



## THE INDIAN PENAL CODE

### <sup>1</sup>[CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS

[s 171A] "Candidate", "Electoral right", defined.

For the purposes of this Chapter—

<sup>2</sup>[(a) "candidate" means a person who has been nominated as a candidate at an election;<sup>1</sup>

(b) "electoral right" means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at any election.

#### COMMENT—

**Candidate, electoral right.**—This chapter was introduced in the Code by the Indian Elections Offences and Inquiries Act (XXXIX of 1920). It seeks to make punishable under the ordinary penal law, bribery, undue influence, and personation, and certain other malpractices at elections not only to the Legislative bodies, but also to membership of public authorities where the law prescribes a method of election; and, further, to debar persons guilty of malpractices from holding positions of public responsibility for a specific period. <sup>3</sup>This chapter has to be read along with the [Representation of the People Act, 1951](#) as it contains additional penalties for certain offences under this chapter, e.g., sections 171E and 171F of this Code. Thus, a conviction under [section 171E](#) or [section 171F, IPC, 1860](#), amounts to a disqualification under [section 8 of the Representation of the People Act, 1951](#).<sup>4</sup>

**1. 'Election'.**—'Election' is defined as including election to all classes of public bodies where such a system is prescribed by law (*vide* Explanation 3 to section 21 *supra*).

<sup>1</sup>. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

<sup>2</sup>. Subs. by Act 40 of 1975, section 9, for clause (a) (w.e.f. 6-8-1975).

<sup>3</sup>. Statement of Objects and Reasons. Gazette of India, 1920, Part V, p 135, section 4. *Bhupinder Singh v State*, [1997 Cr LJ 1416](#) (P&H), accused snatched ballot papers from the custody of a polling officer and tore them. This amounted to use of criminal force.

<sup>4</sup>. For a comparison between the sections 171A to 171E with the provisions of [Representation of People Act, 1950](#). See *Indira Nehru Gandhi v Raj Narain*, [AIR 1975 SC 2299](#) [[LNIND 1975 SC 432](#)] : (1975) Supp SCC 1 : [1976 \(2\) SCR 347](#) [[LNIND 1975 SC 432](#)] .

## THE INDIAN PENAL CODE

### **1.[CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS**

#### **[s 171B] "Bribery".**

**(1) Whoever—**

- (i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or**
- (ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right; commits the offence of bribery:**

***Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.***

- (2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.**
- (3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.**

#### **COMMENT—**

**Bribery.**—This section defines the offence of bribery at an election.

'Bribery' is defined primarily as the giving or acceptance of a gratification either as a motive or as a reward to any person, either to induce him to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election. It also includes offers or agreements to give or offer and attempts to procure a gratification for any person. 'Gratification' is already explained in [section 161 of the Penal Code](#) and is not restricted to pecuniary gratifications or to gratifications estimated in money.<sup>5</sup> Section 171-B(1)(i) of [Indian Penal Code](#) provides that if gratification is given to any person inducing him or any other person to exercise any electoral right, then it will amount to bribery. The term "Electoral right" defined under clause (b) of [section 171-A of Indian Penal Code](#) clearly indicates that the electoral right is of definite nature and it is to be exercised by individual. So, the gratification has to be given to an individual. Here, the offer is made to the party (RPI) and not to any individual. Furthermore, there is nothing in the offer which indicates that any influence is being brought on any individual with respect to exercising his electoral right, that means, to stand, or not to stand as, or to withdraw from being, a candidate or to vote or to refrain from voting at the election. Seeking support of a political party, during the course of election and making an offer to political party of some share in political

power for giving such support cannot be called as giving gratification as contemplated under [section 171-B of Indian Penal Code](#).<sup>6</sup> The word 'gratification' should be deemed to refer only to cases where a gift is made of something which gives a material advantage to the recipient. There is hardly any need to say that giving of anything whose value is estimable in money is bribery. A gun licence gives no material advantage to its recipient. It might gratify his sense of importance if he has a gun licence in a village where nobody else has a gun licence. So might be the conferment of an honour like Padma Bhushan. A praise from a high quarter might gratify the sense of vanity of a person. But the word 'gratification' as used in section 123 (1) does not refer to such gratification any more than in [section 171-B of the Indian Penal Code](#).<sup>7</sup>

#### **[s 171B.1] Sub-clause (2).—'Offers'.—**

By this clause the attempt to corrupt is made equivalent to the complete act.

#### **[s 171B.2] Treating.—**

Treating will be bribery if refreshment is given or accepted with the intent required by law.<sup>8</sup> The gist of the offence of treating is the corrupt inducement to the voter or to refrain from voting, which may be given at any time, although for obvious reasons it is usually given at or shortly before the election. 'Treating' is defined in section 171E.

#### **[s 171B.3] Supreme Court on 'freebies'.—**

In *S Subramaniam Balaji v Government of Tamil Nadu*,<sup>9</sup> the Supreme Court held that freebies promised by political parties in their election manifestos shake the roots of free and fair polls, and directed the Election Commission to frame guidelines for regulating contents of election manifestos and undue influence at elections.

1. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

5. *Statement of Objects and Reasons*, Gazette of India, 1920, Part V, p 135, section 8.

6. *Deepak Ganpatrao v Government of Maharashtra*, [1999 Cr LJ 1224](#) (Bom).

7. *Iqbal Singh v Gurdas Singh*, [AIR 1976 SC 27](#) [[LNIND 1975 SC 354](#)] : (1976) 3 SCC 284 [[LNIND 1975 SC 354](#)] : [1976 \(1\) SCR 884](#) [[LNIND 1975 SC 354](#)] .

8. *Ibid*.

9. *S Subramaniam Balaji v Government of Tamil Nadu*, 6 Mad LJ 307 : [2013 \(8\) Scale 249](#) [[LNIND 2013 SC 627](#)] .

## THE INDIAN PENAL CODE

### <sup>1.</sup>[CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS

#### [s 171C] Undue influence at elections.

- (1) **Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.**
- (2) **Without prejudice to the generality of the provisions of sub-section (1), whoever—**
  - (a) **threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or**
  - (b) **induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,**

**shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).**
- (3) **A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.**

#### COMMENT.—

**Exercise of undue influence.**—This section defines 'undue influence at elections'.

Undue influence at an election is defined as the voluntary interference or attempted interference with the right of any person to stand, or not to stand as, or withdraw from being, a candidate, or to vote or refrain from voting. This covers all threats of injury to person or property and all illegal methods of persuasion and any interference with the liberty of the candidates or the electors. The inducing or attempting to induce a person to believe that he will become the object of divine displeasure is also interference.<sup>10.</sup>

Where an attempt or threat is proved, it is unnecessary to prove that any person was in fact prevented from voting because the offence is complete.

The expression 'free exercise of his electoral right' does not mean that a voter is not to be influenced. This expression has to be read in the context of an election in a democratic society and the candidates and their supporters must naturally be allowed to canvass support by all legal and legitimate means. This exercise of the right by the candidate or his supporters to canvass support does not interfere or attempt to interfere with the free exercise of an electoral right.<sup>11.</sup> The Supreme Court has accepted the proposition that something more than a mere act of canvassing would be necessary and that something more is specified in clauses (a) and (b) of the section. Applying this to the facts, the court laid down that the appeal, even if true, of the Chairman of the Minorities Commission who happened to be the retired judge of the

Supreme Court, to the voters to cast their votes in favour of a particular candidate [who was returned], does not make out the offence enumerated in this section.<sup>12</sup> A message sent to the secretary of a party to boycott the election does not amount to interference within the meaning of this section as members of the party are still free to vote as they like.<sup>13</sup>

### [s 171C.1] CASES.—

A candidate informed the voters that he was *Chalanti Vishnu* and representative of Lord Jagannath himself and that any person who did not vote for him would be a sinner against the Lord and the Hindu religion; it was held that such propaganda would amount to an offence under section 171F read with this section.<sup>14</sup>

The statement was made by a member of the ruling party to the Republican party of India (RPI) that if it supported the alliance in parliamentary elections, the latter would make one member of the RPI as Deputy Chief Minister of State. It was held that this did not amount to giving offer to any individual for inducing him to exercise his electoral right in a particular manner.<sup>15</sup>

1. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

10. *Ram Dial v Sant Lal*, AIR 1959 SC 855 [LNIND 1959 SC 73] : 1959 Supp (2) SCR 748 .

11. *Shiv Kirpal Singh v VV Giri*, AIR 1970 SC 2097 [LNIND 1970 SC 367] : (1970) 2 SCC 567 [LNIND 1970 SC 367] . See also *M Anbalagan v State*, 1981 Cr LJ 1179 (Mad), *Babu Rao Patel*, AIR 1968 SC 904 [LNIND 1967 SC 314] : 1968 (2) SCR 133 [LNIND 1967 SC 314] .

12. *Charan Lal Sahu v Giani Zail Singh*, AIR 1984 SC 309 [LNIND 1983 SC 371] : (1984) 1 SCC 390 [LNIND 1983 SC 371] .

13. *M Anbalagan*, *Supra*.

14. *Raj Raj Deb v Gangadhar*, AIR 1964 Ori 1 [LNIND 1962 ORI 29] : 1964 Cr LJ 57 .

15. *Deepak Ganpatrao v Government of Maharashtra*, 1999 Cr LJ 1224 (Bom).

## THE INDIAN PENAL CODE

### <sup>1</sup>. [CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS

#### [s 171D] Personation at elections.

Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election:

<sup>16</sup>. [Provided that nothing in this section shall apply to a person who has been authorised to vote as proxy for an elector under any law for the time being in force in so far as he votes as proxy for such elector.]

#### COMMENT.—

**Personation.**—This section defines 'personation at elections'. It covers a person who attempts to vote in another person's name or in a fictitious name, as well as a voter who attempts to vote twice and any person who abets, procures, or attempts to procure, such voting.

The accused must have been actuated by a corrupt motive.<sup>17</sup>.

What is to be proved in a prosecution for the offence under section 171-D is that the indicted "applied for voting (ballot) paper" in the name of any person. It is not the law that it must be proved invariably that he had voted or had attempted to vote in the election. All that need be proved is that the indicted had applied for a voting paper. The legislature appears to have carefully worded the statutory provision.<sup>18</sup> The applicant was accused of having abetted the personation of a voter at a Municipal election in that, not being himself acquainted with the person who came forward to vote, he had, on the advice of others, put his name to a "signature sheet" in token that the thumb mark made by the voter was that of the person entitled to vote under a certain name on the electoral roll. It was held that, inasmuch as the acts done by the applicant apparently constituted the specific offence provided for by section 171F, he could only be tried for that offence, and could not be tried for abetment of the general offence provided for by section 465.<sup>19</sup>.

<sup>1</sup>. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

<sup>16</sup>. Ins. by the [Election Laws \(Amendment\) Act](#), 2003 (Act 24 of 2003), section 5 (w.e.f. 22-9-2003).

<sup>17</sup>. *Venkayya*, (1929) 53 Mad 444.

<sup>18</sup>. *E Anoop v State*, 2007 Cr LJ 2968 : 2006 (3) Ker LJ 50 .

19. *Ram Nath*, (1924) 47 All 268 . See *Achcha Bhoomanna v Court of Distt. Munsif (Election Court)*, AIR 1992 AP 157 [LNIND 1991 AP 162] .



## THE INDIAN PENAL CODE

### <sup>1</sup>[CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS

#### [s 171E] Punishment for bribery.

Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

*Provided* that bribery by treating shall be punished with fine only.

*Explanation.*—"Treating" means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

<sup>1</sup>. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

## THE INDIAN PENAL CODE

### <sup>1</sup>[CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS

#### [s 171F] Punishment for undue influence or personation at an election.

Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

#### COMMENT.—

**Punishment for bribery, personation.**— The Chief Minister of a State was campaigning for himself on a date before elections. He was directed by the Election Commissioner under threat of taking drastic action to return to his State headquarters. He was prevented by the order from exercising his voting right at the place where he was registered as a voter. There was no allegation that he used any violence in the election process. Directions were also oral and no reasons were given. It was held that the directions constituted a violation of section 171F.<sup>20</sup> The words "all forms of entertainment" in the Explanation to [section 123 \(1\) of the Representation of the People Act](#) apparently refer to offence of treating found in [section 171-E of the Indian Penal Code](#).<sup>21</sup> Accused entered into a polling booth and handed over a slip showing the name of a voter other than himself. He could not give any explanation as to why he entered into the polling booth. His conduct of appearing before polling officials and handing over the slip which does not relate to him, is sufficient declaration of his intention to apply vote for him. It was held that offence committed by him required a deterrent substantive sentence of imprisonment.<sup>22</sup>

1. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

20. *Court on its Own Motion v UOI*, [2001 Cr LJ 225](#) (P&H) : [\(2000\) ILR 2 P&H 288](#). The Court could not direct the Magistrate to take cognizance under section 190 because of the bar under section 197. Aggrieved party would have to launch prosecution.

21. *Iqbal Singh v Gurdas Singh*, [AIR 1976 SC 27](#) [[LNIND 1975 SC 354](#)] : [\(1976\) 3 SCC 284](#) [[LNIND 1975 SC 354](#)] : [1976 \(1\) SCR 884](#) [[LNIND 1975 SC 354](#)] .

22. *E Anoop v State*, [2007 Cr LJ 2968](#) : [2006 \(3\) Ker LJ 50](#) .