CHAPTER XV

BOOTH CAPTURING

INTRODUCTION

India is the largest in the comity of world democracies where over 500 million people have the right to choose their government through the ballot box. One of the basic postulates of democracy is a free and fair election. During the past few elections 'rigging' and 'booth capturing' have become a menace. So widespread is their use, in some States atleast, that they are now almost a part of the electoral process. Of the two, booth capturing is comparatively a recent phenomenon. Behind the trait is the power of money. Seats of power have, in course of election history, become so tempting that the opportunity to take law into one's own hand is seized at its quickest on the pretext that ends justify means. Of course all this is a part of the gradually deteriorating law and order situation and the flourishing culture of criminality.

THE LAW ON BOOTH CAPTURING

Booth capturing originally did not figure under the categories of corrupt practices enumerated under Section 123 of the Act. It was only in 1989 that Parliament included...
"booth capturing by a candidate or his agent or other person" as one of the eight categories of corrupt practices.

The Explanation to Section 58-A lays down that booth capturing shall have the same meaning as in Section 135-A. Section 135-A which was brought on statute with effect from March 15, 1989 under Amendment Act 1 of 1989, prescribes booth capturing to be an offence and the person committing it shall be punishable with imprisonment for a term which shall not be less than six months and which may be extended to a maximum of two years and fine. Where such offence was committed by a person in the service of the Government he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and fine. Booth capturing has been explained in its explanation thus:

"For the purpose of this section 'booth capturing' includes, among other things, all or any of the following activities, namely:

(a) Seizure of a polling station or a place fixed for the poll by any person or persons making polling authorities surrender the ballot papers or voting machines and doing of any other act which affects the orderly conduct of elections;
(b) taking possession of a polling station or a place fixed for the poll by any person or persons and allowing only his or their own supporters to exercise their right to vote and prevent others from voting;

(c) threatening any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote;

(d) seizure of a place for counting of votes by any person or persons, making the counting authorities surrender the ballot papers or voting machines and the doing of anything which affects the orderly counting of votes;

(e) doing by any person in the service of Government, of all or any of the aforesaid activities or aiding or conniving at, any such activity in the furtherance of the prospects of the election of a candidate".

In the statement of Objects and Reasons for which the amendments were introduced in Section 123 of the Act, "booth capturing" was made an electoral offence under Section 135-A; it was stated that booth capturing and rigging of elections had been on the increase in the recent past and to check the evil, booth capturing had been made an offence and also a corrupt practice.
THE JUDICIAL RESPONSE

In its first judicial pronouncement by the apex Court on booth capturing in Basanagouda V S.B. Amarkhed, it was observed that "in the recent past there have been various complaints regarding booth capturing. The tendency to overawe the weaker section of the society and to physically take over the polling booths meant for them is on the increase. Booth capturing wholly negates the election process and subverts the democratic set-up which is the basic feature of our Constitution." "During the post-independence era ten parliamentary elections have entrenched democratic policy in this country which cannot be permitted to be eroded by showing laxity in the matter of booth capturing which has now been made an offence under Section 135-A of the Act", it was further observed.

On the point of enumeration of categories of booth capturing as appended to the Explanation in Section 135-A, the Supreme held that it was an inclusive explanation and seizure of polling station, taking possession thereof and making polling authorities to surrender the ballot papers or voting machines and doing of any other act which affected the orderly conducting of elections, etc. had been enumerated. "They are only explanatory and inclusive but not exhaustive. The Parliament used words of width with
generality to lug in or encompass diverse acts or omissions; innovated with ingenuity to escape from clutches of law.

On the facts of the case the Supreme Court held that in the instant case the High Court erred in taking the view that even though no factual foundation had been laid in the election petition, but since there were allegations of booth capturing and rigging in various paragraphs of the petition it was necessary to summon and examine the documents asked for by the respondent. The examinations of marked ballot papers and other used ballot papers can in no way substantiate the allegations of booth capturing. Neither the names of persons nor any other details were given in the election petition. Only bare allegations were made that votes of dead persons and those who had left the constituency had been cast. "Therefore," the Supreme Court held, "the High Court grossly erred in permitting the summoning of items ...". Following its earlier decisions the Court reiterated that in the election petition, proceedings being of quasi-criminal nature the allegations must be pleaded clearly and with full particulars especially the grounds of corrupt practices cannot be permitted to be tried on the basis of deficient pleadings or by filing applications for production of record to fish out grounds as
material which is not part of the pleadings. In any case secrecy of the ballot boxes cannot be tinkered unless an iron-cast case is made out in the election petition.".

The second case is a decision of the Punjab and Haryana High Court in S. Baldev Singh Mann v. Gurcharan Singh. In the instant case the election petitioner had stated in the election petition that he had challenged the election of the returned candidate on the ground of corrupt practice mentioned in Section 123(18) of the Act. The evidence as had been brought on record was to the effect that some people had polled votes in place of the real electors or some people had forcibly cast their votes. The High Court observed that if an elector had cast his vote at two polling booths or genuine electors had not polled their votes, the offence of corrupt practice of booth capturing would not be established. The activities which denote 'booth capturing' are not exhaustive. "Nevertheless" these activities have to be of the kind which are mentioned in clauses (a) to (e) under the Explanation to Section 135-A of the Act. The Court found that the evidence brought on record did not establish any of the activities mentioned in clauses (a) to (e) under the Explanation to Section 135-A of the Act.
In Mukhtiar Singh v. Bal Mukand, the allegation of booth capturing was made, but the Court found the allegation untenable. Petitioner, a defeated candidate, filed the present election petition for setting aside the election of respondent No. 1. Allegations of capturing of booth No. 73, had been made in the petition. It was alleged that respondent No. 1 tried to capture the booth but his attempt did not materialise and with the help of his supporters and agents indulged in large scale bogus polling in spite of the objections, protest raised by the agents of the petitioner that the Presiding Officer did not check impersonation; that at least 300 bogus votes were cast by impersonation but the names and details of these persons had not been given in the petition.

A Single Bench of High Court through Ashok Bhan, J., held that he did not find any substance in the allegations made that respondent No. 1 tried to capture booth No. 73 in which he did not succeed. The learned judge did not find any substance in the other allegation that on booth No. 73 bogus votes were polled by impersonation at the instance of respondent No. 1 or his supporters. PW 1 and PW 9 had not stated in their statements that they saw respondent No. 1 present on booth No. 73 on the day of polling. In the absence of any such evidence to this effect, it cannot be held that there was any attempt to capture booth No. 73 or
that any bogus votes were polled by way of impersonation, observed Ashok Bhan, J.

A perusal of the above decisions shows that in all the three cases the plea of booth capturing was not accepted for want of proper evidence. The allegation of booth capturing, if proved, is a corrupt practice under Section 100(1) (b) and materially affects the result of the election under clause (1) (d) and also is a disqualification. Therefore, the allegation must be specifically pleaded giving material particulars. The nature and various acts of capturing booths have been enumerated in the Explanation to Section 135-A. They are only illustrative but not exhaustive. Diverse ways would be innovated to capture booths and rigging. Nevertheless these activities have to be of the kind which are mentioned in clause (a) to (e) under the Explanation to Section 135-A of the Act.

THE VIOLATION OF THE LAW

Political violence in India is a recent phenomenon. One important factor for this is the politicians' anxiety to somehow either stay in power or overthrow the centre of power by fair or foul means. This has ultimately led to the criminalisation of politics.
The selection of candidates has a considerable bearing on the quality of future leaders and hence the choice of candidates is of vital importance. In the early four or five general elections, nobody raised an eyebrow on the quality or integrity of candidates chosen by different parties. Pandit Nehru while selecting Congress candidates always emphasized on persons "who are men and women of proved integrity". So was the case with other political leaders. But the last three general elections specially the 10th one has completely changed the outlook of almost all top political parties, perhaps believing that "elections are the alchemy of politics—they turn base metals into gold". In the 10th Lok Sabha elections all the major parties gladly distributed tickets to criminals and known patrons of criminals. Dacoits, mafia dons and an assorted bunch that lives by the gun and the dagger held the sway in a large number of constituencies with the blessings of those who swear by democracy. Some former bandits like Malkhan Madho Singh, and Tehsildar Singh, the once dreaded dacoits of the Chambal Valley, had been wooed by the Bhartiya Janata Party (BJP) to campaign for the party candidates in the Lok Sabha elections. Tehsildar Singh was fielded against Maulayam Singh Yadav in Jaswant Nagar Assembly constituency of Uttar Pradesh. Tehsildar Singh is the son of late King of dacoits, Man Singh. Five hundred seventy five dacoits campaigned in Jaswant Nagar to wrest support for
Tehsildar Singh. On the other hand Anna, a former don of the Daliganj locality of Lucknow had been rewarded with the Lucknow West Assembly seat by Yadav's Samajwadi Janata Party. Anna, who has 40 police cases against him, five of them relating to murder is the best known of the alleged criminals in the fray in U.P. Further, Maulayam Singh Yadav made his muscle managers' task easier by issuing 300 gun licences to them, while ordering the Etawah district magistrate to ban the entry of others with fire-arms. An estimated hundred old history-sheeters were reportedly in the fray for the 85 Lok Sabha and 425 Assembly seats in Uttar Pradesh alone. Thus almost all political parties this time politicised criminality by putting them up as their candidates. It has thus rightly been said that Indian politics is fast becoming the last refuge of criminals. Particularly so in much of the Hindi heartland where bullets and bombs have come to cast an ominous shadow over the ballot box. Money and mere muscle are passe. That the Indian democracy itself might be under siege was alarmed by N. Palkiwala: "unless the rapid criminalisation of politics is put an end to, there is the very real threat of military take over". Similarly, H.R. Khanna, a former Judge of the Supreme Court, lamented: "It is a most disturbing state of affairs and we must pause and ponder over the fact as to what would be the fate of our polity if we allow bandits and
murderers, mafia-dons and criminal elements to occupy seats of political power and what would be its fall out on the state of our law and order and the machinery for its maintenance.  

**ELECTION COMMISSION ON BOOTH CAPTURING**

Another menace to which mention may be made is the removal of ballot boxes from polling stations at the time of the poll. Sometimes it is called "booth capturing." This menace, it may be pointed out also comes mainly from the State of Bihar with some stray cases in some other States. About booth capturing in Bihar it may be pointed out that it has been in vogue in Bihar for quite sometime, at least since the Second General Elections of 1957.

The Report on the 4th General Elections of 1967 makes specific mention of adjournment of poll and re-poll in Bihar on account of serious disturbances or apprehended breach of peace. In the General Election of 1971, there were eight cases of removal of ballot boxes in Bihar by organised gangs of goondas and other anti-social element, two cases of removal of ballot boxes in J & K and one such case in Haryana. In these eleven cases, the ballot boxes were snatched away from the polling stations in spite of the best arrangements for safeguarding the ballot boxes and the polling stations by posting a number of policemen often
armed with fire arms. But in spite of such arrangements, riotous mobs armed with deadly weapons like revolvers, pipeguns, etc., attacked the polling stations, overwhelmed the security forces, threatened the presiding and polling officers and forcibly removed the ballot boxes in Bihar, Haryana & J & K. A ballot box was removed from a polling station in Anantnag parliamentary constituency by a woman voter under her burqa.21

In all the above cases fresh poll was directed by the Election Commission under Section 58 of the Act. In addition to these 11 cases, there were 55 more cases in some states, thus bringing the total number of cases in which the poll had to be adjourned under Section 57 or fresh poll had to be directed under Section 58 of the Act, to 66. Of these 66 cases, the largest number, namely, 52 occurred in Bihar, 3 in Haryana, 6 in J & K, one in Nagaland, one in Orissa, and 3 in U.P.22 Thus it is clear that in the matter of this vicious practice of removal of ballot boxes or snatching away of bundles of ballot papers and marking them by members of unruly and riotous mobs and then dropping them into the ballot boxes, etc. the State of Bihar comes first.23

THE CASE OF BIHAR

The above mentioned report of the Election Commission has shown that in the matter of all unlawful
electrol practice the State of Bihar comes first. The national press has also reported that in no other State has the election process been vitiated so much as in Bihar\textsuperscript{24}. Although repolling as a result of rigging or violence is not a new phenomenon in the State, but in the recent past the graph has gone up. The number of such booths which stood at 26 in 1952 rose to 283 in 1989 and over 1,000/- in the 1990 Assembly polls. As many as 28 constituencies covering 23 districts witnessed repolling in 1984. The number of such constituencies rose to 34 covering 30 districts in the 1989 Lok Sabha poll\textsuperscript{25}.

It may be recalled that Doordarshan had telecast a film some time back on December 3, 1989 about some parliamentary constituencies of Bihar, giving a graphic description of booth capturing. What was shown was shocking. Following is the text of the interview shown on the T.V.\textsuperscript{26}:

Question: Do people die here at election time?

Answer: Yes, in earlier elections also many died. We drive away people with bribes, bombs, pistols, then we cast their votes.

An open confession by a group of people in a Bihar village engaged in booth capturing brought on the T.V. screen by Nalini Singh. When she asks a 'Mukhiya', how he would go about it, he answers calmly: "We will give the voters money.
If that does not work, we will slap them and chase them away. If even that does not work, we will tear up the ballot papers. Sawn off guns, bullets, we have everything we need". And once a booth is captured, it is very simple to stamp ballots in favour of the candidate who has doled out the currency notes. As a regular says, "in an hour, we cast 800 votes on a booth. Then we move over to the next booth. By 11 a.m. we are done".

"What if a voter comes after 11 a.m."?

"He is told the polling is over. But they do not come. When the earlier lot had been driven away, the rest are scared". The officers in the booths come out as a meek lot, unable to resist the mercenaries or take the help of police". "We know orders to shoot booth capturers are only threats. No one will lift a finger", boasts a bearded young man.

The camera zooms in for a close up of a menacing middle aged man with a pronounced punch: "It is all worked out from the beginning with the polling party. They know in advance that at a certain time we will arrive at their booths".

"What if the presiding officer does not cooperate"?, asks Nalini. "He will", comes the reply with confidence. Then there was an interview with a Zamindar on a mobike,
arrogantly ruling out the participation of farm labour and womenfolk in voting". "It has been like this for generations in our village", he boasts, dismissing with contempt talk of "lok tantra": A terrorised, shrivelled old man echoes the general feeling of the poor that they would not dare to go near a booth. "Some one else casts my vote", he says.

In one of the chilling sequences, the camera closes in on a group of people armed with lathis and other weapons descending on a queue of voters. The villagers were not identified nor were the candidates named. The objective was to "show the trampling of a democratic right". The film no doubt exposed candidly the display of muscle power.

In the just concluded 10th Lok Sabha Elections the situation was described thus: "you need a ticket from my party. Can you arrange at least 100 rifles and Rs.5 lakhs? If yes, you are welcome, otherwise please do not waste my time". That was a former Chief Minister of Bihar abruptly ending a screening session of a ticket aspirant for the 10th Lok Sabha Elections. Sounds outlandish all right, but this is the done thing in this backward State where muscle and money reign supreme, come election time. In a village in Bihar, where an upper-caste combine forcibly kept Harijans away from the polling booth, the slogan was, 'Jeetenge to bantenge, harenge to Katenge' (we will share if we win, we will massacre if we lose).
Fear of violence this time was so much foreseen that various Government employees' organisations urged the Bihar Government to exempt their members from poll duties.

"Would you, given the chance, agree to supervise the polls"? Put this question to any of the employees and a sharp and frank "no thank you" came the answer in a pre-poll survey. The survey showed that, given the chance not a single employee would like to be in the seat supervising the polls. P.N. Das, accountant in the office of the Auditors General, Bihar, said, "nobody is willing to go for poll duty in a happy frame of mind. The elections do not portray the will of the people and criminals have taken over the entire process. With violence and danger lurking at each corner, who would like to sacrifice his life". The employees frankly admitted that fair polling remains no more than 20 percent while the rest is bogus voting. The employees' organisation in Jamshedpur demanded that the Government announce that at least Rs.1 lakh would be provided to the kin, if any polling officer became a victim of violence during the elections. It was pointed out that at least four polling officials were shot dead by criminals, two in the one station in Jehanabad, during the last (1990) Assembly elections and compensation had not been paid to their kin.

The Election Commission set up 65,000/- booths in the State in 54 constituencies of which 25,000/- were believed
to be sensitive. About three lakh government employees functioned as presiding, petrolling and polling officers, an equal number of home guards, policemen including 125 companies of para-military forces were kept on duty in the 10th Lok Sabha Election.

The Election Commission in its 5th Report asks: A question naturally arises who encourages this sordid practice in Bihar? At the same breath the Commission itself answers:

Those who are conversant with the social, economic and political conditions of Bihar, know that economically in spite of its vast natural resources, Bihar is a backward State; Socially it is perhaps the most cast-ridden state in the whole India and this bane of excessive casteism vitiates in no mean degree the political atmosphere in the State. Politicians and their workers and supporters belonging mainly to three dominant castes, to whatever party or parties they may belong, take a leading part in arranging or instigating 'booth capturing' by organised goondas or hoodlums in large numbers necessitating the holding of repoll under Section 57 and fresh poll under Section 58 in the concerned polling stations.\(^2\)
The Commission also points out the remedy: Unless the politicians and political parties not only desist from indulging in or encouraging this nasty practice of elections but also openly denounce it with united voice in unequivocal terms, no arrangement however, efficient it may be, can eradicate this evil.

**NO LONGER BIHAR'S PRESERVE**

A well-known case from Uttar Pradesh is that of H.N. Bahuguna who had won the Garhwal Lok Sabha constituency as a Congress-I candidate in the 1980 general elections, resigned from the party after a tiff with Mrs. Gandhi and contested a bye-election on June 14, 1981 in the constituency in order to assert his personal influence. The Congress-I was equally determined to defeat him. The Chief Election Commissioner first postponed counting and then on June 20, ordered repoll upholding the objection of Mr. Bahuguna to the deployment of policemen from other States in the constituency without the Commissioner's knowledge. This was the first time in an Indian election that a repoll had been ordered in a entire Parliamentary constituency on the ground of the induction of outside police forces by a ruling party without the concurrence of the Election Commission. The repoll was held and Mr. Bahuguna won the election.
The 9th Lok Sabha and Assembly elections in some States have proved that rigging and booth capturing are no longer Bihar's exclusive preserve. At that time the shadow of the musclemen could be seen all over the entire country from Bihar to Gujrat and West Bengal to Andhra Pradesh. In Gujrat, its Health Minister was stabbed to death; in Uttar Pradesh, Sanjay Singh was shot in his abdomen. In Amethi, late Prime Minister Rajiv Gadhi's own constituency the Election Commission had to order repoll in as many as 97 polling booths. This was done when President R. Venkataraman wrote to the Chief Election Commissioner on 23 November to take appropriate action on the complaints of poll violence and booth capturing. Opposition leaders had complained to the President about violence engineered by Congress (I) men and booth capturing by policemen in Uttar Pradesh.

The 1989 elections were perhaps the bitterest and the bloodiest ever fought in Andhra Pradesh. Twenty six persons lost their lives and repolling was ordered in 504 polling stations, a record of sorts in any State. For the first time in Andhra Pradesh a Presiding Officer fell a victim to the violence. The officer reportedly took action against a bogus voter sent by Telugu Desam Workers. The irate partymen assaulated the officer who succumbed to injuries. When a
polling agent objected to another bogus voter in a nearby booth, his hand was chopped off 37.

In Meham (Haryana), the constituency of the then Chief Minister Om Prakash Chhotala, poll violence took place on a large scale. The Election Commission held that there was booth capturing and rigging in Meham with the active support of the State police. Atal Bihari Vajpayee described the Meham incident as blot on Indian democracy. Later a Commission of inquiry was constituted to probe poll violence leading to many deaths.

"Resist rigging in elections to the Lok Sabha and the Assembly at all costs". This was emphasised by the PCC-I president, Mr. S.S. Ray, at the meetings of the PCC-I, the Congress-I Legislature Party and the Congress-I Election Committee he addressed in Calcutta.

"We will not allow elections to be reduced to a farce. We will resist it even if we have to land in jails for that," Mr. Ray said 38. The Chief Minister of West Bengal Mr. Jyoti Basu published the 51st instalment of the serialised reminiscences entitled "with the people" in the party's Bengali organ, "Ganashakti". The entire piece was devoted to a graphic description of the massive "rigging of the March 1972 elections to the Assembly which saw the Congress seize
power in the State after 1966. " The opening paragraph of the article says, "March 1, 1972, was one of the blackest days in the history of parliamentary democracy of West Bengal and India. An unprecedented example of robbing the people of their right to vote was set by the police, administration the Congress and the right Communist part (meaning the CPI). "Nine of our workers and supporters were killed in attacks by Congress goondas on the election day ... This semi-fascist terror against democracy, against the people's minimum rights was masterminded by Mr. S.S. Ray ..."

CONCLUSION

This discussion demonstrates that because of the way the elections have come to be contested, the law, in its present form, has hardly any role to play. Its efficacy will largely depend on how deterrent it is made to be, and how Indian public opinion views the malady. The opinion of the Election Commission is very pertinent here. It has observed:

Unless public conscience is stirred to its depth against these evil practices and the standard of public and electoral morality is raised, no police arrangement and no legal provisions however adequate can root out these practices from out elections. It,
therefore, lies upon the leaders of all political parties and the members of Parliament irrespective of their party affiliation to create, a healthy public opinion among the masses of the people⁴⁰.
1. The situation after the brutal killing of former Prime Minister Rajiv Gandhi in the first phase of the 10th Lok Sabha elections became so worse that President R. Venkataraman had to appeal on 8th June 1991 to all political parties, individuals, government servants and the election machinery to ensure free and fair elections on the next two rounds of polling on June 12 and 15.

In a radio broadcast and telecast the President declared, "Parties that gain power through malpractices will not get the Co-operation of the people. That a Government which does not reflect the will of the people cannot last long is one of the lessons of history". Mr. Venkataraman warned that "a country ceases to be democracy where the will of the people is not reflected in the elections and where the right to vote is deprived either by a dictator or by musclemen employed by unscrupulous politician". He added that what a booth capturer actually does is robbing his brothers and sisters of their inalienable right to vote. It is the solemn duty of political parties to ensure that the polling is both free and
fair. It is only when one party indulging/lawlessness wants to prevent others from imitating them that clashes occur and mar the entire democratic process, Mr. Venkataraman said. See the The Hindustan Times, New Delhi, 9 June, 1991.

2. Act 1 of 1989, Section 13 (with effect from 15.03.89)
4. Id at 618
5. Ibid
6. Ibid
7. Id at 613
8. Id at 612 Per K. Ramasway, J. on behalf of himself and Kul dip Singh, J.
9. AIR 1994 P & H 66
10. Id at 74
11. AIR 1994 P & H 192
12. The Week 34 (26 May, 1991)
14. Supra note 12 at 37
15. Supra note 12
20. Ibid
22. Id at 82
23. Ibid
25. Ibid
26. Id, 7 November, 1989
27. The Week 14 (26 April, 1991)
28. Ibid
28 a) The Times of India, New Delhi, 21 May, 1991
29. The Hindustan Times, New Delhi, 21 April, 1991
30. Ibid
31. Ibid
32. Supra note 18 at 82
33. Ibid
35. The Hindustan Times, New Delhi, 27 November, 1989
36. The previous highest was in 1985 in Bihar when repolling was held in 485 stations. The figures rose to 1200 in 1989.
37. The Week 31 (December 3, 1989)
38. Supra note 18 at 88
39. The Hindustan Times, New Delhi, 31 March 1991
40. **Supra** note 18 at 82

A survey of press clippings from May - June 1991 suggests the following solutions for eradication of election violence:

(i) Increase public awareness;
(ii) Broaden the powers of the Election Commission;
(iii) Get non-partisan observers from abroad;
(iv) Beef up the security - cops, BSF and homeguards;
(v) Vote against violence - an appeal to the electorate;
(vi) Install a computer programme called Election;
(vii) Drastic penal actions against offenders;
(viii) Screening of the biased security.

The suggestions, however, according to the author "in no way show any remarkably vigorous democratic imagination". See Ratnak Tripathy, "College of Violence", *Seminar* 39 (September, 1991).