

International Journal of Criminal, Common and Statutory Law



E-ISSN: 2789-9500
P-ISSN: 2789-9497
IJCCSL 2022; 2(2): 21-23
© 2022 IJCCSL
www.criminallawjournal.org
Received: 21-05-2022
Accepted: 13-07-2022

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Corruption practices in elections

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Abstract

“Government of the people, by the people, and for the people is democracy” and “People have a say in elections. It should be up to them to make the decision”.

These two remarks by Abraham Lincoln doesn't “t” appear to fit in with today's scenario, in which democracy's true essence is under attack. India being the world's largest democracy and we also have the honour of hosting the world's largest democratic elections in history. In India, elections are celebrated as the “Grand Festival of Democracy”.

However, in a country where elections are so important, there are some aspects of politics in India that make it a dirty game and spoil the essence of democracy as many corrupt practices are involved during the process¹.

Elections in a constitutional democracy provide a means of determining the public's opinion on the country's government. In a representative democracy, election is the act of the people choosing a candidate for a public office based on their free choice. The word election comes from the Latin word “legere”, which means “to choose”².

The foundation of democracy is strengthened by free and fair elections. They are a pre-requisite for a lively, alive, and true democracy, which necessitates the establishment of a separate, independent, and powerful body to hold, supervise, direct, and conduct elections. Political liberty and equality are linked to the concept of a free and fair election. In election concerns, “free and fair” means that no one is enslaved to another, and that no one's personal rights, social and political liberty, free thinking, and choices are subjected to legal constraints. While exercising his right to vote, one is not subjected to excessive influence from party discipline, religion, caste, creed, sex, language, or corrupt practices, among other things. As a result, the foundations of a democratic form of government are free and fair elections.

Justice HR. Khanna remarked in “Indira Nehru Gandhi v. Raj Narain”³ that “the notion of free and fair election is an important postulate of democracy, which is a component of the basic framework of the Constitution of India”. This prompts us to examine the Constitution's provisions in light of accepted norms of free and fair elections.

Keywords: Corruption, constitution, elections, corrupt practices, provisions, democratic government, unfair

Introduction

Corrupta practica, is seen as an incurable sickness, a source of numerous negative consequences that create social and economic harm as well as damage to the civilizations' moral and ethical fiber. In India, corruption is the result of a deep link between, bureaucracy, criminals, and politicians.

Election fraud is an example of corrupt behaviors in politics. Bribery, the sale of offices, the awarding of public contracts to favored corporations or persons, and the awarding of land or franchises in exchange for monetary benefits are all examples of public official misconduct. Election fraud can include attempts to sway or intimidate voters, as well as tampering with the official ballot or election results. To combat these tactics, practically every democratic country has established legislation aimed at ensuring the integrity of political campaigns, elections, and officials. One of our long-held hopes as a country to develop an ideal democratic framework which could be done by eradicating political corruption. However, these issues are far from being resolved in practice.

Constitutional provisions related to corrupt practice in India

Corrupt practices and electoral offences are the two categories of acts and omissions that are deemed to be void in election. “Corrupt practices are dealt with in the Representation of Peoples Act, 1951”⁴, whereas “electoral offenses” are covered by both the Indian Penal Code, 1960⁵. In chapter IXA under the title of “Offences Relating to Elections”

To begin with, any corrupt practice carried out by a candidate himself or by his agent with his consent may result in the cancellation of the entire election, as the candidate's nomination will

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be rejected and the election will be considered as void, whereas in the case of an electoral offence, no such major penalty is imposed other than criminal liability, secondly, if a person engages in corrupt practices, he or she faces civil consequences, such as having his or her election cancelled and the constituency remains without any representative until the next election, however, if an electoral offence is committed, the person may face imprisonment, a fine or even both⁶.

Thus corrupt practice is more of a grievous crime than electoral offence, often both are misunderstood as same but the gravity of the offence and its punishment differs.

Corrupt practices under representation of People Act of 1951

“The Representation of People Act of 1951” explicitly says that” corrupt practices refers to any of the practices listed in Section 123 of the Act. “Bribery, undue influence, appeal on the basis of religion, race, caste, community, or language and the use of appeals to religions or national symbols” promotion of enmity or hatred between different classes of citizens on the basis of religion, race, caste, community, or language, viii propagation of sati, publication of false statements, hiring of vehicles or vessels, incurring excessive expenditure”, are all detailed definitions of various corrupt practices under Section 123.

- **Bribery:** Is defined as any gift, offer, or promise of any gratification⁷, to any person whomsoever, made by a candidate or his agent, or by any other person with the consent of a candidate or his election agent, with the intent, directly or indirectly, of inducing a person to withdraw or otherwise not withdraw from being a candidate at an election, or a voter to vote or abstain from voting at an election. Bribery even if given to only one person is also considered crime and is a non-cognizable offence under CRPC⁸. For e.g., In “Onkar Singh V Ghasiram Majhi”, it was held by the SC that, “payment of the worker his salary can actually wield his influence; however this cannot act as bribery”⁹.
- **Undue:** Influence Undue influence is in between the right of free will to elect and the right of the candidate to appeal, so if such canvassing results in undue interference with the right to vote, that interference must be limited by law, because simple influence is not a corrupt act. Undue influence in elections occurs only when misuse of power is utilized in opposition to legitimate influence. As a result, the rule does not render reasonable canvassing or legal strategies for persuading voters to vote for or against a candidate is invalid. However, it's a red flag if a candidate's selection is influenced by reasons other than aptitude, be it social, economic, political, or religious considerations. Only when abuse of power is used in opposition to legitimate influence does it become undue influence in elections.

Section 123(2) of the Representation of People Act, 1951 prohibits any threat, fear, duress, or untruth that impedes or inhibits an elector's free exercise of his or her franchise.

Appeal on grounds of caste, race, community or religion:

A particular element of Indian election law is the provision of law dealing to the corrupt practice of appeal on the basis of religion, caste, and other factors. A political party that seeks power through a religious or caste orientation agenda divides

people along religious and caste lines. It divides individuals and disturbs social structures on the basis of religion or caste, which is an intolerable anathema to constitutional culture. “The corrupt practice of appealing on the basis of religion”, as defined in “Section 123(3) of the RPA”¹⁰, is not limited to appeals to the candidate's faith. The day in Indian history when a LARGE number of people demolished the Babri mosque while shouting “EK-DO, EK-DO”, “BABRI KO TOD DO”, Under Section 123(3), appeal on the basis of religion, etc., and Clause 123(3-A), promotion or effort to promote animosity or hatred between different classes of people irrespective of religion, caste, etc., corrupt acts are prohibited.

Publication of False Statements

Publication of misleading assertions about a candidate via election speeches, brochures, booklets, handbills, posters, or through the press or television, for example, is also corrupt practice.

Free Conveyance of Voters

Hiring or buying trucks or vehicles to transfer voters to or from voting locations since this practice may influence voters and so obstruct their right to freely exercise their franchise is also considered as act of corrupt practice.

Obtaining Services of Government Servant

Because government employees play such an important role in public administration and the implementation of the ruling political party's policies, a government employee should not participate in any election campaigning or canvassing, and he should be wary of lending his name, official position, or authority to one political party or candidate over another. Government employees are expressly prohibited from participating in “politics and elections under Rule 5(1) of the Central Civil Services (Conduct) Rules, 1964”. It is also an electoral offence under RP Act, 1951.

Booth Capturing

Booth capturing was inserted in the act as a corrupt practice in eighties as a result of rampant which was created in several states of the country like Bihar, UP, Jarkhand etc., the booths were captured using the muscle power and forces which lead to fade away the trust of people in the democracy. Thus The Election Commission has adopted tougher measures and has issued clear warnings against booth capturing and rigging, including shoot-at-sight orders, poll countermanding, and rescinding of voting at concerned booths ^[11].

Challenges and problems in conducting free and fair elections

India's elections are largely free and fair. However, a few candidate may have elected solely on the basis of their financial resources and unfair means.

Many established democracies, including India, have similar issues. Those who believe in democracy are concerned about these fundamental issue.

Candidates and political parties with a lot of money may not be certain of winning, but they have a significant and unfair edge over smaller parties and independents. Money is the root cause of all the corrupt practice in elections. It changes the entire dynamics of the election as money corrupts people especially the poor. Unlimited splurge of money is spending in campaigning and propagating the vote bank.

A part from that Criminalization of politics is one of the major concerns, Criminalization of politics entails criminals participating in politics. This means that people with criminal records run for office and be elected to the parliament or state legislature. It is stated that politics has progressed to the point that “lawmakers. Have become lawbreakers”. The growing relationship between criminals and politics in a democratic society like India threatens the existence of true democracy. Persons with criminal history now have greater political clout than people without criminal records, according to a growing trend.

Family politics has also played a pivotal role in election thus to retain the powers and money, there is a ripple effect in corrupt practices in elections as Some political families have a hold in being politics for years and tickets are given to relatives of these families. Thus there is wide scope of nepotism without considering the efficiency of the candidate. But the current scenario and openly done corrupt practice is vote bank politics is run on the basis of communal polarization created in India, which is inciting leaps and bounds. The fuel of hatred amongst the citizens especially against minorities is increasing in leaps and bound. From raising slogan against a particular community, to damaging properties and giving hate speeches is very evident, with a propaganda of normalising communal politics and dividing people of basis of caste, religion or sect is the biggest concern in the modern day politics as they are the form of corrupt practices done openly. Thus, with the rise of communalism and castes as political factors, new difficulties to free and fair elections have emerged. Apart from this there are many issues that arise in conducting free and fair elections.

Conclusion

The parliamentary form of government, rule of law or free fair as well frequent elections along with secular democracy, civil freedoms, judicial scrutiny, national unity as well integrity are all key aspects of Indian democracy. But, sadly the political parties in our country are changing the concept of democracy as defined by the constitution. They have shattered people's faith in parliamentary democracy for their own personal gain. The Anti-defection statute allows political parties to split and merge, but there is no provision in the Constitution prohibiting MPs from asserting no-confidence against the government. Castes and communalism have both been used to construct sectarian vote banks and to gain and keep power. This trend is being encouraged by political parties. The Constitution's goal of eradicating social division has gradually been achieved. The most worrying part of the current political system is the criminalization of politics. In the country, a considerable number of criminals have gained political power, and their numbers are growing. The link between criminal gangs, police forces, and bureaucrats, Politicians as well as businesspeople have been made public. This way criminalization of politics and high-level corruption is eroding the foundation of our democracy. This problem is induced by corruption, bribery, and the desire for power but in the current era of coalition administrations, the sale and purchase of legislators, as well as defections and counter-defections, are the underlying determinants of instability. The black money obtained by illegal trades is used to build a network criminal that politicians can employ for assault, booth capture, manipulation, threatening voters, and sometimes even executing rival candidates during elections. Thus, the legal loophole is deliberate and intentional. It can be

eliminated by modifying the applicable legal laws.

Suggestions for curbing corrupt practices in election

It is the need of the hour to overcome these challenges as the future of the democratic country lies in the elected people, thus curbing the corrupt practices is a prima facie importance. From decriminalizing of politics and giving power in hands of competent and reliable representative to keeping a constant check on the expenditure in election and black money spend and even the bribe given in name of gift and freebies can be a step to curb this menace.

Government sponsored ads should be banned and also the paid media and press inciting hate and disturbance in harmony, for vote bank politics should be scrutinized to core. A constant check on assets owned by the winning candidates must be overlooked again and again.

There is a need independent and impartial EC for free and fair elections. Election commission should be given more power and authority to look after the matters and special courts could be established to deal with electoral offences. The election of “The Chief Election Commissioner and also the Election commissioners” should be done by collegium.

Apart from this, promise based politics should replace with value based politics and a right should be given to often recall the promises in order to fulfill it.

Furthermore, the most crucial step at the current moment is to curb the communalization of politics. Hate speeches in rallies and campaigning against any particular community with incites violence or any other riots should be strictly punishable. As it disrupts the harmony and basis of the constitution it promises “secularism, social justice and political equality, aiming to promoting fraternity amongst all citizens, assuring the dignity of the individual as well as the unity and integrity of the nation”. But if these actions continue to speed up then the constitution will be under serious threat and the democracy will at its worst stage possible. The success of democracy depends on the due conduct of elections so as to ensure the reflection of the true popular will.

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