Chapter 3
CORRUPT PRACTICES AND ELECTORAL OFFENCES

India is a very vast Country with a less percentage of illiteracy. Therefore, the political parties have to put in more efforts to educate the public and rouse their opinion. Further the population in India is divided on the basis of religion, race, caste, community, language etc. It is therefore, essential that political parties carry on their election propaganda in such a way that these social religious or ethnic cleavages are not sharpened by them during elections. They have a responsibility to ensure that election campaigns are carried on smoothly and the process of free and fair elections is not affected by any unwanted incident or violence.

A good electoral system coupled by an impartial electoral machinery are the pre-requisites of free and fair elections. Beside these, it is also necessary that contesting candidates and their workers do not commit certain objectionable acts to swing the result of elections in their favour. The more serious of these objectionable act have been defined as corrupt practices in the election law.

There are three basis categories of corrupt practices:

1. Those which are committed by the use of money such as bribery, excessive expenditure and conveyance of voters;

2. Those which are committed by the use of force or power by use of political or official power such power as undue influence, coercion, intimidation, violence and the obtaining or procuring the assistance of government officials or the use of official machinery;

3. Those which are committed through misleading propaganda false allegations in relation to the personal character or conduct of a
candidates through an appeal to sectional sentiments by spreading disaffection and enmity among different classes of the citizens of India.

All the eight corrupt practices enumerated in section 123 of the Representation of People Act, 1951 fall under these three categories. The basic cause of these abuses is the lack of political consciousness among the voters and the opinion making elites and the tendency of the political parties and individual aspirants to make unauthorized and unscrupulous use of whatever advantage can be had at a given time. An effective code of conduct for political parties based on national consensus would go a long way in curbing some of the abuses.

(A) Following are the details of corrupt practices under section 123 of the Representation of People Act, 1951:

(a) Bribery: Bribery is an offence punishable under section 171 E of the Indian Penal Code, since over spending of money in election ultimately influence the result, and therefore, for his success, the election candidate or his supporters may resort to different from of gift, offers or promises. A gift, offer or promise of gratification to a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election or the receipt of or agreement to receive a gratification by a person from standing as, or for withdrawing from being a candidate, is expressly provided as a corrupt practice under Section 123(1) of the Representation of People Act, 1951. The gist of corrupt practice of bribery, thus, lies in attempting to do something for those opposed to the candidate, with a view to changing their votes as a ‘bargain for votes’. Section 161 of the Indian Penal Code, 1860 which deals with bribery has got an explanation which reads that the word ‘gratification’ is not restricted to pecuniary
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gratification or to gratification 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 of the Representation of People Act, 1951.

Thus, reward or gift, or offer to give employment or providing or promising entertainment or treating voters may constitute bribery if motive of allurement was to obtain favour in election. For instance, in Magan Lal Bagdi V. Hari Vishnu Kamath⁵, the candidate in an election meeting promise to construct a well in a village if the voters voted for him. Money was actually deposited for this purpose and was to wait the result of the election. Here, there was a clear bargain for votes and a corrupt practice under section 123 (1) of the Representation of People Act, 1951. In Dev Raj Anand V Bhawandas,⁴ payments made by the returning candidate for the construction of Gurudwara as donation and for the installation of fans and for performing of Akhand Path for his success, were not held to be corrupt practice on the ground that no bargaining for votes was proved. Therefore, a promise by a candidate that if he was elected, he would see that expenditure on development plans was incurred in his constituency, is held permissible. If a Minister redresses the grievances of the general public on the eve of election. It is not corrupt practice unless he obtains promises from the voters for favour in return as a condition for their help or he bargains in somewhat way directly or indirectly to electors to vote or refrain from voting at an election⁵.

Regarding the offer of an employment by a candidate the Supreme Court in Mohan Singh V. Bhanwar Lal⁶, held that the acceptance of offer
which constitutes a motive or reward for withdrawing from the candidature must be an acceptance of gratification or thing of some value though not necessarily estimable in terms of money. But a mere offer to help in getting employment is not such offer of gratification with in the meaning of Section 123(1) (B) as to constitute it a corrupt practice, offer to secure employment to any one may be an effective method of allurement to gain unlawfully in election. Such offer if is made by a politician, it has more impact in the mind of the job seeker. It is submitted that such an offer should be seriously viewed wherever charges are made out against a candidate.

The entertainment whatever hue amounts to bribery with a view to the inducement of a voter to vote for a candidate. It is for the court to decide whether in a specific case there is either the element or any form of the corrupt practice of bribery. Each case is to be decided on its own facts and merit.

So far as our ‘charitable expenses’ are concerned, our electoral system intends to prevent charity that is, there should be no sort of influence on the electorate in the guise of charity for securing votes, when elections are imminent. If the motives of charity are corrupt, it would be a form of bribery. Thus all kinds of charity can not be bribery. Our court while disposing of the important cases of election have given a liberal and reasonable interpretation to the phrase ‘offer of gratification’. The courts have necessarily taken into account the elements of ‘bargaining’, which constitute the corrupt practice of bribery. For instance, in the case of Bhanu Kumar Shastri V. Mohan Lal Sukhadia, the Supreme Court held that if Ministers on the eve of election render public or social service by redressing the grievances of the public as to construction of roads,
covering of nallahas and installation of water taps etc, these acts should not be interpreted either as grants or as a offer or promise of gratification. The court is always vigilant to watch not only the conduct of 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 purpose 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.

(b) Undue Influence: Section 123 (2) of the Representation of People Act, 1951 defines undue influences and other forms of influences and interference as corrupt practices. It means that any direct or indirect interference or attempt to interfere on the part of the candidate or his election agent or by any other person with the consent of the candidate or his election agent with the free exercise of any electoral right is known as undue influence. The above definition lay emphasis on the use of such influence as it creates the impression of interfering with free exercise of any electoral right. It is an abuse of an ‘influence’ which may be exercised by intimidating a voter against the free exercise of his vote by way of the threats of inflicting injury on him, or social ostracism and excommunication or expulsion from any caste or community or inducement or attempt to induce a candidate or an elector to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure, would be undue influence. This definition widely covers all kinds of fraudulent acts or omissions which is any way directly or indirectly interfere with the exercise of any electoral right. In Ram Dayal V. Sant Lal, the Supreme Court heared the appeal petition against the Tribunal and the High Court of Punjab, which had set aside the election on the ground that a religious leader exercise his
undue influence in support of a particular candidate. The Supreme Court agreed with the views of the lower court and dismissed the appeal, maintaining that the above words implied that the disobedience to his mandate would carry divine displeasure or spiritual censure, the case than clearly was within the purview of section 123 (2) of the Representation of the People Act, 1951. In Avtar Singh V. Tej Singh, the evidence showed that the returned candidate admitted that certain pamphlets and posters were circulated during election at the instance of the returned candidate and the effect of the posters was to mislead the voters so as to make them believe that one of the candidates had withdrawn and any vote given to the returned candidates would be considered as a vote given to the candidate who was alleged to have withdrawn. Under this situation the Supreme Court set aside the election of the returned candidate, as its result had been materially affected by a corrupt practice. In Shiv Kripal Singh v. V.V. Giri, the fact shows that an anonymous pamphlet was distributed in the Central Hall of Parliament, giving various fictitious incidents of sexual immorality of N. Sanjeeva Reddy, the Congress candidate. It was alleged that it was published at the instance of the rival candidate V.V. Giri. The Supreme Court found that it had not been proved that the election of Mr V.V. Giri was materially affected by the publication and distribution of the aforesaid pamphlet.

Thus, mere expression or statements cannot amount to exercise undue influence unless they induce, or attempt to induce the fear of spiritual censure or divine displeasure, undue influence implies an element of compulsion. Strong criticisms and attaching of photos of martyrs do not amount to the corrupt practice or undue influence. The threat may be direct or indirect. Even 'interference' or 'attempt to interfere' with the free exercise of the electoral right are the part of undue influence. However, the
definition of undue influence is in very general term, but it becomes serious only when it contains the 'element of compulsion' which interferes with the voter in the free exercise of his electoral right.

(c) Appeal on Grounds of Caste, Community, Race and Religion: In India caste community, race and religion play an important role. It has been made corrupt practice under sub section (3) of section 123 of the Representation of the People Act, 1951 which falls in two parts (i) an appeal by candidate, his agent or by other person with the consent of the candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language, and (ii) use of appeal to religious symbols, national symbols or national emblems for the furtherance of the prospects of the election of the candidate or for prejudicially affecting the election of any other candidate. This is subject to proviso that no symbol allotted under the Representation of the People Act, 1951 to a candidate shall be deemed to be a religious symbol or national symbol for the purposes of this sub-section.

A question was raised in Mrs. Indira Gandhi's case before the Allahabad High Court that the symbol of 'cow and calf' of the Congress was a religious symbol, so its use was a corrupt practice under the above section. The Supreme Court maintained in this case that representation of a 'cow and calf', except in some special and purely religious context be held to have a religious significance. In Kultar Singh V. Mukhtar Singh and Jogdev Singh Sindhani cases, the Supreme Court raised objection to the use of a poster wherein a candidate was displayed as having taken part in various marches led by the Akali Dal and in the Civil Disobedience Movement, respectively. But in Pratap Singh V. Jagdev Singh case the
use of ‘Om’ flag (which was a religious symbol to appeal Hindu voters) during the election campaign was not taken as religious symbol.

In Harcharan Singh V. Sajjan Singh,\textsuperscript{19} it was alleged that the returned candidate, his election agent and other person with his consent had appealed to the electors in the name of Sikh religion. In the course of canvassing, Hukamnama was issued by the Akal Takhat Prominent Sikh leaders also addressed the election meetings by saying that the candidate was a Gur Sikh and he had been nominated under the orders of the Akal Takhat and it was a religious duty of all Sikhs to vote for him. The Supreme Court held it was a corrupt practice within the meaning of section 123 (3) of the Representation of People Act, 1951. In Dr. Ramesh Yashwant Prabhoo V. Prabhakar K. Kunte,\textsuperscript{20} the Supreme Court observed that the fact of the case shows that Shiv Sena leader Bal Thakeray used provocative language against Muslims in his speeches and stated that “you must elect only Dr. Ramesh Prabhoo of Shiv Sena, otherwise, Hindus will be finished”. The court ordered to set aside the election on finding the above statement as an appeal on the ground of religion. In this case the Supreme Court correctly prostrates that religion of a candidate cannot be used for gaining political mileage by seeking votes on the ground of the candidate’s religion or alienating the electorate against other candidate on the ground of other candidate’s religion. Thus, the courts have made objective interpretation of the statement or appeals and their impression and impact on the mind of the voters. The courts have further taken a broad and wide meaning of the scope of section 123 (3) of the Representation of the People Act, 1951. They have cautioned the need for restrictive interpretation.
(d) **Fomentation of Hatred or Enmity on the ground of Religion, Caste etc:** Section 123(3-A) of the Representation of People Act, 1951 makes the creation of or an attempt to create feelings of enmity or hatred between the different classes of our citizens on the ground of religion, race, caste, community or language as a corrupt practice. Religious appeals which are prohibited under section 123(3) may also fall within the purview of section 123(3-A), if there nature is to create ill-will hatred enmity or differences between the classes of citizens.

For instance, in Mohammad Koya, V. Muthu koya\textsuperscript{21}, the Kerala High Court held that the speech of returned candidate was sufficient to promote enmity and hatred between different classes of citizens. But the reasoning given by the Supreme Court in this case seems to be not correct. What the speaker interpreted in his speech in court could not be held to be the best evidence in such a case where the words used by the speaker apparently bear offending nature and were likely to create hatred or enmity between different groups of society. In Ebrahim Suleman V. M.C. Mohammad,\textsuperscript{22} in this case the Supreme Court spelt out the scope of section 123 (3-A). The main proposition of the court was that the essence of section 123(3-A) purports that the speech may have an impact on the voters. A speech may cause feelings of enmity between the different classes of the citizens of India, even though the immediate target is a political party. It was also held that no law of the Country places any bar on describing a party as ‘irreligious’ and so long as the law allows the formation of such parties an appeal for votes made by the candidates of such parties may lead to their elections successful, in an indirect way, and may conceivably be influenced by religious, racial communal, linguistic and caste considerations.
In Dr. Das Rao Deshmukh V. Kamal Kishore Nanasahib, the appellant, nominee of Shiv Sena party, was the returned candidate in the election to the Maharashtra Legislative Assembly held in February, 1990. The allegations was based on a poster published with the consent of the appellant, which contained an appeal to vote "to teach the Muslims a lesson". It was also alleged that the election speeches of the Shiv Sena leaders had communal overtones. Both the High Court and Supreme Court took the view that the publication of the above mentioned poster would attract section 123(3) and 123(3-A) of the Representation of People Act, 1951. The Supreme Court has approved the law. The court rightly says that in deciding whether a party or its leaders had indulged in corrupt practice, regard must be had to the substance of the matter rather than mere form or phraseology of the speech.

By the Act No. 3 of 1988 sub-section (3-B) was inserted in section 123. The propagation of the practice of Commission of 'sati' or its glorification by a candidate or by his agent or by any person with the consent of the candidate or his election agent in furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate was made to be corrupt practice under this sub-section. Sati or glorification in relation to 'sati' shall have the same meaning respectively assigned to them in the Commission of Sati (Prevention) Act, 1987. Self-immolation by married women on the death of her husband is called 'sati'. Commission of sati was in practice among Hindus as a religious affair, which is now prohibited by law. Sub-section (3-B) of section 123 of the Representation of People Act, 1951 has enlarged the scope of the Commission of Sati (Prevention) Act, 1987.
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(e) **Publication of False Statements:** Sub-section (4) of section 123 of the Representation of People Act, 1951 prohibits the publication of false statement. This provision reads:

"The publication by a candidate or his agent or by any other person with the consent of a candidate or the election agent, or any statement of fact which is false and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidate, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election," shall be deemed to be a corrupt practice.

Since the Indian law makes the publication of a false statement of a candidate’s personal qualification as a corrupt practice, such false statement or propaganda may lead to the declaring of an election null and void, provided it is of such a character as to amount to undue influence with in section 123(2) of the Representation of People Act, 1951. The Supreme Court in Sheopal Singh V. Ram Pratap,24 made it clear that a statement of fact relating to the personal character or conduct etc. of a candidates can be made if it is true. Even if it is false, the candidate making it is protected, unless he makes it believing it to be true, that is to say, statements which are not true but made bonafide are also outside the ambit of the provision25.

While discussing the distinction between the private character and public character, Supreme Court in Inder Lal V. Lal Singh26 noted the difficulty which arises occasionally, in cases wherein the false statements, referred to a man beneath the politician. The court observed: though it is clear that the statute wants to make a broad distinction between public and political character on the one hand and private character on the other, it is
obvious that a sharp and clear-cut dividing line cannot be drawn to distinguish the one from the other. In discussing the distinction between the private character and the public character, sometimes reference is made to the “man beneath the politician” and it said that if a statement of fact affects the politician, it does not touch his private character. There may be some false statements of fact which clearly affect the private character of the candidate. Therefore, it is clear that in dealing with corrupt practices alleged under section 123(4) where we are concerned with border-line case we will have to draw working line to distinguish private character from public character and it may also have to be borne in mind that in some cases the false statement may effect both the private and public character as well. In Om Prakash V. Lal Chand\(^{27}\), the disputed statement published by the returned candidate contained only a general allegation that the candidate under the auspices of his father, had been indulging in murder. The Supreme Court treated the statement as one coming under section 123(4) and set aside the election. In Manmohan Kaliya V. Shri Yash\(^{28}\), it was held that it is very difficult for a court to rely on a news item, as a news item without further proof of what actually happened, is of no moment. It is at best, a second hand evidence. It was also maintained that the proximity of time is essential to bring the case with in the ambit of section 123(4), so as to establish the allegations and a close connection and direct and continuous link between the insinuations made against the candidate earlier and those made at the time of election is essential to bring the case with in the above section. This is known as ‘doctrine of Innuendo’.

In the early days of our democratic experience, election campaign was expected to be educative. They should assist a common man in forming his opinion about the problems before the Country and the
approach which should be adopted to solve them. Day by-day the experience is that the election campaigns are going far away from his objective. Irresponsible statements against the rival candidates or the rival political party are often restored to. Some time it is difficult to draw a dividing line between personal character and public conduct owing to the reason that the public conduct may be the reflection of the personal character of an individual. Although the courts has well defined and applied section 123(4), there appears to be correct approach, but an attack on the 'man beneath the politician' requires more attention in so far as it relates to the personal character of the candidate because that is corrupt practice.

(f) **Hiring of vehicles or free conveyance of voters:** Under section 123(5) of the Representation of People Act, 1951, as amended up-to-date, hiring or procuring, on payment or otherwise, of any vehicle or vessel by a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station or a place fixed for the poll, constitutes a corrupt practice. But the hiring of such a vehicle or vessel by an elector or many electors at their joint costs for reaching a polling station or a place fixed for the poll, shall not be deemed to be a corrupt practice under this section. Under the above section, a strong case of corrupt practice can be established in two ways: (a) the procuring or hiring of vehicle or vessel on payment or otherwise by a candidate or his agent, and (b) use of any such vehicle or vessel for the free conveyance of any elector in Balwan Singh V. Prakash Chand\(^2\), it was alleged that the candidate used a tractor belonging to his wife for the conveyance of electors. The allegation was proved and the court held it a corrupt practice. Therefore, the essence of the corrupt practice under sub-
section (5) of section 123 does not lie in the contract of hiring or procuring the vehicle, but it lies in the fact of hiring for free carriage of voters. The determining factor in all cases is whether the vehicle was used for the free conveyance of voters to or from the polling station. It is to be noted that mere conveyance of voters to the polling station free of charge does not amount to a corrupt practice, until there is an allegation that the voters were given free conveyance. In Chenna Byre Gowda V. S.R. Ramaiah, the voters were carried in motor vehicle belonging to a partner or relation of the candidate but there was nothing to show that the vehicle was hired or procured by that person. In the absence of the consent of the candidate corrupt practice was not proved.

Thus, it can be concluded that providing free conveyance may materially affect the election and therefore the election law makes it a corrupt practice. It appears from the decided cases that strict proof is required to establish the fact of hiring or procuring the vehicle for the free conveyance of voters and using any vehicle for such free conveyance. However, if the hired vehicle is not used, section 123(5) will not apply. It is expected that this corrupt practice may be avoided by installing numerous polling stations which should be within the reach of every voter in the constituency.

(g) Incurring of Excessive Expenditure: The corrupt practice of incurring excessive expenditure is defined in section 123(6). This section provided that every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date of which he has been nominated and the date of declaration of the result thereof, both dates inclusive. The
maximum amount of election expenditure, which may be incurred by the
candidate for the Parliamentary and Assembly Constituencies in the
various states, is laid down under Rule 90 of the Conduct of Election
Rules, 1961. Mere non disclosure of expenditure is not a corrupt practice.
It has been repeatedly held by the Supreme Court that what is referred to in
sub-section (6) of section 123 as corrupt practice is only the incurring or
authorising of expenditure in contravention of section 77 of the
Representation of People Act, 1951. The relevant rulings of the apex court
on this issue are in Dal Chand V. Narayan Trivedi, the Supreme Court
held that Section 77 consists of three parts. Section 77, Sub-Section (1), (2)
and (3). If the candidate incurs or authorizes expenditure in excess of the
prescribed amount in contravention of section 77(3), he commits corrupt
practice under section 123(6). The contravention of section 77, subsection
(1) and (2) or the failure to maintain correct accounts with the prescribed
particular does not fall with in 123 (6). Again in L.R. Shivaramagowd V
T.M. Chandra Shekhar, the same view has been reiterated by the
Supreme Court.

It may be worth recalling here that any voluntary expenditure
incurred by the political party which sponsored the candidate, or the
expenses incurred by the supporters, friends or relatives small not be
included with in the account of election expenses of the candidate. In Smt.
Indira Gandhi V. Raj Narain, the Supreme Court held that voluntary
expenditure by friends, relatives or sympathisers and expenditure incurred
by a candidate’s party without any request or authorization by the
candidate, has never been deemed to be expenditure by the candidate
himself. But a contrary view of the Supreme Court appears in Kanwar Lal
Gupta V. Amarnath Chawla. In this case the court observed that the
objective behind the ceiling on election expenditure would be completely
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frustrated if the political parties are allowed to spend as much as they like to their party candidates. Authorizing the political party for election expenses by the candidate in excess of the prescribed limit was held to be a corrupt practice. The effect of this case was nullified by Parliament in 1974 by adding Explanation-I to section 77 which exempted the expenditure incurred in connection with the election of the candidate by political party, association, supporters or individual. Thus, the object of the provision suffers violation through the escape route and prescription of ceiling on expenses by a candidate has become a mere eye wash. In Common Cause (Registered Society) V. Union of India. It was further held that in the absence of legal provision requiring political parties to maintain proper accounts of donations and contribution they received, the law relating to election expenses has been the subject of common misuse. It appears that the apex court has done as much as it was possible with in its capacity to root out the influence of money in elections. However, the limits which has lost their relevance, are adhered more in their breach then in their observance.

(h) Obtaining Assistance of Government Servant: Sub-section 7 of section 123 provides that the following shall be deemed to be a corrupt practice: "The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the government and belonging to any of the following classes, namely: (a) Gazetted Officer; (b) Stipendiary Judges and Magistrates; (c) Members of the armed forces of the Union; (d) Member of the Police forces; (e) Excise Officers; (f) Revenue Officers; (g) Such other class of persons in the service of government as may be prescribed.
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The above provision is aimed to keep government servants aloof from politics and also to protect them from being imposed on by those with influence or in a position of authority and power, and to prevent the machinery of government from being used in furtherance of a candidate’s return.

The term candidate is defined in section 79(b) of the Representation of People Act, 1951. This section was amended by Act 40 of 1975, which reads that candidate means a person who has been or claim to have been duly nominated as a candidate at an election. It was held in Smt. Indira Gandhi V. Raj Narain,\(^3\) that the obtaining or procuring must be with the ‘consent’ of the candidate or his election agent. Secondly, for establishing this corrupt practice, the candidate must be held to have obtained or procured the assistance of government servant and he must belong to any of the specified categories. Help rendered voluntarily by a government servant without any attempt by the candidate concerned to obtain or procure assistance, does not constitute a corrupt practice of the candidate, whatever be the impropriety of it for the government servant him self. A government servant has a private personality too\(^{39}\).

In several cases canvassing by the government servant was found and the election was set aside by courts. In U.S. Sasidharan V. K. Karunakaram,\(^4\) two government servants had canvassed in the constituency for the returned candidate but the Supreme Court refused to set aside the election instead the petition was rejected preliminary on technical grounds. The facts of the case show that it was a clear case of canvassing. The proviso inserted by Act No. 40 of 1975 retrospectively to the section 123(7) is against the principle of free and fair election. The effect of this proviso is to allow government servants for furtherance of the
prospects of the leader’s election. However, influencing voters by the
government servant is an electoral offence. The Central Civil Services
(Conduct) Rules, 1964 also prohibits the government servants from taking
part in politics. The Election Commission of India, in this reference, has
recommended to the Government of India that restrictions on the political
activities of government servants are necessary in the interests of free and
fair elections.

(i) **Booth Capturing:** Sub-section (8) was inserted in section 123 of the
Representation of People Act, 1951 by Amending Act No. 1 of 1989,
specifying booth capturing by a candidate or his agent or any other person
as a corrupt practice. Prior to this amendment, the act of booth capturing
was covered under undue influence. The explanation (4) to section 123
refer to section 135-A of the Act for the purpose of definition of booth
capturing under section 123 (8). Section 135-A of the Representation of
People Act, 1951 read, as under:

1. seizure of a polling station or a place fixed for the poll by any person
   or persons making polling authorities surrender the ballot papers or
   voting machines and doing of any other act which affects the orderly
   conduct of elections:

2. taking possession of a polling station or a place fixed for the poll by
   any person or persons and allowing only his or their own supporters
   to exercise their right to vote and prevent others from voting:

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

4. seizure of a place for counting of votes by any person or persons,
   making the counting authorities surrender the ballot papers or voting
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machines and the doing of any thing which affect the orderly counting of votes; and

5. doing by any person in the service of government, of all or any of the aforesaid activities or aiding or conniving at any such activity in the furtherance of the prospects of the election of a candidate.

It can be concluded that all the possible act of violence or threats at the polling booth and at counting centres have been included within the definition of corrupt practice of booth capturing. What is needed is strict implementation of the provisions of law. Dealing specifically with section 123(8) the apex court in Baldev Singh Mann V. Gurucharan Singh (MLA) and others observed:

An allegation of corrupt practice within the meaning of sub-sections (1) to (8) of section 123 of the Representation of People Act, made in the election petition are regarded quasi-criminal in nature requiring a strict proof of the same because the consequences are very serious in nature. On the proof of any of the corrupt practice as alleged in the election petition it is not only the election of the returned candidate which is declared void and set aside but besides the disqualification of the returned candidates, the candidate himself or his agent or any other person as the case may be, if found to have committed corrupt practice may be punished with imprisonment under section 135-A of the Act. It is for these reasons that the court insists upon strict proof of such allegation of corrupt practice and not to decide the case on preponderance or probabilities. The evidence, has therefore, to be judged having regard to these well settle principles.

Thus, it appears that all the possible act of violence or threat at the polling booths and at counting centres have been included within the
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definition of corrupt practice of booth capturing under section 123 (8) of the Representation of People Act, 1951.

Related to booth capturing is rigging, it is submitted that the rigging can be classified in two categories, viz. the overt type which is defined as an electoral offence under section 135-A and as corrupt practice under section 123 (8) of the Representation of People Act, 1951; and the covert type which is invisible or otherwise peaceful. The covert type booth capturing seldom reported to the concerned authorities. It takes place at polling stations where a particular caste or group are in dominant position. The polling personal managing the booths have to perforce acquiesce in the invisible booth capturing out of seer fear of the reprisal from the musclemen of the dominant group or for other reasons. However, deployment of more security forces, photo identify cards of voters and use of electronic voting machines proves very useful in restraining this type of booth capturing. Still there is an imperative need for political parties, bureaucracy and the police to evolve a consensus and commitment to eschew rigging and poll violence. The principle of “direct and cogent evidence” to prove the corrupt practice of booth capturing should be relaxed in order to yield cases relating to this corrupt practice.

(B) Electoral Offences:

Electoral offences are mainly offences in relation to such matters as printing or publishing of election pamphlets or posters without the name of the printer or publisher, canvassing in or near polling stations on the day of the poll, election, meetings, maintenance of secrecy at voting, conduct of officers on election duty, breaches of official, duly in connection with elections, disorderly conduct or misconduct at or near polling stations and fraudulent handling of a ballot paper, nomination paper, ballot box, etc.
Section 125 to 136 of the Representation of People Act, 1951 deal with various electoral offences. The offences under sections 125, 133 and 135-A are corrupt practices also under section 123 of the same Act as is already discussed in this chapter. Section 125 to 136 of the Representation of People Act, 1951 prescribes penalties for different electoral offences described in the following paragraphs:

1) Promoting enmity between classes in connection with election, under section 125 of the Representation of People Act, 1951 is a cognizable offence punishable with imprisonment for a term which may extend to three years or fine or with both. This section can be compared with sub-section (3-A) of section 123 of the Representation of People Act, 1951 and with section 153-A and subsection (2) of Section 505 of Indian Penal Code. An offence under this section amounts to a corrupt practice and results in setting aside of election vide clause (b) of section 100(1) of the Representation of People Act, 1951. Offence of promoting enmity between classes, is non-bailable and triable by Magistrate of the first class. It seems that section 125 is an independent provision and it has nothing to do with an election dispute. It is not necessary that an election dispute should be pending or the person accused of this offence should have been held guilty by the election court. Any person including the candidate or his election agent can be punished under this section. If he has committed an offence with regard to elections, consent of the candidate for the commission of the offence is not material under this provision.

2) Section 126 prohibits public meetings during a period of 48 hours ending with hour fixed for beginning of poll. If a meeting is
convened or held or attended by any person in any polling area during the period of 48 hours with the hour fixed for conclusion of the poll in any election in that polling area, that is an offence under section 126 and is punishable with fine or with imprisonment for a term which may extend to two years or with both. The prohibition imposed by this section is about holding of public meetings and not canvassing for election. Acting or inciting others to act in disorderly manner for the purpose of transacting the business for which the meeting was called is punishable under section 127 with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both. Sub-section (3) of section 127 gives power to Police Officers to require such person to declare his name and address, and if reasonably suspected that he is giving a false name or address to arrest that person against whom a reasonable suspicion exists for violating sub-section (1) of Section 127.

3) Under Section 127-A, printers and publishers are required to print their names and addresses on any election pamphlet or poster. The printer is also required to get a declaration as to identity of the publisher signed, by him and attested by two persons to whom he is personally known induplicate, and send a copy of the printed document along with one copy of the declaration to the Chief Electoral Officer, if printed in the capital of a state or in other cases, to the District Magistrate of the District in which it is printed. That is so because, whenever a corrupt practice is alleged under section 123(4), it was difficult to find out printer if the name of the printing press was not mentioned on the pamphlet and then it was more difficult to establish as to who has caused this to be printed. Now the
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requirement prescribed by Section 127-A to print the name of the printer and publisher has made the job easier.

4) Section 128 lays down, that every officer, clerk, agent or any other person performing any duty in connection with the recording or counting, of votes at an election is bound to maintain the secrecy of voting and in maintaining such secrecy, he shall not, except for some purposes authorized under the Act or any other law, communicate to any person any information calculated to violate such secrecy. The contravention of this rule makes him liable to imprisonment for a term which may extend to three months or with fine or with both.

5) Section 129 casts a duty on officers etc, at elections not to act for candidate or to influence voting. It says that no person who is a District Election Officer or a Returning Officer, or an Assistant Returning Officer, or a Presiding officer or Polling Officer at an election, or an Officer or clerk appointed by the Returning Officer or the Presiding Officer to perform any duty in connection with an election, shall in the conduct or management of the election do any act (other than the giving of vote) for the furtherance of the prospects of the election of a candidate. No such, person as aforesaid and no member of a police force, shall endeavour to persuade any person to give or not to give his vote or to influence the voting of the person at an election in any manner. The contravention may be penalized by imprisonment which may extend to six months or with fine or with both. The offence under section 129 is specifically made cognizable.
6) Section 130 and 131 prohibit canvassing or disorderly conduct in or near the polling station. It lays down that no person shall, on the date or dates on which a poll is taken at any polling station, make canvassing for votes or persuade any person to vote or not to vote, exhibit any notice relating to election with in a distance of one hundred meters of the polling station. Section 132 prescribes penalties for misconduct at the polling station. Sub-section (1) of section 132 empowers the Presiding Officer or any person authorized by him in this behalf or any Police Officer on duty to remove any person from the polling station if he fails to obey the lawful direction of the Presiding Officer and if such person re-enters the premises, then he may be punished with imprisonment for a term which may extend to three months or with fine or with both. The offence is made cognizable.

7) If an elector refuses to observe the procedure prescribed for voting, the ballot paper issued to him may be cancelled under section 132-A. Illegal hiring or procuring of conveyance at elections can be punished with imprisonment which may extend to three months and with fine under section 133. Breaches of official duty in connection with election are punishable under section 134 with a fine which may extend to five hundred rupees. The government servants have been prohibited from, acting as election agent, polling agent or counting agent of any candidate. The breach of this prohibition is punishable with imprisonment which may extend to three months or with fine or with both under Section 134-A. No person other than the Returning Officer, the Presiding Officer, any Police Officer or any other person appointed to maintain peace and order, at a polling station, shall on a polling day go with arms within the neighborhood
of a polling station. Contravention of this provision is under section 134-B with imprisonment for a term which may extend to two years, or with fine or with both.

8) Removal of ballot papers from the polling station is an offence under section 135 and if the Presiding Officer has reason to believe that any person is committing this offence, he may cause him to be searched by Police Officer. The offence of removing the ballot paper is punishable with one year imprisonments or with fine which may extend to five hundred rupees or with both. By Act No. 1 of 1989, section 135-A was inserted by which the offence of booth capturing was made punishable by imprisonment and fine. This section as we already discussed in separate heading of booth capturing. Violation of panel provisions or disturbance during the elections cannot be denied. It appears the sufficient statutory safeguards are made to insure free and fair elections, but these provisions remain dead Acts and are not strictly implemented. In every Parliamentary or State general elections, cases relating to electoral offences have not been reported or there was no proper investigation of such cases. Therefore, we do not find, sufficient case law on this area. Police Officer, Returning Officers, Polling officers, etc. are fully authorized to take action on apprehension of violation of law, but it seems that appropriate action has not been taken whenever cases of electoral offences are reported to the concerned authorities. Therefore, what is needed is the strict implementation of these provisions.

Following are offences relating to elections under the Indian Penal Code:

a) Bribery (Section 171-B read with section 171-E).
b) Undue influence at elections (Section 171-C read with section 171-F).

c) Impersonation at elections (Section 171-D).

d) False statement in connection with an election (Section 171-G).

e) Illegal payments in connection with an election (Section 171-H).

f) Failure to keep election accounts (Sections 171-I).

Giving or acceptance of bribery or gratification either as a motive or as a reward to induce any person to stand or not to stand or to withdraw from being a candidate or to vote or stand as or refrain from voting at an election is punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both. However, bribery in the form of food, drink, entertainment or otherwise treating is punishable with fine only\(^53\). The offence is non-cognizable, bailable and trial, by Magistrates of first class\(^54\).

Undue Influence at an election is defined as the voluntary interference or attempted interference with the right of any person to stand or not to stand as candidate or withdraw from being a candidate, or to vote or refrain, from voting. This covers all threats of injury to person or property and all illegal methods of persuasion, and any interference with the liberty of the candidate or the electors. The inducing or attempting to induce a person to believe that he will become the object of divine displeasure is also interference. It is not, however, interference within the meaning of the clause to make a declaration of public policy or a promise of public action\(^55\). The offence is punishable for imprisonment for one year or fine or both, and it is non cognizable and bailable\(^56\).
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It is open to Ministers to canvass for a candidate of their party standing for election. Such canvassing does not amount to undue influence but is proper use of Minister's right to ask the public to support candidate belonging to Minister's party. It is only where a Minister abuses his position and goes beyond merely canvassing, that a question of undue influence may arise. For the purpose of canvassing for a party candidate, even Ministers request in the form of whip is immaterial so long as it is clear that there is no compulsion on the electorate to vote in the manner indicated. A Minister did not cease his office merely because he was himself a candidate for election. He has a right to redress the public grievances even during the eve of election.

False statements of fact in relation to the personal character or conduct of a candidate are penalized by fine under Section 171-G of Indian Penal Code. However, general imputations of misconduct unaccompanied by any charges of particular acts of misconduct cannot properly be described as statement of fact within the meaning of this section.

An important provision has been made which prohibits incurring or authorizing expenses on account of holding of any public meeting or upon any advertisement, circular or publication or in any other way whatsoever for the purpose, of promoting or procuring the election of any candidate and if such act committed by any person without general or special authority in writing of the candidate, it is punishable with fine which may extend to rupees five hundred. For the purpose of regular accounts in the prescribed, form to be kept by the candidate and failure to do so result in penalty the law lays down that whoever being required by law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such
accounts, shall be punished with fine which may extend to five hundred rupees\textsuperscript{59}. Since submission of the details of expenses in the prescribed form is mandatory failure to do so or just submitting the details in some other manner is bound to entail disqualification under section 10-A of the Representation of People Act, 1951 and penalty under the Indian Penal Code.

A remarkable feature of these Penal provisions is that they are placed in more than one statute. Duplicacy of provisions of law is not beneficial in any respect rather it cause unnecessary confusion in their implementation. It is therefore suggested that such duplicacy of law should be omitted. These penal provisions are required to be incorporated under one statute and be enforced in their letter and spirit\textsuperscript{60}.

Thus, a careful study of election cases reveals that the evidence lead in support of alleged corrupt practice must be cogent and definite. The onus lies heavily on the petitioner to establish the charge of corrupt practice and in the case of doubt, the benefit goes to the returned candidate. The judicial role in determining the ambit and scope of the statutory provisions is credible. But the formulation of the principle of strict proof in matters of corrupt practices goes against the avowed purpose of law and seriously defeats the provisions of section 123 of the Representation of People Act, 1951.

(C) Election Petitions:

To inspire public confidence in the verdict of ballot box, it is necessary to have a speedy, fair and inexpensive adjudication of election cases, through machinery manned by persons known for their judicial temperament and integrity. The delay in the court decisions in election
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petitions has become a matter of serious concern. Thus for example, the Supreme Court rejected the election of an Orissa Congress Member of Legislative Assembly from Bhanjanagar Assembly constituency, held in 1995 only in September 1999\(^6\). There are several cases in which election petitions have been finally decided long after the term of the House, to which a person was elected, had expired. The most shocking case of its kind was the punishment imposed in July 1999 on Bal Thackrey almost 11 years after the offence was committed. Such inordinate delays make a mockery of the provisions of law.

However, the election law provides that every election petitions shall be tried as expeditiously as possible and endeavour should be made by the concerned High Court to conclude the trial within six months of the presentation of the petition. But this is rarely achieved. During the time an election petitions is pending before a High Court, the candidate whose election has been challenged is under suspense and cannot function effectively in the Legislature. In cases where there is a prayer for declaration of another candidate as elected, and if a long prayer is allowed after such delay, the other person will have only a short time to serve as a Member of the Legislature. In order to ensure the speedy disposal of the election petitions, the Election Commission is of the opinion that certain judges should be earmarked exclusively for the purpose or some adhoc judges appointed for the purpose of disposal of the petitions. Infact some High Courts such as the High Court of Madras have earmarked certain judges exclusively for purpose of trying election petitions and it has been observed that the progress of disposal of election petitions in these High Courts has been better than that of other High Courts where no such system is adopted. The Commission is of the view that the courts are at present and the procedures they have to adopt, it would not be possible to
expedite election cases with in any time frame. Moreover, High Courts are having a large number of pending cases for disposal which may not allow them to give priority to the disposal of election petitions which they deserve. It has, therefore, been suggested that the High Court should be entrusted with the disposal of election petitions containing only allegations of major corrupt practices such as bribery, undue influence, appeal on ground of religion, etc. and that petitions containing allegations of minor corrupt practices such as hiring of vehicles for free conveyance of voters, obtaining assistance from government servants, etc., and technical irregularities such as qualification or disqualification of a candidate, improper acceptance or rejection of a nomination paper etc. should be entrusted to Election Commission and that appeals against the decision of the Commission should be filed in the Supreme Court.

It need to be considered whether by effecting an amendment to the Constitution, powers to decide cases cannot be given to the Election Commission. During the off-election period, the Commission has ample free time which can be conveniently devoted to deciding such petitions. Since the Election Commission is now a multi member body, full use must be made of its time and expertise. As the members of the Commission are of the rank of a Supreme Court judge, only one appeal may be provide against the decision of the Election Commission and that too only to the Division Bench of the Supreme Court.

Thus, there are penalties of electoral offences defined under the Representation of People Act, 1951 and the Indian Penal Code, 1860. The provisions relating to electoral offences have both preventive and penal role together. But at present cases are rare in which any preventive action is taken or prosecution launched for commission of electoral offences.
Even open violence is not properly guarded. The reason seems behind this is that the election administration is not under a duty to make criminal complaints relating to electoral offences. Though sufficient statutory safeguards are provided but these provisions remain dead Acts due to their non-implementation.
References:


3. AIR 1960, M 362.


7. *Ibid*, 1369-70

8. AIR 1971 SC 2025.


10. AIR 1959 SC 855.


16. AIR 1965 SC 141.
17. AIR 1965 SC 183.
18. Ibid.
19. AIR 1985 SC 236
21. AIR 1979 SC 154; in this case both the candidate were belonging to a Muslim Community but belonged to rival political parties.
22. AIR 1980 SC 354.
24. AIR 1965 SC 677.
25. The same view was taken in Mangilal V. Krishna Ji Rao, AIR 1971 SC 1943; Raghunath Singh V. Krishna Chandra, AIR 1971 SC 1839; Madan Gopal V. Mam Raj, AIR 1976 SC 461; Badri Narayan V. Kamdeo Prasad, AIR 1961 Pat 41; P.K. Sukumaran V. K.J. Munadasseri, AIR 1954 Ker 120.
27. AIR 1970 SC 1889.
29. AIR 1976 SC 1187.
30. 20 ELR (Election Law Report) 37.


33. Ibid at (Bchawat, J. for himself and S.M. Sikri and K.S. Hegde JJ).

34. AIR 1999 SC 252.

35. AIR 1975 SC 2299.

36. AIR 1975 SC 308; (1975) 3 SCC 646.


38. AIR 1975 SC 2299.


40. AIR 1990 SC 924.


42. AIR 1996 SC 1109; (1996) 2 SCC 743.

43. Ibid, 5 SCC at 746.


45. Ibid.

47. *The Representation of the People Act, 1951*, Section 127 (2), substituted by Act No. 21 of 1996. This section applies to any public meeting of a political character held in any constituency between the date of the issue of a notification under the Act calling upon the constituency to elect a member or members and the date on which such election is held.

48. *Ibid*, Section 127 (2) (a) and (b).

49. *Ibid*, Section 128 (1).


53. *Indian Penal Code, 1860*, Section 171-E.


55. *Indian Penal Code, 1860*, Section 171-C.

56. *Ibid*, Section 171-F.


58. *Indian Penal Code, 1860*, Section 171-H.
59. *Ibid*, Section 171-I.
