

# Indic Legal Law Journal

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## ELECTION AND IPC

### **Introduction**

Section 171 of Chapter IXA deals with offences relating to elections in the Indian Penal Code. India's elections are no short of a festival and affect the people tremendously.<sup>1</sup> In the Indian Elections Offences and Inquiries Act, 1920 section 2,<sup>2</sup> introduced this portion, which prescribes fines for offences such as fraud, personation, unfair power, making false claims during elections to malign someone's image, etc. The primary objective of this chapter is to guarantee free and equal elections and to encourage citizens to exercise their right to vote openly.

In terms of democratic relations, the primary considerations for ensuring the principle of free and fair elections are liberty and equality. Free and equal elections mean that when exercising their legal right, no one is influenced; that they can make and make choices of their own and have their personal preference free of the oppression of another without any malice or unequal control of another. To ensure the smooth functioning of a democracy, elections are important and must be carried out in a reasonable way. When a person casts his/her vote, a party discipline, religion, ethnicity, language, caste, creed, etc. is not under any authority or control. One is therefore not bound to unethical practices such as bribes or using inexpensive methods to discredit the political campaign of another. Thus, the true definition of a modern country is free and equal elections.

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<sup>1</sup> The Indian Penal Code, 1860, §171.

<sup>2</sup> Indian Elections Offences and Inquiries Act, 1920, §2.

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## **Offences relating to Elections in IPC**

### Bribery

As per Section 171B of IPC,<sup>3</sup> a person is said to commit bribery when, after being persuaded, he/she gives gratification to someone with the intention of inducing such a person to perform his/her electoral right, or as a reward, after that person has exercised his/her electoral right. The person who takes such a bribe and is coerced differently to exercise his/her electoral right is also guilty of the bribery crime.

For this segment, when they offer/attempt to give/offer or try to attain gratification, an individual is said to give a gratification. The one who accepts or attempts to obtain satisfaction for changing his/her pre-decided path and behaves in accordance with the wish of the person who gives such satisfaction shall be said to have received satisfaction.

In compliance with the rules of Section 171E, a person committing an offence of bribery shall be punished with incarceration which may stretch to one year or a fine, or both.<sup>4</sup> However, a person bribed by an act of treatment shall only have to pay a fine. 'Treating' implies the supply or approval as a gratification of food, drink, recreation, or provision.

### Undue influence during an election

At a referendum, Section 171C deals with unfair interference. This applies to a deliberate interruption or an attempt to interrupt the free exercise of the right to vote. Threatening a candidate or a voter or a person in which a candidate/voter is involved or lying or trying to persuade a candidate/voter to conclude that they or any person they are interested in is liable to Divine disappointment or spiritual censure entails interfering with the free exercise of an electoral right as per this clause. Exercise of a civil right without any mala fide intention to interfere with the right of another to vote, public policy declaration, or public action pledge does not count as interference as described in this clause.

As per Section 171F, with imprisonment that may stretch to one year or a fine, or both, excessive interference in an election is punishable.

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<sup>3</sup>Supra note 1 at §173B

<sup>4</sup> Supra note 1 at §171E.

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## Personalization at an election

Section 171D specifies that the person guilty of the crime of personation is a person who tries to vote twice or vote by unfair means. Should have to cast a vote of their own. For example, a person who applies for a voting paper using the name of someone else, whether alive or deceased, or under a fake name, or has voted in such an election and wishes to vote again is directly guilty. The crime of personation shall also be guilty of a person who instigates or tries to obtain a voting paper by using some other person for their cause. As defined in this section, the exercise of civil law without any mala fide intention to interfere with another's right to vote, a statement of public policy or a commitment of public action does not count as an intrusion.<sup>5</sup>

Excessive involvement in an election is punishable, as per Section 171F, with imprisonment that may extend to one year or fine, or both.

## Election & False Statement

Section 171D states that a person who chooses to vote twice or to vote by arbitrary means is the person convicted of the person's offence. They should cast a vote of their own. For instance, a person who uses someone else's name to apply for a voting document, whether alive or dead, whether under a false name, or has voted in such an election and wants to vote again is explicitly guilty. An individual who instigates or seeks to procure a voting paper by manipulating any other person for his cause shall also be guilty of the crime of personality.<sup>6</sup>

## Illegal payments during elections

An individual responsible for incurring/authorizing costs to support his or her election campaign, which may include attending public hearings, news conferences, ads, circulars, or publications, shall be punished by a fine which may extend to Rs. 500, as provided for in Section 171(h), without any general or special authority in writing from the candidate.<sup>7</sup>

However, where, within days of the date on which those expenses were incurred, a person who has carried expenses not exceeding Rs. 10 without authorization succeeds in receiving authority

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<sup>5</sup> RATANLAL & DHIRAJLAL, THE INDIAN PENAL CODE, Universal Law Publishing, (36<sup>th</sup> ed. 2019).

<sup>6</sup> *Supra* note 1 at §171D.

<sup>7</sup> *Supra* note 5.

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in writing from the applicant, the clause will not be valid since that person would be considered to have behaved with the candidate's permission.

## Failure to keep election accounts

In compliance with Section 171(i) of the Code, a person who is responsible for maintaining records for the expenditures incurred in connection with an election shall be punished by a fine which may extend up to Rs. 500 if he fails to do so according to the law in effect at that time or pursuant to a provision that has the force of law.

## Suggested Reforms

The Fifth Law Commission recommended some amendments to Chapter IX-A of the IPC, presently in effect, involving significant improvements.<sup>8</sup> None of these regulations has however been taken into account and collected to date. The reforms include—the reforms include

Amending the 'electoral freedom' concept—the current definition is exclusive to a candidate's right to withdraw his/her nomination from the polls. The meaning should be updated to include his/her nomination with the expression "to withdraw or not to withdraw".

For a more explicit interpretation, the subclauses pertaining to bribery and its imposed punishment, i.e. Section 171B, and 171E, should be united as one section.

The bribery crime must be taken seriously, and a relatively severe penalty must be prescribed for it since it definitely interferes with a smooth and equal election process to a large degree.

The concept of excessive interference should be narrowed down, and aggressive ways of interfering with the free exercise of legal rights should be included.

Related to the bribery recommendation, all subclauses refer to personification, i.e. for a more in-depth interpretation, IPC Parts 171D and 171F should be merged.

As it can have detrimental consequences on people's minds, and the candidate's credibility, the penalty for making false claims must be made stricter. Instead of being dismissed with a fine only, detention is recommended for a term of up to 2 years.

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<sup>8</sup> Law Commission of India, *Reform in the British Statutes applicable to India*, Report No. 5, 1957.

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Parts 171F and 171I have now been removed by the commission since they have been outdated and obsolete.

None of these proposals, however, have been taken into consideration by the legislature or the fourteenth commission of law.

## **Landmark Judgments**

### E Anoop v. State of Kerala

The complainant reportedly appeared at the polling station at the Mokeri Government U.P. School in the constituency of Peringalam, and changed his name and introduced himself at the polling booth as Kuttikkattu Pavitharan. While he was not the entity he pretended to be, he did so to receive a voting document, nor was he a person belonging to that constituency/booth. The court found him guilty under Parts 171D and 171F of the offence of personality.<sup>9</sup>

### Iqbal Singh v. Singh Gurdas

In this situation, the respondent was elected as a Member of Parliament from a district in Punjab. The petitioner charged that a minimum of 15,000 invalid votes had been cast, as a result of which the respondent was declared elected, and that the accused allegedly circulated considerable quantities of money to Harijans under the cause of assisting them in the building of Dharamshalas, and even granted multiple weapons licenses to persuade electors to vote for them.<sup>10</sup>

The appellant pleaded that this gratification was liable to be regarded as a dishonest extortion activity and that the equal legal rights of electors have been affected and tampered with.

The accused refused to prove that there were 15,000 invalid votes cast. Under Rule 56 of the Election Law, a ballot paper that is empty of both the label and the signature of the polling officer is null. The same has not been the case here.

'Gratification' shall be included only in situations where a financial benefit is conferred on the giving of a reward, whether it is to be used in bribery. In this situation, the license given did not include any material benefit and should thus not be considered to be used in bribery. Besides that, the presence of voting negotiations is vital for bribery. As no facts exist

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<sup>9</sup> E Anoop v. State of Kerala, 2007 Cri.L.J 2968 (India).

<sup>10</sup> Iqbal Singh v. Singh Gurdas, AIR 1976 SC 27 (India).

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surrounding the negotiation of votes in return for gun permits, the problems did not emerge, and the lawsuit was dropped.<sup>11</sup>

## Raj Deb v. Gangadhar

In Odisha, the respondent was the younger brother of the Raja of Puri. The petitioner charged that during election campaigns in the district of Satyapadi, where he claimed that he was "Chalanti Bishnu" himself, the appellant falsely used this fact to his advantage and induced people to vote for him by claiming that if they do not do so, they will displease Lord Jagannath himself and that any vote given to him was a vote given to Lord Jagannath. If his orders were not followed, he threatened Divine displeasure and divine displeasure.<sup>12</sup> In addition, he was also alleged to have appealed to the villagers to cast their votes on the grounds of his Khandayat caste. In his election campaign, he has used Nila Ghakra, which is the holy emblem of the Lord.

## Veeraghavan v. Rajnikanth

Mr. Rajnikanth, the respondent, is an established film actor with a massive fan following throughout India, especially in Tamil Nadu. The petitioner, a Supreme Court lawyer, accused him of exercising excessive control on people as the respondent presented a tele-campaign presentation on the eve of the election where he advised the electorate to accept Rs 500 or 1000 from the petitioner and not to vote for him yet.<sup>13</sup>

The dilemma was whether IPC Section 171B, which deals with bribes and IPC Section 171C, which deals with excessive control, would attract this.

The speech, as translated, said that Tamil Nadu's voters could not be affected by these techniques and could not be corrupted; thus if the opponent offered cash as a vote bargain, do not hesitate and embrace it but also openly exercise their legal rights as the citizens of Tamil Nadu could not be purchased.

The court claimed that in the speech, the respondent never urged him to request and accept a bribe. The offensive speech was not that inflammatory, and the electorate had no trace of a mandate or restriction to refrain from doing what they wanted to do. The above IPC parts were

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<sup>11</sup> *Id.*

<sup>12</sup> Raj Deb v. Gangadhar, AIR 1964 Ori 1 (India).

<sup>13</sup> Veeraghavan v. Rajnikanth, 1997 AIR 1964 Ori 1 (India).

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not applicable, and the respondent was not guilty of any wrongdoing and, the complaint was dismissed.<sup>14</sup>

## **Conclusion**

It is clear that these age-old penalties have been largely obsolete and not so stringent to deter the crimes from continuing. Any candidate running in the elections aims to win and sees themselves as the most viable alternative. They can take unfair means and tamper with the equal process of carrying out elections to work towards this purpose. In order to ensure a fair electoral process, offences pertaining to elections need to be taken seriously, and the sentence amended. It is appropriate to consider the recommendations of the Fifth Law Commission and to make adjustments accordingly.

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<sup>14</sup> *Id.*