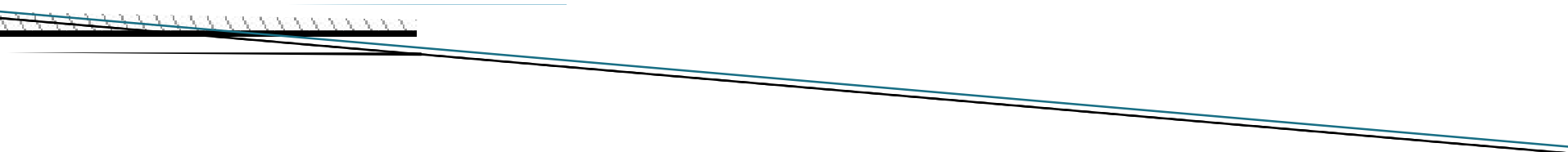


ELECTION LAWS



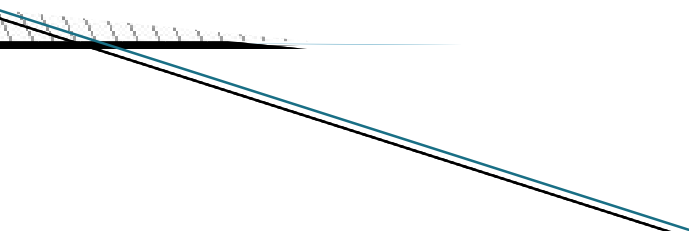
- ▶ The Constitution of India
- ▶ Representation of the People Act, 1950
- ▶ Representation of the People Act, 1951.
- ▶ Presidential and Vice-Presidential Elections Act 1952
- ▶ The Parliament (Prevention of Disqualification) Act, 1959
- ▶ Delimitation Act, 1972 , 2010
- ▶ The Conduct of the Elections Rules, 1961
- ▶ ~~Registration of electors rules, 1960~~

Constitutional Provisions Governing Elections

- ▶ Election of President – Art. 54 - 58
 - ▶ Election of vice-president – Art.66- 68
 - ▶ Election of members of Rajya Sabha – Art.80
 - ▶ Election of members of Lok Sabha – Art.81
 - ▶ Disqualification from membership – Art.102, 191
 - ▶ Election of members of State Legislative Assembly-
Art.168,170
 - ▶ Election of members of State Legislative Councils- Art.171
 - ▶ Election Commission – Art.324 -329
 - ▶ Universal Adult Franchise – Art.326
- 

Election of President and Vice-President

▶ Qualifications

- ▶ **Citizen of India;**
 - ▶ Completed the age of **35** years; and
 - ▶ Qualified for election as a **member of the House of the People**
 - ▶ Not holding **any office of profit** under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.
- 

Procedure

- ▶ **Electoral college** *consisting of the elected members of both the Houses of Parliament and the State Legislative Assemblies.*
- ▶ System of **proportional representation**
- ▶ **Single transferable vote.**
- ▶ Every elected member of the State Assembly shall have votes equal to the multiples of 1000 in the population of the State divided by the number of elected members of the Assembly (if the remainder is equal or greater than 500, the vote of each member shall be increased by one) and each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Assemblies of the States by the total number of elected

Election to Rajya Sabha

- ▶ Indirect Election.
- ▶ Council of States shall consist of:
 - 12 members to be nominated by the President
 - ▶ 238 representatives of the States and of the Union territories.
- ▶ The allocation of seats - Fourth Schedule of the Constitution of India. A nominated member is not eligible to vote.
- ▶ An elected member will hold office for a period of 6 years. A member chosen to fill a casual vacancy will serve for the remainder of his predecessor's term of office.

▶ .

- ▶ The Council of States shall not be subject to dissolution, but, as nearly as possible, 1/3 of the members thereof retire as soon as may be on the expiration of every second year.

(Article 83)

- ▶ Members of Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of **proportional representation by means of the single transferable vote**.

(Article 80(4))

- ▶ The procedure for counting of votes is laid down in the Conduct of Elections Rules, 1961.

Election to Lok Sabha and State

Leg.Assemblies

- ▶ Lok Sabha - 543 Parliamentary Constituencies
 - Anglo- Indian members nominated
- ▶ Direct election
- ▶ Single member constituency
- ▶ One vote each for a candidate, the winner being the candidate who gets the most votes
- ▶ First-past-the-post electoral system.

- ▶ The State Assemblies or Vidhan Sabhas are directly elected bodies. According to Article 170 of the Constitution, the Legislative Assembly of each State shall consist of not more than 500, and not less than 60, members chosen by direct election from territorial constituencies in the State.

Election Commission

- ▶ Multi – member Commission

(T.N.Seshan v. Union of India, (1995)4SCC611)

- ▶ Powers and functions: (Article 324)

- ❖ Superintendence, direction and control of the preparation of electoral rolls
- ❖ Control and supervise the conduct of elections.
- ❖ Appointment of chief electoral Officers
- ❖ Decide on disqualifications
- ❖ Registration of political parties (S.29A R.P.Act 1951)
- ❖ Recognition of political parties and Allotment of symbols.

If there is a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair election

Electoral process

- ▶ I Delimitation of Constituencies – Art.81(2), Act 1972, 2010

Gerrymandering

- ▶ II Electoral roll – Draft and final roll

Electoral Registration Officer

- ▶ III Electoral process

1. Notification

Notification by President/Governor

Notification by Election Commission

Public Notice by Returning Officer

2. Nomination

3. List of validly nominated candidates

4. Scrutiny of Nomination

5. Withdrawal of Candidature

6. List of contesting Candidates

Voter : Qualifications and disqualifications

▶ Qualification:

Citizen of India

Not less than 18 years of age. (Art.326)

Name in electoral roll

Ordinarily resident (S.20 R.P. Act)

▶ Disqualification:

Unsoundness of mind

Disqualified for corrupt practice under S.16 R.P. Act 1950

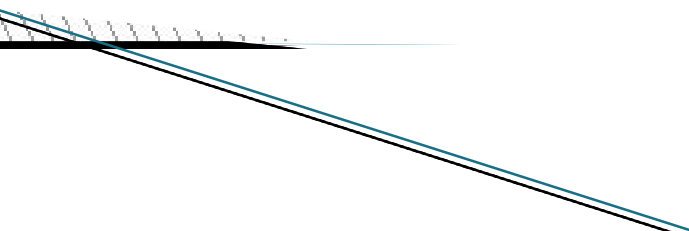
Non- registration in the electoral roll

Person in prison or lawful custody except preventive
detention

Conviction for corrupt practice or electoral offence

Deafness, blindness, infirmity are no disqualifications

Candidate – Qualification and disqualification

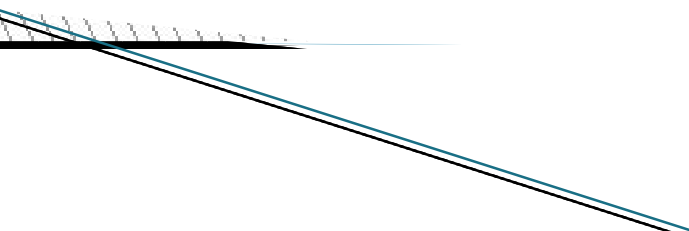
- ▶ **Citizen** of India
 - ▶ Subscribes an **oath or affirmation** according to the form set out for the purpose in the 3rd Schedule.
 - ▶ Not less than **30 years** of age for council of states and, for the Lok Sabha not less than **25 years** of age.
 - ▶ Any other qualifications as may be prescribed by or under any law made by Parliament.
- 

- ▶ A person shall not be qualified to be chosen as a representative of any State or Union Territory in the Council of States unless he is an elector for a Parliamentary Constituency in India.
- ▶ In case of a seat reserved for the Scheduled Castes / Scheduled Tribes in any State, he is a member of any of the Scheduled Castes or of any of the Scheduled Tribes as the case may be, whether of that State or of any other State, and is an elector for any Parliamentary Constituency, and in the case of any other seat (i.e. a seat which is not reserved), he is an elector for any Parliamentary Constituency.
- ▶ A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by election unless he is an elector for any Assembly Constituency in that State

Disqualifications

Constitution of India

Art. 102, 191

1. Alien
 2. Minority
 - 25 years for House of People and Leg. assemblies
 - 30 years for Council of states
 3. Insolvency
 4. Lunacy
 5. Disqualified for defection under Tenth schedule
- 

Under R. P. Act, 1951

I Conviction for offences (S.8)

1. 6 years from date of conviction
2. Continuing further for 6 years from date of release
3. Conviction on corrupt practice
4. Conviction for electoral offences

II Holders of office of profit under Government

III Dismissal for corruption or disloyalty

IV Contract with Government (S.9A)

V Holding of office under Government Company

VI Failure to lodge accounts of election expenses (S.10A)

CORRUPT PRACTICES IN ELECTION

What are the corrupt practices?

- ✘ Bribery - S.123(1)
- ✘ Undue Influence – S.123(2)
- ✘ Appeal on ground of relegion-S.123(3)
- ✘ Promotion of enmity or hatred-S.123(3A)
- ✘ Propagation of sati-S.123(3B)
- ✘ Publication of false statement-S.123(4)
- ✘ Hiring vehicles for conveyance of electors-S.123(5)
- ✘ Incurring expense in contravention of S.77-S.123(6)
- ✘ Obtaining assistance of govt.servant-S.123(7)

Bribery S. 123(1)

Any gift, offer or promise-

- × By a candidate or his agent or by any other person
- × with the consent of a candidate or his election agent
- × Of any gratification, to any person
- × With the object, directly or indirectly of inducing-
- ×
- × (a) a person to stand or not to stand as, or to

or as a reward to-

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature ;

or

(ii) an elector for having voted or refrained from voting

✘ Gratification – not restricted to **pecuniary gratification**, includes all **entertainment, all forms of employment for reward** – does not include **bonafide expenses**.

-
- ✘ Gratification means satisfaction. It means something valuable which is calculated to satisfy a person's aim, object or desire, whether or not that is estimable in terms of money.
 - ✘ A mere offer to help in securing employment to a person with a named or unnamed employer would not amount to gratification.(Mohan singh v. Bhanwarlal)
 - ✘ However employment may amount to bribery if it is offered in return for votes.

Offer of money-

✘ **Rajendra prasad v. Sheel Bhadra** AIR 1967

offer of money without specifying the amount will be bribery

Minister sanctioning discretionary grants-

Ghasi Ram v. Dal singh

Dhartiprakar v. Rajiv Gandhi

Bribery and charity

Charity(a gift or promise of gift for public purpose) amounts to bribery when

- 1.gives satisfaction to an individuals or individuals
- 2.Gift or promise is of some value
- 3.Made with corrupt motive of inducing directly or

✘ **Dhartipakar v. Rajiv Gandhi**

✘ Speeding up construction of amethi railway station – challenged as act to persuade voters to cast votes in favour- held would not amount to corrupt practice.

✘ **Tirnath Singh v. Bachitar singh**

✘ Minister for local Administration had granted good work allowance for all sweepers at @ Rs.5 per month on the eve of election. All beneficiaries were voters of his constituency – election set aside.

✘ **Mangallal v. H V Kamath**, the returned candidate while addressing a public meeting of voters in a village , heard complaints of scarcity of water – he selected a site and promised that he will construct a well after election – held it will amount to bribery.

Treating-

✘ way of getting at the voters through their mouth

✘ Braj Bhushan v. Anand Brahma

distribution of sweets to school children – not bribery

C. Narayana swami v. C K Jaffer sheriff

Mass feeding – not corrupt practice unless object is to induce participants to vote.

Entertainment

Muralidhar Reddy v. Pulla Reddy

Drama arranged by candidate as part of election campaign- not corrupt practice.

✘ Dev Anand v. Bhagvan das

✘ The respondent approached one Sant Singh sethi with a view to getting his support and later paid Rs. 501/- to punjabi gurdwara . After such payment an ' akand path was held in Gurdwara where one Kuldip Singh a member of the Gurdwara executive committee announced that the akand path had been performed for wishing success to the respondent and securing the support of sikh voters for his election. Held donation meritorious- but at the time of election amounts to bribery.

UNDUE INFLUENCE S. 123(2)

Any direct or indirect **Interference** or attempt to interfere on the part of the candidate or his agent, or of any other person with consent of the candidate or his election agent,

with the **free exercise of any electoral right:**

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, **with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community.**

(ii) induces or attempts to induce a candidate or

- ✘ Mere **declaration of public policy, or a promise of public action**, or the mere exercise of a legal right without intent to interfere with an electoral right- not undue influence
- ✘ Influence if allowed to work for itself will not be a corrupt practice. Pressure is the essence of undue influence.
- ✘ Legitimate exercise of influence by a political party or an association or a religious leader will not ipso facto be considered undue influence. Passing a resolution in support of a candidate or asking members to vote for him would be legitimate exercise of influence unless there is

Spiritual intimidation

✘ The appearance of a religious dignitary in support of a party or its candidate will not by itself amount to undue influence. In such cases the question for consideration is whether the religious leader has surpassed the bound of legitimate use of his character, position and power with reference to the class of voters sought to be influenced. Undue influence can be assumed if religious position is used to excite superstitious fears or pious hopes.

✘ **Ram Dayal v. Sant Ram**

Firman issued by head of a sikh sect threatened followers with spiritual consequences in this world as well as world to come undue influence

Bhagwan Dutt v. R.R gupta

Threat of Social ostracism

Ministers in election campaign –not undue influence

Shiv Kripal Singh v. V V Giri

- ✘ It was alleged that the supporters of VV giri with his consent published a pamphlet in which serious allegations were made about the opposite candidate Mr. Neelam Sanjeeva Reddy. It was stated that if Mr. Reddy were elected Rashtrapati Bhavan will be a center of vice and immorality.- no evidence of knowledge or consent– hence rejected

Appeal on ground of religion S.123(3)

- ✘ The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent
 - To vote or refrain from voting for any person on the ground of:
 - his religion,
 - race, caste, community or language
 - the use of, or appeal to religious symbols
 - the use of, or appeal to, national symbols (the national flag or the national emblem)

✘ An appeal that voting in a certain manner would be a religious act and failure to vote in that manner would be against religion would amount to an appeal on the ground of religion. A reference to prophets or religion or deities venerated in a religion will not by itself be an appeal on ground of religion. But if illiterate or orthodox voters are told that their religion will be in danger or that they will suffer miseries or calamities unless they cast their votes for a particular candidates would be an appeal on ground of religion. It is not necessary that there should be a conflict of religion between the rival

Appeal on ground of caste

✘ **Lachi ram v. jamuna prasad**

Appeal on ground of chamar caste- contention of professional brotherhood rejected

Mere mention during campaign – not enough

Abdul Hussain v. Shamsul Huda

Projection of candidate that he was an offspring of mixed marriage between Hindu and Muslim before Hindu and Muslim community – held not corrupt practice

Ramesh yeshwant praboo v. Probhakar Kunte

Mere reference to Hindutwa or Hinduism

Appeal to religious symbols

✘ Abdul Rahiman v. Radha Krishna

Symbol Bullock of the candidate – described as vehicle of shiva and voting for him would be voting for shiva.- corrupt practice

Religious symbol- religious significance

Effect in minds of public or section of it.

Promoting enmity or hatred s.123 (3a)

- ✘ The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on
- ✘ grounds of **religion, race, caste, community, or language,**
- ✘ by candidate or his agent or any other person with the consent of a candidate or his election agent
- ✘ for the **furtherance of the prospects** of the election of that candidate or for **prejudicially affecting** the election of any candidate.

Mohammad Koya v. Muthu koya

Publication of false statement s.123(4)

The publication by a candidate or his agent or by any other Person, with the consent of a candidate or his election agent

Of any **statement of fact** which is **false**, and which he either **believes to be false or does not believe to be true**,

in relation to the **personal character or conduct of any candidate**, or in relation to the **candidature**, or withdrawal of any **candidate**,

statement reasonably calculated to

Essentials

- ✘ 1. Publication
- ✘ 2. By a candidate or his agent or with his consent
- ✘ 3. Statement of fact in relation to personal character of the candidate or in relation to his candidature or withdrawal.
- ✘ 4. The statement is false
- ✘ 5. The statement is believed to be false or not believed to be true
- ✘ 6. The statement is reasonably calculated to prejudice the prospects of candidate's election.

Hiring of vehicles s.123(5)

- ✘ The **hiring or procuring any vehicle** or vessel
By a **candidate or his agent** or by any other person with the consent of a candidate or his election agent

For the **free conveyance of any elector** (other than the candidate himself, the members of his family or his agent)
- ✘ **To or from any polling station.**
use of any public transport vehicle or railway

✘ Essential Ingredients:

- ✘ 1. The hiring or procuring of a vehicle by a candidate or his agent or by any other person with his consent.
- ✘ 2. The hiring or procuring of the vehicle must be for the conveyance of the voters to and from the polling station.
- ✘ The conveyance of voters is free from any charge.

Expenditure in Excess S.123 (6)

- ✘ Election expense S. 77
- ✘ 1. Every candidate should keep **separate and correct account** of all expenditure in connection with the election incurred or authorized by him or his election agent. S. 77(1)
- ✘ 2. The accounts should all particulars as might be prescribed.
- ✘ 3. The total of the said expenditure shall not exceed the prescribed amount.
- ✘ If the candidate incurs or authorizes expenditure in excess of prescribed amount in contravention of s 77(3) he commits corrupt practice under

Obtaining assistance of govt. servant s.123(7)

obtaining or procuring or abetting or attempting to obtain or procure

By a candidate or his agent or, by any other person, with the consent of a candidate or his election agent

Any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, **from any person in the service of the Government**

and belonging to any of the following classes, namely:

(a) gazetted officers; b) stipendiary judges and

- ✘ The requirements of S.123(7)
- ✘ 1. The pleadings should disclose the mode of assistance, measure of assistance, and all the facts pertaining to assistance.
- ✘ 2. The form or kind of assistance obtained or attempted to procure by the candidate for promoting the prospects of his election should be disclosed.
- ✘ 3. The petitioner should state with exactness, the time and manner of assistance and the persons from whom the assistance was obtained.
- ✘ Dharti prakar v. Rajiv Gandhi, Hardwari Lal v. Kanwal Singh

Booth capturing s.123(8) and s.135 a

✘ "booth capturing" includes,

✘ (a) seizure of a polling station or a place fixed for the poll by any person or persons making polling authorities surrender the ballot papers or voting machines and doing of any other act which affects the orderly conduct of election;

✘ (b) taking possession of a polling station or a place fixed for the poll by any person or persons and allowing only his or their own supporters to exercise their right to vote and prevent others from free exercise of their right to vote ,

Electoral offences

✘ 1. IPC Offences

Bribery – S.171B

Undue influence – S.171 C

Personation – S.171 D

Making and publishing false statement- S171 G

Making illegal payments – S171 H

✘ 2. Offences under RP Act 1950

False Statements

Breach of official duty

Electoral offences contd.-

✘ Offences under RP Act 1951

Promoting enmity between classes – S.125

Prohibition of meetings at zero hour – S.126

Disturbance at election meetings – S.127

Restriction on printing of posters – S. 127 A

Maintenance of secrecy of voting – S.128

Officers at election influencing voters – S.129

Canvassing in or near polling station – S.130

Disorderly conduct in or near polling station- S.131

Electoral offences contd.

- ✘ Misconduct at polling station – S.132
- ✘ Failure to observe procedure – S.132A
- ✘ Illegal hiring or procuring of conveyance – S 133
- ✘ Breach of official duty – S.134
- ✘ Government servants as election agents – S.134 A
- ✘ Removal of ballot papers – S.135
- ✘ Booth capturing S.135 A



Thank you