



An overview of Offences and Corruption during Election

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Abstract:

The integrity of elections is crucial for the democratic process and the rule of law. However, election-related offenses and corruption pose a significant threat to the fairness and legitimacy of elections. This paper provides an overview of the various types of offenses and corruption that can occur during elections, including vote buying, intimidation, falsification of results, and abuse of state resources. The paper also explores the factors that contribute to the occurrence of election-related offenses and corruption, such as weak legal frameworks, lack of transparency, and inadequate enforcement mechanisms. Finally, the paper highlights some of the strategies and measures that can be taken to prevent and address election-related offenses and corruption, including strengthening legal frameworks, increasing transparency and accountability, and building public awareness and participation.

Objective:

By understanding the nature and extent of election-related offenses and corruption, and taking appropriate measures to prevent and address them, we can help safeguard the integrity of the electoral process and uphold the principles of democracy and the rule of law.

Keywords: Offences, Corruption, Election, Commission

Introduction:

There are two aspects of the democratic process, pre-election & post-election. Now, the very essence of a democratic is giving people the power to choose their representatives in what should have ideally been a free & fair election process. Elections inevitably become a disruptive force, they change the players in the game which potentially leads to new networks of ruling, and subsequently, corruption. How political cycle and the election system exacerbates corruption, is what I seek to emphasize in this chapter. It is rather unfortunate how elections, politics, political representatives have become synonymous to being corrupt. First, the power play to get into office involves acquiring funds through various unlawful channels, off the books. Second, during the term of office, indulging in practices that entail being rewarded for various acts, again, unlawfully and off the books. Elections provide a window, an easy access to the corrupt arrangements that would have otherwise gone undetected. Elections are conducted to help achieve democracy and therefore, have become an indispensable element in the process of establishing and continuing democracy in not just India, but in any part of the world. The Indian Constitution provides a scheme of democratic bodies that are bestowed on an independent constitutional authority, the very popular ECI of India, whose prime objective is to conduct free and fair elections. This can



only be achieved if the process is free of malpractices, red-tape, bribery, undue influence, etc. by letting every citizen exercise what is their constitutional right to vote, freely, without any intervention.

Concept of Corrupt Practices

The concept of malpractices may or may not have existed since the beginning of the time. However, the fact that a person who holds office becomes a powerful personality in the society definitely did not go unnoticed. With great power, came the great urge to be in power. It is why people who assume office once do everything in their capability to remain there. This gave birth to the idea of resorting to any means to stay in power. Once a candidate jumps into clash, winning the election becomes a single point agenda. Since it is not an easy task, the candidate, his followers, agents and every single person associated would want victory and do not hesitate in adopting tactics that are undesirable. Therefore, laws have been made to restrain activities that are prohibited which not only regulate the conduct of the candidate at elections but also declare certain activities as “corrupt practices”.⁶³ Initially, corrupt practices had a very generic meaning that included paying money where not entitled, or in other terms bribing a person of power to get something a method that was not ethical or sometimes, legal. In the 19th century, these practices were declared to be against the law in most nations. With time, the word started having a much broader meaning, and included under its ambit various practices such as undue influence, fraudulently obtaining something, size of expenditure, contribution, specification of purposes where the money could be spent. This was a direct result of the shift in dimension of the legislations and the ever-changing time. In short, a corrupt practice is anything that intervenes in a citizen’s right to freely exercise his/her vote.

Corrupt practices under this Act included;

- (1) bribery,
- (2) treating,
- (3) undue influence,
- (4) personation and
- (5) unauthorized expenditure.

Corrupt Practices and Electoral Offences:

It is very essential to understand the electoral offences, penalties, disqualification and most importantly, the distinction. This part of Chapter IV deals with all the provisions under the above-mentioned acts. i.e., Representation of People’s Act, 1951, the IPC, 1861 with specific regard to electoral offences. Furthermore, I have tried to distinguish and examine the electoral offences and corrupt practices.

Electoral offences, though not defined in any Indian Law existing in force for time being, in colloquial sense, refers to any offence committed in relation to an election or an electoral right⁶⁸. This offence hinders the process of election and creates a barrier that prevents a citizen from exercising his/her right to vote freely.



1. Indian Penal Code, 1861: The Electoral Offences under this Act are enlisted in Chapter IXA, “Of Offences Relating to Elections”. This chapter was inserted in around 1920 by the Indian Election Offences and Inquiries Act, 1920. This was briefly when the concept of elections was brought into existence, though in a very restricted sense from what we witness today, into some of the legislative bodies that are provided for under the Government of India Act, 1919.

Under the Code, the electoral offences are:

- a. Bribery at Elections;
- b. Undue Influence at Elections;
- c. Personation at Elections;
- d. False Statements in connection with Elections;
- e. Illegal payments in connection with an Election;
- f. Failure to keep Election accounts.

2. Representation of People’s Act, 1951: The Act was enacted by the Provincial Parliament of India before the conduct of the first general elections. This Act provides with regulations for the actual conduct of every single election held in India. The smooth functioning of Indian democracy is the very premise of this Act, as it not only governs the procedure for elections but also puts out prerequisites, a checklist, for every person who wants to be nominated as a candidate into the representative bodies.

The electoral offences under the Representation of People’s Act are:

- a. Promoting enmity between classes in connection with Election;
- b. Filing False Affidavits;
- c. Holding of public meetings during a period of 48 hours ending with an hour fixed for conclusion of poll;
- d. Restriction of publication and dissemination of result of exit polls;
- e. Offences by companies;
- f. Disturbances at election meetings;
- g. Printing of pamphlets, posters without mentioning the name of the publisher;
- h. Violation of secrecy of voting;
- i. Officers or others trying to influence the voters;
- j. Canvassing in or near the polling stations;
- k. Disorderly conduct in or near polling stations;
- l. Misconduct at the polling stations;
- m. Failure to observe procedure for voting;
- n. Illegal hiring or procuring of conveyance at the elections;
- o. Breaches of official duty in connection with elections;
- p. Misuse of Government servants;
- q. Going armed to or near the polling stations;
- r. Removal of ballot papers, etc. from polling stations;



- s. Booth capturing;
- t. Non-grant of paid holiday to employees on the day of poll;
- u. Sale, distribution, etc. of liquor on polling day;
- v. Fraudulently tampering with nomination papers, ballot boxes, ballot papers, election records, unauthorizedly supplying ballot papers, etc

Filing of false affidavits as an electoral offence under the RP Act

Filing of false affidavit or concealing any information in the affidavit filed by the candidate is considered as offence under Section 125A of RP Act. Any person who commits a aforementioned offence will be punished with imprisonment for 6 month or fine or both. But, the matter of concern is that there is no clear provision for follow-up action in the event of candidates filing false affidavits. Hence, there are several complaints of the false statements in affidavits, which mislead the electors. Advocate Ashwini Upadhyay⁷⁸ filed a public interest litigation in the Supreme Court under Article 32 of the Constitution seeking to seek directions for making the filing of false affidavit in elections an offence. In his PIL citing nearing elections, Upadhyay sought directions to the Centre to make false statement or declaration before the Election Commission, Chief Electoral Officer, District Election Officer, Presiding Officer or other similar authority, an electoral offence, in line with the Important Electoral Reforms proposed by the Election Commission of India.

Distinction between corrupt practices and electoral offences

The Supreme Court in *Gadakh Yashwantrao Kangaroo vs. EV Alias Balasaheb Vikhe Patil* ⁸⁰ held that in order to ensure that elections are held in a free and fair manner enabling men of high moral and ethical values to win, the law has laid down certain rules of electoral morality and prohibited certain acts of commission and omission which sully the purity of elections and have corrupting influence and vitiating effect on the outcome of elections. Some of these acts have been branded as ‘corrupt practices’, while the others have been termed as ‘electoral offences.

Corrupt practices are given under Section 123 of the RP Act. Electoral offences, on the other hand are laid down both in the IPC (chapter IXA) and in the RP Act (chapter III of part VII). The electoral offences under the IPC are criminal in nature, relatable to all elections held under any law to any elective body in the country, the corrupt practices and electoral offences under the RP Act are specifically relatable only to elections held under that Act to Parliament and State legislatures, and not to other elections including the elections to the offices of the President and Vice- President of India.

The fundamental distinction between these two classes of prohibited acts is that when a corrupt practice is committed by a candidate, or by someone else with his consent, it has the effect of vitiating the whole election and will result in the election of the candidate being declared void, the commission of an electoral offence does not have such fatal bearing on the election result. In the former, the whole constituency suffers inasmuch as the candidate loses his seat and the



constituency goes without representation in the legislature, till another election is held to replace the unseated member; in the latter, only the persons committing the electoral offences suffer for their criminal liability.

The further noteworthy point here is that any grievance relating to the commission of corrupt practice can be agitated only after the election is over and only in the election petition filed in accordance with the provisions of Article 329(b) and Part IV of the Ac; but the commission of an electoral offence can be taken cognizance of as soon as it is committed and the process of law set in motion immediately thereafter, in the same manner in which any other criminal activity is investigated and tried under the provisions of the Criminal Procedure Code, 1973.

Commission of a corrupt practice entails only certain civil disabilities, like, disqualification for voting and for contesting elections for certain period; but any electoral offence if committed will be visited with criminal liability and may result in imprisonment or with fine or with both, apart from attracting civil disabilities of voting and contesting elections in the case of certain specified electoral offences.

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