CHAPTER I
INTRODUCTION

In a democratic polity elections play a significant role. It is through elections that the mandate for forming the government is determined, the political

1. The emergence of the representative government from the 17th century is the reason for the widespread use of election in the modern world. However, elections took a central place in politics in the Greek City states of the eastern Mediterranean in the fifth and sixth centuries B.C. See 5 International Encyclopaedia of the Social Sciences (Macmillan, New York, 1968) p.529. Ghani Jafar observed: "As for a social system there has indeed been a marked significance attached to electoral verdicts in national elections at different points of time. This variation has been related to democratic options available to the electorate at each given time of its going to poll". Editor's introduction to Ghani Jafar (ed.), Elections in India 1984-85 (Institute of Regional Studies, Islamabad, 1987) p.2. According to Professor W.J.M. Mackenize, "the question of elections is at the centre of politics everywhere", Free Elections: An Elementary Textbook (New York, 1958) p.175.

2. According to Stein Rokkan, "elections are institutionalized procedures for the choosing of office-holders by some or all recognized members of an organization". See Citizens, Elections and Parties (Oslo, 1970) p.147.

3. The purpose of election is said to be the "choice of Government or even of regime". 5 International Encyclopaedia of the Social Sciences (Macmillan, New York) p.529. According to K.C. Wheare, "the system of elections adopted in a country and the distribution of seats may determine the party composition of legislature and the strength or weakness of the executive". Modern Constitutions (Oxford, 1966) p.77.
leadership for controlling the nation is selected, the public opinion on various issues is ascertained and the law makers are chosen. An eminent political scientist described the multifarious roles of elections in the following words:

Elections are complex events involving individual and collective decisions which directly affect, and are affected by, the total political and social process. They open up channels between the polity and the society, between the elites and the masses, between the individual and his government.

4. "Elections are means of making political choices by voting. They are used in the selection of leaders' and in the determination of issues". 6 Encyclopaedia Britannica (Fifteenth edn., 1974), p.527.

5. At the time of election the political parties may publish election manifestos stating their policies, programmes and the priorities for implementation. So the voting pattern may reflect the response of the people to the attitude of the political parties on such issues. See G.B. Gena, "Party Manifestos: A Review". 6 Political Science Review 1 (1968). According to James N. Rosenau, "An election . . . might be viewed as an independent variable in a model explaining the strength of political parties, as an intervening variable in a hypothesis anticipating the nature of public policies and as an independent variable in a proposition predicting the consequences of political campaigns". The Dramas of Politics (Boston, 1973) p.171.

6. According to Douglas W. Rae, the election laws "are of special importance for every group and individual in the society, because they help to decide who writes other laws". The Political Consequences of Electoral Laws (Yale University Press, 1969) p.4.
They are major agencies of political socialization and political participation. Though the consequences of the franchise exercised by the individual elector are multidimensional, elections serve a public purpose. Thomas M. Cooley observed:

Suffrage is participation in the Government: in a representative country it is taking part in the choice of officers, or in the decisions of public questions. The purpose is to keep up the continuity of Government, and to preserve the public order and the protection of individual rights. The purpose is therefore public and general, not private and individual.

Hence it is expected that "the electors should choose as their representatives wiser men than themselves and should consent to be governed by that superior wisdom." However,

7. Norman D. Palmer, Elections and Political Development: The South Asian Experience (Vikas, New Delhi, 1976) p.1. A.H. Brich observed: "... representation by election has come to be regarded as the most important form of representation, and indeed as the only basis of a political system". Representative and Responsible Government (London, 1964) p.17.


it is the paramount duty of the elected to protect the interest of electors. Brich A.H. observed:

The elected might never form to themselves an interest separate from the electors, prudence will point out the propriety of having election often; because as the elected might by that means return and mix again with the general body of electors in a few months, their fidelity to the public will be secured by the prudent reflection of not making a rod for themselves.\(^{10}\)

However, it is practically impossible to achieve the true purpose of elections since the percentage of citizens actively interested in politics is very low. Bagehot observed:

It has been thought strange, but there are nations in which the numerous unwiser part wishes to be ruled by the less numerous wiser part. The numerical majority whether by custom or by choice is immaterial—is ready, is eager to delegate its power of choosing its rulers to a certain minority. It abdicates in favour of its elite and

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10. A.H. Brich, Representative and Responsible Government (London, 1964) p.42. According to V.O. Key, Jr., "the people may not really govern themselves, but they can stir up a defending commotion if they dislike the way they are governed". Politics, Parties and Pressure Groups (Fifth edn., New York, 1964) p.6.
consents to obey whoever that elite may confide in. But in actual practice it is not the elite class but the middle class who dominates the political sphere. According to J. Blondel "politics is a middle-class job and the training appropriate for middle class job is also training for politics". The ultimate result of the sidelining of elite class by the middle class may be the devaluation of the quality of leadership.

The passive electorate and the second rate candidates for leadership may provide ample scope for manipulating the election device. It was observed:

Although they formalise and equalize the possibility of popular influence, elections, by


institutionalizing popular influence also create new and subtle means for its manipulation. Consider, for example, the mechanism of electoral rules and procedures, which specify how individual choices, or votes, will be translated into collective decisions. These "rules of the game" are everywhere subject to definition and redefinition and can be adjusted, for example, to diminish or even preclude the possibility of electoral influence. Examples of authoritarian elections without choice are, of course, numerous, but even where competition and choice are built into the system, the election laws can play an important role in preserving an established distribution of power.¹³

An aggravated form of manipulation is the commission of corrupt practices. The scope of commission of


Another form of manipulating election process is the projection of images of the candidate. V.O. Key, Jr. described this sort of unfair practice thus: "if leaders believe the route to victory is by projection of images and cultivation of styles rather than by advocacy of policies to cope with problems of the country, they will project images and cultivate styles to the neglect of the substance of politics. They will abdicate their prime function in a democratic system, which amounts, in essence, to the assumption of the risk of trying to persuade us to lift ourselves by our boot straps". The Responsible Electorate (Harvard, 1966) p.6.
Corruption of electoral practices is of course, not limited to bribery or intimidation of individual voters. The possibilities are endless, ranging from the dissemination of scurrilous rumours about candidates, and deliberately false campaign propaganda, to tampering with the election machinery by stuffing the ballot box with fraudulent return, dishonest counting or reporting of the vote, and total disregard of electoral outcomes by incumbent office-holders 14.

Thus it is said that in the present electoral system the gambling, betting and sporting instinct of the nation seem to have found their characteristic political expression 15.

The corrupt practices and other vices of éléctoral system would cause to damage the very foundation of representative Government. J.F.S. Ross observed:


Any electoral system must be operated properly and kept in good working order if it is to produce its best results. But a bad electoral system can most certainly damage and even ruin the prospects of self-government. So though a good electoral system is not by itself a sufficient condition for the ensurement of genuine representative government it is none the less a necessary condition\textsuperscript{16}.

The role of the legal system in ensuring free and fair election is very significant. In the system of constitutional government the structure of the principal organs of the government is determined by law\textsuperscript{17}. Hence provisions for ensuring free and fair elections are generally incorporated in the Constitution itself\textsuperscript{18}. There may be other elaborate provisions in this regard incorporated in various statutes. The purpose of these legal provisions is to prescribe detailed rules regarding the system of election, delimitation of constituencies, structure, powers and functions of the authority charged


\textsuperscript{17} See \textit{Wade and Bradly, Constitutional and Administrative Law} (Sixth edn., 1985) p.9.

\textsuperscript{18} See generally Amos J. Peaslee, \textit{Constitutions of Nations} (Hague, 1974).
with the duty to conduct elections, qualifications and disqualifications of electors and candidates, manner of the preparation of the electoral rolls, procedure for the conduct of elections and declaration of results and the forum and procedure for remedying the grievances in connection with elections\textsuperscript{19}. It is expected that the enactment and the enforcement of such legal provisions will ensure free and fair elections since every action of each individual in connection with election is structured by law.

Thus it is said that:

The primary object of the law of election in every country is to create and maintain that sort of atmosphere in which the electorate can choose their representatives by the exercise of their free will without any pressure or hindrance or undue influence from any quarters\textsuperscript{20}.

In the Constitution there are provisions regarding the structure, powers and functions of the Election Commission, the apex body of the machinery charged with the duty to prepare electoral roll and conduct election\textsuperscript{21}.


\textsuperscript{21} Art. 324.
Article 325 provides that "there shall be one general electoral roll for every territorial constituency" and that "no person shall be ineligible for inclusion in any electoral roll on the grounds only of religion, race, caste, sex or any of them". Article 326 provides for the application of the principle of adult suffrage. Both the Parliament and State Legislatures are empowered to make detailed provisions in their respective fields. The provision dealing with the manner of challenging the validity of election bars the interference by courts in electoral matters. The procedure of the election of the President and Vice-President, composition of both of Parliament and State Legislature, readjustment of constituencies after each census, qualifications and disqualifications for membership in Parliament, and State Legislatures are regulated by the constitutional

22. Art. 327.
25. Arts 54, 55, 62, 64 and 68
26. Arts. 80 and 81
27. Arts. 170 and 171
28. Art. 82
29. Arts. 84, 102 and 103
30. Arts. 173, 191 and 192
provisions. The Representation of the People Act, 1950 and The Representation of the People Act, 1951 (R.P Act) are the major enactments in this regard.

In England, though corrupt practices were prevalent\(^{31}\) in the earlier days, after 1911 there has not been a single election petition on the ground of an alleged corrupt practice\(^{32}\). But in India, the position is entirely different. The number of election cases containing the allegations of corrupt practices are comparatively high\(^{33}\).

There are so many reasons for the large scale existence of the corrupt practices in the Indian electoral system. First, the elections based on universal adult franchise is a post-independence development\(^{34}\). Hence, Indian democracy has not yet attained a level of maturity as


\(^{33}\) The total number of reported cases containing the allegation of corrupt practice during the period 1952-1992 is nearly 575. In addition there may be hundreds of unreported cases.

\(^{34}\) However, democratic institutions formed on the basis of limited franchise had been in existence in British India. See M. Rama Jois, Legal and Constitutional History of India, Vol.II (1984) pp.278-343.
in countries such as U.K. and U.S.A which have a fairly long tradition of democratic government and the democratic process has attained maturity through the trials and errors practised for centuries.\(^35\)

Secondly, the illiteracy and ignorance is a major impediment to political awareness in India.\(^36\) Hence serious efforts on the part of the political parties and other social institutions are necessary to make the ordinary man aware of the significance of the election process. But quite often the attempt of the political parties is to ignore their primary role and to adopt unfair means for electoral gains.\(^37\) The social institutions devoted for politically educating the people are practically non-existent in India. The irresponsible attitude of political parties and the lethargic approach of other social institutions towards politics is a contributory factor for increasing corrupt practices.

Thirdly, since India is not yet free from the hang-over of the caste-based closed society, communal and


religious factors tend to dominate over social and political issues\textsuperscript{38}. The linguistic and parochial considerations may also influence the ordinary man in choosing his representatives for democratic institutions. The role of the religious and communal leaders in influencing the elector in making political choice is also significant.

Poverty of the people and the undeveloped character of the villages constitute the fourth factor which increases the chance of corruption in elections\textsuperscript{39}. The persons having the power can adopt a two-fold strategy of carrot and stick upon such a society for mobilising political support - first, to induce them by offering some incentives and the second, to threaten them of the possibility of worsening the position of the individual or the locality owing to the displeasure of the authorities. The money power and muscle power may be enormously used upon such a society for electoral gains.

\textsuperscript{38} See G.S. Ghurye, \textit{Caste and Class in India} (Bombay, 1950) See also M.N. Sreenivasan, \textit{Social Change in Modern India} (Orient Longman, 1972).

Fifthly, since the lingering elements of feudalism still exist in the Indian Society, land lords or local chieftains enjoy substantial control over the ordinary villageman. Hence the ordinary man may be under the undue influence of his landlord, or village head in making his political choice. In such a situation it is quite possible that political parties may resort to unfair methods to please the landlord or local chief. In addition, there are many instances where the harijans and landless labour are prevented from entering the polling stations and the votes of such groups are cast by the upper castes by rigging and impersonation.

Sixthly, the nexus between the political leadership and the bureaucracy, including police and officials on election duty, may result in the misuse of the official machinery for the advantage of a particular political party or a candidate.


42. See Susheela Kaushik, supra n.8. See also Prashant Bhushan, The Case that Shook India (Vikas, 1978) pp.241-255.
Unholy alliance between the political leadership and the vested interest groups having control over vast economic resources, including black money, may provide ample scope for manipulating the election with the strength of money power. Since a huge amount has to be mobilised within a short span of time to meet the expenditure in elections, political parties may be compelled to approach the vested interest groups having money power.

However, all the malpractices connected with elections are not taken up for detailed study. Norman D. Palmer observed:

Conventionally, in voting behaviour and other types of electoral studies, elections have been analyzed on the basis of factors influencing; and the motivations of, the individual voter, the electors as a collectivity, the representatives chosen through the electoral process, the process itself, the kind of Government that is produced and the nature and degree of its actual responsibility to the electorate, and the role of elections in the functioning and development of the political system.

43. See S.N. Sadasivan, Party and Democracy in India (New Delhi, 1977) and Krishna Kant, "Black Money and Electoral Reforms" I and II Hindustan Times 26 and 27 December, 1974.

44. Supra n.7 at 2.
A survey of the election studies in England and India clearly reveals this fact. The present study is an attempt to analyse and evaluate the legal strategy to meet the challenge of corrupt practices in India.


In order to prevent the malpractice in elections a two-fold strategy has been adopted in India. The first strategy operates through penal sanctions. Thus Bribery\(^{47}\), undue influence\(^{48}\), personation\(^{49}\), false statements\(^{50}\),

\(^{46}\) (Contd...)


- S. 171-B, Indian Penal Code, 1860.
- S. 171-C, Ibid.
- S. 171-D, Ibid.
- S. 171-G, Ibid.
illegal payments\textsuperscript{51} and failure to keep election accounts\textsuperscript{52} are offences under the Indian Penal Code. In addition, there are fifteen electoral offences defined by the R.P. Act viz., Promoting enmity between classes in connection with election\textsuperscript{53}, convening of public meetings in contravention of law\textsuperscript{54}, disturbances at election meetings\textsuperscript{55}, printing of pamphlets or posters without observing the formalities prescribed by law\textsuperscript{56}, violating the law governing the secrecy of voting\textsuperscript{57}, assistance by officers on election duty for furthering the prospects of election of a candidate\textsuperscript{58}, canvassing in or near polling stations\textsuperscript{59}, disorderly conduct in or near polling stations\textsuperscript{60}, misconduct at the polling station\textsuperscript{61}, failure to observe procedure for voting\textsuperscript{62},

\textsuperscript{51} S. 171-H, Ibid.
\textsuperscript{52} S. 171-I, Ibid.
\textsuperscript{53} S. 125, Representation of the People Act, 1961.
\textsuperscript{54} S. 126, Ibid.
\textsuperscript{55} S. 127, Ibid.
\textsuperscript{56} S. 127 A, Ibid.
\textsuperscript{57} S. 128, Ibid.
\textsuperscript{58} S. 129, Ibid.
\textsuperscript{59} S. 130, Ibid.
\textsuperscript{60} S. 131, Ibid.
\textsuperscript{61} S. 132, Ibid.
\textsuperscript{62} S. 132 A, Ibid.
illegal hiring or providing of conveyances at elections\textsuperscript{63}, breaches of official duty in connection with election\textsuperscript{64}, government servant acting as election agent, polling agent or counting agent\textsuperscript{65}, removal of ballot papers from polling station\textsuperscript{66} and booth capturing\textsuperscript{67}.

The second strategy is to deprive a successful candidate of the gains of unfair means adopted for his success and to make all the concerned persons subject to electoral disqualifications. For that purpose certain unfair practices having grave amplitude have been treated as corrupt practices.

The legal provisions governing the corrupt practices in elections are embodied in the Representation of the People Act 1951. Section 123 of the Act defines various corrupt practices. Bribery, undue influence, appeal on the ground of religion, race, caste, community or language and the use of or appeal to religious or national symbols, promotion of enmity or hatred between different classes of citizens on the ground of religion, race, caste, community or language, propagation of sati, publication of false

\textsuperscript{63} S. 133, ibid.
\textsuperscript{64} S. 134, ibid.
\textsuperscript{65} S. 134 A, ibid.
\textsuperscript{66} S. 135, ibid.
\textsuperscript{67} S. 135 A, ibid.
statements, hiring of vehicles or vessels, incurring excessive expenditure, procuring the assistance of government servants and booth capturing are corrupt practices defined by the Section. According to Section 100 of the Act, commission of corrupt practice is a ground for setting aside the election. The Sections read thus:

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion-(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or (c) that any nomination has been improperly rejected; or (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected.

(i) by the improper acceptance of any nomination, or (ii) by any corrupt practice committed in the interests of the returned candidate (by an agent other than his election agent); or (iii) by the improper reception,
refusal or rejection of any vote or the reception of any vote which is void; or (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders and without the consent, of the candidate or his election agent;

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void.
In addition, if the court is of opinion that but for the votes obtained by the returned candidate by corrupt practices, the petitioner or such other candidate would have obtained a majority of valid votes the court can declare that such a candidate has been duly elected.

Section 99 of the Act provides for recording separate finding regarding the names of the person found to be guilty of the commission of corrupt practices and the nature of the corrupt practices. The finding recorded

68. Section 101 reads thus:

If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion:

a. that in fact the petitioner or such other candidate received a majority of the valid votes; or

b. that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the High Court shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

69. The provision reads thus:

1. At the time of marking an order under section 98 the High Court shall also make an order—

a. where any charge is made in the petition of any corrupt practice having been committed at the election, recording—

i. a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and
under Section 98 is a ground for disqualifying a person for being a candidate in an election. The provision reads thus:

(1) The case of every person found guilty of a corrupt practice by an order under section 99, shall be submitted, as soon as may be, after such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period;

69. (Contd...)

ii. the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

b. fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid:

Provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless-

a. he has been given notice to appear before the High Court and to show cause why he should not be so named; and

b. if he appears in pursuance of the notice; he has been given an opportunity of cross-examining any witness who has already been examined by the High Court and has given evidence against him, of calling evidence in his defence and of being heard.

2. In this section and section 100, the expression "agent" has the same meaning as in section 123.
Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him under section 99 takes effect.

(2) Any person who stands disqualified under section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may if, the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period.

(3) Before giving his decision on any question mentioned in sub-section (1) or on any petition submitted under sub-section (2), the President shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion\(^7\)

Hence the consequences of the commission of corrupt practices have semi-penal character.

\(^{70}\) Section 8-A, Representation of the People Act, 1951.
The present study is confined to the corrupt practices in election. The purpose of the study is to examine whether the existing provisions of law are sufficient to achieve the objective of ensuring free and fair elections and to suggest reforms in the present law so as to make it more effective to achieve the object. The question whether the judiciary has assimilated the true spirit of the provisions is crucially relevant in this context and forms the core of the study.
CHAPTER II
BRIBERY

The influence of money power in election is a curse of the democratic process since the overspending of money by and large, influences the ultimate result\(^1\). Payment as the reward for a particular line of voting or for standing or not standing as a candidate or withdrawing or not withdrawing the nomination etc. is one of the unfair ways of election spending\(^2\). Another mode of improper using of money is the payment to influential persons for taking a particular stand in an election\(^3\). Huge amounts may be spent

1. David Adamany observed: "In American Politics, money and other political resources are for the most part used to gain representation, rather than improperly to influence decisions of public official." Financing Politics (London, 1969) p.257. L.K. Advani exposes the Indian scenario in the following words: "One of the questions almost all parties put to candidates seeking their ticket is: how much you are willing to spend on this election? And a major factor influencing a party's choice is the ticket seeker capacity to spend." "Indian Electoral System's : A Plea for Reform" in Verinder Grover (ed.) Elections, Electoral Mechanism and Behaviour in India 699, 717 (New Delhi, 1985).

2. See infra.

3. See infra.
for refreshments and entertainments\(^4\). Paid canvassers may also be engaged\(^5\). Unlimited amounts may be spent on a variety of advertisement devices and for organizing public meetings and processions\(^6\). Using of vehicles for providing free conveyance to electors and for other purposes is another item which involves enormous spending\(^7\).

In India since the bulk of the population is illiterate and below the poverty line, attempts may be made to influence electors by offering gratification. Such an evil practice would jeopardize the very foundation of the concept of people's representation. Hence it is essential to make adequate legal provisions for dealing effectively with this undesirable practice. Bribery in election is treated as

\footnotesize{4. According to an illustration given by Strathearn Gordon, Lord Ashley who won Dorset seat in 1931, was faced with bill of £15,600 of which £12,525 were paid to inns and public houses as cost of refreshments provided to the voters. See Our Parliament (London, 1964) p.52.}

\footnotesize{5. It was observed: "No longer do people volunteer to campaign. They have to be paid in hard cash for taking out procession and shouting slogans." Editorial "After the Vote", Hindustan Times, December 21, 1984.}

\footnotesize{6. See B. Maheshwari "Campaign Techniques and Organization" in Verinder Grover (ed.) Elections, Electoral Mechanism and Behaviour in India 814 (New Delhi, 1985).}

\footnotesize{7. See L.K. Advani supra n.1 at 725.}
an offence punishable under the Indian Penal Code\(^8\). The Representation of the People Act, 1951 prohibits bribery and makes it a corrupt practice.

Payment of money as a reward for voting is a simple form of bribery. However, the definition given in the Act clearly indicates that the term bribery has a wider meaning\(^9\).

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8. Section 171-B of Indian Penal Code reads thus:

1. Whoever
   i. gives a gratification to any person with the object of inducing him or any other person to exercise an 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.
Offer of Money

In election the offer of money as gratification may be either in general terms or in the form of specific amount. According to the view taken by the Supreme Court

9. Section 123(1) of the R.P. Act reads thus:

'Bribery', that is to say,—

A. any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly, of inducing—

a. a person to stand or not to stand as, or (to withdraw or not to withdraw) from being, a candidate at an election, or

b. an elector to vote or refrain from voting at an election, or a reward to—

i. a person for having so stood or not stood, or for (having withdrawn or not having withdrawn) his candidature or

ii. an elector for having voted or refrained from voting.

B. the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

a. by a person for standing or not standing as, or for (withdrawing or not withdrawing) from being, a candidate;

b. by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting or any candidate (to withdraw or not to withdraw) his candidature.

Explanation—For the purposes of this clause the 'gratification' is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bonafide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.

In English Law also analogous provisions exist. See 15 Halsbury's Laws of England (Fourth edn., 1977) P.419.
in Rajendra Prasad V. Sheel Bhadra\textsuperscript{11}, an offer of money without specifying the amount is sufficient to constitute corrupt practice of bribery. The facts of the case reveal that in the election to the Council of States from the constituency of the Legislative Assembly of Bihar two instances of offering money were proved\textsuperscript{12}. The finding recorded by the Tribunal and the High Court did not show that any specific amount was offered as bribe. In the appeal it was contended that offer of money in general terms could not be treated as corrupt practice. The argument was based on the well-accepted meaning of the word 'offer' in the law of contract. Justice Bhargava rightly held that while interpreting the word 'offer' in Section 123 (1) of the Representation of the People Act, 1951 no assistance could be

\textsuperscript{10} In Nani Gopal v. Abdul Hamid A.I.R. 1959 Ass. 200, the allegation was that the election agent of the candidate purchased the ballot paper from electors at the polling booth on payment of Re.1/- Though the Tribunal treated it as corrupt practice and ordered to set aside the election, the High Court reversed on the ground of lack of evidence.

\textsuperscript{11} A.I.R. 1967 S.C. 1445.

\textsuperscript{12} Seven instances of payment of bribe were alleged in the petition. The Tribunal found that all instances of payment were proved. However, the Patna High Court held that only two instances were proved beyond reasonable doubt. For High Court decision, see Rajendra Prasad v. Sheel Bhadra A.I.R. 1957 Pat. 17.
sought from law of contract. The learned Judge distinguished
the factual situation of the cases cited by the counsel for
the appellant 13 and referred to the English position 14 in
this regard. It was observed:

We are unable to accept the proposition suggested
by learned counsel that an offer of bribery cannot
be held to be such unless a specific amount is
mentioned in the offer. No such requirement is

13. Two decisions, Emperor v. Dinkar A.I.R. 1933 All. 513
and Emperor v. Amiruddin Salebhoj Tyabjee A.I.R. 1923
Bom. 44 were cited. In the former the words used by the
accused were that "my cousin wishes to give you
Rs.5000." In the latter case, the accused admitted that
he went to a judge and told him that the plaintiff
would pay Rs.10,000/- if the suit was decreed, but
denied that he had gone on behalf of the plaintiff.
Distinguishing the facts of the above mentioned cases
from that of the present case, the Court rightly held
that "in the instant case, the words used by the
appellant clearly amounted to an offer to give money
himself to woo voters" (See supra n.11, at 1449). Union
of India v. H.C. Goel A.I.R. 1964 S.C. 364 was the
other decision cited. The Court correctly pointed out
that the ratio of Goel was that the mere taking out of
currency from the wallet did not amount to an offer and
held that in the instant case there was a clear offer
to give money (See supra n.11, at 1449).

14. Two earlier English decisions Borough of Stately Bridge
1869 1 O'M and H 66 and Borough of Coventry (1869) 1
0'M and H 97 were cited to drive home the point that in
England the law relating to corrupt practice of bribery
was extended to include offers of bribery. The earlier
Supreme Court decision Chatturbhuj Vithaldas v.
Moreshwar Parashram A.I.R. 1954 S.C. 236 was also cited
to explain the need for avoiding narrow construction to
the words 'offer' of bribery when used in election law.
Mohan Singh v. Bhanwarlal A.I.R. 1964 S.C. 1366 was
also cited to elucidate the meaning of the term
'gratification'.
laid down by law, and if we were to accept this proposition, it would lay the field open for corruption in such a manner as to make the provision totally ineffective. A candidate wanting to secure a vote by bribery can always go and first ask the voter whether he is prepared to accept money as a bribe and need offer a specific sum only after the voter has signified his assent. Once the voter actually accepts the offer, it is not likely that evidence of that instance of bribery will be available. The mere fact that a candidate goes and offers some money is enough to show that he has already made his offer to corrupt the voter and secure his vote, though there may still be a possibility that, if subsequently the negotiations as to the precise amount to be paid as bribe fail, he may not actually succeed in his objective.\textsuperscript{15}

The Court upheld the High Court decision in setting aside the election.\textsuperscript{16} It is submitted that the reasoning is correct. Since the promise of gratification is

\begin{flushright}
\textsuperscript{15} A.I.R. 1967 S.C. 1445, 1450.
\end{flushright}

\begin{flushright}
\textsuperscript{16} The decision was followed by the Orissa High Court in Ghasiram Mahji v. Omkar Singh A.I.R. 1968 Ori. 99 for setting aside the election of the respondent on the ground that Rs.100/- had been paid and Rs.400/- had been offered as bribe.
\end{flushright}
covered by section 123 (1) any attempt in this regard should be treated as corrupt practice.

Allotment of Discretionary Grants etc. by a Minister

The minister is the executive head of a government department. In addition, he may be the chairman of an authority like a public corporation. This type of official position may enable him to sanction discretionary grants to be utilised for general purposes. This also enables him to take decisions on matters affecting individual interests, like transfer of employees. Such discretionary powers may be abused for political gain, since most of the ministers are active politicians. The question whether this sort of abuse of power may be treated as corrupt practice of bribery was involved in many election petitions.

The issue came before the Supreme Court in Ghasiram v. Dal Singh. The petition enumerated several instances of allotment of discretionary grants by the minister and it was contended that the action constituted bribery. It was alleged that before the grants were sanctioned the Minister had visited several villages and

voters told him that as he had done nothing they were not going to vote for him. It was by promising the grants that the respondent had secured the bulk of votes from the villages. The Punjab and Haryana High Court had dismissed the petition on the ground that it had failed to prove both the question of law and fact. On appeal, affirming the decision of the High Court, an attempt was made by Hidayatullah J. to examine the singular position of ministers. The learned Judge observed:

The position of a Minister is difficult. It is obvious that he cannot cease to function when his election is due. He must, of necessity, attend to the grievances, otherwise he must fail. He must improve the image of his administration before the public. If everyone of his official acts done bona fide is to be construed against him and an ulterior motive is spelled out of them, the administration must necessarily come to a standstill.

18. The returned candidate was the Minister for irrigation and power. The election took place in February 1967. The allegations were that the Minister promised a payment of Rs.5,000 on February 13, 1967 for a sacred tank in village Ram Rai, Rs.2,500 in December 1966 to Gram Panchayat of Bibipur and Rs.500 each on January 9, 1967 for public utility works to Gramapanchayat Ram Rai Balkami Harijan Community Centre at Village Mehrra and Rs.500 for the repair of a Harijan well at Laljwana Khurd.

19. A.I.R. 1968 S.C. 1191, 1196. (For himself and on behalf of K.S. Hegde J.)
Analysing the factual situation, the learned Judge opined that the action of the Minister was part of his official work and the money was not distributed among the voters directly but was given to local authorities and the public at large. The learned Judge pointed out that the grant of discretionary grants was part of the general scheme to better community development projects and to remove the immediate grievances of the public and that the money was not distributed among the voters directly but was given to Panchayats and the public at large to be used for the good of those for and those against the candidate. The Court concluded that in the absence of good evidence that the Minister bargained directly or indirectly for votes, there cannot be any corrupt practice.

But the Court clearly expressed its disquiet on the practice of granting discretionary funds by ministers intending to capture votes and described it as evil practice which should be avoided.

It was observed:

Election is something which must be conducted fairly. To arrange to spend money on the eve of elections in different constituencies, although for general public good, is when all is said and done an evil practice, even if it may not be corrupt practice. The dividing line between an
evil practice and a corrupt practice is a very thin one. It should be understood that energy to do public good should be used not on the eve of elections but much earlier and that even slight evidence might change this evil practice into corrupt practice. Payments from discretionary grants on the eve of elections should be avoided\textsuperscript{20}.

On the same day, another case having similar factual situation was disposed by the Court. In Om Prabha v. Abnash Chand\textsuperscript{21}, the allegation was that the returned candidate, a minister, used certain discretionary grants to bribe the voters of her constituency. The particular instances shown were the payment of two sums of Rs. 2,000 for the construction of two dhowshallas for the Kumhar and Sweeper Colonies at Karthal. It was specifically alleged that the candidate personally approached the electors and promised to provide funds, and tempted by the offer they agreed to vote. The Punjab and Haryana High Court ordered to set aside the election. However, on appeal, the Supreme Court reversed. The Court referred to its decision in Ghasiram and explained the law governing the aspect in the following terms:

\textsuperscript{20} Ibid.

\textsuperscript{21} A.I.R. 1968 S.C. 1083.
a Minister in the discharge of his duties may be required to do some acts of administration including the granting of money for the uplift of certain communities and this action of the Minister is not to be construed against him unless it can be established that there was a bargain with the voters for getting their assistance at the election. The Court examined the evidence and held that there was no proof to show bargaining with the electors and added that the alleged action of the minister was part of the due discharge of her duties.

The above mentioned two decisions clearly reveal that the amelioration of grievances of the public and the initiating of development works even at the time of an election do not come within the purview of corrupt practice of bribery if there is no bargaining with the electors in this regard. It is relevant to note that both the decisions were delivered by Justice Hidayatullah. In Ghasiram though the learned Judge upheld the minister's conduct, he posed serious doubts regarding the propriety of using government fund, under the pretext of public duty, to secure the votes. The learned Judge himself had admitted of the difficulty to formulate a criterion to determine whether the action went...

22. Id. at 1086. (Hidayatullah J. for himself and on behalf of R.S. Bachawat J.)
beyond the limit of evil practice and entered the zone of corrupt practice. The only test laid down was that if there was bargaining with electors for initiating development works or ameliorating grievances it could be treated as corrupt practice. It is also not clear whether 'bargaining with electors' was intended to be the sole criterion to determine this sort of corrupt practice. However, Om Prabha assumed it to be so. It is relevant to note that in Om Prabha the learned Judge did not mention anything about the impropriety of misusing the discretionary grants for political gains. Hence it is to be said that Om Prabha narrowed down the scope of the provision.

The issue was again considered by the Court in B.K. Shastri v. M. Sukhadia where the allegation was that

23. A.I.R. 1971 S.C. 2025. The date of polling was 15th February, 1967. One of the allegations was that the returned candidate and his agents promised the voters of the Raigar Colony, Udaipur, that they would be issued pattahs at a nominal rate of Re.1/- The government order for granting pattahs was issued on 10th February, 1967.

The second allegation of bribery was that the returned candidate had ordered the Public Works Department (P.W.D.) to construct a road at Tekri though it was a municipal area and P.W.D. had no jurisdiction. It was further alleged that the respondent held a meeting on 5th February, 1967, and during his speech said that he was arranging for construction of roads and installation of water taps and requested the people to vote for him.

The third allegation was that the Chief Minister visited Baluchistan Colony and induced the voters to vote for him and promised to get the construction of the roads and canals done.
the returned candidate, the Chief Minister, bargained with the electors for ameliorating their grievances. The Rajasthan High Court dismissed the petition stating that the petitioner had failed to prove that there was bargaining with the electors to secure votes. On appeal, the Supreme Court reappraised the evidence and agreed with the High Court. Referring to the question whether the respondent did any act which can be construed to be out of the ordinary or with a view to entering into an election bargain with the voters, the Court observed:

In all the three instances . . . it is manifest that there were longstanding public grievances and the Government from time to time made suggestions and recommendations for redress of the grievances and amelioration of the condition of the people. It cannot be said that on the eve of the election there was any sudden or spontaneous outburst of public activity in the shape of diverting public money to win electors.24 . . .

Here also the learned Judge stressed the need to avoid the

24. Id. at 2039. In Chaitanya Kumar v. Sushila A.I.R. 1975 S.C. 1718 it was alleged that the returned candidate, a minister, gave a sum of Rs. 100/- to a cultural organization for securing the support of the villagers. But from the evidence it was clear that the amount in question was a discretionary grant made by the minister. The grant was sanctioned long before the poll. The petition was dismissed.
abuse of opportunities of power and resources by ministers which were not available to their opponents. Referring to the earlier decisions, Ghasiram and Om Prabha, the learned Judge summarised his views in the following words:

Ordinarily amelioration of grievances of the public appears to be innocuous. If, however, there is evidence to indicate that any candidate at an election abuses his power and position as a Minister in the Government by utilising public revenues for conferring advantage or benefit on a particular group of people for the purpose of obtaining their votes, different considerations will arise. The Court is always vigilant to watch not only the conduct of the candidates and to protect their character from being defamed but also to see that the character and conduct of the public is not corroded by corrupt motive or evil purposes of candidates. The genuine and bonafide aims and aspirations of candidates have to be protected on the one hand and malafide, abuse and arrogance of power will have to be censured on the other.

Though the Court explicitly condemned the abuse of power for election gains, the decision does not provide any definite

25. Id. at 2039.
answer to the question whether the misuse of discretionary power to initiate development works and to ameliorate grievance at the time of election could be treated as bribery. The decisions discussed above disclose that bargaining with electors is a condition precedent for treating an official action by a candidate as corrupt practice. It is to be said that the existence of such a condition makes it impossible to treat other sorts of misuse of power as corrupt practice and it acts as a clog on the ambit of the provision. Further the law is not clear about the nature of evidence to be adduced to prove bargaining.

It seems proper to view all such acts of ameliorations and redressal of public grievances on the eve of election as instances of bribery. One should not lose sight of the fact that the period of election is only thirty days. The presumption may be rebutted by showing that the matter was urgent and had arisen after the election notification.

In the above mentioned decisions though bargaining is made an important ingredient of bribery, no attempt has been made to explain the term. But in Iqbal Singh v. Gurdas Singh\(^26\) a wider meaning was given to this term by Justice Alagiriswami. It was observed:

A bargain for the purposes of this section does not mean that the candidate or his agent makes an offer and the voter accepts it in the sense that he promises to vote. It is enough if the candidate or his agent makes the gift or promise on that condition. If a candidate or his agent pays money to a voter saying that he wants him to vote it is a bargain for the purposes of this section. It is not necessary that the voter should say that he would vote and thereafter the candidate or his agent should pay the money. Even in such a case the voter after receiving the money might or might not vote. Hence it follows that two conditions must be satisfied in order to constitute a bargaining. First, there must be a gift or offer or promise of gratification. Secondly, votes should be solicited on the basis of that condition.

The facts of the case show that the election petition contained the allegation that Shri Prakash Singh Badal, the brother of the returned candidate, who was also the Chief Minister of the State, allotted large sums of money to Harijans in the form of contributions towards construction of dharmashalas for the purpose of inducing

27. Id. at 35.
the electors to vote in his favour. The Court held that the action was the part of official administrative action. Hence the Court refused to treat it as bribery.

Another allegation was that a large number of gun licences were issued for the purpose of inducing the electors to vote in favour of the candidate. The Court refused to treat it as corrupt practice on the score that the issuing of gun licence was not a gratification within the meaning of Section 123(1). The absence of bargaining with electors was also pointed out by the Court.

The issue of bargaining again cropped up in Harjit Singh v. S. Umrao Singh and the Court reiterated its

28. In that particular year the Punjab Government had set apart a sum of Rs.50,00,000 for the purpose of issuing grants for construction of dharmashalas. It was found that only Rs.3,00,000 had been spent towards the end of the financial year in the District where the parliamentary constituency of the returned candidate was situated. The Court observed that the sum allotted was not disproportionately large. However, one may ask, why the haste on the eve of the election?

29. The Court pointed out that the possession of arms did not give a material advantage to its possessor.

30. A.I.R. 1980 S.C. 701. The allegation related to the allotment of discretionary grants for the development works in the constituency of a minister, who was a candidate. However, the allotment had been made prior to the date of filing the nomination. While dismissing the petition the absence of bargaining with the electors was also pointed out by the Court. The facts are not clear and do not say how much prior it was.
earlier view. Hence the bargaining with the electors has been treated as an essential ingredient to constitute the corrupt practice of bribery owing to the misuse of official position by persons holding political offices.

A plea to reconsider the view was put forward in B. Rajgopala Rao v. Appayya Dora Hanumanthu. The facts of the case disclose that the returned candidate was the nominee of Telugu Desam, the ruling party of the State of Andhra Pradesh during the time of election. The disputed matter was the advertisement which stated that the Government formed by the Telugu Desam Party was giving to the poor people, whose income was below Rs. 6,000 per year, a kilo of rice at Rs. 2/-. The said advertisement also referred to a new scheme of selling sarees and dhoties at half price to the poor people. The High Court dismissed the petition on the ground of lack of bargaining with electors. On appeal, the counsel for the appellant pointed out the need to overrule the earlier principle of 'bargain with electors'. But the Court, without paying any heed to the request, stated that "even on the footing that in order to amount to a corrupt practice under the aforesaid provision the alleged acts need not constitute a bargain, the acts established 31. A.I.R. 1990 S.C. 1889."
in the present case, in our opinion, do not amount to a corrupt practice.

The misuse of power by persons wielding public power for giving unfair advantage to individual electors may constitute bribery. In Tirmath Singh v. Bachitar Singh it was proved that the Minister for local administration had granted good work allowance to sweepers at the rate of Rs.5/- per month. The benefit was granted during election days and the beneficiaries were the voters of the constituency in which the Minister contested. The Pepsu High Court affirmed the decision of the Tribunal setting aside the election.

It is relevant to note that the Committee on Electoral Reforms has taken note of the evil practice of allotting discretionary grant on the eve of elections and an amendment in the R.P. Act for prohibiting this practice was suggested. In 1984 the Election Commission had published a Code of Conduct for the guidance of political parties and

32. Id. at 1891.

33. A.I.R. 1954 Pepsu 118.

34. See Report of the Committee on Electoral Reforms (1975) Para 2.8 to 2.10.

candidates. According to the Code "from the time the elections are announced by the Commission, Ministers and other authorities should not-

1. announce any financial grants in any form or promise thereof;
2. lay foundation stone etc. of projects or scheme of any kind; or
3. make any promise of construction of roads, provision of drinking water facilities etc. which may have the effect of influencing the voters in favour of party in power." 36

Bribery and Charity

Money spent for charitable purposes may also constitute corrupt practice. However, all kinds of

36. See id. Para VII (vi).

The question whether the Election Commission has the power to enforce the Code of Conduct has to be examined. An attempt by the Election Commission to assume such power has become controversial. An order of the Election Commission cancelling the notification for a by-poll for Kalka Constituency in Haryana on the ground of initiating developmental activities was set aside by the High Court. The High Court ordered that the election process must continue as scheduled. The Supreme Court quashed the order of the High Court. See, Indian Express May 6, 1993. For a discussion on the question, see infra.
charitable donations are not covered by the provision, the motive behind the payment being the relevant factor. If the payment is made when election is imminent, the motive of charity becomes suspect. Since a wider meaning is given to the term 'bribery' in Section 123(1) of R.P. Act, charity may also constitute bribery. When could charity be treated as bribery was a fertile area for litigation since the enactment of R.P. Act.

In Maganlal Bagdi v. H.V. Kamath it was alleged that the returned Congress candidate had addressed a public meeting of voters at Singhpur, where the villagers said that they needed a well as there was dearth of water supply in the village. The returned candidate with some villagers then selected a site and there performed a ceremony and promised to construct the well after the election. The Madhya Pradesh High Court affirmed the decision of the Tribunal to set aside the election. Bhutt J. observed:

As held by their Lordships of the Supreme Court in S. Khader v. Munuswami. (S) A.I.R. 1955 S.C. 775, while it is meritorious to make a donation for a charitable purpose, but if made on the eve of election, it is open to the charge that its real object was to induce the electors to vote in

favour of a particular candidate. Although this observation was made in connection with the question whether the amount so spent should be treated as election expense, the necessary effect of the gift being to induce the electors to vote for a particular candidate, we see no reason why it does not constitute corrupt practice within the meaning of section 123(1) of the Act. As held in Wigon 4 O'M and H 13, "charity at the election time ought to be kept by the politicians in the background", as in truth, "it will generally be found that the feeling which distributes relief to the poor at the election time, though those who are the distributors may not be aware of it, is not really charity, but party feeling following in the steps of charity, wearing the dress of charity and mimicking her gait". We are accordingly of the opinion that while we endorse the view of the Tribunal that the circumstances of the case clearly reveal a case of a promise of reward for the votes, the case also otherwise falls within the mischief of section 123(1) of the Act.  

The reasoning is correct since it reveals the true object of

38. Id. at 366-67.
the provision. The earlier decisions of election tribunals also endorse the view.

In Bankabehari Das v. Chittaranjan Naik the Orissa High Court considered the question and observed:

We must take the whole of the evidence into consideration, and enquire whether the governing principle in the mind of the man who made such gifts was that he was doing something with a view to corrupt the voters; or whether he was doing something which was a mere act of kindness or charity. It might be a doubtful question whether assuming two motives to exist, the one being pure, and the other with the intention to corrupt, you could exclude the corrupt intention, and rely

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39. The tribunals treated the promise of charity as corrupt practice. The promise to build a water channel and a contribution to the Sanatana Dharma Sabha were the issues involved in Amritsar and Sialkot (General Rural) Constituency, 1937 Sen and Poddar, Indian Election Cases (1951) p.21. In Agra City Constituency Hammond, Indian Election Cases (1959) p.18 the allegation was regarding the contribution for repairs of a temple. Offer to pay Rs.4000/- by the candidate to the managing committee of a high school was the disputed action in Sankara C. Gowda v. Mariyappa 9 E.L.R. 101. All the above mentioned actions were treated as bribery by the respective tribunals.

40. A.I.R. 1963 Ori. 83. The facts show that the allegation was that the returned candidate made personal contributions of Rs.500/- towards relief funds. Another allegation was that the candidate supplied a radio battery to the village library, on condition that some of the villagers would cast their votes in his favour.
wholly upon the pure intention. On this the Courts have consistently taken the view that this must be rather a question of degree\textsuperscript{41}.

The learned Judge pointed out that time was an important factor in this regard\textsuperscript{42}.

The question was one of degree and an isolated small donation on the occasion of birth or death might not be bribery. Analysing the factual situation and evidence adduced, the Court concluded that the evidence was not sufficient to prove the allegations.

One of the allegations contained in Tirlochan Singh v. Karnail Singh\textsuperscript{43} was that the respondent had entered into an agreement with Harijan voters of village Jodhpur Ramana through their leaders to place at the disposal of the

\begin{quote}
\textsuperscript{41} Id. at 86-87.
\end{quote}

\textsuperscript{42} The following passage from the Halsbury's Laws of England was cited.

The imminence of an election is an important factor to be taken into consideration in deciding whether a particular act of charity amounts to bribery. A charitable design may be unobjectionable so long as no election is in prospect; but if an election becomes imminent the danger of the gift being regarded as bribery is increased. It has been said that charity at election times ought to be kept in the background by politicians.

\begin{quote}
14 Halsbury's Laws of England (Third edn., 1956) p. 218. The learned Judge included the passage in the judgment without mentioning that he was quoting.
\end{quote}

\textsuperscript{43} A.I.R. 1968 Punj. 416.
Harijan Community Rs.1500/- for the construction of their dharmasala as a consideration for Harijan Villagers voting for him. The contention on behalf of respondent was two-fold. First, since the gift or gratification had to be to a specific person, a gratification to the entire community of Harijans could not be treated as bribery. The second argument was based on the assumption that bribery and undue influence were intimately connected. 'Undue influence' as defined in subsection (2) of Section 123, meant any direct or indirect interference with the free exercise of any electoral right including the right to vote and subsection (1) deals with 'bribery' which is one of the particular forms of exercise of undue influence. The contention was that second proviso which exempted 'declaration of public policy' and 'promise of action' from the purview of undue influence should be made applicable to cases of bribery.

In support of his first argument, the learned counsel for respondent pointed out that the definition given by Section 2(g) of the Representation of the People Act, 1950 clearly provided that 'person' does not include a "body of persons" and argued that if by making a gift of money a candidate benefitted only a community or a constituency or the country at large, he was in fact not offering any gift or gratification to any person within the meaning of Section 123(1). The counsel for the petitioner urged that a
definition given by the R.P. Act, 1950 could not be used to limit the meaning of the term 'person' used in Section 123(1) of R.P. Act, 1951. It was further urged that an elector may be gratified not necessarily by direct payment of money to him but in a number of other ways, one of which may be some charitable or philanthropic work for the benefit of the entire community. Accepting the argument, the Court held that the contention that no gift made to a body of persons or to a section of the community or electorate was to be treated as bribe could not be accepted. For developing the second argument that the proviso (2) to Section 123(2), which exempted declarations of public policy, promise of public action and mere exercise of legal rights from the purview of undue influence, is equally applicable to bribery, three earlier decisions were cited by the counsel for the respondent.

Without deciding the question whether the second

44. Id. at 425.

45. The decisions revealed that a promise by a candidate to get allotments of land made earlier to Bhawalpuri refugees changed to Sirsa and get their valuation of land left by them in Pakistan raised, (S. Mehar Singh v. Umrao Singh A.I.R. 1961 Punj. 244) or promise to Harijans that he would do his best to enable them to retain the old mosque to be used as temple, (Balwant Rai Tayal v. Bishan Saroop E.L.R. 101) or get development work done (Gangadhar Maithani v. Narendra Singh Bhandari E.L.R. 124.) did not amount to promise of gratification to person or persons within the meaning of Section 123(1).
proviso of subsection (2) of Section 123 was applicable to subsection (1) in clause (a), the Court distinguished the factual situation of the present case and the cases referred to. It was observed:

... it has to be kept in mind that in all the three cases noted ... on which reliance has been placed, the promise made by the candidate was in respect of an action by him in his public capacity as a legislator. In each case, the candidate held out a promise that if elected then as a member of the legislature he would use his influence with the authorities concerned ... Such use of his influence as an elected representative for the benefit of the constituency from which he has been elected, can certainly be expected by the electors of the constituency ... .

However, a promise to contribute or actual contribution by the candidate to the construction of a Dharamsala or a well, even if it be for the benefit of a section of the constituency, say, Harijans of the village, would fall in an entirely different category. It would not be a promise of an action by him in his capacity as an elected representative. A.I.R. 1968 Punj. 416, 424.
It seems that the reasoning falls in line with the object of the provision, viz. to prevent a candidate from securing the votes by resorting to any form of gratification. Though the learned Judge did not decide the question whether the definition of undue influence was applicable to bribery, from the observation cited above it is clear that the answer is in the negative. The decision is correct because of the distinction between an offer of service by a person in his capacity as the holder of a public office, and a promise to do something in his personal capacity. Only the former would come within the scope of the 'promise of public action', which is exempted from the purview of undue influence. Since the promise of a public action is exempted from the purview of undue influence, it may not be treated as bribery, if the rule of harmonious construction is applied.

In answering the question whether a gift or promise of gift made for a public purpose does fall within the definition of bribery, Harban Singh J. referred to the earlier decisions and concluded that it would mainly depend on facts and circumstances of each case. It was held to be bribery if the following conditions were satisfied:

1. That it gives satisfaction or pleasure to an individual or individuals;
2. The gift or promise to give such a gratification or
pleasure to the individual is of some value; and
3. The gift or promise by a candidate is made with corrupt
motive of directly or indirectly inducing the persons
gratified to vote in his favour or to induce other
electors to vote in his favour.\(^{47}\)
Hence it follows that individual satisfaction is essential
to constitute bribery even if a gift is intended to the
public at large. Being a member of the public, an individual
should receive some satisfaction or pleasure.

An offer made by a third party was the issue in
Raghuvin Singh v. Raghbir Singh\(^ {48}\). The allegation was that
in a public meeting held in a village Mr. Madhav Rao Scindia
of Gwalior, who was supporting the returned S.S.P. candidate
announced a donation of Rs.20,000 for completing the school
building of that place, if not even a single voter of that
village voted for the Congress Party. The Supreme Court
treated the allegation as unworthy of serious consideration
since "if any such offer had been made it would have been
considered as a joke"\(^ {49}\).

In the matter of appreciation of evidence,
difference in perception seems to exist at different levels.

\(^ {47}\) Id. at 426. (For himself and for A.N. Grover and D.K.
Mahajan JJ.)


\(^ {49}\) Id. at 446.
In Ramanbhai v. Jasvant Singh\textsuperscript{50} the election petition contained the allegation that the returned candidate had paid Rs.\,500/- for the reconstruction of a school. The Gujarat High Court treated the action as one covered by Section 123(1) of the Act. However, on appeal, the Supreme Court reversed on the ground of lack of evidence and allowed the appeal. The judgment does not contain anything much about legal issues involved, viz. charity and bribery.

One of the allegations involved in Brij Mohan v. Mange Ram\textsuperscript{51} was that the returned candidate contributed Rs.\,5000/- towards the cost of construction of a temple for backward classes in the village of Kandela. The Punjab and Haryana High Court held the action a corrupt practice and set aside the election\textsuperscript{52}. On appeal the Supreme Court reversed on a reappraisal of evidence.

It is submitted that the reappraisal of evidence may be done only on rare occasions. It is relevant to note that there are so many instances where the allegation of bribery has failed in the trial court for want of

\begin{thebibliography}{9}
\bibitem{50} A.I.R. 1978 S.C. 1162.
\bibitem{51} A.I.R. 1985 S.C. 887.
\end{thebibliography}
evidence\(^53\). In Dev Raj v. Bhagwandas\(^54\) one of the allegations was that the returned candidate during the period of election donated a sum of Rs.501/- for the construction of a gurudwara. Upholding the decision of the High Court, the Supreme Court refused to treat the action as corrupt practice on the score that there was no bargaining between the candidate and electors. However, the learned Judge had muddled two separate legal issues, viz. charity on the part of a candidate and allotment of grants by a person holding official position. The misconception entertained by the learned Judge is obvious from the following portion of the judgment:

In view of the pleading the appellant is not entitled to invoke any principle other than the


one contained in Ghasi Ram v. Dal Singh that the gist of the corrupt practice of bribery lay in attempting to do something for those opposed to the candidate with a view to changing their votes and as a bargain for votes. This principle was further elaborated in Om Prabha v. Abnash Chand, where it was observed with reference to the previous case:

"It has been pointed out that a Minister in the discharge of his duties may be required to do some acts of administration including the granting of money for the uplift of certain communities and this action of the Minister is not to be construed against him unless it can be established that there was a bargain with the voters for getting assistance at the election."

We find no error in the view expressed by the learned judge that it had not been proved by satisfactory evidence that respondent No.1 has made the donation by way of a bargain for procuring Sikh votes.

It is apparent that the observation cited relates to the payment of money as part of official duty and not

55. Id. at 244.
payment by way of charity. It is possible that there may be bargain even in situations which apparently satisfy the test of charity. In such a context it is better to examine the motive.

Treating Voters

Since the explanation to Section 123(1) clearly states that the "term gratification is not restricted to pecuniary gratifications estimable in money" treating of voters comes within the purview of the provision. In Braj Bhushan v. Anand Brahma it was alleged that the returned candidate distributed sweets to school children with the express object of influencing the voters. The expenses incurred in this regard were included in the return of election expenses. The Court did not treat it as corrupt practice. It was observed:


57. In an earlier decision Desai Basawaraj v. Dasankop Hasansab 4 E.L.R. 380, the Election Tribunal, Dharwar, treated the action of treating the voters on the date of polling by the agents of returned candidate as corrupt practice and ordered to set aside the election.

It is admitted that none of those children were voters in this constituency. Further there is no allegation or assertion that their parents were voters. Some evidence has been provided on behalf of the petitioners that the respondent No.1 asked the children to request their parents to vote for him. The allegation is not only hopelessly vague but the evidence produced in support of it is worse.\footnote{59} The Court accepted the testimony of the returned candidate that whenever he visited those places it was his habit to give some money for distribution of sweets among children. The Court felt that the idea that this donation would increase his popularity and might result in some indirect propaganda for him might also have been there at the back of the respondent's mind. But the Court refused to accept the suggestion put forward on behalf of the appellants that those amounts were given with any sinister motive as bribe for securing votes. The action of the respondent was, therefore, held to be not a corrupt practice.

In the course of argument the counsel for the petitioner cited The Central Division of the Borough of

\footnote{59} Id. at 360.
Kingston-Upon-Hull\textsuperscript{60} to substantiate the contention that mere distribution of sweets to some children in the constituency when the election was imminent was by itself a corrupt practice. The learned Judge rejected the contention stating that "whatever may be the position in England the term of section 123(1) (a) of the Act makes it quite clear that it was the object of the Act which determined whether it amounted to bribery or not". It was pointed out that in order to show his public spirit, the candidate for election to Parliament might render financial assistance to movements, such as child welfare, boy scouts and girl guides, and to the poor and the needy. The Court referred to the English decision of The East Division of the Borough Nottingham\textsuperscript{61}. In that case it was found that the election agent of the candidate who was returned had relieved the necessity of several poor people in the constituency during the period of election, and the candidate made a clear admission that it was meant to win popularity. The election

\textsuperscript{60} 6 O'M and H 372, 374. The passage cited reads thus: "You assume for the moment that man forms a design which at the time is unobjectionable because no election is in prospect, for that is the point; yet if circumstances alter, and an election becomes imminent, he will go on with that design at his risk, and if he does so he will be liable to be found guilty of corrupt practices; that is to say that he has done a thing which must produce an effect on the election contrary to the intention of the Act of Parliament".

\textsuperscript{61} 6 O'M and H 292.
was held to be valid. According to the Court the distribution of sweets to the children in the four villages who participated in the procession of the Raja and raised slogans on his behalf could not be said to be a case of bribery and as such it did not constitute any corrupt practice. It was pointed out that the object behind the distribution of sweets on behalf of the Raja was at the most to make himself popular in his constituency and that could not amount to any corrupt practice.

It is submitted that the view is clearly erroneous. Four reasons compel one to draw such a conclusion. First, the learned Judge himself stated that if the object of the distribution was to secure votes it was a corrupt practice. There was clear evidence suggesting that the candidate had asked children to request their parents to cast votes in his favour. The fact that the request was made at the time of distribution of sweets makes the matter more serious. In this context, the only conclusion that can be arrived at is that the object behind the distribution of sweets was to induce the children to canvass votes. It is relevant to note that Section 123(1) clearly states that any gift, offer or promise of gratification by a candidate to

any person whomsoever, with an object, directly or indirectly inducing an elector to vote constitutes corrupt practice.

Secondly, the expenses incurred for distribution of sweets were included in the election expenses incurred by the candidate. According to Section 77 of the Act only the expenditure in connection with election incurred or authorized by the candidate could be included as election expenses. The admission by the candidate that the money spent for distribution of sweets is an election expense points to the conclusion that the distribution was part of the election campaign.

Thirdly, the learned Judge had some reservation about following the English decisions. However, it could be seen that *East Nottingham Case*\(^6^3\) was used for contradicting an argument based on *Borough of Kingston-Upon-Hull*\(^6^4\). One who goes through the factual situation of *East Nottingham Case* can clearly see that the decision was not applicable to the facts of the present case. However, *Borough of Kingston-Upon-Hull* which was cited on behalf of the petitioner, was similar in facts with the present case. In *Nottingham Case*\(^6^5\)

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63. Supra n. 58.
64. Supra n. 57.
65. Supra n. 58.
the returned candidate had spent a huge sum for assisting
the people of his constituency. His political agent Berryman
was authorized to process the applications for help.
However, when the election process started, Captain Morrison
had instructed Mr. Berryman that in all cases of
applications for charity he should acknowledge them briefly
and say they must stand over for the present. The Court
refused to treat the action of Morrison as corrupt practice.
In Borough of Kingston-Upon-Hull the allegation was that the
returned candidate had distributed coal as part of the
celebration of the twentyfifth anniversary of his membership
in the Parliament. Entertainment to children and the
distribution of sweets were also made. The distribution
continued during the election. Setting aside the election,
Bucknill J. observed:

‘... can two cases be more dissimilar? In this
case the coals continued to be given away at all
events by one of the coal merchants; the
children's entertainment was given, and the boxes
of sweets were given away. In the other case, the
moment Captain Morrison was aware of the fact that
there was to be general election he stopped it' 66.

66. 6 O'M and H 372, 390. Nottingham had come before the
Division Bench consisting of Mr. Justice Channell and
Mr. Justice Bucknill between May 8 to 19, 1911 and
Borough of Kingston-Upon-Hull had come before the bench
consisting of Ridley J. and Bucknill J. between May 23
to June 1, 1911.
It is relevant to note that Justice Bucknill himself was a member of the Division Bench which decided Nottingham. In this context the action of the Allahabad High Court in citing Nottingham in order to stifle the reasoning of Kingston-Upon-Hull is a clear negation of the fundamental principles governing the law of precedent. The two English decisions clearly lay down that if an ongoing charity is not stopped during the election, it would constitute corrupt practice. It seems that this was somehow missed by the learned Judge, because the candidate had admitted that it was his habit to give money for distribution of sweets whenever he visited the place.

Fourthly, the fact that the distribution was limited to the children who participated in the procession is immaterial since the children were directed to canvass votes in favour of the returned candidate.

In Abraham Kauriakose v. Thomas the allegation was regarding the distribution of rice on the day the ashes of Mr. Rajiv Gandhi were immersed in holy river. Though the petitioner described the action as one coming under Section 123(1), the Court refused to treat it as a corrupt practice. The decision is correct since there was no allegation that votes were solicited at the time of distribution. Moreover,
the distribution was made consequent on an unforeseen event, the assassination of Mr. Rajiv Gandhi. Hence an evil motive could not be attributed.

Bribery and Entertainment

The question whether entertainment is a 'gift' or 'gratification' under clause (a) of Section 123 is yet to be settled. The issue had come before the Election Tribunal in Sarup Narayan v. Durga Narain Singh. It was ruled that the performance of Nowtanksi, a kind of entertainment, to please the voters was an instance of corrupt practice. The Tribunal pointed out that the term 'treating' connoted an entertainment though the voters were not approached through their mouths and stomachs, but the entertainment was by other senses such as eyes, ears etc. and held that Nowtani was an entertainment and hence 'treating'. The Andhra Pradesh High Court in Muralidhar v. P. Pulla Reddy examined whether a drama arranged by a candidate as a part of his election propaganda would fall within the Section. The Court posed the question whether this sort of entertainment could be considered 'treating' and examined

the earlier English decisions covering the topic of bribery and treating. On the basis of the English decisions the Court expressed doubts regarding the correctness of the principle formulated in Sarup Narayan. According to the Court even if Sarup Narayan contained sound law, it was not of much assistance to the respondent for the reason that in that case it was found as a fact that it was intended to induce the electors to vote for the successful candidate. It was observed:

... to bring an act within the ambit of Section 123(1) it must be made out that the treating was administered "with the evil feelings and evil intentions" of procuring their votes. Thus, even if the drama is within the connotation of treating, if it was not got up with the sole object of influencing the voters, it cannot be regarded as a corrupt practice. It should be remembered that some kind of attraction is needed to get the people attend a meeting.

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70. Bewdley Election Petition 1869 L.T. 676; Borough of Wigan 4 O'M and H 1; Hexham Division of The county of Northumberland 4 O'M and H 143; Borough of Rochester, 4 O'M and H 156; The East Division of the Borough of Nottingham 6 O'M and H 292; The Central Division of the Borough of Kingston-upon-Hull 6 O'M and H 372.

The learned Judge relied on certain observations from Baker on Parliamentary Elections 72, Corpus Juris Secundum 73 and Halsbury's Laws of England 74 and concluded that the entertainments of this kind did not constitute bribery. It seems that the reasoning of the Court is correct.

Offer to Give Employment

Offering of employment may constitute bribery under Section 123(1). In Mohan Singh v. Bhanwarlal 75 the Supreme Court had occasion to consider the issue. The facts disclose that the returned candidate had offered to help one

72. "It requires some sort of attraction, however, interesting a speaker may be, to get people to come and listen to his views upon subjects which are supposed to interest politicians, but do not interest everybody." (Ibid).

73. "Treating electors to intoxicating liquor or other refreshment with intent to influence their votes may fall within the prohibition of applicable corrupt practices, but the furnishing of entertainment or refreshment to voters will not constitute a corrupt practice where it is not shown that this was done with intent to influence their votes, nor where it is regarded as merely one means of advertising a candidacy" (Ibid).

74. "Where refreshments are a mere incident of a political meeting, there is no offence; but if persons are gathered together merely to gratify their appetites and so influence their votes, then it is a corrupt treating. It is not necessarily corrupt, however, to attract people to meetings by offering refreshments of a moderate kind" (Ibid).

of the other candidates, Mr. Himmat Singh, to get employment, in order to induce him to withdraw his nomination. Mr. Himmat Singh had not been impleaded in the election petition. This was contrary to Section 82 of the Act. Hence it was contended that the election petition should be dismissed in limine. The Tribunal rejected the contention, the election was however set aside on another ground, viz. commission of corrupt practice of publication of false statement. On appeal to the Supreme Court, Shah J. examined the nature of an offer to give employment and held that a mere offer to help to secure employment without more was not offer of gratification within the meaning of Section 123(1)(b) of the Act. The Orissa High Court considered a similar factual situation in Subodh Kumar Bouria v. B.C. Mohanty. The facts were that one Jaitum Nisa Begum was supervisor of Barabati Raffle of which the returned candidate was the secretary. The allegation was that Nisa Begum has filed her nomination from Cuttack Town Constituency. She withdrew it on the inducement of the returned candidate, who, as a reward promised to make her the secretary of the Barabati Raffle. The High Court treated

76. According to Section 82, a candidate against whom corrupt practice had been alleged in the petition should be impleaded as party in the petition.


78. 49 E.L.R. 360.
this as allegation of corrupt practice and ordered to dismiss the election petition on the ground that Nisa Begum had not been impleaded as a party to the petition. The Court distinguished the factual situation of the case from that of Mohan Singh v. Bhanwarlal in the following words:

In this case, the opposite party did not promise to Jaitum Nisa Begum to assist or help her in obtaining employment in the Barabati Raffles. He made a definite offer to give her the job after he was elected. The opposite party was the Secretary of the Barabati Raffles and Jaitum Nisa Begum who was employed in the Raffles for sometime obviously believed that the opposite party was in a position to give her the job. It is this consideration which is alleged to have influenced her to withdraw her candidature. The promise made to her was something definite and valuable and not uncertain and illusory as the one made by Mohan Singh to Himmat Singh...

Hence it follows that if the offer to secure employment is definite, the acceptance of it would constitute corrupt practice. The probable conclusion that

80. 49 E.L.R. 360, 369.
follows is that such offer itself would constitute the corrupt practice of bribery.

It is submitted that this sort of corrupt practice should be seriously viewed. In a country like India, where the problem of unemployment has assumed alarming proportions, the offer to secure employment is an effective method to capture votes. If such an offer is put forward by a person having political influence its impact will be tremendous. Either because candidates occupy positions in the Board of Directors of public enterprises or because of the popular belief that their political influence proximate to members of Public Service Commission, an offer to give employment by candidate often has a high degree of credibility among the voters.

Offer to Give Seat in Next Election

Election arouses large number of claimants for candidature in all political parties. It is usual that disgruntled aspirants contest the election as independent candidates jeopardizing the chances of party candidates. In such a situation the party leadership may either expel such candidates from the party or may try to persuade them to withdraw from the contest. Sometimes the official candidate himself may take the initiative for ensuring the withdrawal
of rebel candidates. For that purpose offers like official position in the party organization, ticket in the next elections etc. are made. Whether such offers would constitute corrupt practice is an issue having great importance.

In Gokulananda v. Jogesh Chandra it was alleged that the returned Congress Party candidate and some of the party workers promised the Congress ticket in the next election to an independent candidate with a view to ensuring his withdrawal from contest. Justice Barman refused to treat it as corrupt practice of bribery and observed:

There was no certainty as to who would live or who would die by then and who would be the selecting authority in the Congress High circles (R.W.5). Besides, in view of the complicated procedure for selection of candidates for the Legislative Assembly by Congress Party as explained by R.W.3, it was a mere pious wish expressed by the signatories to the letter (Ext.1) and nothing more than that. There was no substance in the argument that the promise of a seat in the next election was a promise of gratification.

81. A.I.R. 1959 Ori.47.
82. Id. at 49.
The decision is correct, since the offer was only a party ticket and not a seat in the legislature. If the offer was to make him the nominated member of the Council of States the position would be different. In the former case there is no certainty as to whether he could win the election and become a member of the legislature. The offer should be of a substantive benefit to the offeree. The person who makes the offer should also be able to provide substantial benefit to the offeree. But to reason that even such an offer will have no effect since there is no certainty as to who would live or who would die is clearly erroneous. If such reasoning is applied to other types of offer, it would defeat the very purpose of the provision, since, in the case of every offer, there is no certainty as to whether the offerer would live or die immediately.

It is submitted that any offer to give any official position, or membership in the board of directors of government companies and public corporations, or government delegation put forward by the ruling party as a

83. In Raghavan v. Unnikrishnan A.I.R. 1972 Ker.218, the allegation was that in order to induce a rebel Congress Party candidate to withdraw from the contest, an offer to make her India's representative in United Nations Human Rights Commission was given by the Congress leadership at the instance of the returned candidate. Without determining the legal issue the case was dismissed by the Kerala High Court on the ground of lack of evidence to prove the allegation.
reward for the withdrawal of candidature, should be treated as a corrupt practice. But if similar offers are given by an opposite party, a candidate may ignore it on the ground of lack of possibility.

Paying Money to Influential Persons

In every society there may be some persons who enjoy considerable influence over general public. Religious and caste leaders, social workers, landlords, ex-rulers, professionals etc. may come within this category. In an election the support of these persons may make the election campaign easier. It is legitimate for a candidate to approach such persons and solicit their support. But offering reward for support stands on a different footing. The Supreme Court had the occasion to consider the issue in Abdul Hussain v. Shamsul Huda. Krishna Iyer J. who delivered the majority judgement, examined the legal issue and observed:

If the candidate pays money to a V.I.P. of the locality to use the good offices and canvass votes

84. A.I.R. 1975 S.C. 1612. One of the allegations contained in the petition was that the returned candidate had approached a Mulla and offered him Rs.2,000/- if he would be ready to work for him. Since the petitioner failed to adduce evidence, the allegation was held to be baseless.
for him, it is a border line case, but if the money is paid as consideration for votes promised to be secured by him using his sway, it is bribery eventhough indirectly exercised. If the Mulla had been paid the money striking a bargain for getting the votes in his ambit of influence, it is electoral corruption. On the other hand, if it is money received for the purpose of organising effectively the election campaign . . . it is proper election expenses. In between these two extremes lies the case of a man who just receives a large sum of money, pockets it himself and promises to use his good offices to secure votes.

. . . The touchstone in all these cases of payment or gratification is to find out whether the money is paid in reasonable measure for work to be done or services to be rendered. Secondly, whether the services so offered amount to a bargain for getting votes or merely to do propaganda or to persuade voters to vote for the candidate, it being left to the voters not to respond to the situation.

85. Id. at 1626. (emphasis original)
The learned Judge has viewed the matter in its true perspective and expounded the various aspects of the problem correctly.86

**Giving Financial Assistance to Another Candidate**

In *Rahim Khan v. Khurshid Ahmed*87, the appellant was the defeated Congress Party candidate. One of the allegations was that the returned independent candidate provided financial assistance to another candidate (respondent 9) by way of giving a car and offering its hire charges and running expenses to induce the latter not to withdraw from the contest. The allegation was that the respondent 9 belonged to Harijan community and he could attract some votes of that community, which was the traditional vote bank of Congress Party. That is to say, by splitting the Harijan votes, the returned candidate won the election. Though the issue was not pressed before the Supreme Court, Justice Krishna Iyer considered the question whether the appellant did commit corrupt practice under Section 123(1) of the Act by giving a car to respondent No.9

86. But Alagiriswami J., who delivered a separate judgment, refused to discuss the legal issue stating that "it is a good policy not to discuss in a judgment questions which do not arise out of facts of the case" (Id. at 614).

and promising him the hire charges and running expenses thereof with a view to the splitting of Congress votes. The learned judge refused to treat the above action as corrupt practice and observed:

... it is not every help by a candidate to a fellow candidate that constitutes corrupt practice. Such financial aid must be to induce the latter not to withdraw from the election. May be, a candidate may wish to fight but do it so bloodlessly that he may not reach his potential supporters and if his effective canvassing is in the interests of another candidate (the electoral chemistry has many actions and reactions) then the latter may invigorate his campaigning with funds or aid in kind, not for non-withdrawal but for full-blooded electioneering. To jack up is different from preventing a jump down. This is not a corrupt practice under the law and so the key question is not whether a car was provided but whether the provision of the car was to prod the candidate not to withdraw.88

It seems that the reasoning is clearly erroneous. The learned Judge viewed the matter from the angle of the Harijan candidate who received the benefit from the returned

88. Id. at 296. (emphasis original)
candidate and failed to give due importance to the question whether the respondent intended to induce the candidate not to withdraw his nomination. It is a matter of common knowledge that a candidate in an election will never help another candidate who is contesting against him. Hence the act of helping the opponent itself is a factor which proves the ulterior motive of the helper. It is relevant to note that such action would attract Section 123(1) only if it is done before the last date for withdrawal.

In Chanda Singh v. Shiv Ram respondents 2, 4, 5 and 6 were alleged to have been set up at the instance of the returned candidate and financed by him. The 4th, 5th and 6th respondents, a refugee from Pakistan, a water carrier by caste and a Harijan respectively were set up with the intention to split blocks of votes habitually going to the petitioner, who was a Congress Party candidate. However, the case failed for want of evidence. Justice Krishna Iyer did not express any view on the legal issue, but he described the alleged corrupt practice strategy "of splitting blocks of votes habitually going to a party by the device of setting up candidates without hope for themselves but with potential to break the prospects of others".

90. Id. at 411.
Payment to Workers

A candidate may often engage his employees to get the election propaganda in motion. Designing posters, preparing banners and boards, erecting arches and podium, decorating places of mass gathering, using of amplifiers, video and audio cassettes and vehicles etc. are the activities which necessitate the service of paid workers. The workers so engaged may be the voters of the constituency, in which the candidate contests. So a candidate may employ voters with the ulterior purpose of ensuring their votes. In addition, bribe may be paid in the pretext of remuneration to a worker engaged in election propaganda.

Though the Act is silent about the nature of such employment the English position is very clear\(^91\). Halsbury's Laws of England summarizes the English position thus:

If, for the purpose of promoting or procuring a candidate's election, a person is, either before, during or after an election, engaged or employed for payment or promise of payment as a canvasser, the person so engaging or employing him and the person so engaged or employed are guilty of

\(^91\) See Section 96 of the Representation of the People Act, 1949.
illegal employment. A person who is lawfully engaged or employed for payment for some lawful purpose is not, however, deprived of the ordinary right of a citizen to canvass, and he may therefore canvass so long as it is not for his canvassing that he is paid\textsuperscript{92}.

Although the payment to canvassers is illegal, there is nothing illegal in the payment of the expenses of a canvass.

In \textit{Pyari Mohan v. Durga Sankar}\textsuperscript{93} the Orissa High Court considered the question of employment of electors constituting a corrupt practice. The facts of the case show that the election petition contained the allegation that the returned candidate was guilty of corrupt practice of bribery by way of paying money as gratification to several workers who were also electors of his constituency in order to induce them to vote for him and also to induce other voters likewise. In support of the allegation the petitioner mainly relied upon the accounts of the election expenses lodged by the respondent under Section 78 of the Act. Some of the vouchers revealed that the food and travelling charges of the workers were paid by the returned candidate. The High Court rightly concluded that the payment for food and


\textsuperscript{93} A.I.R. 1958 Ori. 125.
travelling charges was a legal expense and could not amount to corrupt practice\(^9\)\(^4\). However, there were two vouchers which showed that the amounts were paid not only towards food charges, but also for parisramika (labour charges). On behalf of the petitioner it was contended that at least these payments were payments to a canvassing agent and as such amounted to bribery. In support of the contention the counsel for the petitioner referred to the English position in this regard. But the counsel for the returned candidate submitted that even under the English law, canvassing was something different from doing propaganda work and that though the employment of paid canvassers was prohibited, expenses of canvassing were legal expenses. The following definition given to the term canvasser in *Halsbury's Laws of England* was cited:

> A canvasser is a person who solicits and persuades individual voters, although not necessarily one by one separately, to vote for a candidate\(^9\)\(^5\).

After examining the relevant statutory provision and case law, P.V.B. Rao J. observed thus:

> ... it is only a colourable employment of voters as workers and payments to them that would be bribery. But if the payment is commensurate with

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\(^9\)\(^4\). Id. at 134.

the work done and the number of voters engaged as workers is commensurate with the work to be done in the constituency then payment to such workers cannot be bribery96.

According to the learned Judge in order to attract Section 123(1) "the act done by a person who was paid the gratification directly or indirectly, must be something more than mere asking the electors to vote for the Congress candidate"97.

Regarding the case of excess payments to the workers the Court held that it was covered by the principle laid in Youghal Case which reads thus:

Considering the very penal consequences attaching to bribery, and that if these over-payments to agents were to be considered as acts of bribery they would be acts of personal bribery by the candidate himself who paid those agents, I cannot come to the conclusion that they could be considered as such, or that it was the intention of the Legislature to make them so; such an

96. A.I.R. 1958 Ori. 125, 136. Seven English decisions were referred to by the Court, viz. Borough of Youghal 1 O'M and H 291 Borough of Penryn 1 O'M and H 127 Borough of Stroud 2 O'M and H 181; The Counties of Elgin and Nairn 5 O'M and H 1; Lichfield Division of the County of Stafford 5 O'M and H 27; Amstrong v. Crooks (1871) H.B.C. 97 Oxford City Case (1857) Wolf and D. 106.

97. Ibid.
intention would, I think, have been expressed in clear and unambiguous terms.\textsuperscript{98}

The petition was dismissed since there was no evidence to show that the workers prevailed upon any voter to vote for the respondent.

In \textit{Omkar Singh v. Ghasiram Majhi}\textsuperscript{99}, the Supreme Court considered the issue and observed:

Any payment to a worker . . . cannot amount to bribery within the meaning of S. 123 of the \textit{Representation of the People Act, 1951}. . . . a canvasser carries out work of propaganda on behalf of an election candidate, and puts forward his efforts to persuade electors to vote for a particular candidate. In selecting a worker or paying money to him for his expenses the candidate only thinks of the benefit that accrues to him by the power of persuasion of the worker . . . . So long as the payment is made to a worker, only for his expenses it will not fall within the mischief of S.123(1) of the Act\textsuperscript{100}.

\textsuperscript{98} Id. at 135.

\textsuperscript{99} 39 E.L.R. 447.

\textsuperscript{100} Id. at 483-84 (G.K. Mitter J. for himself and M. Hidayatullah C.J.) The Court reviewed the evidence and dismissed the election petition, reversing the High Court. For High Court decision, see \textit{Ghasiram Mihji v. Omkar Singh} A.I.R. 1968 Ori.99.
It seems that the English doctrine governing the payment to workers has been followed by the Court. Though the payment for services rendered in connection with the election campaign is permissible, engaging paid canvassers is prohibited.

Payment as Part of a Custom

India is a country consisting of hundreds of tribal groups having their own distinct culture and customs. One such custom is payment of gifts to the persons visiting a tribal village and the payment of gift by such persons to the villagers. Whether the payment of gift by a minister to the villagers as part of the custom could be treated as corrupt practice under Section 123(1) was the issue in N. Horangse v. M. Tsubongse \(^{101}\). The allegation was that the returned candidate distributed four waist coats to the voters in a Naga Village. The contention of the returned candidate was that he gave those coats to the villagers as part of the custom prevailing among Nagas. The alleged distribution happened long before the election. Though the High Court set aside the election, on appeal, the Supreme Court reversed.

The view of the Supreme Court seems to be correct.

If the payment is part of the custom prevailing in a community, it would not influence the voters, since they would treat it as a routine affair. However, when such gifts are costly the intention could be to win over the voters, and the courts should be vigilant to identify the real intention behind such gifts.

Payment for Withdrawing or Not Withdrawing

Section 123(1) expressly provides that payment of money to a person for withdrawing or not withdrawing his candidature would constitute corrupt practice. If a candidate has withdrawn his nomination, his name would

102. In *Bam Dev v. Sarla Prashar* (1972) 3 S.C.C. 862 the allegation was that the returned candidate persuaded Munshi Ram to be a candidate and not to withdraw his candidature by offering Rs.3,000/- plus all his election expenses. Though the case failed for lack of evidence, the following observation of Shah J. is relevant.

These circumstances taken separately or collectively do not prove that Bam Dev had entered into a bargain with Munshi Ram by giving him any gift or offer to pay him any gratification in consideration of the latter agreeing not to withdraw his candidature from the election (at 866).

The observation is the result of a misconception that bargaining is an essential ingredient here also.

103. Section 37(1) reads thus:

Any candidate may withdraw his candidature by a notice in writing which shall contain such particulars as may be prescribed and shall be subscribed by him and delivered before three O' clock in the afternoon on the day fixed under clause (c) of section 30 to the returning officer either by such candidate in person or by his proposer, or election agent who has been authorised in this behalf in writing by such candidate.
not be included in the list of contesting candidates prepared under section 38 of the Act. However, a candidate who has not withdrawn his nomination may retire from contest. In such a context, even if he is not in the election fray, his name will appear in the ballot paper. Whether the terms "to withdraw or not to withdraw from being a candidate in an election", includes the retirement from contest was the legal issue in Mohd. Yunus v. Shivkumar. After considering the dictionary meaning of the term 'withdraw' and examining the consequences of two possible interpretations, Goswami J. for the Division Bench observed:

Since purity of elections is the most important object of the Act, a narrow meaning to the word "withdraw" to refer only to legal withdrawal under Section 37 would defeat the very aim. We have, therefore, to give a meaning to the word

104. Section 38(1) reads:
Immediately after the expiry of the period within which candidatures may be withdrawn under subsection (1) of section 37, the returning officer shall prepare and publish in such form and manner as may be prescribed a list of contesting candidates, that is to say, candidates who were included in the list of validly nominated candidates and who have not withdrawn their candidature within the said period.

105. A.I.R. 1974 S.C. 1218. The allegation was that a contesting candidate was induced to withdraw from contest at the instance of the returned candidate by offering to pay Rs.30,000/- to Rs.35,000/- The case failed for lack of evidence.
"withdraw" keeping in mind the object and scheme of the Act with a view to effectuate the intention of the legislature to ensure purity in elections; else there will be an absurd position where actual withdrawal after the time limit by taking bribe will be free from the vice of corrupt practice whereas that prior to it will not be so. Such an intention cannot be attributed to the legislature from deletion of the words "retire from contest". The word "withdraw" is comprehensive enough to connote "retire from contest."\(^{106}\)

However, a full bench of the Court overruled the decision in Umed v. Raj Singh\(^{107}\). Bhagwati J. in his concurring judgment reasoned thus. The learned Judge agreed that the provision should be construed so as to suppress the mischief and advance the remedy. However "that does not mean that a construction should be adopted which ignores the plain natural meaning of the words or disregards the context.

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and the collocation in which they occurred. It was held that the scheme of the Act should be taken into consideration in order to find out the true meaning of the words. Since Section 37 prescribed the procedure of withdrawal of the candidature, the term 'withdrawal', it was held, should be interpreted in the backdrop of Section 37.

It was observed:

... the only mode in which a candidate can withdraw his candidature and cease to be a candidate is that set out in section 37. Until the last date for withdrawal of candidatures, he has a locus paenitentiae and he can withdraw from being a candidate by giving a notice in writing to that effect under section 37. But once that date is past, he becomes a "contesting candidate" and then he has no choice. He is irrevocably and irretrievably in the contest .... He cannot therefore, cease to be a contesting candidate and that be so, it must follow a fortiori that he cannot withdraw his candidature or withdraw from being a candidate, once the last date for withdrawal of candidatures under section 37 is gone.

108. Id. at 61.

109. Id. at 62.
The learned Judge pointed out that the term 'withdraw' used in S.123(1) has to be interpreted in the light of its meaning in two earlier provisions, viz. Section 30(c) and Section 37. So a presumption could arise to the effect that the term 'withdraw' had the same meaning wherever it was used in the R.P. Act.

The view is correct. It is to be noted that though the words 'retire from contest' were originally used in another part of the same provision while defining the corrupt practice of publication of false statement, by an amendment, those words were deleted. Hence the intention of the legislature was to disregard retirement from contest.

In Kalya Singh v. Genda Lal it was alleged that the returned candidate induced one of the contesting candidates to retire from contest and support his candidature. Here the payment was after the expiry of the last date for withdrawal. The Court applied Umed v. Raj Singh. It was contended that such payment, being a payment to a person to induce an elector to vote in favour of the candidate, could be treated as corrupt practice. The Supreme Court negatived the contention. Untwalia J. observed:

But the point of difficulty may arise where any gratification is paid by or on behalf of a candidate to a third person for procuring some votes of some electors who may be under his (third person's) influence. Whether in such a case the payment has got any indirect inducement to an elector to vote at an election: we are inclined to think that mere payment of any gratification to a third person for securing or procuring some votes in favour of a particular candidate without the establishment of any nexus between the money and the inducement to the voter will not be sufficient to prove that the voter is indirectly induced on account of the payment of gratification to the third person.\(^{113}\)

The view is clearly erroneous. According to Section 123(1) A (a) any "gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification to any person whomsoever, with the object, directly or indirectly of inducing

a. .................................................................

b. an elector to vote or refrain from voting at an election is bribery.

\(^{113}\) A.I.R. 1975 S.C. 1634, 1637.
It is thus obvious that the payment to any person to induce an elector to vote or refrain from voting is bribery. Hence it is clear that the payment to a third person may constitute bribery provided two conditions are satisfied:

i. There should be a gift, offer or promise of gratification to a third person by a candidate or his agent or any other person with the consent of the candidate or his election agent.

ii. The object of the action should be to induce an elector to vote or refrain from voting in an election.

The mode of inducement is immaterial. The learned Judge examined the nature of a particular mode of inducement, by way of utilising the personal influence of a person over the electors, and arrived at a wrong conclusion.

One of the allegations contained in the petition in Mool Chand v. Rulia Ram was that the returned candidate induced one Jain Singh, who filed nomination to withdraw his nomination through an offer to support Jain Singh's brother in the neighbouring constituency. However, Jain Singh was not joined as a party in the petition. The Court considered the question whether an offer to support another candidate in another constituency intending to

induce a candidate to withdraw the nomination would amount to corrupt practice. Though the petition was dismissed for non-joinder of necessary parties, the Court answered this question in the affirmative.

Payment for Defection

In Harisingh v. Popatlal the returned candidate was the nominee of the Ruling Congress Party and the appellant was the Organization Congress Party candidate to the House of People from Bananscanthu Constituency in the election held in March, 1971. The allegation was that the returned candidate, approached the appellant and offered to secure him party ticket in the next election to the Gujarat Assembly and to pay him Rs.10,000/- in cash towards the expenses in that election for leaving Organization Congress and joining Ruling Congress. The election petition contained a specific allegation that the returned candidate wanted the appellant to vote for him. The High Court held


116. In a meeting addressed by the Prime Minister, the convener of the District Ruling Congress Committee announced that the appellant had joined the Party and asked him to say a few words. The appellant went to the microphone, took out the bundle of notes of Rs.10,000/- given to him and flung it in the air and told the gathering that he and his colleagues could not be purchased and they would remain loyal to the Organization Congress.
that though the allegations were true, the object of the gift of Rs.10,000/- was to bring about his defection and not to induce directly or indirectly any voters to cast their votes. The returned candidate was held not guilty of corrupt practice.

On appeal the Supreme Court followed the decision in *Kalya Singh v. Genda Lal*\(^{117}\) and held that since the payment was to a person to induce him to canvass votes it was not covered by section 123(1). Alagiriswami J. observed:

\[\ldots\] when a person makes any payment to another person in order to make him use his influence to induce a 3rd person to vote for him that is not bribery by the person who pays but the receipt of money by the second person for inducing or attempting to induce another elector to vote is bribery. It is also bribery for the voter himself to receive the money\(^{113}\).

No valid reason is stated by the Court for exempting the bribe given for inducing defection from the ambit of Section 123(1).

Regarding the allegation that the returned


candidate wanted the appellant to vote for him, the learned Judge opined that since the payment was not for voting but for defection he was not liable for corrupt practice. It was observed:

In this case it is obvious that the primary object of the payment made to the appellant was to induce him to defect from the Organization Congress to the Ruling Congress. That is not a corrupt practice under the Representation of People Act. . . . The payment was made not for the purpose of inducing him to vote but to make him defect to the Ruling Congress. That was the purpose for which the payment was made. That incidentally he might vote to the Ruling Congress candidate does not mean that the payment was made to him in order to make him vote for the Ruling Congress candidate. The bargain was not for his vote, the bargain was for his defection.\textsuperscript{119}

It is submitted that the reasoning is the result of a muddled judicial thinking. The opinion is founded on the assumption that the payment was not for casting or canvassing votes but for defection from one party to the other. Thus the Court failed to answer the basic question,\textsuperscript{119}

\textsuperscript{119} Id. at 274.
viz. what is the motive behind the inducement to defect. It is a matter of common knowledge that the object of gaining defection of a candidate of a political party is to ensure his vote in favour of the party to which he defected and to utilize his influence to solicit votes. Hence having due regard to the object of incorporating the corrupt practice of bribery in the law, it seems that payment for defection should be considered as an act falling under Section 123(1).

Conclusion

The Representation of the People Act provides a clear and detailed definition of the term bribery, covering almost all modes of payment of gratification in connection with election. While determining the ambit of the provision, the Supreme Court has correctly held that while interpreting the word 'offer' in Section 123(1) of the R.P. Act no assistance should be sought from the law of contract. The principles formulated by the Court to determine the corrupt practice in the form of payment to influential person are also correct. In order to determine bribery in the form of charity, entertainment and offer to give employment, there are well defined criteria formulated by various High Courts. However, there are occasions in which the Courts failed to assimilate the true spirit of the provision. For example,
the doctrine of 'bargaining with electors' as the criterion to determine bribery in amelioration of grievances of public and initiating development works is one such instance. The Court has attempted to extend the principle inadvertently to other forms of bribery. By excluding the evil practices of giving financial assistance to another candidate intending to induce him not to withdraw nomination, the payment to a third person for procuring votes of some electors who may be under his influence, and payment for defection from the purview of the corrupt practice, the Supreme Court has narrowed down the scope of Section 123(1).