

Electoral Adjudication and Reforms: An Overview



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Abstract

Election constitutes the bedrock and plays a very significant role in a democratic system. The basic problem is how to conduct the elections in an impartial manner. The influence of money power in election is a curse of the democratic process. To influence electors, attempts usually made by use of money such as bribery, excessive expenditure and conveyance of voters etc. These kinds of corrupt practices and other vices of electoral system viz., religion, communalism and casteism cause damage to very foundation of democracy. Legal system plays a very significant role in this connection. There are many provisions incorporated to curb the corrupt practices in election in various statutes especially in the Representation of People Act, 1951 and the Indian Constitution itself. These legal provisions serve the important purpose of prescribing detailed rules regarding the system of election, delimitation of constituencies, structures, powers and the functions of the authority charged with the duty to conduct election, qualifications, and disqualifications of electors and candidates, manner of the preparation of electoral rolls, procedure for conduction of elections, declaration of results and the forum and procedure for remedying the grievances in connection with elections. While determining the nature and scope of each provision, the Indian Judiciary has played an important role and thus in practice, the dimension and parameter of each provision is that which is observed by Judiciary. Legislature and the Election Commission have also played a vital role for the same time to time to strengthen our democratic values. First and foremost need to meet out the corrupt practices in elections through the social awareness and legal reforms.

Keywords: Communalism, Democracy, Legal Reform, Election, Corrupt Practice, Void, Petition, Electoral, Cost.

Introduction

Free and fair elections are the fountain-spring of a healthy democratic set up. Hence electoral administration must be free from pressure and interference of the executive and legislature. The declaration of result is sometimes questioned by the defeated candidates on one pretext or the other. Generally allegations of corrupt practice in elections happen to be afterthoughts mischievously conceived after the elections when one finds that the results declared are not to one's satisfaction. To inspire public confidence in the verdict of ballot box, the founding fathers of the Indian Constitution provided for a fair and speedy adjudication of election petitions. Part VI of the R. P. Act, 1951 provides for settlement of election disputes.

Objectives of the Study

The main objectives of the study is to analyse the legal and constitutional provisions relating to the powers of Election Commission in India; to evaluate the role of judiciary in settling the disputes relating to electoral malpractices and other corrupt practices; to study the recent trends of Election Commission in curbing electoral malpractices and to identify further electoral reforms to strengthen the Election Commission of India in order to fill the gaps between Law and Practice.

Review of the Literature

Periodical elections are an integral part of the democratic process. It is through elections that the citizens get an opportunity for involment and participation in public affairs. An election system that is free is *sine qua non* of the survival of democracy. In the system of constitutional government the legal system plays a pivotal role for ensuring impartial elections. For that purpose election laws are enacted. In order to prevent malpractices in elections a book entitled, "Corrupt Practices in Election Law (1996), Eastern Book Company, Lucknow" has been written by K.C.Sunny. Under this book the contours of statutory provisions defining corrupt

practices, are determined by judicial interpretation. Section 123 of the Representation of the People Act, 1951, defining corrupt practices in election has generated hundreds of judicial decisions in which the issue of interpretation of the provision was involved. The author is of view that any study which is intended to examine the effectiveness of law in preventing corrupt practices must necessarily be concerned not merely with the provisions of the statute but with judicial decisions also.

Method of the Study

To accomplish the present study analytical method has been used with the help of relevant case law and literature available in the form of report, journals, commentaries, cases and data prepared by various agencies working against corrupt practices in election so that a healthy democratic environment in India may be created.

Presentation of Election Petitions

Section 80 lays down that no election shall be called in question except by an election petition presented in accordance with the provisions of this Part. This provision has its genesis in the Constitution of India. Article 329 (b) is the provision which runs as, "No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature". It is observed that there is some difference between constitutional provisions and the provisions in Section 80 of the R. P. Act, 1951. The legislature is an appropriate authority to make any law prescribing the authority and the manner for the presentation of an election petition. Evidently, Parliament has got the right to prescribe the authority and the manner for Parliamentary election and a State Legislature has got similar powers for elections unto itself.¹ This is made especially clear by the provisions of Articles 327 and 328 which are as follows :

Article 327 says that subject to the provisions of this constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

Article 328 says that subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to or in connection with the elections to the House or either House of Legislature of the state including the preparation of electoral rolls and all other matters necessary for securing the due Constitution of such House or Houses. But the powers of the State Legislature in this respect are postponed to those of the Parliament also by Article 328 in so far as provision in that behalf is not made by Parliament. As Section 80 of the R. P. Act has made a provision which applies to the

elections to the State Legislatures also, the latter's powers in this respect are not exercisable.² Pursuant to the provision under Article 329, the R. P. Act, 1951, has made provisions relating to election petitions.

High Court to Try Election Petitions

An election may be called in question by presenting an election petition to the High Court within the local limits of whose jurisdiction the election to which the petition relates has been held.³ An election petition calling in question an election may be presented by any candidate at such election, or any electors⁴ who was entitled to vote at such election. The petition must be presented within forty-five days from, but not earlier than, the date of election of the returned candidate. Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.⁵ If the requirements are not followed, it would result in the dismissal of the election petition without any trial as provided by Section 86. Interpreting Section 81(1) of the Act, it has been held by the Madhya Pradesh High Court in *Ramanlal Premy v. Shiv Pratap Singh*⁶ that the presentation of the election petition ought to be made by the candidate himself though the words "himself" or "personally" have not been incorporated in the section. The words "candidate at such election" particularises the person; where the petition was presented by the candidate's counsel and the candidate waited outside or was somewhere away, the presentation of the petition could not be construed as having been made in his immediate presence. As this was tantamount to non-compliance of the provisions in Section 81(1), the petition deserved to be dismissed. The Court opined in this connection that the provisions of the Civil Procedure Code could be invoked only in the absence of procedural provisions in the Act or the rules framed under its authority. As the manner of presentation of an election petition has been provided for in the Act itself its scope cannot be extended or enlarged by importing into its provisions something from the Civil Procedure Code or from the general law.

In *Chandrakant Shukla v. Maharaja Martand Singh*⁷ the question of an election petition being barred by limitation was discussed. As already noted Section 81(1) of the Act provides that a petition calling in question any election may be presented to the High Court within forty-five days from the date of election of the returned candidate. Section 67-A lays down that the date on which a candidate is declared by the returning officer to be elected to a House of Parliament or the Legislature of a State shall be the date of election of that candidate.

The scope of sub-clause (3) of Section 81 has also been a subject of judicial scrutiny in a large number of cases. One such pronouncement of the apex Court is *Satya Narain v. Dhruja Ram*.⁸ In the instant case the Punjab and Haryana High Court had dismissed Satya Narain's election petition on the preliminary ground that the appellant had failed to comply with the mandatory requirement of Section 81(3) of the Act inasmuch as the requisite number of

spare copies of the petition for the respondents were not filled along with the petition in the High Court. It was further held by the High Court that the said defect could not be cured subsequently even within the period of limitation prescribed for filing the election. The High Court further held that the spare copies were actually filed beyond the period of limitation.

The Supreme Court (Goswami, J., on behalf of himself and Jaganmohan Reddy, J.) opined that the Representation of the People Act, being a self-contained special law, the court had to seek answers to questions raised with the four corners of the Act and the power of the Court were circumscribed by its provisions. An election petition could not be equated with a plaint in the civil suit. The purpose of enclosing the copies of the election petition for all the respondents, the Court observed, was to "enable quick dispatch of the notice with the contents of the allegations for service on the respondent or respondents so that there is no delay in the trial at this very initial stage when the election petition is presented. If there is any halt or arrest in progress of the case, the object of the Act will be completely frustrated."⁹ The Supreme Court, therefore, held that the provision relating to the number of copies which should accompany the petition was a peremptory provision and that total non-compliance with the same would entail dismissal of the election petition under Section 86 of the Act. The Court also held that in the absence of any provision under the Act or the rules made there under, the High Court Rules could not confer upon the Registrar or the Deputy Registrar any power to permit correction or removal of defects in an election petition presented in the High Court beyond the period of limitation provided for under the Act.

It is clear that in construing the provision the Court has kept in the forefront the expeditious trial of the election dispute for the purity of election. And the very object of expeditious trial will be defeated if the presentation of the election petition should be treated casually permitting all kinds of devices to delay the ultimate trial. The purpose of the provision under Section 81(3) is to enable quick dispatch of the notice for service on the respondent or respondents so that there is no delay in the trial at this very initial stage when the election petition is presented. The legislature shows no mercy in case there is non-compliance of Section 81(3). It has rightly been concluded that "Section 81 (3) read with Section 81(1) is draconian in their severity".¹⁰

Parties to A Petition¹¹

A petitioner must join as respondents to his petition where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no further declaration is claimed, the returned candidate; and any other candidate against whom allegations of any corrupt practice are made in the petition.

The applicability of Section 82(b) was discussed by the Supreme Court in *Udhar Singh v. M. R. Scindia*.¹² The Court held that Section 82(b) in

clear, peremptory terms, obligations an election petitioner to join as respondent his petition, a candidate against whom allegations of the corrupt practice are made in the petition. Disobedience of this mandate, in the opinion of the Supreme Court inexorably attracts Section 86 which commands the High Court, in equally imperative language, to "dismiss the election petition which does not comply with the provisions of Section 82." It was further observed that the respondent cannot by consent, express or tacit, wait these provisions or condone a non-compliance with the imperative of Section 82(b). "Even inaction, laches or delay on the part of the respondent in pointing out the lethal defect of non-joinder cannot relieve the Court of the statutory obligation cast on it by Section 86, As soon as the non-compliance with Section 82(b) comes or is brought the notice of the Court, no matter in what manner and at what stage, during the pendency of the petition, it is bound to dismiss the petition in unstinted obedience to the command of Section 86".¹³

Contents of Petition¹⁴

An election petition: shall contain a concise statement of the material facts on which the petitioner relies; shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings.

Where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.¹⁵ The false statement of fact could be treated as corrupt practice. The Supreme Court in *Gadakh Y. v. Balasaheb Vikhe Patil*¹⁶ gave certain guidelines for determining "statement of fact" under Section 123(4) of the R. P. Act, 1951. In this case, the respondent Vikhe Patil filed an election petition at the Aurangabad Bench of Bombay High Court challenging the election of the appellant Godakh who had been duly elected from Ahmed Nagar constituency as a member of Lok Sabha. It was alleged by respondent that certain false statements were made relating to his personal character and conduct by the appellant and the then Chief Minister of Maharashtra Mr. Sharad Pawar. They have committed corrupt practice under Section 123(4) of the R.P. Act.

Relief That may be Claimed¹⁷

A petitioner may claim a declaration that the election of the returned candidate is void and may, in addition, claim a further declaration that he himself or may other candidate has been duly elected.

Grounds for Declaring Election To Be Void¹⁸

An election petition may be presented on one or more of the following grounds:

1. That on the date of his election a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under the Constitution or the law;
2. That any corrupt practice has been committed by

- a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent;
3. that any nomination has been improperly rejected;
 4. that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
 - a. by improper acceptance of any nomination, or
 - b. by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
 - c. by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
 - d. by an non-compliance with the provisions of the Constitution or of the R. P. Act, 1951, or of any rules or orders made under that Act;

If in the opinion of the High Court a returned candidate has been guilty by an agent, other than his election agent of any corrupt practice, the High Court may not decide the election of the returned candidate to be void if it is satisfied-

- a. that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;
- b. that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practice at the election; and
- c. that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents.

Grounds For Which A Candidate Other Than the Returned Candidate May Be Declared To Have Been Elected¹⁹

If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion- that in fact the petitioner or such other candidate received a majority of the valid votes; or that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the High Court shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected. Thus, if any of the grounds under Section 100 is proved, the High Court will declare the election of the returned candidate void. If any of the grounds under Section 101 is proved, the High Court will after declaring the election of the returned candidate void, also declare the petitioner or such other candidate to have been duly elected.

Procedure before the High Court

Every election petition is tried by the High Court in accordance with the procedure laid down under the Code of Civil Procedure, 1908. However, this is subject to the provisions of the Representation of the People Act and the Rules made there under. The provision of the Indian Evidence Act, 1872, is

subject to the provisions of the R. P. Act, 1951. The High Court has been given power to refuse to examine any witness or witnesses if it is of the opinion that such evidence is not material for the decision of the petition or that it has been done on frivolous grounds or with a view to delay the proceedings.²⁰ In connection with evidence Section 93 provides that no document shall be in admissible in evidence on the ground that it is not duly stamped or registered. And Section 94 provides for maintaining the secrecy of voting, i.e., no witness or other person shall be required to state for whom he voted at an election. Reasonable expenses incurred by a witness may be allowed by the High Court.²¹ A witness shall not be excused from answering any question as to any matter relevant to a matter in issue in the trial of an election petition upon the ground that the answer to such question may criminate or may tend to criminate him, or that it may expose or may tend to expose him to any penalty or forfeiture. However, a witness who answers truly all questions shall be entitled to receive a certificate of indemnity from the High Court. Such an answer given by a witness shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in either civil or criminal proceeding. After a certificate has been granted, it may be pleaded by him in any court and shall be a full and complete defence to or upon any charge under Chapter IX A of the Indian Penal Code or Part VII of the R. P. Act (i.e. Corrupt practices and Electoral Offences) arising out of the matter to which such certificate relates. However, it shall not be deemed to relieve him from any disqualification in connection with an election imposed by the R. P. Act, 1951 or any other law.

In other words, the indemnity applies to any proceeding against the witness for any corrupt or illegal practices at or in relation to the election or for any illegal payment, employment or hiring so committed, or for the partner or clerk of an official, an agent in the conduct of or management of the election or for printing, publishing, posting or distributing election publications without; the printer's and publisher's name and address thereon or of making or entering into any agreement or undertaking for the corrupt withdrawal of an election petition. The trying court may stay the proceedings on production of the certificate and pay costs to such persons.²²

Decision of the High Court

Sections 98 and 99 prescribe the orders which the High Court can make at the conclusion of the trial of an election petition. Section 98 provides that the High Court shall make an order- (a) dismissing the election petition; or (b) declaring the election of all or any of the returned candidates to be void; (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

Effect of Orders of the High Court

Sub-section (1) of Section 107 lays down that the order shall take effect as soon as it is pronounced by the High Court, but if the losing side intends to file an appeal to the Supreme Court and makes an application for stay of operation of the order

under Section 116 (B), the High Court can grant the application and the stay, as also the Supreme Court can grant such stay after the appeal has been filed to it. In such a case the order of the High Court will not take effect till such stay order is vacated. Sub-section (2) of Section 107 makes special provision for validating the acts of the elected member upto the date when his election is declared void. Neither will the proceedings of the legislature be vitiated thereby nor will the member incur any liability or penalty because of such participation. This indemnity clause shows that no interim injunction will be issued by the High Court against an elected candidate prohibiting him from participating in the affairs of the legislature to which he has been elected.²³

Abatement of Election Petitions

An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners. Then an election petition abates, the High Court shall publish this fact as it may deem fit. Any person who might himself have been a petitioner desires he may be substituted as a petitioner within fourteen days of the publication of the notice of abatement. The substituted petitioner shall be required to furnish the statutory security and comply with the terms and conditions imposed by the High Court.²⁴ If before the conclusion of the trial of an election petition, the sole respondent dies or gives notice that he does not intend to oppose the petition or any of the respondents dies or gives such notice and there is no other respondent who is opposing the petition, the High Court shall publish this fact in the Official Gazette and thereupon any other elector/petitioner may apply for substitution within fourteen days of such publication, to oppose the petition.⁴⁶ He will, be entitled to continue the proceedings upon such terms as the High Court may think fit²⁵.

Costs and Security for Costs

Deposit of Security

At the time of presenting an election petition, the petitioner shall have to deposit in the High Court in accordance with the rules of the High Court a sum of two thousand rupees as security for the costs of the petition. during the course of the trial of an election petition, the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct.²⁶ Section 118 provides for the deposit of security by the respondents as the High Court may direct. Thus Sections 117 and 118 provide for deposits of securities for costs both by the petitioner and the respondent. This provision is intended to produce a salutary effect of discouraging frivolous petitions.²⁷ But it is not the petitioner alone who can present a frivolous petition, a frivolous defence may also be put up by other persons by seeking to be joined as respondents under Section 86(4). Candidates or persons who have already been made respondent by the petitioner are of course exempted from providing any security. The reason is that necessary parties must have been joined by the petitioner himself. If any other person wants to be joined of his own free will chances are that he may in the end be found to be unnecessary but as his

inclusion will occasion some costs it is reasonable that he should be put to some security for this. That is why persons applying for being added as respondents are also put to such security as the High Court may decide.²⁸

A question relating to the deposit of security was raised in *Chanan Lal Sahu v. Nanda Kishore Bhatt*²⁹ before the M. P. High Court. The petitioner prayed that the amount of security prescribed by Section 117(1) of the R. P. Act, 1951, be reduced from Rs. 2000 to Rs. 250 or in the alternative he be permitted not to make any deposit whatever. The High Court rejected the petitioner's application and pointed out that an election petition is neither an action at law nor a suit in equity, but a purely statutory proceeding unknown to the Common law and the Court possessed no common law powers independent of the statute.

Costs

Under clause (b) of Sub-section (1) of Section 99 of the R.P. Act, 1951 the High Court is required, at the time of making an order under Section 98, to also make an order fixing the total amount of costs payable and specifying the persons by and to whom costs should be paid. Section 121 provides for payment of costs out of security deposits and return of such deposits. Section 122 provides for execution of orders for costs. Section 119 provides that costs shall be in the discretion of the High Court but that where a petition is dismissed under clause (a) of Section 98, the returned candidate shall be entitled to the costs incurred by him in contesting the petition and accordingly the High Court shall make an order for costs in favour of the returned candidate. It means that it will not be open to the High Court to disallow costs to a successful returned candidate on any such ground as production of false evidence by the returned candidate and the like, on which ground, sometimes, costs are disallowed to a successful defendant in a suit.³⁰ In *Ram Phal v. Bramha Prakash*,³¹ it was observed that the question of awarding costs is, generally speaking, a matter left to the discretion of the court and unless such discretion has been exercised arbitrarily or contrary to the well recognised principles, it is not open to the court of appeal to interfere with it.

One of the contentions raised before the Supreme Court in *Lakshminarayan v. Returning Officer*,³² was concerning the costs awarded by the High Court to the second respondent. Supreme Court held that as there was no proof of any payment of fee to counsel by the returned candidate he was not entitled to the amount of Rs. 400 a day, the fee prescribed by the Bombay High Court for counsel; he was, however, held entitled to any other costs shown to have been incurred by him.

Above observation makes it clear that, the Court having the jurisdiction to try an election petition is the High Court. Section 81(1) of the Act provides that an election petition calling in question any grounds specified in Sub-section (1) of Section 100 and Section 101 to the High Court. The term "election petition" used in Section 81(3) is not defined in the

Act. However, it is well settled that other papers also, in addition to the petition, which form integral part of the petition, are to be included in the term "election petition".

It is apparent from clause (a) and (b) of Section 83 (1) that a election petition shall contain a concise statement of the material facts and also set forth full particulars of any corrupt practice. These two requirements are mandatory in nature. So, whenever there is an allegation of corrupt practice, the election petition shall contain a concise statement as to the material fact on which the petitioner relies and also must set forth full particulars of the corrupt practice alleged by the petitioner. If the material facts of the corrupt practice are stated, more or better particulars of the charge may be given later. The power of amendment is given in respect of particulars but there is a prohibition against an amendment which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

An election petition once filed cannot be abandoned or withdrawn by the petitioner of his sweet will. It may be withdrawn only by leave of the High Court. The abatement of election petition shall take place only on the death of a sole petitioner or of the survivor of several petitioners. Any person who might himself have been a petitioner desires he may be substituted as a petitioner within fourteen days of the publication of the notice of abatement by the High Court. The substituted petitioner shall comply with terms and conditions imposed by the High Court.

An appeal shall lie to the Supreme Court on any question (whether of law or fact) from every order made by the High Court under Section 98 or 99. Although the limitation period fixed is thirty days from the date of the order of the High Court, but the Supreme Court can extend this time. Before a person is entitled to maintain an appeal under Section 116-C, all the three conditions must be satisfied, First, that the subject - matter of the appeal is a conclusive determination by the High Court of the rights with regard to all or any of the matters in controversy, between the parties in the election petition. Secondly, that the person seeking to appeal has been a party in the election petition. Thirdly, that he is a 'person aggrieved', that is, a party who has been adversely affected by the determination. A perusal of judicial interpretation of Part VI of the Act shows that the courts have always kept in mind that the right to stand for election and the right to move for setting aside the election are not common law rights. These rights are conferred by statute and strict statutory compliance is necessary for enforcing them.

It has been seen that more often than not, appellants appear to take up issues which have been settled by judicial decisions. Perhaps what induces the litigant to proceed to appeal is the desire to exhaust all possible remedies. He may also feel that since two or more heads are fairer than one, he may have a better chance at the appellate stage. One wonders whether it will not make any difference in the attitude of the litigant, and incidentally some improvement in the administration of justice, if a collegiate bench of at least three judges hear and

adjudicate election disputes at the trial stage. This will undoubtedly help towards justice being manifestly seen to be done.³³

Election Commission on Electoral Reforms

Electoral reforms, as envisaged by the Election Commission, have a long and chequered history. Initially, the Commission used to make its recommendations for amendments to Election Law and procedure and electoral reforms through its Reports on General Elections brought out after the completion of each General Election. Most of these earlier suggestions for reforms mainly related to the changes to the electoral procedure found necessary on the basis of experience of the relevant General Election. No major or vital changes were proposed to the basic provisions of Election Law till 1970.³⁴

For the first time in 1977, a review of all recommendations made by the Commission earlier was undertaken and consolidated recommendations of the Commissions on electoral reforms, including both the unimplemented recommendations and fresh recommendations were sent to the Government of India on October 22, 1977. In 1982, the earlier recommendations were again reviewed thoroughly by the Commission on the basis of new developments and challenges thrown up at the General Elections held during the period 1980-82. The main recommendations which were reiterated with or without modifications are:³⁵ (I) Ban of defection; (II) Fresh delimitation of constituencies; (III) Creation of election fund; (IV) A new proposal to ensure same privileges and safeguards in the matter of Secretarial and staff of the Election Commission as are available to other Constitutional Bodies like Parliament, Supreme Court, Comptroller and Auditor-General of India and UPSC and make the expenditure of the Election Commission a charge on the Consolidated Fund of India; (V) The powers to be vested in the Election Commission to direct the State Governments to file a complaint in respect of any breach of official duty, by an officer in connection with the preparation or revision of electoral rolls and conduct of elections and initiation of criminal action which should be binding on the Government; (VI) A Law should be made (1) to define political parties, (2) to empower Election Commission to make regulations to deal with the matters like compulsory registration of political parties, compulsory maintenance of accounts and compulsory audit of accounts by an agency to be named by the Commission, submission of the periodical report to the Commission; (VII) Donation to the political parties to be regulated; (VIII) Security deposits should be doubled; (IX) Commission should be empowered to order fresh poll in case of destruction of ballot papers, ballot boxes, prevalence of coercion, intimidation and impersonation at the polling stations; (X) Law should be amended to empower the Commission to order repoll in the entire constituency or an Assembly segment of a Parliamentary constituency; (XI) High Court should be empowered to declare an election void if it is satisfied that there has been prevalence of bribery, undue influence, coercion and intimidation of voters on a large scale and Government machinery has been

abused or misused for the furtherance of the prospects of a candidate; (XII) Restoration of the legal provisions as existed before 1974 in connection with the incurring of election expenses by political parties, etc. for the furtherance of the prospects of a candidate.

Some of the important items which were not pressed by the Election Commission in this review were (a) Mixed system of election; (b) Lowering of voting age to 18 years; (c) Entrusting the Commission itself with the disposal of election petitions; (d) Direct subsidy to candidates; (e) Cash subvention to political parties.³⁶ In September, 1982 the Commission recommended holding simultaneous elections to the House of the People and the Legislative Assemblies of States, with a view to saving the colossal avoidable administrative and other expenditure incurred on account of holding of separate General elections. On the basis of the experience gained at the General election to the various Legislative Assemblies in 1982-83, the Commission again proposed certain further electoral reforms in September, 1983. Some of the important recommendations are:³⁷ (1) President's rule should be imposed in States simultaneously with the announcement of Assembly elections for avoiding the alleged misuse of official machinery by the ruling parties; (2) The Constitutional provisions contained in Article 324 (4) should be availed of to appoint Regional Commissioners; (3) Observers appointed by the Election Commission, be provided with statutory powers as in the case of Deputy Election Commissioner and Secretaries to the Commission; (4) The Election Commission be empowered to sanction penal action against the breach of official duty and to entrust the enquiry and prosecution in such cases to an independent organisation; (5) The Commission should have power to cancel poll in the entire constituency in certain contingencies; (6) The service voters should be allowed to vote by proxy at the polling station in which they have been ordinarily resident, but for their service; (7) Use of electronic voting machines; (8) Amendment to certain provisions to J & K law to bring it in line with that applicable to the rest of the country.³⁸ That is, the Election Commission be empowered to order repoll if it is necessitated in specified polling stations to ensure free and fair elections.

Conclusion

The election offences such as booth capturing, rigging, violence etc, are tried by the ordinary courts which are already overburdened. As a result expeditious disposal of election offences has become difficult one. The election offences are to be considered more serious than ordinary offences as they are posing a threat to the very existence of democracy. The persons involved in the election offences are in no way better than terrorists as both are posing a threat to the democratic process when the terrorists are tried under special laws by the special courts why not the election offenders be tried under special laws by the special courts. So, it is suggested that in order to curb violence in elections there is a need to establish special courts to try the offenders under special laws following a special

procedure. Election expenditure should be minimized, Communalization of politics should be curbed, Criminalization in politics must be curbed.

References

1. *Bhawani Sankar Chowdhary, The Law of Elections in the Indian Republic* 123-124 (1967).
2. *Id.* at 124.
3. *Sections 79(e) and 80-A of the R. P. Act, 1951.*
4. *Explanation to Section 81 says that an "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.*
5. *Section 81 clauses (1) & (3). R. P. Act, 1951.*
6. *AIR 1978 NOC 1982 (MP).*
7. *AIR 1973 SC 584.*
8. *AIR 1974 SC 1185.*
9. *Id.* at 1192.
10. *Virendra Kumar in Annual Survey of Indian Law* 243.
11. *Section 82, R. P. Act, 1951.*
12. *AIR 1976 SC 744.*
13. *Id.* at 749.
14. *Section 83, R. P. Act, 1951.*
15. *Samant N. Balakrishna v. George Fernandez*, AIR 1969 SC 1201. See also *Hardwari Lal v. Kanwal Singh*, AIR 1972 SC 515.
16. *AIR 1994 SC 678.*
17. *Section 84, R. P. Act, 1951.*
18. *Section 100, R. P. Act, 1951.*
19. *Section 101, R. P. Act, 1951.*
20. *Section 87, R. P. Act, 1950.*
21. *Section 96, R. P. Act, 1950.*
22. *B.S. Chowdhury, Op. Cit. at 144.*
23. *B. S. Chowdhury, Op. Cit. at 150.*
24. *Section 112 at 150.*
25. *Jagannath v. Jaswant Singh*, 9 E.L.R. 231.
26. *Section 117, R. P. Act, 1951.*
27. *B.S. Chowdhury, Op. Cit. at 159.*
28. *Ibid.*
29. *AIR 1974 M. P. 4.*
30. *G. L. Sriwastava, Law of Election Petitions* 479 (Vol. 2 1967)
31. *AIR 1962 Punj. 129.*
32. *AIR 1974 SC 66.*
33. *Joseph Minnatur in Annual Survey of Indian Law* 381 (1975).
34. *Election Commission of India First Annual Report 1983 at 79 (April, 1984).*
35. *Id.* at 80-81.
36. *Id.* at 81.
37. *Id.* at 83-84.
38. *The amendment in R. P. Act, 1951 on the lines of the provisions of the J & K R. P. Act, 1957 became essential when the Returning Officer of the Doda Assembly Constituency filed a writ petition against the decision of the Election Commission, since the Commission had set aside the poll-result announced by the R. O.; by its order dated 22 June 1983 on account of certain allegation of booth-capturing.*