

Title: Electoral manipulation and impunity: ethnographic notes from Uttar Pradesh

(VERSION ACCEPTED FOR PUBLICATION)

Abstract

This article explores how electoral manipulation intersects with issues of impunity in a constituency in Western Uttar Pradesh, North India. By casting electoral manipulation as a tool to obtain, maintain and enhance impunity this article argues that there is often more at stake in manipulating elections than simply winning. More specifically I show how an holistic ethnography of ‘electoral seasons’ sheds light on the kinds of authority and legitimacy produced by the visible non-punishment of electoral manipulations. The article offers new insights into ongoing debates in the anthropology of power, leadership and the law.

Keywords: Impunity; Electoral Manipulation; Authority; Electoral Complaints; Criminality

Word counts: 10,000

INTRODUCTION

In this article, drawing on participant observation, complaints of election malpractice, judicial sources and ‘out-of-court narratives’,¹ I seek to shed light on the dynamics of electoral manipulation and impunity in a district in Western Uttar Pradesh, North India.² The focus is on state elections. Crucially, this exploration offers a window through which to observe the wider cultures of complicity that sustain localised muscular economic systems of governance - popularly known in the region as ‘*Mafia Raj*’ or ‘*Goonda Raj*’ (mafia/gangster-rule). These are regimes in which politics, money and crime have developed symbiotic relations.³ Notably, these hybrid Mafia-esque systems of governance do not work independently of the law but they

¹ I conducted 12 months of fieldwork over three years during the period 2012-2015. This research builds on previous research I conducted in 1998-2000 and 2008-9 in the area. The district and the MLA constituency discussed in the article are anonymised and with it also the names of the leaders and officers involved.

² Building on Simpson (2013) I use the term electoral manipulation to refer to ‘a variety of tactics with the capacity to influence elections’.

³ See Michelutti et al 2018.

function precisely because they are protected by 'the law' (the local politician, the police and the judges). Such impunity is not achieved by magic. Economic godfathers have to collaborate with the police and the state and/or enter into politics to protect their legal and illegal economic enterprises and ensure their own protection.⁴ By casting electoral manipulation as a tool to obtain, maintain and enhance impunity this article argues that there is often more at stake in manipulating elections than simply winning.⁵ Acquiring authority and impunity is often what is at stake.

The protagonists of this paper: politicians, businessmen, vote contractors, musclemen, lawyers, accountants, booth level and police officers manage to carry out (or be complicit in) a variety of election malpractices in a setting where the rule of law (and the power of the Election Commission) prevail on a formal level. These are actors who do not operate on the fringes of the state or in formal 'states of exception'.⁶ The fear of being caught and the possibility of going to jail are real possibilities for everybody – including powerful and established bosses.⁷ Trading votes and intimidating voters and candidates are criminal offences according to Section 171 of the Indian Penal Code and the Representation of the People Act of 1951 (RPA), and the accused can be sentenced for up to a year in prison. The RPA definitions of electoral malpractice are quite detailed but how is this law enforced? How does one get away with electoral manipulation? What is the nature of 'political influence' on judicial decisions with regard to election petitions? And finally, what kinds of authority, legitimacy and power are produced by visible non-punishment of electoral manipulations? These are the research questions at the heart of this article. Addressing such objectives requires a study that does not merely focus on 'the

⁴ See Michelutti (2016); Martin and Michelutti (2017).

⁵ For a similar argument see also Simpser (2013).

⁶ See for example Das and Phoole (2003) and Agamben (1998).

⁷ These are actors who do not enjoy the monopoly of legitimate violence 'by birth' (*dandaniti*). Such legitimacy was a prerogative of the local dominant kingly/martial castes but this monopoly has been challenged over the past three decades.

time' of elections, namely the campaign and the election day. The temporal boundaries for understanding the modus operandi of electoral manipulations and their relation to 'the law' needs to be much wider as negotiating and gaining impunity is often a long-term strategy.

Anthropologists have begun to investigate how elections offer citizens an opportunity to depict their relationship with the state.⁸ As such, 'elections' are often studied as events with special (almost 'ritualistic') temporalities, isolated from the everyday realm of politics itself.⁹ In India, these moments are protected by the Election Commission's rules and the Model Code of Conduct which are devised to keep 'dirty/normal politics' under control and allow the ritual of 'sacred elections' to take place.¹⁰ Such a temporal frame is also employed by default to evaluate electoral malpractices and their influence (or lack thereof) on the final electoral outcomes.¹¹ By contrast in this article I focus on 'electoral seasons' and on the system of power that they produce. 'Electoral seasons' may even start a year before the actual 'election day' and last for months (and even years) after the voting. It is important to keep in mind that some electoral manipulations are carefully crafted and strategised way before the actual 'election time'.¹² By the same token, post-electoral violence (rather than violence on election day and pre-election violence) is rampant and is often under-analysed.¹³ Similarly, post-election litigation may last for years after the actual results are published; thus 'the temporality' of electoral justice (and impunity) is intrinsically bound to the chronic delays and corruption of the Indian justice system.¹⁴ Such 'seasons' are the backdrop against which electoral manipulations become

⁸ For a summary of this literature see Jaffe (2015).

⁹ See for example Banerjee 2014; Bertrand, Briquet, and Pels (2007).

¹⁰ On the Model Code of Conduct see Gilmartin (2004); on 'sacred elections', Banerjee (2007).

¹¹ Bjorkman (2015).

¹² Here I also consider rising funds for political campaigns through criminal activities as part of long-term electoral forms of manipulations.

¹³ See CSDS study on electoral violence, Kumar (2014).

¹⁴ 'More than 22 million cases are currently pending in India's district courts. These figures are increasing according to the decennial reports (<https://www.theguardian.com/world/2016/may/05/indias-long-wait-for-justice-27-million-court-cases-trapped-in-a-legal-logjam>) (accessed 5/7/2016). However

central performative sites for negotiating, building up or ‘showing off’ impunity (and with it authority). This article begins examining a number of tactics by providing a description of the local culture of political participation, its hyper political and economic agonism and its tight electoral races. This section also introduces the main protagonists of the story and examines their mantra when it comes to manipulating elections: ‘*saam daam dand bhed*’ (persuasion, money, force and manipulation). The second part of the article explores how these techniques’ were implemented and performed during the 2012 Uttar Pradesh State Assembly ‘electoral season’. The third section follows this ‘season’ up to the present by analysing an election petition and its role in creating different forms of authority (and impunity) at the local level.

I. HYPER POLITICAL AND ECONOMIC AGONISM AND COMPETITIVE MANIPULATION

Today, over 200 million people live in the state of Uttar Pradesh. If independent, Uttar Pradesh would be the world’s fourth largest democracy, and the fifth largest country - behind China, the rest of India, the United States, and Indonesia. Hence UP’s politics can hardly be dismissed as an exception to the norm. Uttar Pradesh is the state that decides who governs India every five years. In 2012 I went back to conduct fieldwork in Western part of the state. This region is well-known for its endemic violence; for being culturally shaped by the ‘macho’ ethos of its dominant castes (Jats, Yadavs, Gujars and Rajputs); for being marred by communalism and caste-based conflicts; and finally, for poverty and underdevelopment. The economy of this region has been transformed by the commercialisation of agricultural land over the past two decades. It is in this local booming ‘land’ economy that dabangs (enforcers/bosses) and their power syndicates started to pursue violent forms of capital accumulation through increasingly

delays in electoral justice are not only specific to India. See the case of France where investigations about corruption in campaign financing for the 1995 elections are still on going.

cartelised ‘land mafias’, ‘sand mafias’ and ‘construction mafias’. The power syndicates involved in the area are many: they are also flexible, volatile, fragmented, and in constant flux (Harriss-White and Michelutti 2019). This muscular economy lives in symbiosis with routinised forms of social and political violence and conflicts and hyper political competition. Democratic competition, as Wilkinson argued, produces an intensified scramble for monetary and political resources, and turns money and muscle-power into pre-requisites for electoral success.¹⁵ Moreover, the need for muscle-power is at its peak in areas with deep community divides where voters want forceful representatives that they perceive can protect their group-based interests most credibly.¹⁶ It has been established that political parties select criminal candidates in those areas where social divisions are the most contested,¹⁷ and this has been happening in the district over the past two decades.¹⁸

In the old days, typical MLAs would be drawn from the ranks of the old gentry, mostly the upper castes: lawyers, doctors, engineers, or from other professions. Today, these backgrounds have been gradually replaced by a new broader category of entrepreneurs who dominate the local semi-cartelised economy: brick-owners, builders, owners of cement factories, sand contractors, transportation businessmen, and so on.¹⁹ At the local level, people draw a line between what was politics before 1996 and the present, with money and criminal enterprises being the main factors today. The RTA legislation was built on the assumption that the greatest challenges to ‘free and fair elections’ were government interference and India’s factionalised and communalised society. By contrast today it is the link between (criminal) money and party

¹⁵ Wilkinson (2004).

¹⁶ See Michelutti and Heath (2013; 2014) for a study of these dynamics in this area of Uttar Pradesh.

¹⁷ Vaishnav (2011); Banerjee and Pande (2007).

¹⁸ Michelutti (2016).

¹⁹ Verniers (2014).

machines that is said to be the biggest threat to the electoral process.²⁰ Although violence on polling day is still a reality today the local pocket of ‘Mafia Raj’ no longer produces the rough Wild West-style booth capturing of the 1990s. Instead, the interconnection between money, muscle and power is producing more sophisticated and ‘peaceful’, organised and planned white-collar frauds in which money and intimidation (rather than unconcealed violence) are central.²¹ In such a world ‘the lawyer’ and ‘the accountant’ are as central as the figures of the musclemen and/or the vote contractor.²²

“Money is dominating now. Criminal elements are joining politics more than in the past. Before they used to be the musclemen of the local politician, then they decided to contest elections directly. When I entered into politics in the sixties I was a student. I won the MLA seat. People gave me donations to campaign. It was a totally different situation... now one needs black money in order to contest the election. And criminals are the ones with such capital today. The local profitable businesses are the oil mafia and of course land grabbing. These are businesses which need political protection. the rising political stars of the district come from these backgrounds...”

This is how a local seasoned politician and active kingmaker (he was MLA three times in the 1960s-80s) sums up what is a very widespread narrative. During the 2012 state elections candidates were said to have spent between three and four million dollars on campaigns. Elsewhere I have described the careers of the new district rising stars – men in their 30s and early 40s who are using ‘criminal capital’ to enter into politics to protect their business.²³ Their business survival and prosperity depend on a ‘negotiated’ lack of law-enforcement. State and

²⁰ On party finance, see Vaishnav (2014); Berenschot (2013); See, also the Election Commission website.

²¹ India's Election Commission says it has seized 57 million in cash along with 21 million litres of alcohol. (Personal communication, EC Fraud Team Officer, Lucknow 2014).

²² See Berti (2010) on Indian culture of litigation. India can not only boast being the world's largest democracy but also having the second largest number of legal professionals after the United States.

²³ Michelutti (2016); Hoque and Michelutti (2014).

national elections can trigger changes in who protects who. In order to protect both their illegal and their legal activities, local bosses need to be active in the political judicial and security systems of the country with money and violence. At the time of elections, their main aim is to do whatever is possible to maintain the integrity and continuity of their businesses. And it is with this in mind that they strategise how to manipulate the electoral process and/or even how to reposition themselves in the middle of the election campaign if necessary. Some of these bosses contest elections directly, some provide support through money and muscle for local candidates, and some support more than one candidate. This is an area where switching political parties is extremely common and widely accepted. Self-sabotage is also a well-rehearsed technique. “There are two types of candidates in any election. The ones who run to win... and the ones who run to make a profit... In this constituency dabangs run to make a profit and help ‘clean’ candidates to win by selling them votes.” “You keep the money allocated for the election campaign and you make more money by selling votes from your protected areas to the two main contending candidates. This is a business strategy.” (Party worker). Such deals are usually made very close to the election day and are also very effective ways of negotiating impunity with the newly elected government.

The constituency under study has over 15 lakh voters spread over five Assembly segments. — The ethnography focuses on one this segments that I will call Jangapura. The constituency was considered a BJP stronghold till the late 90s, then regional parties and the Congress alternated and in 2014 BJP took control again. From 2012 to 2017 the state has been ruled by the Samajwadi Party. In March 2017, the BJP won the state election. The 2012 UP State Assembly marked the end of BSP rule and the rise to power of the rival Samajwadi Party (SP). One of the dynamics at the heart of the studied localised pocket of ‘Mafia Raj’ is its instability due to the availability of multiple and often competing centres of protection within the party machine of

the current ruling party.²⁴ Competition is rife in the district. We know that Indians have a unique passion for ‘the political’ and some of the highest rates of participation and contestation in the world. Politics shape everyday people’s social lives and it is generally something that people cannot (and/or do not want to) ignore. In the studied district such levels of participation are even higher than the national average. This constituency always tops level of turnout in the state. Voting and contesting elections are often used to express division, articulate rivalries and personal interests.²⁵ Money and issues of honour often trump political motivations. This is an environment where the enemy of my enemy is my friend. Five political party machines have a substantial presence in the area. This produces a five-sided ‘competitive manipulation’. Manipulation is used by all the parties. However, the ruling party has a recognised advantage by being in the position to manipulate directly the electoral administrative machine and the police. In this hyper agonistic political environment even a few hundred votes can provide a victory in a state election. Every vote counts. To win, party machines have to focus on an obsessive micro mobilisation and ‘manipulation’ of the voters at the booth level. Such closely-fought battles and margins incentivise low risk (i.e. difficult to monitor) electoral forms of misconduct, such as:

- 1) the manipulation of electoral registers
- 2) the manipulation of the location and provisioning of polling facilities in such a way that benefits one contestant over the others
- 3) the obstruction of electoral observation
- 4) the manipulation of the decision about what should be classified as a critical or vulnerable polling booth
- 5) the manipulation of party symbols and fake candidates.

²⁴ Martin and Michelutti (2017).

²⁵ Michelutti (2004).

Such manipulations are not spectacular or improvised. They are often not as visible as alcohol distribution or vote buying. They take careful planning, advice from lawyers, and the cultivation of contacts and ‘allies’ in the local government structure starting with the DM (the Returning Officer at election times) and low-level officers, who are part of the district electoral administrative machine during election times. Even a couple of hundred fraudulent votes per polling booth may have a tremendous effect on the final result. This professionalisation of fraud which involves an active engagement of lawyers, indicates that in today’s electoral manipulations brain is becoming more important than muscle. It should be also emphasised that fraud techniques are continuously revisited and tailored to newly-build anti manipulations provisions. It is against this backdrop that electoral manipulations are an ‘open secret’ in town and are a constitutive part of the local election experience and its competitive ‘fun’. As a result, 15 per cent of the constituency polling booths were declared Critical/Vulnerable by the District Electoral Officer/Returning Officer (the District Magister) in 2012 and 2014.²⁶

Table 1: Critical and Vulnerable Booths in the studied district

Classification	Number of Booths	Percent
Only Critical	217	13
Critical and Vulnerable	38	2
Other	1475	85

Table 2: Reasons for categorising a booth as critical

²⁶ See http://eci.nic.in/eci_main/CurrentElections/ECI_Instructions/ins241008b.pdf ;
http://eci.nic.in/eci_main/CurrentElections/ECI_Instructions/ins_121007.pdf ;
http://eci.nic.in/eci_main1/current/CI2_13032014.pdf; <http://www.hindustantimes.com/india/ec-sets-voting-based-parameters-to-identify-critical-polling-stations/story-4v3ygNribRl86iALO2v6jI.html>

Reason for categorising a booth as Critical	Number of Booths	Percent of Critical Booths
A Candidate received more than 75% votes in 2012 and/or 2014	105	41%
Inter Caste Rivalry/Caste Tensions	98	38%
Personal Rivalry	75	29%
Political Rivalry	63	25%
Presence of Criminals	22	9%
Located at state borders	21	8%
Jat Dominant Area	20	8%
Thakur Dominant Area	14	6%
Hindu-Muslim Communal Tension	14	6%

Table 2 provides insights into the nature of recurrent visible forms of electoral manipulation in this area. Caste, personal rivalries and communalism are some of the criteria used to classify a polling booth as critical. A polling booth that has more than 75 per cent voter turnout is also considered suspicious. ‘Above the norm turnout’ is taken as an indicator that malpractices (such as bogus voting) may have taken place. As a local party worker explains, “We can win 85 per cent of the vote in an honest manner. But since everybody does it (‘manipulation’/‘bogus voting’) we also need a plan. It is part of the game ... Lord Krishna told us to do your duty and not worry about the results...well here, I can tell you, we worry about the results. Nobody wants to lose money or honour.” Before the 2014 election I witnessed party workers warning their agents to be careful and to not make the mistake of winning more than 75 per cent of the votes. On the day after the election I went to the local EC office. I was there waiting for Mr K.P – the officer in charge of the election logistics. I was not alone. Three party agents (from different

political parties) and a couple of journalists were there waiting for Mr. K.P as well. When he finally arrived it soon became clear that we were all there for one thing: we all wanted the polling booth turnout results. Some party agents were worried they had won by over 90 per cent. The journalists (and myself) were interested in cross-checking stories and gossip about vote trading.

One of the party agents commented, “It is all about ‘saam daam dand bhed’. Get the work done by any means! Money first – if it does not work then by intimidation and blackmail. In the 1990s there was no money. The Election Commission’s control was weaker. Now they use drones and videos! So *Dand* (force) used to be more visible. Nowadays there is more scope for *Daam* (money) and *Bhed* (manipulation/intimidation/blackmailing). But then it depends from constituency to constituency and on political parties and their resources...BJP’s main weapon is still riot politics. The incumbent party has the police in its pocket ...” I heard this ‘mantra’ on many occasions.

In many cases local political leaders openly brag about their plans to rig elections or to intimidate their opponents. By contrast some try to make a career by trying to do the opposite by presenting themselves as ‘clean’, as I will show in the next section. In the neighbourhood where I conducted fieldwork party workers and bosses talk about ‘night-time campaigning’ as opposed to ‘day-time campaigning’. Over the years I collected innumerable narratives about dark side (nighty) part of the electoral processes by politicians, lawyers, vote contractors and citizens. Few times I was asked to vote. I witnessed ‘peaceful’ forms of intimidation outside polling stations when local musclemen just sat outside the booth. Their presence a warning.²⁷ I

²⁷ Long participant observation has been essential to observe directly some of these practices. One needs to know who is who in the area in order to understand such dynamics on polling day.

saw police officers in charge of monitoring the local polling booth being bribed the night before the election and observed a very soft control at the polling booth the day after – in particular during the last hours of the day when ‘night voting’ started. More recently this ‘open secret’ is also appearing in pictures and videos, which are widely circulated on social media or reported on local TV and media. In 2014, in a neighbouring district, a candidate was caught on camera instructing party workers to do bogus voting in the coming 2014 Lok Sabha election.²⁸ He told his party workers not to worry about the police because ‘they were protected’.... “All cases will be withdrawn later,” he added. A FIR was promptly filed against the politician but the party fully supported and protected him. The ‘open secret’ is not only increasingly visible in widely circulated WhatsApp/You Tube videos but also in legal documents and in post-electoral court cases in particular. A product of such tight electoral battles (and ‘necessary’ manipulations) is one of the locals MLAs who won with a margin of only 501 votes in 2012. Luck and ‘vote buying’ (and alleged post-election ‘witness’ and ‘judge’ buying) are popularly said to be his best assets. His direct opponent Arjun P. filed an election petition in March 2012. In May 2015 (three years later) the High Court of Allahabad dismissed the case. The case is currently in the Supreme Court. The election season for the 2017 Assembly UP election already started in 2015 - while a post-litigation battle from the previous election is still ongoing. The next two sections will reveal this story.

II. ‘2012 STATE ASSEMBLY ELECTORAL SEASON’

In 2012 the battle for one of the MLAs district seats was a four-corner contest that involve the Congress, BJP, BSP and Congress. BJP was pegged as the favourite to win. This seat had been a direct contest between the BJP and Congress for the past thirty years. The former had controlled the seat for over a decade. In 2012 the BJP fielded Arjun P., a college teacher/social

²⁸ <https://www.youtube.com/watch?v=ivyc9NhHkQ8> (accessed 27/06/2016).

worker. BJP workers believed that Rakesh S. with his RSS credentials and ‘simplicity’ and young appeal was just what they needed to win. Rakeshji presented himself as the clean and humble candidate. He was in his early forties, ‘from humble origins’. In an interview soon after the elections in March 2012 he proudly said:

I was the first MLA candidate who did not distribute alcohol and/or bought votes during an election campaign in this town! My father supported me. Party workers were very critical... They said I should do it because otherwise I would lose...I said that I will not distribute alcohol – and did not care if I was losing the election because of that ... Other parties have distributed alcohol. Lots of it! They have also distributed money. They distributed alcohol and money 3-4 days before the election’s day. Some people say that I lost the election because I did not distribute the liquor. I am sorry...I feel very bad for my party workers and friends who have done so much for my election campaign.

Rakesh S. thought that ‘durbar’ style of politics – and giving gifts to please the voters – is very wrong. By contrast his party supporters thought that he was too ‘modern’ (here they use the English word) and he should have distributed alcohol like everybody else. Rakesh S. portrayed himself as an anti-Raja-politician. He used his scooter for his campaign. He did not have bodyguards. He kept on saying that he was his own bodyguard or that God was ‘his bodyguard’. The 2012 UP polls were the first elections he had ever contested. He often emphasised that he did not belong to a ‘political family’ and did not believe in dynastic politics. Jangapura is full of it – he says, “The M.M. family was very closed to the Gandhi – that’s how he got into politics – A. A. belong to the biggest sweet-makers family of Jangapura - and of course J.S. is the grandson of a great socialist leader.” Rakesh S.’s campaign centred on the problem of the Yamuna pollution (environment issues) and rampant corruption in the state. “Netas (leaders) do their own development – they do not care about the nation, their state or

their town. Take for example the sitting MLA. He used to live in a rented house and he now lives in a palace. Where did he get the money from? He used to go around by bicycle. Now he has five cars and a new red BMW...My campaign was very simple. Madam my real fight is against corruption. ...Mainly the younger people are with me...I believe in positive politics. I don't criticise people. But I find everyone dishonest. All SP and BSP politicians are *chor mauasere bhai* (thieves)!" The district was inundated by fake currency: 'S.S.M is good friend with Tiwari – the Gorakhpur boss – Mayawati likes to get Brahmin thugs as candidates....Tiwari runs a fake money racket across the Nepali border and is helping his friends here'.

Rakesh S. may not have distributed money or alcohol but many would not describe the ethos of his campaign as 'peaceful'. As one SP supporter pointed out, "Us and the BSP (and perhaps the Congress) all need the Muslim vote. Muslims vote for the candidate who can beat the BJP. Therefore we target the Muslims who are undecided. It is money well spent. We make them swear on the Koran....they vote for us. What the BJP (and RSS) do is to polarise Muslims and Hindus – riot politics rather than vote buying is their approach." Religion is a formidably effective tool for mobilising people in this corner of India. Over the years the divide and resentments between the Hindu and Muslim communities has grown.²⁹ 'Communal consciousness' (*sampradayik bhav*) was the bread and butter of the local BJP/RSS campaign. The RSS is Rakeshji's family, as he often proudly asserted during our conversations. Soon after the MLA election in June 2012 a major communal riot took place in district. This was the first of a long series of 'communal moments' which led to the Muzaffarnagar's incidents in August/September 2013.³⁰ This event marked the start of the election campaign for Narendra

²⁹ Michelutti and Heath (2011; Michelutti and Heath (2014).

³⁰ Narayan (2013).

Modi. I must admit that I have lost count of the low key communal incidents which occurred in area during my fieldwork. They were indeed weekly affairs. Rakeshji's campaign hence had a dark side too, but discussing this is beyond the scope of this article.

In a post-election survey I conducted in the locality 65 per cent of the respondents said that they witnessed vote-buying activities taking place during the state and national elections; 82 per cent saw distribution of alcohol and 32 per cent witnessed manipulation of ID cards.³¹ Only 15 per cent said that they have seen booth capturing activities. To the question, "Do people who receive such gifts feel obliged to vote for the party or candidate that provided them or do they finally vote as they wish regardless of the benefits they receive from parties and candidates?" 13 per cent of the candidates said they did; 28 per cent preferred not to answer; and only 58 per cent said they voted as they wished. During the survey smiles, laughter and jokes become an integral part of the interviews. Many people said "No" but their eyes or heads said "Yes". Off the record more stories materialised. Not surprisingly local political leaders were quite interested in the survey results and some have even approached me. A local BJP leader asked me specifically how many of the people interviewed said that they felt obliged to vote if they were paid or given a present. I told him that the number was about 10 per cent. He smiled and said it was more... about 20/30 per cent. He then added, "Even if it was only 10 per cent, it's still worth doing it." I asked how he knew it was 20/30 per cent. He said that they have a way of monitoring it. The local dabang keeps votes captive through local vote contractors who are often village Sarpanches or municipal councillors in town and who have detailed knowledge of voting patterns at their local polling booths. Importantly the 'vote contractors' often wield authority in Khap Panchayats—informal bodies that adjudicate caste disputes—and use the

³¹ The survey took place between April and May 2013 in collaboration with the Centre for the Studies of Development Society (CSDS). Through a stratified quota selection process, XX were interviewed in all. We set loose quota for age, caste and religion.

threat of ostracism to ensure that people vote according to their dictates. This threat is even more effective than that of physical punishment. Vote contractors can find out who people voted for through rumours and by analysing booth-wise polling results. In 2012 Anna Hazare’s anti-corruption movement campaigned to stop the release of results by polling booth. Political parties have strongly opposed it, presumably because it would remove a crucial mechanism through which they can monitor voters.

During the 2012 election, campaign candidates and their supporters accused each other of ‘malpractice’ in public and/or on paper by filing complaints to the Election Commission, FIRs to the police, or by tipping off the local press. The Delhi EC Complaint Unit reported receiving about 300 complaints daily from Uttar Pradesh.³² In the District Complaint Unit (which becomes the Election Commission District Complaint Unit during ‘election time’) received about 50 complaints per week. I analysed a sample of such complaints and when possible interviewed the complainer and the accused. I conducted the same exercise during the 2014 parliamentary election campaign.

Pre-Election Complaints 2012

Type of complaint	Percentage (%)	Number
Bogus voters/Fake ID cards/ Planning of Rigging		16
Campaign Rule Violations/ vote buying/black money		14

³² I conducted four weeks’ archive work at the EC in Delhi (May-June 2012-November 2012). Complaints are filed under the following headings: ‘General complaints’: which are mainly from the public, MLAs and regard transfers – File 61/UL/-LL/2012 UP – when it is classified VIP it means that an MLA is concerned; ‘No clear subject’ (File 39/....); ‘Complains during by election’ (100/....); ‘complaints with regard to the code of conducts of candidates’ (437/....);’ judgments with regard to election petitions’ (82/....).

Against politically biased officials		68
Against police officers		13
Against 'criminal' elements		28
Violations of Model code of conduct		13
Delay in issuing Voter ID card		3
New Voter Registration		3
Excluded from voter list		1
Incorrect Voter Card/Electoral Roll/Updating of details/New card		3
Voter ID card		1
Irregularities with: location of counting centres, nomination papers, nominations of booth level officers		14
Unrelated to election		8

What is the nature of the complaints? Who are filing the complaints? The answer is: MLAs candidates, party workers, a variety of associations (caste associations/community associations/colleges), low level officers and ordinary citizens. Many of the complaints which flood in on a daily basis were filed by the Samajwadi Party or BSP party workers who were accusing each other of violating the Model Code of Conduct. A great number of complaints was filed by citizens accusing particular government officers (police, teachers, health officers,

educations officers) of being ‘agents’ of the ruling party and requesting their immediate transfer. Many complaints were filed against the local teachers who were accused of getting votes for the parties in rural areas. A substantial number of complaints pointed the finger at police officers and accused them of actively campaigning for a particular candidate by using intimidation tactics. In particular, many complaints were directed at the BSP (the party of government) and its candidate – a local land aggregator turned boss-politician.

The local election administrative machinery mostly dismissed what they categorised as ‘general citizens complaints’ and did not bother to follow them up because of ‘their personal nature’. They focus instead on ‘elite complaints’ meaning complaints by party leaders with regard to the implementation of the Model Code of Conduct. For example, the EC intervened and filed a model code violation notice on RLD leader for allegedly accepting cash at an election rally. When someone receives a notice they have a limited time (usually 24 hours) to respond to the charges. But such notices are rarities. As an EC officer explained, “Many complaints are about personal rivalries, about village life, about neighbourhood disputes and not about elections. People take advantage of the elections and the Model Code of Conduct to pursue their personal battles and claims ... There is a specialised person in each village who manufactures complaints-complaining is part of politics in India – this is what local politics is about.”

To a certain extent this was very true. A great number of the complaints showed a vital culture of litigiousness. It also makes directly or indirectly justice inefficient due to the impossibility of investigating hundreds and hundreds of cases. Complaints were often direct accusations with no supporting evidence. It was obvious that for many ordinary citizens the Model Code of Conduct was evoked and used as a way of resolving personal rivalries and taking revenge. I suggest that such a culture of litigiousness and conflict is hence very much complementary to

the competitive ethos of the muscular political regime that encompasses it. On the whole this material reveals the corruption of the low-level officers (and not only of the big politicians); it shows how the battles between politicians mirror parallel antagonistic fights among ‘the voters’ and a frantic search for justice and revenge. ‘Election time’ does not provide a sealed protected time in which to cultivate cooperation or citizenship ‘special values’.³³ By contrast ‘the sacred election time’ is deeply permeated by normal (muscular) politics. The Model Code of Conduct (an externalised framework of legal restraint) does not transcend everyday politics but rather ends up encompassing it.

By the same token reading these complaints with hindsight made me realise that all the key muscular/criminal protagonists of the district (vote contractors, muscleman, political/criminal bosses) are present in these documents and their actions have been protected by ‘the inaction’ of the local authorities in a variety of ways. Indeed, complaints can be partly manufactured and be bogus but in many ways they also reflect underlying empirical realities. They provide full descriptions of practices which are difficult to observe and provide an entry point to make people discuss such topics. Take for example the following complaint against a police officer during the election campaign for the 2014 elections.

Addressed to: District Magistrate/District Election Officer

Complainant: XXX

Subject: Threat from local police officer

This is regarding a double bed purchased by police officer – XX, from my shop – Name of Shop and address, date of purchase and amount. I called him today – XX. XX.2014 from my

³³ Banerjee (2011: 95).

mobile number -XXX to send the bill and process the payment for the same. He did not listen to me and said that the bed was not in good condition. I assured him that if he did not like the bed, I would be willing to send him a replacement. Then he started using foul language and threatened to beat me and damage my shop. He wanted me to visit him, which I politely refused out of fear. He again threatened to cause physical harm to me and my property. He also said that he would affect my public reputation. I recorded the telephone conversation and have prepared a CD (enclosed herewith). I am a reputed trader and office bearer in various social organisations. This incident may cause harm to my public reputation. I also fear that due to this incident I may be physically attacked or my property might be damaged.

I urge you to record my complaint and initiate necessary official action. I also request you to ensure the security and wellbeing of me and my family members and protect my property.

Documents Enclosed:

Newspaper report from Hindi Daily – Hindustan (Date) – “Article title...”

Newspaper report from Hindi Daily – Amar Ujala (Date) – “Article Title ...”

Recording of phone call

The complaint involves a senior police officer and the owner of a furniture shop who belongs to the Qureshi Muslim community. It is not directly about elections but as the District Monitor officer explained to me: ‘We want to monitor all type of intimidation by police officers in this period. If they run rackets they will be also prone to corruption during the election.’ The police officer was recorded extorting from the shop keeper. In 2012 about 8 per cent of the electoral complaints were against police officers. In 2014 this figure rose to 24 per cent. Crucially all of these complaints have been dismissed as ‘false’. Mr Y.Y. who was in charge of the district complaint office in 2014 commented, “The monitoring exercise is a complete farce. The DM has to forward the complaints against police officers to the Superintendent of Police: how can

a father punish his own children?” With this comment he wanted to emphasise how there was no autonomous body which was assessing citizens’ grievances related to free and fair elections. At election time the DM and SP adopt central roles in the local administration of the election. Polling Booth officers are also sourced within the district and hence are inevitably embedded in local structure of power. How can they be immune from pressures?

In 2014 the EC Commission pledged state governments to not withdraw cases related to poll offences after the election. In a letter to the Minister of Law the EC writes: ‘The Commission has observed that in many cases, after the elections are over, the state governments seek unilateral withdrawal of the cases filed/registered during the election period.... This happens generally when the accused happens to be a leader or supporter of the ruling party.’...’Even cases involving serious offences like bribery, which have serious implication in the context of fair elections and free exercise of franchise by the electors, are sought to be withdrawn at times. The withdrawal of such cases is totally against public interest and also sends a wrong signal that miscreants may indulge in any electoral malpractices and offences at elections with impunity as those cases may be withdrawn later...’³⁴

Similarly, in the district after the election FIRs connected with electoral malpractices are usually dropped. The justice system is not considered an ideal terrain for pursuing electoral justice – unless there is a basis on which to file a petition on technical faults - as explored in the next section. A Parliamentary Standing Committee on Public Grievances, Law and Justice is currently looking into the issue of ‘cash for votes’ in elections and had advocated prosecution powers with the Election Commission and the setup of a designated special court to try such cases.³⁵

³⁴ See http://articles.economictimes.indiatimes.com/2014-08-04/news/52428662_1_election-commission-offences-cases (accessed 7/07/2016)

³⁵ <http://news.webindia123.com/news/Articles/India/20160620/2887441.html> (accessed 30/06/2016).

Meanwhile however 'justice' is locally often achieved informally through violence. Few of my informants ended up in hospital after being beaten up by the rival party workers or faction.

The local police do not have the time, resources or, perhaps more importantly, the will to investigate such cases and convert FIRs into proper charges after an election. It should be noted that after the election results the key local state administrators are often transferred. After the 2012 and 2014 elections both the DM and SP were transferred. By the time the newly appointed DM and SP had settled in – a few months passed and then they were transferred again... Ten months later when the new Superintendent of Police had finally managed to settle in had to focus on the rising crime rate which usually occurs soon after an election. As a criminal lawyer told me soon after the election results 2012, "Do come back in a few months' time. I promise you that there will be a 50 per cent rise in extortion and kidnapping cases..." I asked him why that was and he answered, "Both losers and winners need to get back the money they spent during election time quickly ... and prepare for the next parliamentary election in 2014 and Vidhan Sabha election 2017." Indeed another 'electoral season' had already started.

III. ELECTORAL ADJUDICATION, JUDICIAL POLITICS AND THE PRODUCTION OF AUTHORITY

In this final part I shall discuss the cycle of an election petition which was filed to the High Court of Allahabad by Rakesh S. An election petition is the legal tool through which an inquiry into the validity of the election results (of Parliamentary or local government elections) can be started.³⁶ It is a little-known fact that India has the largest number of election petitions (i.e.

³⁶ 'One of the more famous instances of a poll challenge succeeding was that against former Prime Minister Indira Gandhi and her election to the Lok Sabha in 1971 from Rae Bareilly in Uttar Pradesh on the grounds of corrupt electoral practices. After four years, the Allahabad high court invalidated her election in a historic judgment, disqualifying her from contesting elections for six years. Within 13 days of the verdict, she imposed a national emergency on the nation'

contested results) in the world. Not much has been written about this topic. The EC kept a record of the filed petitions only until 1977, then it stopped.³⁷ Election petitions are filed in the High Court. The authority of the Commission to interpret electoral law ceases once the official results are released. Inevitably post-election litigation ends up being entangled with the delays of the Indian judiciary system.

It was on counting day (6 March 2012) that the troubles started for Rakesh S. Electronic voting does not use electronic counting technology. After voting, the EVMs were transferred to the local counting centre. When it comes to the counting process EVMs are basically treated as physical ballot boxes. Counting is a major ritual in itself. Each party needs about 100 party agents to observe and monitor the process of adding (manually) the tally of each EVM machine. A margin of human error is possible for and hence for ‘manipulation’. It follows that a great deal of care is devoted to choosing the right (and loyal) party agents. Such agents play an important role in ensuring free and fair election, but they are also the ones who can manipulate the results.

On 6 March 2012 things did not go smoothly in the counting centre. The counting ended up with Rakeshji and his agents being removed from the site by force. The fight broke out when 1048 votes cast by ‘election duty staff’ were declared null and void and not admitted to the final counting because of a form irregularity. Rakesh sent a fax to the Chief Electoral Officer of Uttar Pradesh - requesting to open the ballot paper contained in the Ballot (Drop) Box and count the same. His request was not heeded and Arjun P. was declared the winner by a narrow margin

http://articles.economictimes.indiatimes.com/2014-02-28/news/47774290_1_election-petition-election-results-chief-election-commissioner (accessed 28/06/2016).

³⁷ In 2012 the following 19 petitions were pending in the state of Uttar Pradesh (data collected at the EC Judicial and Complaint session in Delhi).

of a couple of hundred votes. According to Rakesh S. all the 1048 votes were by ‘genuine electors and identified by the Returning Officer himself’. The election duty staff voted in a ‘PB Facilitator Centre’ on 22 February. During the counting, the Returning Officer questioned the lack of Form 13A, which should have been filled in by the voters but according to Rakesh it was never provided.

Rakesh was understandably furious. He argued that margin of the victory was so slim that not counting 1048 ballot papers had substantially affected the result of the election. For him (and for many others in town) Arjun P. was ‘illegally elected’. Within 45 days Rakesh filed an election petition.

Rakesh was advised to contact a lawyer, a specialist in Electoral Law who decided to file the petition on the grounds of ‘improper reception, refusal or rejection of any vote....’ All the five electoral lawyers I interviewed explained to me that that petitions are usually admitted and won on technicalities, namely on irregularities in counting and/or nominations or administrative malpractices. By contrast coercion and intimidation are said to be very difficult crimes to prove. The same goes for vote buying as it cannot be disentangled from the logic of coercion. Generally, intimidation and extortion do not have a marked electoral judicial presence. These are crimes which are very difficult to tackle and prove in courts because there is often no physical violence. These are crimes which only need the threat of violence – a form of violence which does not leave visible and tangible evidence. Most importantly such electoral malpractices are also hidden by a veil of silence and fear of retaliation. In this part of India, it is incredibly difficult to get witnesses to testify in courts for criminal cases. The phenomenon of ‘hostile witnesses’ is indeed extremely widespread across the sub-continent. Berti (2012) shows how even in serious criminal cases where no private compromise is allowed, it often

happens that all the prosecution witnesses deny before the judge what they are supposed to have previously stated to the police.

Rakeshji was convinced that most of the 1048 voters had voted for him because the voters were mainly teachers (on election duty) and he himself was a teacher. In January 2013 he was still confident that his petition would have a positive result. He was prepared to wait for 2 years. "In 20 other constituencies in UP a similar thing has happened but votes were counted. Why should it not apply to me?" He was a little disappointed that the party was not supporting him helping him financially. By February 2013 he had already spent Rs 50,000 in lawyers' fees. Rumours said that he was financially supported by one of the contestants: the local boss of the area. Her son was one of the witness in the trial. Rakesh S. kept on saying, "I have been cheated and I will fight it." The petition has been in the High Court for three years. In February 2013 Arjun P. contested the petition in court (or rather his lawyer did) and stated that everyone who was on election duty had to fill in Form 13-A in order to have their vote registered. The returning officer also confirmed that the 1048 ballot papers had not been counted because they were not accompanied by Form 13-A, which is mandatory. Some of the other respondents supported Rakesh S. instead and said that 1048 postal ballot papers were wrongly rejected and ought to have been counted. Oral evidence on behalf of Rakesh S. consisted of depositions from five witnesses. Rakesh S. was cross-examined in August 2014. No more evidence was received after February 2015, after 25 hearings, and the final judgment was delivered in May 2015. Over the past four years Rakesh S. 's petition has become an integral part of local politics and went on to shape the career of this young politician in many ways. It also become an asset for the allegedly illegally elected MLA.

Arjun P. never wanted to discuss the petition directly with me. Over the years I had innumerable long conversations with him— but whenever I asked about the petition he clammed up. People who know him said that he was scared. Others said that he had enough ‘contacts’ to muddle the process and ‘influence witnesses’ but uncertainty was there – especially since BJP was gaining power again at national level. In the end what Rakesh’s witnesses said was in direct contrast with what they had stated in their earlier written statements. The judge was also changed in the middle of the case, which fomented further gossip in town. The new judge was said to be friendlier with Arjun P. There is indeed no evidence whatsoever to prove it but the simple fact that people talked about it made the petition a performative political tool. On the one hand it helped Rakesh S. to build up his image as an uncorrupted young politician who was illegally deprived of his seat and on the other it showed the authority of the older Arjun P., his capacity to operate above the law, and confirmed his well-known ‘charismatic luck’.

Arjun P. often attributes his successful political career to the stars. As many local politicians is obsessed with astrology and does not make any important decision without consulting his astrologer. Rakesh S. was beaming when I told him that Arjun P. was doing work on his house because his astrologer had advised him to move one of the toilets in the basement and to restructure the entire first floor of the house according to vashtu architecture. Rakesh S. asked, “Is it true? Someone had already told me that. It means that he is scared...I am pleased. We may have a change.” A few weeks later Arjun P.’s astrologer confirmed the story, “Mr Arjun P.’s house is changing. He is currently taking big risks, his luck also needs vasthtu...He needs a confidence boost. Feeling invulnerable plays an important part in politics. My advice helps leaders psychologically...to win one needs to feel like a winner... Currently I advise 15 politicians MPs and MLAs. Apart from that, many small leaders are also my clients. Astrologers are like priests and lawyers, we know things that sometimes it would be better not to know. It

is a fascinating job but also dangerous.³⁸ Charismatic leaders have extraordinary *kundali*. Few times in my life have I seen a *kundali* like Arjun's."

With the passing of the months Rakesh S. started to become restless. In April 2014 he asked me to intervene and to use my name and links abroad to make his election petition 'internationally known', and an 'international scandal' (his own words). "This will put pressure on the judges. I do not have the money to put such pressure on them. I think that if you write in the Economist it will help me. Someone needs to call out the lack of justice of this country. Everybody knows you can buy a judge and distort justice. In the district court lawyers can tell you the different charges that apply. Everything is on sale from FIR, charge sheet, bail..." Over the years at the time rumours spread that Rakesh S. had won the petition. Once I was with him when this happened and his phone did not stop ringing. People were asking him if it was true, other were congratulating him. Rakesh S. commented, "If it really happens, I will become a hero. I dream about it..." His dream was however stymied by the High Court final judgment which dismissed the petition for lack of proven evidence in May 2015.

CONCLUDING REMARKS

Impunity is often a topic of study for scholars of human rights, war crimes, genocides or communalism. By contrast less spectacular and routinised forms of impunity remain ethnographically under-researched. In this article I show how an ethnography of an 'electoral season' can capture the temporal flow of the electoral process and with it the cultures of

³⁸ The astrologists talked about 'danger' was referring to the murder of Mulayam Singh Yadav's family astrologer in November 2012. He was shot dead by gunmen dressed like policemen at his residence in Jaunpur district. The motive behind the killing is said to be an old dispute about panchayat elections. Three people ('contract killers') were arrested in connection with the murder. He was a very 'high profile' astrologer and his connection with Mulayam made the headlines of national newspapers. For some weeks conversation about the murder was a popular topic of conversation in the tea stalls in Jangapura.

impunity which sustain locally democratically elected ‘Mafia Raj’. These are hybrid systems where ‘criminal organisations, politicians, police, and bureaucrats—are entangled in a relationship of collusion and divestment, sharing control over spaces and population’ (cf. Jaffe 2013). How does one get away with electoral manipulation in these systems of government? The ethnography of the 2012 electoral season shows that it is achievable with the right protections, money and the complicity of the public. It is achievable because as it has been already pointed out by others ‘...Though politically independent, the Election Commission does not have its own staff for the administration of elections. This imposes serious limitations on its independence and effectiveness.’³⁹ It is achievable because at the heart of local muscular systems of governance there is a politicised police and bureaucracy. In this environment electoral manipulation has become part of the local political and economic ‘permanent performance’ (Hansen 2002). Performances usually mark exceptional events and exceptional times but constant performance makes political time in systems of ‘Mafia Raj’ always somehow extraordinary (and hence insecure). If for many electoral malpractices are a tool to seek revenge, to resolve personal conflicts or to seek justice, for others they are tools to be employed to minimise risks and the economic uncertainties that each election cycle produces. They are also tools to show off the capacity to navigate the system. To achieve impunity from the law has become a sign of power. Indeed, as pointed out in the introduction there is often more at stake in manipulating elections than simply winning.

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³⁹ Verma (2005). *India Review* 4(3-4): 354-376

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