

entertain such a violation touching human rights by invoking the powers of respective High Courts through writ jurisdiction to restore the violations caused to normalcy.

It is under these *aegis*, the Hon'ble Supreme Court pronounced land mark judgments: to refer a few: *Hussainara Khatton*, *ADM Jabalpur*, *Sunil Batra*, *Rudolf Shaw*, *Olga Tellis*, *Bombay Payments etc.*

It is apt to refer here about Hon'ble Justice *H.R. Khanna* of the Hon'ble Supreme Court in *ADM Jabalpur Case*, where a question arose before the Constitutional Bench in connection to; whether, the Fundamental Right guaranteed under Article 21 of the Indian Constitution, which being right to life, whether can be suspended during State Emergency declared under *Article 356* of the Indian Constitution; to which, except Justice *H.R. Khanna* the other Hon'ble Judges held that it can be suspended; however, Justice *H.R. Khanna* clearly deferred with the judgment of the others, holding that the State has no such Authority to take away the life of

an individual even during emergency and, *per se* Justice *H.R. Khanna*, in case State were to be endowed with such Arbitrary Powers, it would certainly exercise the same without discretion to its advantages, thereby stifle to intrude into private rights of the individuals. Hence, this judgment and view was hailed by the Nations of the World and there was an Article published in Newyork Times hailing his Lordship *H.R. Khanna* as the true Crusader of Human Rights, and recognizing the intellectuality, Hon'ble Justice *H.R. Khanna* was given the Doctorate by Columbia University on this deferred judgment.

In all colours, so far, the Indian Constitution very well functioned through the mechanism of the Indian Judicial System, particularly, the Hon'ble Supreme Court stood as the Torch Bearer and Watch Dog to the excesses committed by the Sovereign Authority by enthuse and arbitrariness. Hence, the Constitution of India is the "*Hallmark Doyen*" in protecting the Rights of the Citizens, particularly the cause of Human Rights.

OFFENCES RELATING TO ELECTIONS – PUNISHMENTS

By

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Introduction :

The electoral offences under Chapter IX-A of the IPC are enumerated under the heading 'Of Offences Relating to Elections'. This chapter was inserted in the chapter was added more than 90 years ago in 1920 by the Indian Elections Offences

and Inquiries Act, 1920 when the concept of elections in a limited way was introduced in some of the legislative bodies under the Government of India Act, 1919. Under IPC, the electoral offences are bribery at elections (Section 171-B), undue influence at elections (Section 171-C), personation at elections (Section 171-D), false statement in

connection with an election (Section 171-G), illegal payments in connection with an election (Section 171-H) and failure to keep election accounts (Section 171-I).

The provision laid down in the abovementioned section make the act of bribery, undue influence, personation and other *mal practices* at elections punishable. It is worthwhile to know what the Select Committee had to say to justification while incorporating such offences in this code.

'Freedom of choice' is called the essence of democratic election. In all democratic countries, election of a particular person of their choice among the other candidates for discharging certain duties is considered to be the natural right of an individual. 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.*

We feel there is a distinct advantage at the present time when an election is to play so vital part in the new public life of India that the public mandate should be markedly drawn to the danger of corrupt practices in relation to the franchise, whether that franchise relates to legislative or other bodies.

Representation of People's Act :

Representation of People's Act was introduced during the year 1950, it was the first Act post-independence which provided for a comprehensive framework covering the laws related to elections and it discussed detailed provisions pertinent to conduct and nature of elections for the Parliament and State Legislature was laid down by the said Act.

Notwithstanding any such enactments, provisions of IPC still hold great importance as they are applicable not only to elections

to Parliament or State Legislatures but any kind of elections such as Panchayats and local bodies *etc.*, therefore, the existence of Representation of People's Act would not take away the power of ordinary Criminal Court with jurisdiction to try cases related to any offence contained in Sections 171-B to 171-E. Therefore, both the enactments are complementary to each other.

The electoral offences under the Representation of People's Act, 1951 are :

1. Promoting enmity between classes in connection with election (Section 125)
2. Filing false affidavits (Section 125-A)
3. Holding of public meetings during a period of 48 hours ending with an hour fixed for conclusion of poll (Section 126)
4. Restriction on publication and dissemination of result of exit polls (Section 126-A)
5. Offences by companies (Section 126-B)
6. Disturbances at election meetings (Section 127)
7. Printing of pamphlets, posters without mentioning the name of publisher (Section 127-A)
8. Violation of secrecy of voting (Section 128)
9. Officers or others trying to influence the voters (Section 129)
10. Canvassing in or near the polling stations (Section 130)
11. Disorderly conduct in or near polling stations (Section 131)
12. Misconduct at the polling stations (Section 132)
13. Failure to observe procedure for voting (Section 132-A)
14. Illegal hiring or procuring of conveyance at elections (Section 133)

15. Breaches of official duty in connection with elections (Section 134)
16. Misuse of Government servants (Section 134-A)
17. Going armed to or near the polling stations (Section 134-B)
18. Removal of ballot papers *etc.*, from polling stations (Section 135)
19. Booth capturing (Section 135-A)
20. Non-grant of paid holiday to employees on the employees on the day of poll (Section 135-B)
21. Sale, distribution *etc.*, of liquor on polling day (Section 135-C)
22. Fraudulently tampering with nomination papers, ballot boxes, ballot papers, election records, un-authorized supplying ballot papers *etc.* (Section 136)

Any conviction of an offence under Section 125, Section 135, Section 135-A and Section 136(2)(a) attracts disqualification for membership of Parliament and State Legislatures for a minimum period of 6 years from the date of conviction. Further, any conviction for an electoral offence committed under Section 125, Section 135 and Section 136(2)(a) also imposes disqualification for voting for a period of 6 years.

Electoral Offences and Penal Provisions

Sections 123(1) of RP Act and 171-B/171-E of IPC defines bribery as a corrupt practice as well as an electoral offence. The section *vide* clause (1)(i) says that whoever 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, commits the offence of bribery. According to this sub-clause one way of committing bribery is by giving gratification. The object of the giver must be either to induce a person to

exercise an electoral right or of rewarding him for having already exercised such right. Bribery has also been defined under clause (1)(ii) wherein it has been said that whoever accepts any gratification, either for himself or for any other person, 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. Thus the second way of committing bribery is by accepting gratification. So bribery under this section is possible either by giving gratification as stated under the first part of the first clause or by accepting gratification as stated by the second part of the first clause. There is a proviso clause as well which clarifies that a declaration of public policy or a promise of public action shall not be an offence under this section.

According to the second clause of this section, a person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification. In otherwords, a gratification is deemed to have been given in any of the four cases, *viz.*, where a person offers gratification, or where he agrees to give gratification, or where he offers to procure gratification, or where he attempts to procure gratification. The second clause, therefore, further explains 'bribery by giving gratification' which has been explained in clause (1)(i) of this section.

The third clause of this section further explains 'bribery by accepting gratification' which has been explained in clause (1)(ii) of this section. According to the third clause, 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 something which he has no intention to do, or as a reward for doing something which he has not done, shall be deemed to have accepted the gratification as a reward.

Section 171-E prescribes punishment which is simple or rigorous imprisonment for a term extending upto one year, or fine, or both.

Undue influence at Elections :

Section 123(2) of RP Act and Section 171-C/171-F of IPC talks about undue influence at election, thereby making it both a corrupt practice and an electoral offence. 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 one year imprisonment or fine or both as per provision of IPC. The offence is punishable under Section 171-F of the Code. Sub-section (1) of the section states that whoever interferes voluntarily, or attempts to interfere voluntarily, with the free exercise of any electoral right commits the offence of undue influence at an election. Actual interference and attempt to interfere have been treated at par.

The interference or its attempt must be with respect to free exercise of any electoral right. 'Electoral right' has the same meaning as given under Section 171-A of the Code. Sub-section (2) explains the meaning of the expression 'free exercise of the electoral right' by including within it certain things while at the same time not prejudicing the generality of the provisions of sub-section (1). It says *vide* clause (a) that without prejudice to the generality of the provisions of sub-section (1), whoever either threatens any candidate or voter, or threatens any person in whom a candidate or voter is interested, with any kind of injury, it shall be deemed to be an interference with the free exercise of the electoral right of such candidate or voter, as the case may be, within the meaning of sub-section (1). It says *vide* clause (b) that without prejudice to the generality of the provisions of sub-section (1), whoever either induces a candidate or a voter or attempts to induce

a candidate or a 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 be an interference with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1). Sub-section (3), while excluding certain things from being considered as interference, says that a declaration of public policy or a promise of public action, or the mere exercise of a legal right without any intention to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

In the case of *Shiv Kirpal Singh v. V.V. Giri*, the election of *V.V. Giri* as the Indian President was challenged on the grounds of exercise of undue influence and one of the acts which were done in furtherance of this allegations was the circulation of pamphlet which was anonymous.

It was circulated in the Parliament's central hall containing information of attacks on *Sajeeva Reddy*, the viral candidate. Allegedly, the pamphlets had been created by the supporters of *V.V. Giri* with his consent and knowledge.

And the Hon'ble Court observed that Undue influence can occur at any stage during the election and this span would encompass the time the voter would apply his mind to weigh the merits and demerits of the candidate till the voter has cast his vote. Even though the pamphlet was anonymous, it will face the vice of Section 171-C and Section 171-G. The circulation of the pamphlet was done by an MP indicating his endorsement of the pamphlet and in the present case it was required to prove that *V.V. Giri* was involved or bear the responsibility for the pamphlet and that the election had been majorly affected. The petitioners failed to establish both the ingredients, therefore, the Apex Court

dismissed the petition. Moreover, a promise to take public action or declaring of public policy, will not be undue influence according to Section 171-C(3) of Act.

Personation at Elections:

Section 171-D : Personation at elections, whoever at an election applies for a voting paper on 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 offences of personation at an election.

It is necessary that the person committing the offence must have a guilty mind or corrupt motive. When a person's name appears in two voter's at two polling stations and the person in good faith believes that he has two votes cannot be made guilty under this Act, for example if a person has a belief that he can cast vote for his ill-health father, cannot be held guilty under this section. There is no necessity to establish a corrupt motive or *mens rea* of a person who is not entitled to vote and is aware of it, casts a vote by applying a ballot paper under a false name, the corrupt act and *mens rea* of such a person is apparent in his act.

In *Pantam Venkayya v. Unknown*, on 30th October, 1929:

There was an election to fill vacancies on the Peddapur Taluk Board. There were two vacant seats for Peddapur firka and eight candidates and eight polling stations. The petitioner's name was by mistake on the roll of two different villages, namely, Geddnapalli and Bhupalapatnam. The petitioner voted once in the morning in the polling station for Geddnapalli and in the afternoon for a second time in the polling station for Bhupalapatnam. He, however, admitted that he voted a second time, but stated that he had done so in the bona fide belief

that he could do so as his name was included in two lists. It was contended that the petitioner's plea, amounts to nothing more than the plea as he was ignorant of the law. But the Court does not follow that the petitioner's plea was merely the one that was ignorant of law. His plea apparently was that, as his name was twice upon the electoral roll, he believed by a mistake of fact, that he was on that account entitled to vote twice and not that he thought that a voter could vote more than once at an election. Court held that in order to prove the offence under Section 171-D, what is necessary is that the accused must have been actuated by a corrupt motive.

False Statement in Connection with an Election :

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 and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

The section is present to penalize a person who makes or publishes a statement which is false with respect to the personal character or a candidate's conduct. A statement which is general in nature and only has a general imputation related to misconduct will not be covered under this section.

A person can be made guilty under this section the following factors are taken into consideration:

- (a) Election must be impending
- (b) Accused knows that the statement was false or he did not believe in its veracity.
- (c) Publication of the statement must be done with an intention to affect the election's results.
- (d) Statement must be in relation to personal character or conduct of a candidate.

Illegal Payments in Connection with an Election Failure to keep Election Accounts :

Whoever without the general or special authority in writing of a candidate incurs or authorizes expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees :

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

Unauthorized and Unapproved expense incurred by a candidature is prevented by this section to an extent that it is illegal in an election, the section primarily seeks to curb the menace of corruption in elections.

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.

This section basically necessitates the candidate to maintain proper accounts of the expenditure done in an election.

Conclusion

The concept of free and fair election relates to political liberty and equality. Being 'Free and Fair' in matters of election connotes that no one under the electoral process is in bondage of another or is influenced by another person in any way. If elections are conducted in an unlawful manner, the public will lose their trust in the procedure of elections and in Democracy. Hence, Free and fair elections are the foundations of democratic form of Government.

ELECTORAL BONDS – A SOURCE OF UTILISATION OF BLACK MONEY

By

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01. Introduction:

A Political Party is an Association of Persons registered with Election Commission of India and it is governed by its own rules and regulations within the purview of Election Commission of India and their guidelines from time to time. A Political Party can own assets in its name like any other person and receive donations/contributions from its members and others. It also can have some other income generated on its assets such as, rental income, interest on deposits and sale of properties *etc.* The Political Parties shall

maintain and audit their books of accounts as required, and shall file the Income tax returns like any other person for claiming of exemption.

02. Sources of Income and taxability of Political Parties:

The following incomes of a Political Party is exempted under Section 13-A of the Income Tax Act, 1961

01. Donations and Membership fees:

The main sources of income for any political party is from the contributions or