



## A CRITICAL STUDY OF ELECTORAL CORRUPT PRACTICES AS A MAJOR THREAT TO DEMOCRACY

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### Abstract:

*In Westminster pattern of democracy government is of the people for the people and by the people. It is a continual participative operation, not a cataclysmic, periodic exercise. The citizen in his multitude, marking his vote at the poll does an audit of his Parliament plus political choice of his proxy. Although the full flower of participative Government really blossoms, the minimum credential of popular Government is appeal to the people after every term for a renewal of confidence. So we have adult franchise and general elections as Constitutional compulsions. The right of elections is very essence of the Constitution. It needs little argument to hold that the core of the Parliamentary system is free and fair elections. Periodically held, based on adult franchise, although social and economic democracy may demand much more.*

**Key words:** Election, democracy, corrupt practices, electoral offences, adult franchise, bribery, corruption.

Abraham Lincoln defined a democratic govt. as “Government of the people, for the people and by the people”, while Sir Winston Churchill has vivified the pervasive philosophy of democratic election as below:

*“At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil making a little cross on a little bit of a paper –no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.”<sup>1</sup>*

In a democratic polity elections plays a significant role. It is through elections that the mandate for forming the govt. is determined, the political leadership for controlling the nation is selected, the public opinion on various issues is ascertained and the law makers are chosen.

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<sup>1</sup> Dr. Anshuman Mishra ; “Election laws with special reference to corrupt practices”; Central Law Publication ; 1<sup>st</sup> edition; p.1.



Though the consequences of the franchise exercised by the individual elector are multidimensional, elections serve a public purpose.

Thomas M. Cooley observed:

*“Suffrage is participation in the Government: in a representative country it is taking part in the choice of officers, or in the decisions of public questions. The purpose is to keep up the continuity of Government, and to preserve the public order and the protection of individual right. The purpose is therefore public and general, not private and individual.”*<sup>2</sup>

Hence it is expected that *“the electors should choose as their representative wiser men than themselves and should consent to be governed by that superior wisdom”*. However, it is the paramount duty of the elected to protect the interest of electors. A. H. Brich observed:

*“The elected might never form to themselves an interest separate from the electors, prudence will point out the propriety of having elections often; because as the elected might by that means return and mix again with the general body of electors in a few months, their fidelity to the public will be secured by the prudent reflection of not making a rod for themselves.”*

The corrupt practices and other vices of electoral system would cause to damage the very foundation of representative Government. J.E.F Ross observed:

*“Any electoral system must be operated properly and kept in good working order if it is produced its best results. But a bad electoral system can most certainly damage and even ruin the prospects of self-government. So though a good electoral system is not by itself a sufficient condition for the ensurement of genuine representative government it is none the less a necessary condition.”*<sup>3</sup>

The role of the legal system in ensuring free and fair elections is very significant. In the system of constitutional govt. the structure of the principal organs of the govt. is determined by law.

<sup>2</sup> Andrew A. Brace ; “The General Principles of Constitutional Law In The United States Of America”; 4<sup>th</sup> edition Bostan, 1931 ; pp. 326-327.

<sup>3</sup> Elections and Electors (London, 1955). (Emphasis original).



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Hence provisions for ensuring free and fair elections are generally incorporated in the Constitution itself. There may be other electoral provisions in this regard incorporated in various statutes. The purpose of these legal provisions is to prescribe the detailed rules regarding the system of election, delimitation of constituencies, structure of election, delimitation of constituencies, structure, powers and functions of the authority charged with the duty to conduct elections, qualifications and disqualifications of electors and candidates, manner of the preparation of the electoral rolls, procedure for remedying the grievances in connection with elections. It is expected that the enactment and the enforcement of such legal provisions will ensure free and fair elections since every action of each individual in connection with election is structured by law.

Corrupt practices is basically, a general term and include bribery, undue influence etc. having specific reference to electoral systems. Such practices were declared against the law by many nations in the beginning of 19<sup>th</sup> century as these were considered interferences in the free exercise of right to vote. In later years legislation acquired a new dimension and covered many more aspects including the size of expenditure, contribution and the specification of purposes for which the money could be spent. In United States corrupt practices were regulated by both State and Federal legislation. The early statutes covered matters concerning bribery and related abuses. In later years other states also enacted similar statutes. The principle Federal legislation rested on the Corrupt Practices Act of 1925, the Hatch Acts of 1939, 1940, and the Labour Management Act, 1947. In the United Kingdom, the earliest legislation enacted to rub these undesirable practices was the Corrupt and Illegal practices Prevention Act, 1883. The basic thrust of this legislation was the placing of the onus on the election agent for any infringement of the provisions. Corrupt practices under this Act included; (i) bribery, (2) treating, (3) undue influence, (4) personation, and (5) unauthorized expenditure. Illegal practices included, paid conveyancing, advertising, hiring without authority committee rooms; voting without qualification, false statements made about authority committee rooms; voting without qualification; false statements made about candidates; disturbance of public meeting during elections; printing, publishing or posting any bill placard or poster not bearing on its face the name and address of the printer and publisher and illegal proxy voting. The expenditure aspect was further controlled by the latter enactment of 1918 and 1928 and thereafter the Representation of People Acts. 1948 and 1949.



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In England, the latest law governing the field is occupied by corrupt practices, is the Representation of the People Act, 1983.

In India the law relating to corrupt practices was for the first time introduced by the Government of India Act, 1919. The law was virtually a reproduction of the provisions of the British Act of 1883 with slight modifications. The Indian Election Offences and Inquiries Act, 1920 which also introduced certain amendments in the Indian Penal Code, disqualified persons found guilty of corrupt practices. The Corrupt Practice Order, 1936 did not make any significant change in the existing provisions regarding corrupt practices. The position continued till the enactment of the Representation of the People Act, 1951, the first Statute enacted by our Parliament to regulate matters concerning elections including corrupt practices. This way we find that the emergence of the concept of corrupt practices has remained closely connected with the system of election of representatives in all democratic countries of the world. The basic thrust behind the evolution of the concept of corrupt practices has been to enable a voter to exercise his right to vote freely and fearlessly. It is also an injunction to all those who may like to win elections by employing means which are not only undesirable, unethical but are also prohibited by specific legislation.

It cannot be denied that the credibility of any democratic institution is dependent upon the purity of electoral process through which succession to these institutions is to be made. In other words, if the elections are free and fair, then only there would be true representation of the people in the Government. This objective is primarily sought to be achieved by framing rules for election which provide to every citizen an equal opportunity to participate in the democratic process. Further this has also been sought to be achieved by creating an appropriate machinery to see that the elections are conducted strictly in accordance with the rules framed for the purpose. Lastly, the objective of fair and free elections is also sought to be achieved by creating an atmosphere where people could form an objective opinion about their selection of the candidate of their choice without any interference from any quarter. Thus, fairness of an election is dependent upon the existence of these pre-conditions.



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It must also be stated that the choice of suitable candidate by the voters involve so many considerations. Merits and demerits of a candidate and their political parties and programmes are some of the considerations which usually weigh the mind of the voters in selecting a candidate. When considerations other than the merits of the candidates and policies overtake the mind of the elector or influence his choice, we may say that the purity of process of election has been contaminated. If this happens, it is treated as an interference with the electoral right of the voter. Such acts of interference are called corrupt practices. It may take various forms. It may be in the form of an inducement, thereby compelling him to vote for candidate whom he would not have voted for in the normal course. Sometimes attempt may be made to purchase voters or put them under threats so as to change their mind. There may be various other methods resorted to which are not only unwarranted but have declared as illegal practices by or under the law and the candidate may still use of such methods bypassing all norms statutory or otherwise. The Representation of people Act, 1951 as amended from time to time, Conduct of Election Rules, 1961 and the Indian Penal Code, 1861 are some of the statutes which have taken care of all such practices resorted to by candidates or his election agent or any other person on his behalf.

Whatever may be the provisions on the statute book covering the subject matter, the most important aspect that has to be taken into account is the role of the machinery constituted under the law for implementing the mandate of these statutes. It is in this context a reference to Article 324 of the Constitution of India becomes inevitable. The provision vests the authority of superintendence, direction and control of these elections and the Election Commission of India. The Election Commission is required to work within the framework of Article 324 and other provisions of law and the rules made thereunder. In a way, the provision contained in Article 324 not only confers powers on the Commission but also entrusts him with duties relating to the same subject matter. Thus the Election Commission has all the powers to give proper directions and pass necessary orders for a free and fair poll. If any complaint from any quarter is received alleging violation of the law and the rules by any of the candidates during elections, he is the competent authority to take full cognizance of the matter issue and directions or orders which he may consider appropriate in the eyes of law. This way, corrupt practices or many other unauthorized practices which may be indulged in by the



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candidate himself or on his behalf, if brought to the notice of the Election Commission can be taken cognizance of by the Commission itself. There may be situations where, in the opinion of the Election Commission, a particular complaint may not be considered as of establishing a *prima facie* cause in favour of the complainant and consequently the same may be dismissed. But when a candidate wins the election with such allegations, his election can still be set aside before an election tribunal if the complainant is able to substantiate his allegations dismissed earlier by the Commission. Thus, we may find that purity of electoral process is always protected by law. But it is equally important that the public remains vigilant and if they come to know of any unfair practices, the matter must be reported to the appropriate authority. No law can be implemented in true letter and spirits unless there is a solid public support behind it.

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