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# Corrupt Practices in Relation to Elections in India

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## ABSTRACT

*Corruption is the major challenge that denies the effectiveness of the institutions and the governments. Kofi Annan remarked, "Corruption hurts the poor inappropriately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid." Corrupt practices distract the very existence of electoral process. "Corrupt practice in any form is held as an incurable disease, a cause of many unfavorable problems which brings social and economic evils in the society and also damages the moral and ethical fibers of the civilization". Corrupt practice in India is the consequences of the nexus between the bureaucracy, criminals and politics. Through the medium of this research, researcher tends to highlight the corrupt practices adopted by the person contesting elections in India. The research is comprehensive narrative about the corrupt practices followed in relation to elections in India.*

## I. INTRODUCTION

Freshwater Rule of law is an essential ingredient for the survival of democracy and the best person should become the representative for efficient administration of the nation.<sup>2</sup> The Supreme Court in *Gadakh Yashwantrao Kankarrao v. EV alias Balasaheb Vikhe Patil*<sup>3</sup> observed that;

*"This can be achieved through men of high moral and ethical values who win the elections on a positive vote obtained on their merit and not by the negative vote of process of elimination based on comparative demerits of the candidates."*<sup>4</sup>

In *Azhar Hussain v. Rajiv Gandhi*<sup>5</sup> the Supreme Court opined that the term "corrupt practice" in the Representation of Peoples Act, 1951 is "repulsive and offensive" and hence there should be more neutral and inoffensive expression. Only when the political parties, their candidates and the party supporters adhered to the election morality and defy any kind of corrupt practice

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<sup>2</sup> V.S Rama Devi and S.K. Mendiratta, *How India votes, Election Laws, Practice and Procedure*; Haryana, LexisNexis, 2014, 2<sup>nd</sup> edition, 905.

<sup>3</sup> AIR 1994 SC 678.

<sup>4</sup> Id. at 3.

<sup>5</sup> AIR 1986 SC 1253.

and electoral offences, the election becomes free and fair in the truest of its sense.<sup>6</sup> In view of the Apex Court;

*“The duty at the top echelons of leadership at the state and national level of all political parties is to set the trend for giving the needed information to the electorate by adopting desirable standards so that it percolates to the lower levels and provides a congenial atmosphere for a free and fair poll.”<sup>7</sup>*

There are basically two types of acts and omission that are considered as devoid of electoral ethical values, namely; corrupt practices and the electoral offences.<sup>8</sup> The corrupt practices have been dealt in the Representation of Peoples Act, 1951<sup>9</sup> while the electoral offences have been provided under the Indian Penal Code, 1960 as well as under the Act of 1951.<sup>10</sup> Now let us note few major distinction between the above two mentioned. Firstly the when a corrupt practice has been done by any candidate or by his agent with his consent, that may amount to cancellation of the whole election as such the candidature will be rejected and election will be void, while on the other hand in case of the electoral offence no such major penalty has been attached except that the person has to bear criminal liability. Secondly, in case of commission of the corrupt practices the person suffers civil disabilities, such as his election is cancelled, the constituency goes without representation unless another election is held but in case of commission of an electoral offences the person may suffer imprisonment or fine or both.<sup>11</sup> There’s one thing common between these two that is the standard of proof in both the cases should be strictly proved as in criminal cases and there is no scope for preponderance of probability.<sup>12</sup>

## II. CORRUPT PRACTICES

There are seven types of commission and omission that are classified as the corrupt practices; namely; 1) Undue Influence 2) Bribery 3) Appeal on the ground of religion, caste, etc. 4) Publication of false statement relating to the candidate 5) free conveyance of the voters 6) election expenditure in excess of the limit prescribed 7) taking help of the government servant 8) spreading hatred or enmity between different classes of citizen 9) glorification of sati 10) Booth Capturing.<sup>13</sup>

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<sup>6</sup>Id. at 1, 906.

<sup>7</sup> AIR 1994 SC 678.

<sup>8</sup> Id. at 3, 906.

<sup>9</sup> Representation of the Peoples Act, 1951, Section 123.

<sup>10</sup> Chapter IXA of Indian Penal Code, 1960; Chapter III of Part VII of the Representation of Peoples Act, 1951.

<sup>11</sup> Id at 3, 907.

<sup>12</sup> Id at 3, 630.

<sup>13</sup> Representation of the Peoples Act, 1951, Section 123.

- **Bribery**: “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 2[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 as a reward to—

- a person for having so stood or not stood, or for 3[having withdrawn or not having withdrawn] his candidature; or
- .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 4[withdrawing or not withdrawing] from being, a candidate; or

(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 2[to withdraw or not to withdraw] his candidature. Explanation.—For the purposes of this clause the term “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 bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.].<sup>14</sup>

[171B. Bribery.—

(1) Whoever—

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any 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

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<sup>14</sup> The Representation of the Peoples Act,1951, Section 123.

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.]<sup>15</sup>

Bribery is held as a non cognizable offence under code of criminal procedure, 1973 which is also punishable with imprisonment with either description up to one year or with fine or with both.<sup>16</sup>

It was held that bribery even to a single person can be held as void.<sup>17</sup>

A) **Gratification:** it is not an exhaustive definition but however it is implied that the term gratification is not only restricted to pecuniary gratification but it also includes gratification in all forms of entertainment, all forms of employment for reward.<sup>18</sup>

In *Kalya Singh V Genda Lal*<sup>19</sup>, it was held by SC that payment of any gratification to any person to work at an election is outside the ambit of section 123(1).

In *Onkar Singh V. Ghasiram Majhi*, it was held by the SC that, payment of the worker his salary can actually wield his influence; however this cannot act as bribery.<sup>20</sup>

In *Hari Singh Pratapsingh Chawda V Popatlal Mulshanker Joshi*<sup>21</sup> the SC held that, “if gifting or offering to a person asking him to work for him with incidental result that that person might vote for him was not permissible under sec 123, then it would be impossible for person standing for election to get any person who are voters to work for them in constituency.”

B) **Inducement:** SC held that In *Kalya Singh V. Genda Lal* “ that the dictionary meaning of the word ‘induce’ is to persuade and where the inducement to a voter is not direct

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<sup>15</sup> Indian Penal Code, 1860, Section 171B.

<sup>16</sup> The Indian Penal Code 1860, Section 171(E).

<sup>17</sup> Hari Singh Pratapsingh V Popatlal Mulshanker Joshi, AIR 1976 SC 271.

<sup>18</sup> The Representation of the Peoples Act, 1951, Section 123.

<sup>19</sup> AIR 1975 SC 1634

<sup>20</sup> 39 ELR 477

<sup>21</sup> AIR 1976 SC 271

but indirect through a third person such inducement shall be treated as corrupt practice if gratification paid to the third person is in the knowledge of voters.”<sup>22</sup>

In *Rajendra Prasad Jain V Sheel Bhandra Yajee*<sup>23</sup> the sc held that the candidate offering money is enough to show that he has made an offer to corrupt the voter. The SC further in *Ziauddin Burhanuddin Bukhari V Brijmohan Ramdas Mehra*<sup>24</sup> that offering of bribe is sufficient to constitute corrupt practice, whether it is accepted or not is irrelevant.

- **Element of bargain:**

In gift, offer or promise there has to an element of bargaining for votes. In other words such offer should be backed by desire for having votes in return.<sup>25</sup>

In *Ghashi Ram V. Dal Singh* “ that an offer or promise not made to any particular votes or voters but to the general body or of residents without distinguishing between those who were favorably inclined and those who were not was not a corrupt practice.”<sup>26</sup>

After the assassination of Shri Rajiv Gandhi a mass feast was held to which SC didn't hold that to be a corrupt practice.<sup>27</sup>

- **Grants And Promises**

The promises made by ministers, candidates regarding public action do not fall within the category of mischief.<sup>28</sup>

SC held in *Rajagopala Rao V. Papaya Dora Hanumanthu*<sup>29</sup> the provisions could never intend to treat normal election promises made during the manifestos by members to get elected.

Its legitimate in the part of the PM also being the leader of the party at the same time to appeal for the votes.<sup>30</sup> However election should be conducted in a fair manner.<sup>31</sup> a similar view was taken up in the case of s *Khaddar Sheriff V Munnuswami Gounder*.<sup>32</sup>

- **Appeal on Ground of Religion, Race, Caste, Community or Language or Appeal to Religious or National Symbols**

The promotion of, or attempt to promote, feelings of enmity or hatred between different classes

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<sup>22</sup> AIR 1975 SC 1634

<sup>23</sup> AIR 1967 SC 1445

<sup>24</sup> AIR 1975 SC 1788

<sup>25</sup> S.K. Mendiratta, *All You Want To Know About Indian Election*; LexisNexis, 2009, Nagpur.

<sup>26</sup> AIR 1968 SC 1191

<sup>27</sup> C Narayana Swamy V Ck Jaffer Sharief (1994) Supp 3 SCC 170.

<sup>28</sup> The Representation of the Peoples Act, 1951, Sec 123.

<sup>29</sup> AIR 1990SC 1889

<sup>30</sup> AIR 1987 SC 1577

<sup>31</sup> Ghasi Ram Singh Vs Dal Singh AIR 1968 SC 1191.

<sup>32</sup> AIR 1955 SC 775

of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.] 8[(3B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate. Explanation.—For the purposes of this clause, “sati” and “glorification” in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987 (3 of 1988).]<sup>33</sup>

In *Ramesh Yeshwant Prabhoo Vs Prabhakar Kasinath Kunter*, SC held that, “there can be no doubt that the word ‘his’ in subsection (3) must have significance and it cannot be ignored or equated with the word ‘any’ to bring within the net subsection (3) any appeal in which there is any reference to religion<sup>34</sup>

Any appeal if is made on the ground of sex cannot be held as mischief under sec 123.<sup>35</sup>

Where appeal is made on the ground of religion it can give rise to corrupt practice within the meaning of section 123.<sup>36</sup> SC held that provision in sec 123(3) is not violative of fundamental right of speech and expression guaranteed under art 19 of constitution of India.<sup>37</sup> SC however drew a distinction “between appeals simplicitor to vote or to refrain from voting made by religious leaders which may benefit any particular candidate and an appeal to vote or to refrain from voting on the ground of religion emanating from religious leader and attributable to candidate within meaning of sec 123.”<sup>38</sup> SC also held that the former isn’t vulnerable but the later is.<sup>39</sup>

- **Appeal to ‘hindutva’:**

Whether appeal to hindutva in speeches of election amounts to appeal on the ground of religion came up under scrutiny by SC in *Ramesh Yeshwant Prabhoo V Prabhakar Kashinath Kunte*<sup>40</sup>, *Manohar Joshi V Nitin Bhaurao Patil*<sup>41</sup>, *Surya Rao Venkat Rao Mahadik V Saroj Sandesh*

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<sup>33</sup> The Representation of the Peoples Act, 1951, Sec 123.

<sup>34</sup> 1996 1 SCC 130

<sup>35</sup> Id. at 129

<sup>36</sup> *Kultarr Singh V. Mukhtiar Singh*, AIR 1965 SC 141

<sup>37</sup> 1996 1 SC 130

<sup>38</sup> AIR 2005 SC 2379

<sup>39</sup> AIR 1985 SC 236

<sup>40</sup> 1996 1 SCC 130

<sup>41</sup> 1996 1 SCC 169

*Naik*<sup>42</sup> were decided on 11 dec 1995.<sup>43</sup> In *Ramesh Yeshwant Prabhuo's* case<sup>44</sup> it was held that hindutva is basically way of life so it is an error if reference to hindutva automatically makes a speech based on hindu religion.<sup>45</sup>

- **Appeal on language:**

In *Jagdev Singh Sidhanti V. Pratap Singh Daulta*<sup>46</sup> it was held by SC that the right to conserve language includes right to agitate for protection of language, therefore it cannot fall under the category of corrupt practice.<sup>47</sup> It was held by apex court that *Kultarr Singh V. Mukhtiar Singh*<sup>48</sup> agitation for creation of Punjabi suba cannot be held as corrupt practice u/s 123.<sup>49</sup>

- **Appeal to religious/ national symbols:**

In *Ramanbhai Shabhai Patel V Dabhi Ajit Kumar Fulsinji*<sup>50</sup>, SC held that it is kind of impossible to associate any particular object, bird, animal with hindu religion.<sup>51</sup>

“For instance a particular object, plant, bird or an animal associated with deity is used in such a way as to show that votes are being solicited in the name of that deity or as would indicate that the displeasure of that deity be incurred if a voter doesn't react favourably to that appeal it may be possible to say that it amounts to making an appeal in the name of religion. But the symbol alone cannot be regarded as an appeal in name of religion.”<sup>52</sup>

Generally cow is held as a sacred object by hindus. But it was not held as religious symbol when INC used it as election symbol.<sup>53</sup> Again in *Karan Singh V. Jammu Singh*<sup>54</sup> using portrait of mahatma Gandhi was not held as national symbol.<sup>55</sup>

- **Appeal inherent in the name of political party:**

It was considered that the name of a specific part has an inherent appeal on the consideration of religion, community, language, race.<sup>56</sup> In *Das Rao Deshmukh(Dr) V Kamal Kishore Nanasaheb Kadam* it was held that such circumstances cant be avoided as long as law

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<sup>42</sup> 1996 1 SCC 384

<sup>43</sup> Id. at 129

<sup>44</sup> 1996 1 SCC130

<sup>45</sup> Id. at 129

<sup>46</sup> AIR 1965 SC 183

<sup>47</sup> Id. at 129

<sup>48</sup> AIR 1965 SC 141

<sup>49</sup> Id. at 129

<sup>50</sup> AIR 1965 SC 669

<sup>51</sup> Id. at 129

<sup>52</sup> Id. at 129

<sup>53</sup> Indira Nehru Gandhi v. Raj Narain

<sup>54</sup> 15 ELR 370

<sup>55</sup> Id. at 129

<sup>56</sup> Id. at 129



recognizes those parties for election and parliamentary life.<sup>57</sup>

- **Promotion of Feelings of Enmity / Hatred between Different Classes of Indian Citizen**

“123(3A) of 1951 act says that: The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.”<sup>58</sup>

In *Ramesh Yeshwant Prabhoo V Prabhakar Kashinath Kunte*<sup>59</sup>, it was held that making derogatory remarks against muslims in speeches by Shri Bal Thakrey leader of shiv shena was held to constitute corrupt practice u/s 123 (3A).<sup>60</sup> In *Das Rao Deshmukh V Kamal Kishore Nanasheeb Kadam*<sup>61</sup> its held that appealing to voters to vote with an intention to teach muslims a lesson was held offensive and was likely to cause hatred.<sup>62</sup> “Condemning reforms by congress party as anti muslim and describing them as interference by hinduraj in the religion of muslim was held to be promoting hostility.”<sup>63</sup>

- **Publication of false statement:**

Section of 123(4):The publication by a candidate or his agent or by any other person 9[with the consent of a candidate or his election agent], of 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 candidature, or withdrawal,10[\*\*\*] of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate’s election.<sup>64</sup>

False statement in relation with election is held as electoral offence.<sup>65</sup>

In *Inder Lal V Lal Singh*<sup>66</sup> the apex court held election should be free it’s necessary that electorate should be educated on political issues.<sup>67</sup> Dissemination of false statement about

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<sup>57</sup> 1995 5 SCC 123

<sup>58</sup> The Representation of the Peoples Act, 1951, Section 123 (3A).

<sup>59</sup> 1996 1 SCC 130

<sup>60</sup> Id. at 129

<sup>61</sup> 1995 5 SCC 123

<sup>62</sup> Id. at 129, pg 475

<sup>63</sup> Ziauddin Burhanuddin Bukhari V Brijmohan Ramdass Mehra AIR 1975 SC 1788

<sup>64</sup> The Representation of the Peoples Act, 1951, Section 123(4)

<sup>65</sup> Indian Penal Code, Section 171(G)

<sup>66</sup> AIR 1962 SC 1156

<sup>67</sup> Id. at 129, 477

personal character of a candidate constitutes corrupt practice.<sup>68</sup>

- **Ingredient:**

A corrupt practice u/s 123 (4) it shall include following ingredient:

- i) “It should be statement of fact.”<sup>69</sup>
- ii) “It should be false.”<sup>70</sup>
- iii) “The person making it either believes it to be false or doesn’t believe it to be true.”<sup>71</sup>
- iv) “It should be in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate.”<sup>72</sup>
- v) “It should be statement reasonably calculated to prejudice prospects of candidate’s election.”<sup>73</sup>
- vi) “Such statement made by candidate either by himself or by his agent, or by any other person with the consent of candidate or his election agent and not by other person.”<sup>74</sup>

Oral statement too comes under the ambit of sec 123 (4). The recitation of poem also comes under the ambit of sec 123 (4).<sup>75</sup>

Statement of fact, meaning of- statement attracting sec 123 (4) should be statement of fact and not just mere expression of opinion.<sup>76</sup> in *Gadakh Yashwantrao Kankarrao V EVA/S Balasaheb Vikhe Patil*<sup>77</sup> “the court observed that a statement of fact can be proved to be false only if it relates to an event which happened and not to a hypothetical future possibility.”

- **Statement relating to personal character:**

The corrupt practice u/s 123(4) is committed only when false statement in relation to personal character and not his political character.<sup>78</sup> In *Inder Lal V Lal Singh*, SC held that its extremely difficult to draw a distinct between the kinds of statements.<sup>79</sup> It was also held in *Inder Lal*’s case that the statement that alleges candidate had offered bribe to purchase votes was actually

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<sup>68</sup> Id. at 129, 477

<sup>69</sup> Id. at 129 pg 477

<sup>70</sup> Id. at 129 pg 477

<sup>71</sup> Id. at 129 pg 477

<sup>72</sup> Id. at 129 pg 477

<sup>73</sup> *Subhash Desai V Sharad J Rao* AIR 1994 SC 2277

<sup>74</sup> *Baburao Bagaji Karemore V Govind* AIR 1974 SC 405

<sup>75</sup> *Kumara Nand V Brijmohan Lal Sharma* AIR 1976 SC 808

<sup>76</sup> *Supra*

<sup>77</sup> AIR 1994 SC 678

<sup>78</sup> Id. at 129, 478

<sup>79</sup> 23 ELR 242

a statement assailing private character of candidate.<sup>80</sup>In *TK Gangi Reddy's case*<sup>81</sup> it was held that circulating the leaflet relating to the matter of personal character was more damaging. In *Sheopal Singh's case*<sup>82</sup> SC held that where a minister misappropriated property to benefit him, such statement is reflection to his personal character.<sup>83</sup>

In *Gadakh Yashwantrao Kankarrao's Case*<sup>84</sup> “the candidate made a statement in a speech and interview that rs 20 lakh were paid by a rival candidate to another candidate for withdrawing from constituency and shifting to another constituency not believing in the truth of that statement. It was held to be false statement relating to the personal character and conduct of candidate against whom allegation was made.”<sup>85</sup>

- **False statement in relation to candidature:**

In *Elvin Sangma V Projengton Momin*<sup>86</sup> here a dummy ballot papers were distributed 3 days before date of poll SC held that distribution of those dummy papers fall under the ambit of corrupt practice.<sup>87</sup> Similarly in *Avtar Singh Brar Vs Tej Singh*<sup>88</sup> “here certain posters were circulated among the voters of the constituency in which they were misled to believe that one of the candidate ‘r’ had withdrawn and an appeal was made that any vote given to respondent would be considered as a vote given to ‘r’ SC held it as a corrupt practice.”<sup>89</sup>

- **Incurring of election expenditure in excess of prescribed limit:**

- **Election Expenses:**

Section 123 (6) of 1951 says that the incurring or authorizing of expenditure in contravention of section 77.<sup>90</sup>

[77. Account of election expenses and maximum thereof.—

(1) 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 authorised by him or by his election agent between 2[the date on which he has been nominated] and the date of declaration of the result thereof, both dates inclusive. 3[4[Explanation 1.—For

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<sup>80</sup> 23 ELR 242

<sup>81</sup> 22 ELR 261

<sup>82</sup> AIR 1965 SC 677

<sup>83</sup> Id. at 129 PG 478

<sup>84</sup> AIR 1994 SC 678

<sup>85</sup> Id. at 129 pg 479

<sup>86</sup> AIR 1975 SC 425

<sup>87</sup> Id. at 129 pg 479

<sup>88</sup> AIR 1984 SC 619

<sup>89</sup> Id. at 129 pg 479

<sup>90</sup>Representation Of The Peoples Act 1951, Section 123(6).

the removal of doubts, it is hereby declared that—

(a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a candidate of that political party or his election agent for the purposes of this sub-section;

(b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section. Explanation 2.—For the purpose of clause (a) of Explanation 1, the expression “leaders of a political party”, in respect of any election, means,—

(i) where such political party is a recognised political party, such persons not exceeding forty in number, and

(ii) where such political party is other than a recognised political party, such persons not exceeding twenty in number, whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act: Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.]]

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.]<sup>91</sup>

Also rule 90 of 1961 rules prescribes election expenditure election of parliamentary and assembly constituency to be conducted in each state and union territories.<sup>92</sup>

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<sup>91</sup> Section 77, Act of 1951.

<sup>92</sup> Appendix vii

[171-I. Failure to keep election accounts.—Whoever being required by any 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.]<sup>93</sup>

Every candidate also needs to provide a true copy of account of election expenses with district election officer within 30 days of declaration of election.<sup>94</sup> It also states that failure of such document shall lead to disqualification.<sup>95</sup>

- **Scope Of Corrupt Practice:**

Apex court says that corrupt practice shall occur only when the expenditure is in excess of prescribed limit, failure to submit the detail of expenses<sup>96</sup> and failure to maintain account.<sup>97</sup>

The SC also states that any matter relating to non compliance of sec77 shall be dealt by election commission.<sup>98</sup> When account has not been maintained truly and expenses are undervalued then it shall fall under the category of corrupt practice.<sup>99</sup>

- **Object:**

SC held in *Kanwar Lal Gupta V. Amar Nath Chawla*<sup>100</sup> that “the object of provision limiting the expenditure is twofold. In the first place, it should be open to any individual or any political party, howsoever small, to be able to contest an election on a footing of equality with any other individual or political party howsoever rich and well financed it may be and no individual or political party should be able to secure an advantage over others by reasons of its superior financial strength.”<sup>101</sup>

Other object is to limit big money in electoral process.<sup>102</sup>

- **Expenditure incurred during prescribed period alone accountable:**

Candidate is not accountable for expenditure incurred before filing of his nomination paper or after declaration of result.<sup>103</sup> Similar view was held in *Gajanan Krishnaji Bapat V Dataji*

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<sup>93</sup> Section 171 I of IPC

<sup>94</sup> Section 78, Act of 1951.

<sup>95</sup> Id. at 129 pg 482

<sup>96</sup> AIR 1995 SC 2284

<sup>97</sup> Shri Krishna V. Sat Narain 37 ELR 13

<sup>98</sup> LR Shivaramagowda V TM Chandrashekhar (1999) 1 SCC 666

<sup>99</sup> Magraj Patodia V Rk Birla AIR 1971 SC 1295

<sup>100</sup> AIR 1975 SC 308

<sup>101</sup> Id. at 129, 482.

<sup>102</sup> Id. at 129, 482.

<sup>103</sup> Nongthombam Ibomcha Singh V. Leisangtham Chandramani Singh AIR 1977 SC 682.

*Raghobje Maghe*.<sup>104</sup> However it was also held that where the expenditure is incurred by candidate prior to date of nomination and such amount is used post nomination shall also be held as election expenses.<sup>105</sup>

Where expenditure is authorized during prescribed election period but actual payment is not done it remains as outstanding during that period such expenditure will fall under sec77 and 123(b).<sup>106</sup> “the new explanation 1(b) retains earlier exemption that any expenditure incurred in respect of any arrangement, facilities by any person in service of government shall not be deemed to be expenditure in connection with election.”<sup>107</sup>

- **Obtaining of assistance of government servants:**

For election to be fair its important the government to act impartial and neutral.<sup>108</sup>

*In Raj Krushna Bose V Binod Kanungo*<sup>109</sup> “it was held by SC that policy of the law is to keep government servants aloof from politics and also to protect them from influence.”<sup>110</sup>

The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person 11[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 officers;<sup>111</sup>

(b) Stipendiary judges and magistrates;<sup>112</sup>

(c) Members of the armed forces of the Union;<sup>113</sup>

(d) Members of the police forces;<sup>114</sup>

(e) excise officers; 13[(f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, desh mukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue

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<sup>104</sup> AIR 1995 SC 2284

<sup>105</sup> Election Commission’s Circular No 76/2004/Js-Ii, Dated 6 August 2004

<sup>106</sup> 1961 Rules Of Representation of the Peoples Act, 1951

<sup>107</sup> Id. at 129, 485.

<sup>108</sup> Id. at 129, 485.

<sup>109</sup> AIR 1954 SC 202

<sup>110</sup> Id. at 129, 486.

<sup>111</sup> Section 123(7)

<sup>112</sup> Id. at 215.

<sup>113</sup> SECTION 123(7)

<sup>114</sup> SECTION 123(7)

collected by them but who do not discharge any police functions<sup>115</sup>; and]

(g) such other class of persons in the service of the Government as may be prescribed: 14[Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.] 15[(8) Booth capturing by a candidate or his agent or other person.] Explanation.—(1) In this section the expression “agent” includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.<sup>116</sup>

Here ‘prescribed rules’ means rules made u/s 169 of 1951 act and not by any executive order.<sup>117</sup>

Any approach to government servants seeking their votes is not prohibited.<sup>118</sup> It was held by SC government servants are allowed to nominate candidates in election.<sup>119</sup> However mere proposing of nomination of candidate will not fall u/s 123 (7).<sup>120</sup>

Law prevents obtaining assistance of government servants but it doesn't prohibit voluntary assistance / help of an official without the candidate asking for such help.<sup>121</sup>

“A government servant has a ‘private personality’ too and help rendered voluntarily by a government servant without any attempt by the candidate to obtain / procure doesn't constitute corrupt practice u/s 123.”<sup>122</sup> Just a mere performance of an official duty which accidentally benefits a candidate cannot be held as corrupt practice.<sup>123</sup>

Assistance by a government servant must involve prospects of election of candidate to fall in corrupt practice u/s 123(7).<sup>124</sup> In *Indira Gandhi V Raj Narain*<sup>125</sup> says that ‘official duty’ should be duty in law.

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<sup>115</sup> SECTION 123(7)

<sup>116</sup> Representation of the Peoples Act 1951, Section 123(7).

<sup>117</sup> Dina Nath Kaul V Peer Mubarak Shah AIR 1962 J&K 28

<sup>118</sup> Id. at 129, 487.

<sup>119</sup> Raj Krushna Bose V Binod Kanungo AIR 1954 SC 202

<sup>120</sup> Id. at 129, 487.

<sup>121</sup> Id. at 129

<sup>122</sup> AIR 1975 SC 2299

<sup>123</sup> Id. at 129, 487-488.

<sup>124</sup> AIR 1990 SC 924

<sup>125</sup> AIR 1975 SC 2299.

- **Undue influence:**

The practice of undue influence is an offence under the Section 123(2) of the Representation of Peoples Act, 1951.<sup>126</sup> This is also an offence under the Section 171C of the Indian Penal Code, 1860.<sup>127</sup> Under IPC the punishment is imprisonment of either description up to one year or with fine or both.<sup>128</sup> The Supreme Court in *Shiv Kripal Singh v. VV Giri*, opined that; “*..free exercise of electoral right does not mean that the voter is not to be influenced.. What amounts to interference with the exercise of an electoral right is ‘tyranny over the mind’.*”<sup>129</sup> The most common form of undue influence is the threat of doing physical injury. So blasting explosives near the polling booth and scaring away the voters are held to be undue influence as well.<sup>130</sup> The people of India are also easily carried away with religious feelings and hence influencing the voters by depicting “divine pleasure or spiritual censure” is also a corrupt practice.<sup>131</sup> Thus when a candidate having cock as his election symbol urged members of certain tribes who regard cocks as part of their spiritual culture, to vote for him, it was held to be a corrupt practice of undue influence.<sup>132</sup> There is one exception that is declaration of any public action or public policy, thus election manifestoes declaring certain development programme released on the eve of the election was held no to be a corrupt practice.<sup>133</sup>

- **Free conveyance to voters:**

The practice of carrying the voters free of cost to and from the polling booth is a frequent practice on part of the parties and the law prohibits such practice.<sup>134</sup> It is one kind of gratification which is void under the section 123(5) of the Representation of Peoples Act,

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<sup>126</sup> See Section 123(2); “Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:

Provided that— (a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who— (i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or (ii) induces or attempts 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,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.”

<sup>127</sup> See Section 171C; “whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.”

<sup>128</sup> Section 171F of Indian Penal Code, 1860.

<sup>129</sup> AIR 1970 SC 2097.

<sup>130</sup> Ram Sharan Yadav v. Thakur Muneshwar Nath Singh, AIR 1985 SC 24.

<sup>131</sup> Id. at 34, 929.

<sup>132</sup> Shubnath Deogam v Ram Narain Prasad, AIR 1960 SC 158.

<sup>133</sup> Thakur Sen Negi v. Dev Raj Negi, AIR 1994 SC 2526.

<sup>134</sup> Id. at 34, 958.



1951.<sup>135</sup> Section 133 provides penalty for such conveyance which is imprisonment up to three months as well as fine.<sup>136</sup>

The respondent used a jeep of his friend to carry the voters without any cost; subsequently it was captured by the officials on its way of conveying the voters on the day of poll. The court held the respondent to be practicing corrupt practice as mentioned.<sup>137</sup> Again in another case, the Apex court observed that it will not be unreasonable to held liable the parliamentary candidate for the work done by his party in connivance with him in carrying the voters.<sup>138</sup>

- **Promotion of feelings of enmity or hatred between different classes of indian citizen:**

This was added to the Representation of Peoples Act, 1951 as Section 123(3A) by an amendment in 1961 as a new form of corruptive practices.<sup>139</sup> Along with this section 125 was also added which prescribes punishment of imprisonment for term extending to three years or with fine or both.<sup>140</sup> This amendment was done with an intention to limit the trend of enhancing any sort of communal or linguistic enmity or hatred between the classes of citizen and also to prevent the divisive tendencies.<sup>141</sup> The section was also held to be constitutionally valid in this case.<sup>142</sup> Certain remarks made by Bal Thackeray and with is implied consent by a returned candidate, was held to be derogatory and against the Muslims and hence constituted a corrupt practice.<sup>143</sup> Again criticism of the reforms done by the Congress party by saying that those are anti-Muslim and threshold to initiate Hindu raj in the religion of Muslims were held to fall under the ambit of this section.<sup>144</sup>

- **Propagation of practice of sati:**

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<sup>135</sup> See Section 123(5); “The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person 4[with the consent of a candidate or his election agent], 6[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 provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll:”

<sup>136</sup> Section 133, Representation of Peoples Act, 1951.

<sup>137</sup> Dharmesh Prashad Verma v. Faiyazal Azam, AIR 1984 SC 1516.

<sup>138</sup> Bhagwan Datta Shastri v. Ram Ratanji Gupta, AIR 1960 SC 200.

<sup>139</sup> Section 123(3A); “The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.”

<sup>140</sup> Section 125; “Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable, with imprisonment for a term which may extend to three years, or with fine, or with both.”

<sup>141</sup> Ramesh Yashwant Prabhoo v. Prabhakar kashinath Kunte and Ors. (1996) 1 SCC 130.

<sup>142</sup> Id. at 3. 946.

<sup>143</sup> Ramesh Yashwant Prabhoo v. Prabhakar kashinath Kunte and Ors. (1996) 1 SCC 130.

<sup>144</sup> Ziauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra AIR 1975 SC 1788.

Sati denotes self-immolation of the living wife on the pyre of the husband on his death. This practice was rampant in the British India as such they tried to curb it down by making a regulation. It was mainly followed by the Rajputs of Rajasthan till 20<sup>th</sup> century.<sup>145</sup> After the case of Roop Kanwar in 1980's when she was made to commit sati while others present there, glorified the custom, attracted the civil society's concern as such the Commission of Sati (Prevention) Act 1987 was passed which made glorification of sat as an offence. Simultaneously the Parliament also barred any person glorifying sati to be a representative in elections.<sup>146</sup>

- **Booth capturing:**

Capturing of the polling booth is one of the oldest methods of rigging. Instances of such cases are, the ballot papers are seized or voting is cast by certain unauthorised persons instead of the actual voters, Polling officers are threatened to surrender the ballots, preventing the voters from going to the booths etc.<sup>147</sup> Previously these cases were dealt under the provision of undue influences later on amendment was made to incorporate booth capturing as a new offence.<sup>148</sup> Section 123(8) was inserted by the amendment Act of 1988 to include the offence of booth capturing.<sup>149</sup> Another Section was also inserted by the amendment Act as section 135A which dealt with the punishment for the offence of booth capturing.<sup>150</sup> The offence was also not cognizable in 1989 but later on it was made cognizable and the punishment was also increased.<sup>151</sup>

As mentioned above the cases regarding the booth capturing previously fell under the heading of undue influence such as forceful removal of the ballot papers from the officials so that those can be put in their favoured candidate was held to be a corrupt practice.<sup>152</sup> When the returning officer found that there was a duplicate seal being used to mark the ballot in the counting hall, he counted the ballots on which original marks were there but the returning candidate and his associates made him to beg for pardon, it was held to be a corrupt practice which would have

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<sup>145</sup> Id. at 3, 946.

<sup>146</sup>Representation of the Peoples Act, 1951, Section 123(3B).

<sup>147</sup> Id. at 1, 985.

<sup>148</sup> Id. at 1, 985.

<sup>149</sup> Section 123(8); "booth capturing by a candidate or his agent or other person."

<sup>150</sup> Section 135A; "Whoever commits an offence of booth capturing shall be punishable with imprisonment for a term which 4[shall not be less than one year but which may extend to three years and with fine, and where such offence is committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine."

<sup>151</sup> Representation of the Peoples (Amendment) Act, 1996.

<sup>152</sup> Ram Singh v. Col Ram Singh. AIR 1986 SC 3.

fall under Section 123(8) if it was brought when such incident took place.<sup>153</sup>

The Apex Court also held that threatening a polling agent, debarring him from going inside the booth or raising doubt regarding the voters' identity will not amount to booth capturing as provided in the section 123(8) of the Act of 1951.<sup>154</sup>

### **III. ELECTORAL OFFENCES**

The Government of India Act 1919 gave some voting power in a limited way and in light of that voting power punishment relating to certain election relating offences were introduced in the Indian Penal Code itself.<sup>155</sup> Though the punishment provided therein though seems to be inadequate in modern scenario but they were huge amount in those days.<sup>156</sup> In order to unleash a deterrent effect the punishment in the Indian Penal Code needs to be modified in accordance with present state of affairs.<sup>157</sup>

#### **Electoral offences under IPC:**

There are numerous acts and omissions done during the election which go against the moral or electoral ethics and the Indian Penal Code recognises few of them as an offence which are as follows;

- Bribery at the election<sup>158</sup>
- Undue influence in election<sup>159</sup>
- Personation at the elections<sup>160</sup>
- False statement connected with election<sup>161</sup>
- Illegal payments in connection with elections<sup>162</sup>
- Failure to keep election accounts<sup>163</sup>

#### **Offences Under Representation Of The People Act 1951:**

Thought the original Act had no such provision on the prohibition of malpractices but with amendment in 1958, 1960 and 1996 following acts were declared as malpractices and hence an

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<sup>153</sup> Dharam Vir v. Amar Singh AIR 1996 SC 2314.

<sup>154</sup> Baldev Singh v. Gurcharan Singh, AIR 1996 SC 1109.

<sup>155</sup> Chapter IXA, "Of offences Relating to Election"; Indian Penal Code, 1860.

<sup>156</sup>Id. at 34, 988.

<sup>157</sup> Id. at 34, 988.

<sup>158</sup> Section 171B.

<sup>159</sup> Section 171C

<sup>160</sup> Section 171D

<sup>161</sup> Section 171G

<sup>162</sup> Section 171H

<sup>163</sup> Section 171-I

offence.<sup>164</sup>

- **Making false declarations:**

In case of preparation, revision, or correction of any electoral roll if any person makes any false statement or makes any false entry or exclusion of any entry form a electoral roll, which he knows to be false or has reason to believe that not to be true, he is said to commit an offence and hence punishable with imprisonment which may extend to one year or with fine or with both.<sup>165</sup>

The offence of making false declaration has been held to be non-cognisable in *Kesav Lal Thakur v. State of Bihar*.<sup>166</sup>

- **Breach of official duty:**

When any electoral registration officer or any such person designated under the Act, has any official duty to perform with regard to preparation, revision, or correction of the electoral roll or to include or exclude any entry, and he is guilty of any action or omission that too without any reasonable cause and in breach of any such official duty, he is liable to be punished with imprisonment for a term which shall not be less than three month but may extend to two years.<sup>167</sup>

### **Electoral offences under the representation of the peoples act 1951:**

The Representation of the Peoples Act incorporates various acts and omissions that are regarded as electoral offences which can be listed as below;

- Promoting enmity between classes in connection with election.<sup>168</sup>
- Filing false affidavits.<sup>169</sup>
- Holding of public meetings during the period of forty-eight hours ending with hour fixed for conclusion of poll.<sup>170</sup>
- Disturbance at election meetings.<sup>171</sup>

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<sup>164</sup> Id. at 3, 990.

<sup>165</sup> Representation of the Peoples Act, 1950. Section 31.

<sup>166</sup> (1996) 11 SCC 557.

<sup>167</sup> Representation of the Peoples Act, 1950, Section 32.

<sup>168</sup> Representation of the Peoples Act, 1951, Section 125.

<sup>169</sup> Section 125A,

<sup>170</sup> Section 126,

<sup>171</sup> Section 127.

- Printing of pamphlets, posters, etc, without printing the names of publisher, printer, etc.<sup>172</sup>
- Violation of secrecy of voting.<sup>173</sup>
- Officers, etc at elections not to act for candidates or to influence voting.<sup>174</sup>
- Canvassing in or near polling stations.<sup>175</sup>
- Disorderly conduct in or near polling stations.<sup>176</sup>
- Misconduct at the polling station.<sup>177</sup>
- Failure to observe procedure for voting.<sup>178</sup>
- Illegal hiring or procuring of conveyance at elections.<sup>179</sup>
- Breaches of official duty in connection with elections.<sup>180</sup>
- Government servant not to serve as election agent, polling agent, or counting agent.<sup>181</sup>
- Going armed to or near polling stations.<sup>182</sup>
- Removal of ballot papers, etc from polling stations.<sup>183</sup>
- Booth Capturing.<sup>184</sup>
- Non-grant of paid holiday to the employees on the day of the poll.<sup>185</sup>
- Sale, distribution, etc, liquor on polling day.<sup>186</sup>
- Fraudulently tampering with nomination papers, ballot boxes, ballot papers, election record, unauthorisedly supplying ballot papers, etc.<sup>187</sup>

If any conviction is made under section 125, 135 or 135A then that candidate is disqualified

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<sup>172</sup> Section 127A.

<sup>173</sup> Section 128.

<sup>174</sup> Section 129.

<sup>175</sup> Section 130.

<sup>176</sup> Section 131.

<sup>177</sup> Section 132.

<sup>178</sup> Section 132A.

<sup>179</sup> Section 133.

<sup>180</sup> Section 134.

<sup>181</sup> Section 134A

<sup>182</sup> Section 134B.

<sup>183</sup> Section 135.

<sup>184</sup> Section 135A.

<sup>185</sup> Section 135B.

<sup>186</sup> Section 135C.

<sup>187</sup> Section 136.

from becoming member of the Parliament or any State Legislative Assembly for a period of six years commencing from the date of the conviction.<sup>188</sup> The conviction under section 125, 135 and 136(2)(a) that is fraudulently defacing or destroying any nomination paper also attracts disqualification on voting for a period of six years.<sup>189</sup>

In *Rahim Khan v. Khurshed Ahmed*,<sup>190</sup> and *Kanwar Lal Gupta v. Amar Chand Chawla*,<sup>191</sup> the cases were regarding printing of handbills and pamphlets which were derogatory to the election laws so the court was of opinion that there should a semi judicial agency to look into the matter that who has printed those, from where they came, and who is responsible for getting them printed etc. But as of now no such agency exists as such the investigation of offences under section 127A has to undergo the normal course of investigation done by police authority.

Any person printing any election material has to send four copies of the printed material to the district magistrate or the chief electoral officer, if required, as per the instruction of the Election Commission in order to comply with the section 127A dealing with Restriction on the printing of pamphlets, posters, etc.<sup>192</sup>

In *Raghubir Singh Gill v. Gurcharan Singh Tohra*<sup>193</sup> the court observed that provision of secrecy of ballots denotes that no person should be compelled to disclose to whom he has casted his vote but the section 128 will not be attracted when he himself discloses that to whom he has casted his votes.

In order to have a free and fair election the officials deployed and the police officers in duty must not behave in such a way as to indicate that they are working for benefit of any one of the candidates in the elections as observed in *PR Belagali v. BD Jatti*.<sup>194</sup>

In *G Panneerselvam v. S Narayanaswami*<sup>195</sup> the court held that wearing the badge having inscription of the name of the candidate would amount to an offence of canvassing near polling station under section 130 if done within the radius of 100 metres or in the polling station itself.

Where a journalist was accused under section 135 that is removal of ballot papers from polling station, but in fact it was found that he found that ballot paper on the road which has been thrown away by any mischief maker, as such he used the ballot paper to write a report in the

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<sup>188</sup> Section 8(1).

<sup>189</sup> Section 11A(1).

<sup>190</sup> AIR 1975 SC 290.

<sup>191</sup> AIR 1975 SC 308.

<sup>192</sup> Election Commission Circular No. 3/9(ES008)/94-JSII dated 2<sup>nd</sup> September 1994.

<sup>193</sup> AIR 1980 SC 1362.

<sup>194</sup> AIR 1971 SC 1348.

<sup>195</sup> 46 ELR 36.

news paper. Hence he was held no to be liable under section 135.<sup>196</sup>

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<sup>196</sup> ABK Prasad v. State of AP, AIR 1997 AP 357.