioning of the electoral system. Blocking commissioners' election materials, election materials polluting the electoral system unfairly favoring a particular political party or a coalition of political parties that present list candidacy according to the electoral code's regulations are examples of physical or psychological barriers. The right to vote is guaranteed to all citizens under the state's basic statute, the Constitution. Voting allows every citizen a voice in government, but democratic value assessments should be individual, impartial, free, and secret. The right to vote is closely linked to concepts of democracy, popular sovereignty, and citizen protections, and is thus a fundamental political right protected by the United States Constitution and the Universal Declaration of Human Rights. The right to vote, or the freedom to cast a ballot, is the greatest accomplishment of the twentieth century. However, crimes committed during or in connection with an election raise serious concerns about democracy and fairness. 2 So the fundamental purpose of this study article is to elucidate the connective notion of election and crime. Later effort to give election-related charges and penalty under the Penal code 1860.

Akhil Kumar (2014) In constitutional democracy elections give a chance to discern the people will towards the governing of the nation. Election is the act of selecting a person generally for holding public office by free will of the people in a representative democracy. From the Latin *legere*, which means "to select," we get the term election. Election refers to the process through which a candidate for public office is selected by a majority vote of the electorate. Election, as defined by Webster's, is the process through which a candidate is selected by a majority of voters to hold public office. According to Black's Law Dictionary, election implies the process of choosing a person to fill a post or office generally public office. In guaranteeing free and fair elections the role of the legal system is considerable. In a Democratic culture or nation like India where the people of the country are viewed as sovereign, which in practical terms is otherwise. Hence it is vital to organize free and fair election so that the people may feel sovereign in the real sense.

Srinibas Nayak et al (2020) Elections in a parliamentary democracy allow regular people to assess the government's performance. In a representative democracy, an elected official is a candidate who has been given the power to serve the public by popular vote. Voting in a democratic election gives the average citizen a voice in determining the direction of the nation. In a representative democracy, a presidential candidate is someone whose public role is determined by the will of the voters. 'Choice' derives from the Latin word 'legere,' which means 'to read' or 'to pick.' The term "vote" refers to the act of selecting a candidate for public office by a show of hands from members of a legislative body. According to Webster, elections may also indicate the selection of a single candidate by a vote for an open post or office. To be "elected" implies to be confirmed by a formal procedure for holding a public office, as defined by Black's Law Dictionary. Having a functioning legal system is essential to ensuring honest and open elections. Technically speaking, under a representative social system like India's, the people of the nation are seen as autonomous. Holding free and fair elections is crucial for people to really feel like they have sovereignty.

Najeed Naved Siddiqui (2021) The Indian election is widely seen as a celebration of constitutional democracy and the value of a rule of law. Voting is a concrete manifestation of the preamble's declaration that "we the people" are the ultimate arbiters of government. The Constitution of India is the guiding document that guarantees that India will always be governed in accordance with the values of justice and fairness that its "people" established. Therefore, free and fair elections are a cornerstone of the principle of ensuring that the people retain control over their government, as envisioned in the book of rights. It is impossible to exaggerate the significance of a just, fair, and free election, despite the fact that there have been many significant modifications to the election rules since independence.

Parindu Bhagat et al (2020) To commit an electoral offence, one must have committed, at the very least, a violation of the law or an unlawful act relating to the election law, the election process, or, to put it another way, an unlawful act applicable to the election law, the conduct of election rules, and the election process itself. Election day starts when the Election Commission of India (ECI) releases the election schedule, and concludes when the ECI's authorized authority releases the election results.

CONCEPT OF FREE AND FAIR ELECTION

Elections are considered "free and fair" if they do not place any individual in the bondage of another in terms of their personal rights, social and political freedom, or freedom of thought and choice. One's ability to vote is not hindered by factors such as party discipline, religious or ideological affiliation, social class, sexual orientation, language, or experience with or exposure to corrupt activities. As a result, democratic administration rests on the pillars of free and fair elections. The Constitution of India is based on the idea of a free and fair election, as pointed out by Justice HR. Khanna. This compels us to examine the Constitution's voting provisions in the context of long-standing commitments to electoral fairness.

Election Offences in India

Election-related crimes are defined under the Indian Penal Code 1860, Chapter IXA, Sections 171A to 171I. In 1920, a new section was added to what had been the Indian Penal Code of 1860. A primary goal of the legislation was to establish procedures for investigating and prosecuting electoral fraud. The electoral offenses are also outlined in section VII of the Representation of the People Act of 1951. The court ruled in the case of Indira Nehru Gandhi vs. Shri Raj Narain & Anr. that the phrase "candidate" in reference to numerous electoral offenses demonstrates that he must be a candidate at the time of the offense. Resolving the violations will take some time. The electoral offenses under the 1951 Act differ significantly from the electoral offenses under Sections 171-A to 171-I of the Indian Penal Code in that the 1951 Act refers to various offenses in terms of a "candidate" or his election agent, whereas the Indian Penal Code does not use the word "candidate" in relation to the commission of any offence. A person shall be guilty of electoral crime if he without appropriate permission distributes to any person or receives any ballot paper, as stated in Section 136 (d) of the 1951 Act, as determined by the court in R. Thirumavalavan vs. Sumathi Udayakumar. The right to vote in a constituency is contingent upon inclusion on the electoral register for that area, as stated in Section 62.

LIST OF ELECTORAL OFFENCES

Corrupt Practices

Corrupt practices are defined as those listed in Section 123 of the Representation of the People Act, 1951, which is stated succinctly in Section 2(c).

Bribery: Bribery is formally defined as corrupt practices under Section 123(1) of the RP Act and Sections 171B and 171E of the IPC. It is widely accepted that bribery is an enticement that has an effect on electoral activity. Those who provide or receive improper benefits are equally guilty of the crime of bribery. Any inducement or incentive for voting is considered bribery and is punishable by up to a year in jail or a fine, or both. It was decided in the case of S. B. Adityan vs. S. Kandaswami And Others iii that the word gratification in s. 123 is quite broad and covers the withdrawal of candidacy by a candidate to persuade another candidate to contest in an election. Providing such a reward would be considered bribery under section 123. Furthermore, accepting a gift is not considered corrupt under section 123(1). While interpreting the terms "offer of bribery" in the Election Law, we should not limit their meaning, as the Supreme Court said in Rajendra Prasad Jain vs. Sheel Bhadra Yajee, iv. In reality, the term "offer of bribery" should be given a broad interpretation to guarantee that elections are conducted in a completely clean environment. The court in Ghasi Ram versus Dal Singh & Othersv noted that the pledge was not given to a specific group of voters but rather to all inhabitants of the area without preference. Accordingly, the essence of the corrupt practice consisted of making an effort to help individuals who were voting against the candidate in exchange for their votes.

Undue Influence at Election: Unlawful influence in an election is prohibited under Section 123(2) of the RP Act and Sections 171C and 171F of the IPC. The crime of undue influence is punishable by a year in jail, a fine, or both, under the provisions of the Indian Penal Code (IPC), as is the direct or attempted interference with the free

exercise of any election right. The Election Tribunal ruled in the case of Jujhar Singh v. Bhairon Lall & Others that "an attempt to interfere by the method of compulsion is not necessary and that even the method of inducement may be sufficient, provided that it be of such a powerful type as would leave no free, will to the voter in the exercise of his choice." That is to say, "undue influence" may arise from just positive mental compulsion rather than real physical coercion. The Election Tribunal ruled that in N.Sankara Reddi vs. Yashoda Reddi, vii the court decided that in Jeetmohinder Singh Sidhu vs. Amarjit Singh Sidhu "A political party may distribute a manifesto to its constituents urging them to vote for the party's preferred candidate. There was no undue influence within the meaning of S.123 (2) of the Representation of the People Act since the head of the Congress Legislature Party and Chief Minister of the State had addressed letters to Congress Party members encouraging them to vote for the candidates put up by the party ". It was also noted that the issue of undue influence would only arise in cases where a Minister exploited his position to help a candidate from his party, but that when a leader just canvassed for candidates of his party, there would be no question of excessive influence. The means of threat or incentive must indicate to the concerned individual that the threat or inducement may result in damage to him or a person in whom he may be interested, but real physical threat or coercion is not required. The basic aspect of undue influence is thus the apprehension of harm in the event of noncompliance with the intended outcome, which might be in the form of a threat or an enticement.

Booth Capturing: According to section 123(8) of the RP Act, capturing a voting booth is also a corrupt offense. "Booth capture" refers to any of the following: - a person seizing control of a polling booth and demanding that election officials hand over ballots and voting equipment; - a person enabling just his or her followers to cast ballots while preventing or coercing others from doing the same.

Seizing a polling location means taking over a building to tally ballots.

Section 135A of the RP Act establishes a penalty range of 3–5 years in jail and a fine for those who commit the aforementioned offense while in government employment, and 1–3 years in prison and a fine for those who do not. Boothcapturing completely nullifies the electoral process and undermines the democratic setup that is fundamental to our constitution, as stated in Basanagouda vs. Dr. S. B. Amarked and others. Parliament chose broad, generic terms to include a wide variety of creative ways that people have found to evade the law. Various novel approaches of capturing booths and rigging would be developed. If proven, the accusation of booth capture and rigging constitutes a corrupt practice in violation of section 100(1)(b) and significantly alters the outcome of the election, making it grounds for disqualification under section 100(1)(d). The court ruled in Markio Tado v. Takam Sorang xi that "Booth seizing requires use of force, while impersonation or double voting is on the basis of trickery." In addition, incorrect receiving of votes, as might result from impersonation or duplicate voting, is another cause for declaring an election null and invalid.

Promoting Enmity Between Classes: Any person who, in connection with an election under this Act, promotes or attempts to promote enmity or hatred between different classes of citizens of India on the basis of religion, race, caste, community, or language

shall be punished by imprisonment for a term which may extend to three years, or by fine which may extend to ten thousand rupees, or by both. It's legal according to the Representation of the People Act of 1951, specifically Section 125. The relevant section of the Indian Penal Code is Section 505(2). In *Subash Desai v. Sharad J. Rao*, the Supreme Court ruled that while the right of every citizen to freely profess, practice, and propagate his religion was guaranteed by the Framers of the Constitution, this right does not include the freedom to incite violence or hatred between members of different faiths. The court ruled in *Pravasi Bhalai Sangathan vs U.O.I. & Ors.* that "Hate speech is an attempt to marginalize people based on their membership in a group ; it aims to delegitimize group members in the eyes of the majority, diminishing their social status and acceptability within society." The effects of hate speech extend well beyond the grief it causes to single members of a group. It has the potential to affect people and communities. The seeds of prejudice, ostracism, segregation, deportation, violence, and, in the most severe circumstances, genocide are sown in the fertile soil of hate speech.

Publication of False Statement: Publication of any statement of fact that is false, and that 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, which statement is reasonably calculated to prejudice the prospects of that candidate's election is a crime. For example, the IPC's Section 171G states Any person who, with the goal to influence an election, makes or publishes any statement purporting to be a statement of fact that is false with respect to the personal character or behavior of any candidate commits an offense and is subject to a fine. Circulation of false statements about the private or personal character of the candidate in 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 that are likely to effect the voting of the electors, as held by the court in *Inder Lal vs. Lal Singh*, xiv. The legislation includes the dissemination of false allegations about the private character of a candidate as corrupt activities to safeguard the electorate from conduct that would be detrimental to the freedom of election. A corrupt practice is the spreading of untrue allegations about a candidate's reputation.

Concerning Election Expenses: Corruption is defined as the incurring or authorizing of expenditures in breach of section 77 of the Representation of the People Act, 1951, per Section 123(6). A candidate for the House of Representatives or a state legislative assembly must, under Section 77(1), maintain a separate and accurate account of all expenditures spent or authorized by him or by his election agent between the date on which he was nominated and the date of the election.

A fine of up to 500 rupees is possible for violators of Section 171I of the Indian Penal Code, which states: "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." The court ruled in *Mast Ram v. State of Punjab and Anr.*, xv that Section 171I of the Indian Penal Code only applies to the irregular maintenance of an account, not to the non-keeping of an account by a candidate who ran for office.

Free Conveyance of Voters: Anyone who illegally hires or procures a vehicle for the free conveyance of any elector other than the candidate himself, member of his family, or his agent to or from any polling station commits an offense and is punishable with 3 months in prison and a fine under section 133 of the Representation of the People Act, 1951. According to the court's interpretation in *Ch. Razik Ram vs. Ch. Jaswant Singh Chouhan and Ors.*, Clause (5) of Section 123 is split in two. The first section calls for a candidate or his election agent, or anyone else with the candidate's or election agent's approval, to hire or procure, for money or otherwise, any vehicle or vessel for the free transportation of voters. Part 2 allows for "the use of such vehicle or vessel for the free transportation of any elector (other than the candidate himself, members of his family, or his election agent) to and from any polling location." The conjunction "or," which allows for alternative constructions, links the two halves together. A particle, in a way, it coordinates the Clause's two halves and forges a new kind of native between them. The alternative meaning is synonymous with "and" and means to unite or combine the first and second parts of the sentence. The latter interpretation seems more in line with the intent of the 1966 amendment.

Obtaining Services of Government Servant: A government employee should not participate in any election campaign or canvassing, and he should be extremely careful not to use his name, official position, or authority to help one political party or candidate over another. This is because government employees play such an important role in the administration of public affairs and the implementation of policies made by the ruling political party. Government employees are forbidden from participating in politics and elections under Rule 5(1) of the Central Civil Services (Conduct) Rules, 1964. The Representation of the People Act, 1951 makes it illegal to obstruct the course of an election, act as an election agent, or attempt to influence voters. In addition, Section 123(7) of the same Act defines bribery of a government official as an act of corruption if it is used to acquire favors from the government, such as help in an election. Shri Yashpal Kapoor's involvement in *INDIRA GANDHI'S* election is a real-life illustration of the practice of Obtaining Services of Government Servant in previous Indian elections. Legal precedent established 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" (*Raj Krushna Bose vs. Binod Kanungo And Others*xvii). However, it is not the intention of the legislation to deprive individuals of their voting rights or other protections afforded to all other citizens.

Propagation of Sati: According to Section 123(3B), it is illegal for a candidate, his agent, or anyone else with the candidate's or election agent's knowledge or approval to promote, commit, or glorify sati with the intent to aid in the candidate's election or to adversely impact the election of any other candidate. The terms "sati" and "glorification" as they pertain to sati shall have the definitions given to them in the Commission of Sati (Prevention) Act, 1987. (3 of 1988). Sati is a Hindu ritual that has been practiced for centuries, most notably among the Rajputs in the state of Rajasthan. When a woman loses her husband, she may commit sati by setting herself on fire on the funeral pyre.

BOOTH CAPTURING, A NEW ADDITION TO THE LIST OF CORRUPTION PRACTICES AND ELECTORAL OFFENCES

Using force or threats to steal votes goes against the principles of a free society. In reality, this is one of the main causes of people losing trust in the democratic system and disliking the political process itself. Even though the Election Commission had given unambiguous warnings against booth capture and rigging, such as shoot-at-sight orders or countermanding the poll and rescinding votes at the booths impacted by the booth capturing, it had become a useless exercise. Since complaints about booth capturing have been rising steadily since the 1980s, Amending Act No. 1 of 1989 added Sub- Section (8) to Section 123 of the Representation of the People Act, 1951, making it clear that booth capturing by a candidate or his agent or any other person is a form of corruption.

For these reasons, section 123(8) of the Act provides that "booth capturing" is to have the same meaning as the newly enacted section 135A of the Act, which makes booth capturing an electoral crime. According to Section 135 A, "Whoever commits an offence of booth capturing shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine," and "where such offence is committed by a person in the service of the Government, he shall be punished with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine."

Multiple sources date the first reported takeover of a polling place during an election to the Rachiyahi neighborhood of the Begusarai district in 1957. It is unclear, however, whether that episode qualifies as Booth Capturing. With the return of paper votes in the 2014 Lok Sabha elections, a practice known as "booth capture" has resurfaced. But Electronic Voting Machines have helped keep it under control. According to the Supreme Court's ruling in *Basanagouda vs. S.B Amarkhed*, the practice of "booth capture" undermines the Constitution's essential component of a democratic system by nullifying elections.

CONCLUSION

Free and fair elections are synonymous with democratic rights and justice. In the context of elections, the phrase "free and fair" means that no one participating in the process is a bondage of another or is influenced in any manner by anybody else. The people will lose faith in the electoral process and in Democracy itself if elections are handled illegally. As a result, a democratic system of governance relies heavily on having access to free and fair elections. It becomes clear that the foundation of a democratic form of governance is a system of free and fair elections. Many legislations, such as the Representation of the People Act of 1951 and the Election Commission Act of 1991, were passed in the past to guarantee free and fair elections. The amendment limits corrupt activities for the most part. It is the principal law that addresses issues of electoral fraud and other forms of corruption.

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