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ELECTORAL OFFENCES AND THE ROLE OF GOVERNMENT MACHINERY

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ABSTRACT

The election is the time when the chances of offenses being committed are higher and thus to control these offenses high security is maintained in the area where the election is taking place. Some of these offenses are cognizable and some are non-cognizable. The list of offenses related to elections is big but we will see the offenses mentioned in this paper. The offenses related to elections are committed mainly with the object to infringe or affect the outcome of the result of elections. The government machinery which includes the SP, DSP, and collectors play an important role in the elections as the election commission is an independent body and thus it has to rely on these officials for elections. Also, the government of the day has a huge role to play in the elections and thus it becomes important to study the policies and schemes of government regarding elections under the classes of constitutional principles. The courts play an important role in bringing electoral reforms and fueling the vehicle of democracy to run further by the judgment related to disclosure of criminal records and financial statistics of the candidate and even striking of laws which are inconsistent with the constitution

INTRODUCTION

After the independence, we chose to form a democratic government in India where the government is elected by the people which is

for the people, of the people, and by the people. Where the last by the people means that in a democracy the people themselves chose their representatives who are elected by a process called elections. In India elections are treated as a festival of democracy where people come together to cast their votes to select a representative who would represent them in the legislature and also as a part of the formation of the government, these elections are regulated and organized by an Independent constitutional body: The Election Commission, whose duty is to organize, conduct and regulate the election in India. The election commission announces dates enforces the model code of conduct takes the nomination of candidates, conduction pol, ling, and also announces the results of the election.

The offenses related to elections are committed mainly with the object to infringe or affect the outcome of the result of elections. These types of offenses consisted of bribing the general public or election offices with either money or any other commodity, using the government machinery for personal use during an election, personating at the polling booth, etc. These offenses are mostly committed by the party workers of different parties who are sometimes given these types of tasks to help their party win the election.

With about 43% of MPs in the 17th Lok Sabha with declared criminal records and almost half of the lower house filled with persons with criminal cases against them, it becomes obvious that offenses or crimes during the election will take place to affect the election results. Even some of the big national parties give tickets to candidates having a criminal record because they have a more chance of winning than that the candidate with no record.¹⁴⁵⁶

The government machinery which includes the SP, DSP, and collectors play an important role in

¹⁴⁵⁶ Analysis of Criminal Background, Financial, Education, Gender and other details of Winners Association for Democratic Reforms

the elections as the election commission is an independent body and thus it has to rely on these officials for elections.¹⁴⁵⁷ Also the government of the day, has a huge role to play in the elections and thus it becomes important to study the policies and schemes of government regarding elections under the classes of constitutional principles.

CHAPTER 1

ELECTORAL OFFENCES

The election is the time when the chances of offenses being committed are higher and thus to control these offenses high security is maintained in the area where the election is taking place. Some of these offenses are cognizable and some a non-cognizable. The list of offenses related to an election is big but we will see the offenses mentioned in IPC.

1. Bribery: This offense is most common in an election where the candidates or their agents bribe the voters by promising gratification or providing some chattel, money, etc. against his doing something in his favor that would help him in the elections. Some common forms of bribing are:

A. Money: the candidates or their agents distribute the money amongst the targeted people and convince them to vote for them or refrain from voting on the voting day which may help them in some way or the other. Usually, the bribe starts from Rs.500 and even goes up to Rs. 50,000. Sometimes the bribe may include even government officials who take the money and do something or omit to do something which they were bound to do. This practice is still practiced in India of which the recent case is of the Bihar election in which the election commission's flying squad seized around Rs.36 crore which was intended to be used for bribing purposes in the elections.

B. Chattel: sometimes the people are offered different kinds of goods which include house old items or liquor. Because of this, the election commissions order the liquor shops to be closed on the day of the election and the day before that, but still, liquor distribution takes place in many parts of India on the eve of elections and also many such unauthorized trucks containing liquor are seized before elections.

C. Promise of doing something for a particular person or section of society if the candidate wins the election is also illegal, this includes offering any promotion or post or performance of any other obligation.

But the declaration of any public policy or public action is an exception under section 171B of IPC, which defines bribery.

D. Treating: Treating includes sponsoring any dinner or food, entertainment, drink, etc. only this category of bribing is punishable with a fine only under section 171 E of IPC, which gives punishment for bribery.

The above-mentioned bribing in the election is defined under section 171B of IPC and is punishable under section 171 E of the aforementioned act which has the provision of punishment of imprisonment of a term which may extend up to one year or a fine or both for the person bribing or accepting a bribe.

2. UNDUE INFLUENCE AT ELECTION:

Section 171 C of IPC describes undue influence at the election as any person interfering with the electoral right of any other person is guilty under this section. This includes the use of muscle power, money power, or unauthorized or wrong use of position to infringe the other's right to vote, this includes threatening any person or person in whom he is interested.

This section covers and makes all such persons guilty who use their power or position to infringe

¹⁴⁵⁷ REFORMING THE ELECTION COMMISSION Author(s): B. L. FADIA

on others' right to vote or right to contest an election which is a common practice during elections in India a common case has been in the recent case of Bangalore where congress demanded police complaint against the BJP candidate, RR Nagar, who took away from people thousands of voter ID cards in exchange of 5000 rupees so that they do not cast their votes.¹⁴⁵⁸

In the Lok Sabha election, an FIR under section 171C was registered against a minister of the Haryana government who tried to enter a polling station with 50-60 musclemen to capture the booth.¹⁴⁵⁹

People use different means to affect the election in a particular booth or constituency by their undue influence of power it is because of this that the election commission imposes a model code of conduct during the election according to which the government's authority to introduce new policies or use government machinery for own use is suspended along with other restrictions, as on when the election commission announces the polling date till the time the result is declared and a new government formed.

Undue influence to restrict a person from practicing his electoral right is a crime unless it is done in the mere exercise of a legal right in good faith.

In *Raj Deb v. Gangadhar Mahapatra*, a candidate for election pretended to be 'Chalanti Vishnu,' a representative of Lord Vishnu, in front of the electorate and told them that voting for him would be a sin against Hinduism and sacrilege against the deity. He was found guilty under section 171-F of the IPC for the crime specified in that section.¹⁴⁶⁰

The offense mentioned under section 171 C is punishable under section 171 F which state that the person committing the offense of undue influence at an election shall be punished with imprisonment of a term that may extend tone a year or fine or both.

3. PERSONATION AT ELECTION:

Personation at an election refers to a situation where one person votes in the name of another person either dead or alive, it is a failure of the election officers that this thing happens even today in India where fake votes are cast in the EVM by personating as someone else. Though many steps are taken to curb this offense one of the effective steps was the issuing of Photo ID cards which were first used in 1978 in the Sikkim legislative election on the stance of the then Chief election commissioner S.L. Shakhder and in 1993 it was ordered by the election commission to issue photo ID cards for all voters to curb the election fraud. But even after the introduction of this significant step there is seen a lack of implementation on the part of authorities because of which the practices still exist, even sometimes people sell their votes to the person who gives them money and assist the other person to cast the vote in his name. Also, in many parts of the country, the news of a dead man voting in an election was seen not only in India but also in the U.S. presidential election this news of fake dead man votes was heard.

Section 171 D also holds guilty any person who has voted once at such election applies at the same election for a voting paper in his name, and whoever abets, procures, or attempts to procure the voting by any person in any such way.

Although steps are taken to curb this situation and now the election commission also issues voting slips in every house to the voters and which is a mandatory slip to be brought to the polling booth and which decreases the possibility of fake votes unless there is a chance

¹⁴⁵⁸ KM Rakesh, BJP nominee accused of taking voter cards *Telegraphindia.com* (2020).

¹⁴⁵⁹ Haryana Minister Booked for 'Exercising Undue Influence' During Lok Sabha Polls, *News18* (2019).

¹⁴⁶⁰ Sehgal, D., 2021. *Critical analysis on electoral offences in India - iPleaders*. [online] iPleaders.

of corruption the sides of the authorities. This practice of personation at the election existent even in the 1920s which is evident from the case *Pantam Venkayya vs Unknown* where the accused was held guilty of an offense under section 171D of IPC for casting his vote for the same election two times in two different places the first at genddanapalli and the other at bhupalapatnam.¹⁴⁶¹

The offense under this section is punishable under section 171 F of IPC with imprisonment which may extend to 1 year or fine or both and this offense is made a cognizable offense, which means any person found personating in an election can be arrested without a warrant.

5. FINANCIAL OFFENCES:

171H: any person making payment in the name of a candidate without his authority is punishable with a fine of Rs. 500 under this section and such payments are treated as illegal payments as they are not authorized by the candidates. This section has been included in the IPC to discourage the practice of spending more than the limit given for election by the commission, which gives an upper limit for expenditure that can be made by the candidates in the election and such type of records of expenses have to be recorded in the accounts as per the guideline failing to which the person would be violating section 171 I of IPC. The election commissions put an upper cap on the election expenditure which can be made by a candidate which is the same for all the candidates to make a level playing field for all candidates.

6. CORRUPT PRACTICES (Representation of people's act 1951):

Apart from IPC, other offenses are enriched in the Representation of people's act 1951 (hereafter referred to as ROPA) under section 123 of the ROPA which defines corrupt practices

related to the election which can lead to the disqualification of a candidate from the election and also has penal provisions. Section 123 of the ROPA lays down various corrupt practices in elections which are enlisted from section 123(1) to section 123(7). While there are sub-sections of section 123 which are with that of IPC like that of bribery, undue influence, and false statement. Apart from these, section 123 also considers the act of spreading enmity amongst classes, hate speech, asking for votes in the name of religion, race, caste, sex, etc., and also the act of asking the people to not vote for a candidate on the above-mentioned grounds is also a corrupt practice under this section. This was mentioned in the corrupt practices of election as these types of acts are not good for fair election as asking votes from the people based on their religion creates a social stigma and selecting or rejecting a candidate based on his religion or caste is not a good practice for a secular country like India.

Apart from distributing freebies and bribing people to vote for a candidate some candidates also try to make people vote for them by providing them with transport facilities to and from the polling booth to their houses, the candidates or their agents bring voters in trucks or other vehicles and ask them to vote for their candidate, which is a corrupt practice under section 123(5) of ROPA which considers the hiring and procuring of any vehicle for purpose of transportation of voter to or from the polling booth as an election offense.

As we observe from the above section that the authorities stated from a to h are institutions with some authority or influence in elections the use of them by a candidate for his purpose can affect the election results as seen in the former prime minister's case. This section is most obvious to be violated by the incumbents as they are in the government and because of their power use either the means of bribery or force to make these institutions work for them. Thus, to ensure that this act does not happen

¹⁴⁶¹ 121 Ind Cas 763, (1930) 58 MLJ 111

the election enforces a model code of conduct as and when the elections are declared because of which the Minister, MPs, and MLAs are unable to introduce any new policy, legislature, or any public action during that time.

There are several offenses related to the elections which can be listed and some of the main ones are what we discussed above but still, it is impossible to say that we have listed all the offenses as we don't know what new ideas or strategies these political parties, their agents or any other person will design to affect the election as in every election we see new acts done by them to affect the election results.

CHAPTER 2

MISUSE OF LEGISLATIVE POWER THROUGH "UNCONSTITUTIONAL" ACTS

From Nehru to Modi, from Congress to BJP there has been a change in power many times and the methods of governance have also changed, but the one thing which is not changed is the misuse of power by the ruling government to influence the results of the election. The party in power uses all such means that it deems fit for use for its benefit in the election. The methods and ways of misusing have changed but the motive remains the same, i.e., gaining an unfair advantage in the elections. From imposing emergency and bringing unconstitutional amendments to introducing the electoral bond scheme we will discuss some of the important landmarks and incidents which had almost hit hard the democracy and defeated the whole idea of election.

39TH CONSTITUTIONAL AMENDMENT ACT:

When discussing the role of government machinery in the election, one cannot refrain from referring to the famous State of UP vs. Raj Narain case which challenged the election of the then Prime Minister Indra Gandhi on the

grounds of using corrupt practices for electoral benefits.

In that same instance, there were two cases. The Supreme Court case has taken on a completely different tone from the High Court case. Although it was an ordinary election appeal in the High Court, it became an exclusively constitutional matter in the Supreme Court due to constitutional and election law changes brought to affect the case.

There were many issues related to the misuse of power and using corrupt practices in an election some of the important ones were related to the appointment of the ex-government official Yashpal Kapoor as the election agent of Miss Gandhi, the allotment of cow and calf symbol to the ruling Congress party, using government expenditure in contesting elections and the jet used for traveling for rallies, distribution of freebies in elections, incurred expenditure much above the prescribed limit of Rs 35,000, a large number of voters conveyed to and from the polling stations in vehicles provided by her agents.

All these were corrupt practices for which Indra Gandhi if held guilty would have to resign and also could be barred from contesting the elections this happened as the High Court under Justice Jagmohanlal Sinha on 12th June, 1975 found her guilty of an offense under section 123(7) of the ROP act 1951 which is, misusing the government machinery, and thus her election was declared null and was barred from contesting any election for 6 years.¹⁴⁶²

On the same day, Indira Gandhi appealed the decision to the Supreme Court, which heard her case. The court granted her bail and allowed her to serve as Prime Minister for another six months as the case was being settled, but they denied reinstating her as a Member of Parliament.

¹⁴⁶² State of Uttar Pradesh v. [Raj Narain](#) (1975 AIR 865)

Following this she used the period allotted to wholly her benefit and imposed an Emergency on the night of 25th June 1975, arresting all main leaders of opposition parties including the petitioner, Raj Narain. Also, she tried to protect her seat by bringing the 39th constitutional amendment act or Election Laws (Amendment) Bill in the parliament on 4th August through the law minister, Gokhale when all the main leaders of the parliament were arrested and were in jail. This amendment bill was brought to remove all the obstacles in her way of becoming a Member of Parliament along with giving a prospective effect to the act.

The act along with these took away the authority of the Election Commission to overturn a candidate's disqualification for engaging in a dishonest procedure. The President now had the authority to limit or eliminate any other disqualification, rather than the Election Commission, which had the power previously. This amendment granted the President, Governors, and Prime Minister Lifetime criminal immunity for any crimes committed before their entering office and after their term of office. This meant that even if only for a day, a person committing the most heinous offense was a governor he could avoid the rigor of the Penal Code by being a Governor.

The case of Miss Indra Gandhi is a clear visualization of the flow of democracy to dictatorship, and as Plato once said:

"Dictatorship naturally arises out of democracy, and the most aggravated form of tyranny and slavery out of the most extreme liberty."

It is because of the right to constitutional review that this amendment was held unconstitutional or else the election reforms which the PM brought were no less than the reforms which were seen as a reform in dictatorship and not in democracy, thus it depicts how a government of the day through its immense power and authority play a major role in affecting elections.

ELECTORAL BOND SCHEME:

The role of government is not always directly linked with electoral offenses or corrupt practices; it is an indirect attack on free democracy for example The Finance Act 2017, which introduced the system of electoral bonds for electoral funding was passed as the Money Bill. The bill is also known as the Electoral Bond Scheme, under the scheme any person who wants to donate money to any political party can deposit the amount in the marked 29 SBI branches and convert the money into electoral bonds in multiples of Rs 1,000, Rs 10,000, Rs 1 lakh, Rs 10 lakh, and Rs 1 crore for donation the parties of their choice. The bonds must be encased within 15 days validity period after which the amount will be transferred to PMNRF. The scheme led to opposition not only from the opposition parties but also from the RBI and the government's law ministry because the scheme has the potential to increase corruption and black money in the country. The correspondence between then-RBI Governor Urjit Patel and then-Finance Minister Arun Jaitley shows that the government has repeatedly ignored the central bank's concerns about the scheme.

The issue was that the electoral bond scheme by maintaining the secrecy of the donor gives rise to existing corruption in India and is also creating an unfair advantage for the ruling party as the information about the donors can be demanded by the government from the SBI but the other parties were given no such rights and even the scheme was kept outside the review of the common voter as it was not kept under the Right to Information along with clause that excludes the need for political parties to list the names and addresses of those who contribute by electoral bonds in their annual donation reports to the Election Commission of India. The scheme was justified by the government by terming that it is more to save the donor's interest in the donation and save his identity from the other parties.

The ECI has too on record stated that “Any contribution obtained by a political party by an electoral bond has been taken out of the ambit of reporting and, as a result, is a retrograde measure that needs to be withdrawn,” it further stated that: “it can never be ascertained whether a political party has taken any donation in violation of provisions of the Representation of the People Act, 1951 which prohibits the political parties from taking donations from government companies and foreign sources.”¹⁴⁶³

The documents have exposed how then-junior finance minister P Radhakrishnan misled Parliament by claiming that the EC had asked no questions about the scheme, as well as internal notes about how he could be bailed out of a privilege complaint filed by the Opposition.¹⁴⁶⁴

According to a 2019 report by the Association for Democratic Reforms:

“Number of political parties in India has increased manifold since the inception of the Electoral Bond Scheme: Electoral bonds have patently endorsed and encouraged black money by permitting political parties into becoming a breeding ground for money. There is already a rampant nexus between money and muscle power, hence, only the rich and powerful will get the tickets to contest elections. “Electoral bonds have undoubtedly emerged as a critical tool for both endorsing and encouraging opacity, not just by allowing limitless and unexplained contributions to flow in, but also by legitimizing the illegal money in our electoral and political processes, which amounts to over Rs 6500 crore. Government has also made SBI accept expired electoral bonds worth Rs 20 crores sold in the illegal window.” –ADR.

The foremost cause of opposition is the lack of transparency in the whole system. The electoral bonds lack the basic need for transparency and promote anonymity which is not good for a healthy democracy. The idea of making it a transparent system by the government is ironic because the government says it wants to ensure the safety of the donor by such anonymity, but the anonymity is destructed by the ruling government itself as the government has all the means and measures to seek the identity of the donor. This means that it is the voter who will not get access to the source of political funding of the political party but the party in power can know from whom the donation has come. “This means that the taxpayers are the only ones who are unaware of the origins of these contributions. It can also be remembered that the central government pays for the printing of these bonds as well as the SBI commission for promoting the selling and buying of the bonds with taxpayer’s money.”

In a petition filed before the Apex Court by the Association of democratic reforms represented by Prashant Bhushan, they alleged that the scheme lacks transparency and demanded the stoppage on the issuance of fresh EBs for the recent election but the Supreme Court ordered that “In the light of the fact that the Scheme was introduced on 2.1.2018; that the bonds are released at periodical intervals in January, April, July, and October of every year; that they had been so released in the years 2018, 2019 and 2020 without any impediment; we do not see any justification for the grant of stay.”

This comes after the ignorant attitude of the court on electoral bonds since 2017 by not allowing any petition against the electoral bonds. Also, the court ignored the statements of constitutional bodies like ECI and RBI on electoral bonds while delivering its judgment.

The Supreme Court has found out that electoral bonds have not necessarily favored the ruling party. However, the BJP has earned the lion’s share of the 6,128-crore worth of electoral

¹⁴⁶³ Adrindia.org. 2019. *Electoral Bonds And Opacity In Political Funding* | Association for Democratic Reforms.

¹⁴⁶⁴ Verma, A., 2020. *Legality of Electoral Bonds - iPleaders*.

bonds released so far since January 2018, which is 90 percent of the total amount.¹⁴⁶⁵

SECTION 8(4) Representation of People's Act, 1951:

The RPA, 1951 lays down certain rules for the disqualification of MPs and MLAs.

The first three sub-sections contain a lengthy list of offenses that are punishable by disqualification under different rules. Subsection (4), which creates an exception, is the most contentious part which "allowed convicted MPs, MLAs and MLCs to continue in their posts, provided they appealed against their conviction/sentence in higher courts within 3 months of the date of judgment by the trial court."

This section was for promoting the criminalization of politics by allowing criminals to remain in politics for a longer time. Not only criminals but also certain star politicians are also nowadays accused of big white-collar crimes which would lead to their disqualification from the house and thus to save their seat this section always came as a light of hope and thus corrupt practices in elections grew. When these politicians enter the office, they misuse their powers reluctantly and promote illegal activities in their constituencies.

And to support them this section provided a way out and allowed convicted MLAs and MPs to hold office by appealing in a higher court within three months and thus indulging and increasing no. of lawbreakers who become lawmakers.

As a result, MPs and MLAs sentenced in separate cases would file appeals in higher courts, allowing them to avoid automatic disqualification. Due to the backlog of litigation in our legal system, the appeals would take a

long time to be resolved, during which time the accused MP or MLA would not only attend sessions of Parliament or the legislative assembly but would also run for election from the jail.

Thus, two parties Lily Thomas and Lok Prahari Foundation filed petitions challenging the constitutional validity of the section on two grounds:

First, the Constitution does not grant Parliament the authority to make such an exemption, even if and

Second, if it did, the amendment was unconstitutional and in violation of Article 14 of the Indian Constitution's Fundamental Right to Equality.

The respondent Union of India defended the section on the grounds of the previous judgment by the same court which upheld the constitutional validity of the section in 2005.

But this time the court took a U-turn and held the section unconstitutional and Ultra Virus of power by the parliament and struck it down from the Act, prospectively.^{1466 1467}

Section 33-B in the Representation of People's Act 1951:

The 3rd constitutional amendment act inserted various sections in The Representation of the People (Third Amendment) Act, 2002 along with section 33B in it which stated:

"Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made there under."

The more the elections are free and fair, the stronger the allegiance the people will have toward democratic institutions. Contrary to this, if the elections are not free and fair, the people will not have faith in democracy. Of all the MPs

¹⁴⁶⁵ The New Indian Express. 2021. *Allowing electoral bonds is a letdown for the voter.*

¹⁴⁶⁶ Lily Thomas vs. Union Of India & Ors WRIT PETITION (CIVIL) NO. 490 OF 2005

¹⁴⁶⁷ Firstpost. 2013. *Supreme Court verdict on disqualifying netas: A right step in the wrong direction?* - India News, Firstpost. [online]

elected to the house, a percent were crorepatis. This is based on data released by the Association for Democratic Reforms (ADR); this means that the representatives of the house represented only crorepati and not the common poor man of India. The importance of disclosing the financial information of a person is to ensure transparency to the voters about the status of the representative they are going to choose and by disclosure of such information, it also becomes easier to choose the candidate based on their status. Also, it is because of money that the criminals are mostly chosen by political parties, "Money is a core reason parties are attracted to politicians with dubious backgrounds."¹⁴⁶⁸

Thus, an attempt was made in 2003 to avoid this and thus "the Parliament introduced Section 33-B in The Representation of People's Act 1951 under which a person had to declare his assets and liabilities only before the presiding officer of the house within 90 days after having become a member of the house. However, Supreme Court struck down Section 33-B as unconstitutional and void on the ground that it violated the Fundamental Rights of citizens to make an informed choice."¹⁴⁶⁹

Peoples Union for Civil Liberties v. UOI

The Peoples Union for Civil Liberties approached the Supreme Court to strike down Section 33B of the Representation of People (Third Amendment) Act, which rendered the decision in Association for Democratic Reforms (2002) null and void by stating that candidates contesting elections are not required to file an affidavit of criminal antecedents and particulars as required by the Court.

This section was declared null and invalid because it violated the "right of electors to know," which is a component of the fundamental right to free speech and expression, and hampered free and equal elections, which are part of the Constitution's basic structure. As a result, all criminal histories

and antecedents of people running for office are now required to be made public.¹⁴⁷⁰

CHAPTER 3

INFLUENCE OF GOVERNMENT MACHINERY IN ELECTIONS

The previous chapter discussed how the legislative power is abused by the government for introducing unconstitutional and unethical acts concerning the election. This chapter will deal with the influence and misuse of a dominant position by the government of the day during the election. The influence of the government is evident from the elections commission's letter to the Prime Minister, proposing electoral reforms back in 2018 while suggesting that "the law should be amended to provide that any person who is accused of an offense punishable by imprisonment for five years or more should be disqualified from contesting election even when the trial is pending, provided charges have been framed against him by the competent court." It also addressed the problem of motivated cases by the ruling party against the opposing candidate and thus suggested that: "it may be provided that only those cases which were filed before six months before an election alone would lead to disqualification as proposed. It is also suggested that persons found guilty by a Commission of Enquiry should also stand disqualified from contesting elections."

Thus, the existing issue of the influence of government over its machinery which includes the police department, and the administrative department is evident and is also recognized by the election conducting authority. The government always gets a clean chit after influencing the election, one of the reasons for successfully influencing the election can be:

¹⁴⁶⁸ Vaishnav, M., 2017. *When Crime Pays – Money and Muscle in Indian Politics*.
¹⁴⁶⁹ Beniwal, N., n.d. *Electoral Reforms Towards Decriminalizing Politics*

¹⁴⁷⁰ Scobserver.in. n.d. *Supreme Court Observer - Court in Review: Reservation in Promotion*.

The Bureaucratization of Politics: Despite the inclusion of many provisions aimed at making the ECI an independent entity, it is still financially dependent on the Union, which allows political parties to use money and muscle power to influence officers in their favor.

The authorities and the Election commission is an independent body and it does not have an administrative department for supervising elections at the ground level and thus have to depend upon the government for the staff and also funds for conducting the elections. Thus, a clean and transparent election comes under the glasses of doubt. As a result, the administrative staff's dual responsibility to the government for ordinary administration and to the ECI for electoral administration is conflicting with the Commission's unbiased and effective operation.

The misuse of official government machinery is grave and thus the Election Commissioner Ashok Lavasa during the Odisha Assembly elections said that "there were allegations of huge sums of money being parked with preferred government functionaries before the EC observers move in. Some parties also complained about the use of police vans and ambulances for transporting money for political use."

ACCUSATIONS BY OPPOSITION:

According to opposing parties like that of BSP, the leader of the party Mayawati accused the ruling BJP government of committing acts of aggression and using the Central Bureau of Investigation, the Enforcement Directorate, and the Internal Revenue Service to harass opposition party representatives.¹⁴⁷¹ Also, many times it is seen that the opposition parties raise serious doubts over the election commission's conduct in the election and favors given to the ruling party.

¹⁴⁷¹ Business-standard.com. 2019. *BJP of misusing government machinery: Mayawati.*

Ashish Dua, national secretary, of Congress during the General election, 2019 said:

"The ruling party has tried to misuse the state machinery in several places, including Gurugram and Mewat, to indulge in bogus voting and prevent Congress supporters from exercising their franchise. Our candidate has demanded a repoll at the Chandaka and Jhamuwas booths, as there was clear evidence of malpractice,"

In the same election, Faridabad, a polling agent was arrested for tampering with the voting process at a booth. In Mewat, too, the police have filed seven FIRs for alleged violations of the Representation of the People Act against a presiding officer and others.¹⁴⁷²

This is evidence of the corrupt government machinery.

Even the BJP accused the Kerala government in the recent ongoing elections and said, "Pinarayi Vijayan-led government is missing the government machinery. It is carrying out the distribution of postal ballots improperly to influence the attention of the voters."¹⁴⁷³

The RPAs lack specific provisions and guidance on issues relating to the abuse of official machinery, which gives the governing party an undue advantage during elections and contributes to the misappropriation of public funds to support members of a particular party. Misuse of official machinery takes many types, including the publication of advertising at the expense of the government and the public exchequer celebrating their accomplishments, disbursements from ministerial discretionary funds, and the use of government equipment for canvassing.¹⁴⁷⁴

TRANSFER OF OFFICIALS:

¹⁴⁷² Hindustan Times. 2019. *Congress, INLD allege misuse of government machinery in state.*

¹⁴⁷³ Singh, S., 2021. *'Pinarayi Vijayan govt is misusing govt machinery,' claims Pralhad Joshi; files complaint.* [online] Republic World.

¹⁴⁷⁴ Drishti IAS. 2020. *The Representation of the People Act : Part II.*

It is well known that some state governments designate pliable and politically driven individuals to critical positions such as DEOs, ROs, and other similar positions. They often transfer controversial officers who do not follow the orders of the ruling political party or powerful political figures. This trend is particularly noticeable during the time leading up to an election. Many state governments and even central governments appoint or transfer the officers who do not follow their politically motivated orders to areas that are of less influence and appoint an officer who is corrupt and follows their orders during the elections to favor the ruling party in exchange for promotion or any higher post or any transfer demanded by the official in his interest. This type of practice is even noticed by the Election Commission of India and thus the Commission had recommended in 1998 that, "Section 13 CC of the Representation of the People Act, 1950, and Section 28A of the Representation of the People Act, 1951 should be amended to provide that no transfer shall be made, without the concurrence of the Commission, of any officer, referred to therein, as soon as a general election/bye-election becomes due in any Parliamentary or Assembly Constituencies. Such transfers often made on grounds other than administrative exigencies, disrupt the arrangements then underway for conducting smooth and peaceful elections."

Even in the recent election, it had issued guidelines about the transfer of officials to regulate the unnecessary and motivated transfer for electoral benefit by the governments.

CONCLUSION

The final line and the conclusion that we draw from the above discussion is that the offenses related to elections are mostly motivated by the political parties and even the ruling parties and thus the Representation of Peoples Act, 1951 also becomes an important aspect to be taken into consideration while discussing offenses related

to election as it highlights the corrupt practices and grounds for disqualification of candidates in Elections. Through the discussion of the Indra Gandhi case and the case of the Electoral bond the picture which becomes clear is that the ruling government always tries to make such laws that will benefit them in the elections and help in maintaining their seats in the election. Such laws which are introduced are of no benefit to the people that is the democracy and thus should be scrapped. The courts play an important role in bringing electoral reforms and fueling the vehicle of democracy to run further by the judgment related to disclosure of criminal records and financial statistics of the candidate and even striking of laws which are inconsistent with the constitution like the 39th amendment act, section 8(4) and section 33B of Representation of Peoples Act, 1951, but when such courts refuse to entertain petitions of public interest for a long time like that of electoral bonds than it seems difficult to keep the vehicle of democracy running for a long time, thus sincere and continuous efforts are required on the part of the courts the election commission and even the administrative bodied of the government to ensure free and fair elections.

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