



RELOOK OF REPRESENTATION OF PEOPLES ACT 1951 -NEED OF THE HOUR

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After we got independence the adult franchise was introduced to elect a responsible and representative government. The election commission was authorized by the constitution of India to hold general elections periodically in a free, fair and responsible manner.

The History of elections in India revealed some evils were in crept into the electoral process due to various reasons. Use of muscle and money power, violence, rigging, snatching of ballot boxes influence of religion and caste are becoming more and more a common feature in elections in India. Added to this there is criminalization of politics.

The deterioration of ethical standards among politicians, politician having nexus with criminals or hawala or having several criminal cases pending against them, influence of money in the elections, are some of the ills facing the modern electoral process.

With a view to conduct elections in a free and fair manner, and prevent electoral offences and various corrupt practices in elections. various offences were defined in chapter IX A of Indian Penal Code and disqualifications for membership and voting were provided under Representation of the People Act 1951.

Election offences under I. P. C 1860 broadly speaking comprise:

(i) bribery (Section 171-B), (ii) Use of undue influence (Section 171 C), (iii) (Section 171-B), (iv) in false statements (Section 171-G) , (v) illegal payments (Section 171-H), and (vi) failure to keep election accounts (Section 171-I).

However there is fundamental difference between offences under the Indian Penal Code 1860 and corrupt practices listed in the Representation of the People Act 1951.

The I.P.C 1860 Chapter IX-A declares certain acts of candidates and voters as offences in the electoral process. It first defines them and then makes them punishable. Similarly the Representation of the

People Act 1951 declares certain acts of candidates as "corrupt Practices", Resort to one or more of them by a candidate in an election is prohibited.

I. P. C 1860 Offences and corrupt Practices:

There is fundamental difference between offences under the Penal Code and corrupt practices listed in the Representation of the People Act. For any of the offences under the Code the "accused" is penalized with imprisonment or fine or both, while under the Representation of the People Act 1951. For any of the offences under the Code the "accused" is penalized with imprisonment or both, while under the Representation for the People Act on Proof of indulgence in any corrupt practice, the election of the candidate shall be set aside under Section 100.

Among to Election Commission in India which issued guidelines in 1991, the following are corrupt practices during elections:

- a. Bribing a person to induce him/her to stand or to stand as a candidate
- b. Being a voter for casting or not casting hi/her vote for a particular candidate.
- c. Interference with free exercise of anybody's electoral right.
- d. Threat with injury of any kind including social ostracism, excommunication divine displeasure or spiritual censure.
- e. Appeal on ground of religion, caste, community or language or the use of religious or national symbols.
- f. Attempt at inciting enmity or hatred between different classes on grounds of religion, caste, community or language.
- g. Propagation or glorification of Sati.

- h. Publication of false statement about personal character and conduct of any candidate.
- i. Hiring of procuring of vehicles for free conveyance of voters.
- j. Incurring of election expenditure by a candidate in excess of prescribed limit.
- k. Booth Capturing.

Commission of any corrupt practice will result in election being declared void. The person concerned will also be disqualified for future elections up to 6 years and can also be prosecuted.

Electoral Offences:

The following are the electoral offences:

- a) Prompting enmity between classes on grounds of religion, race community or language.
- b) Convening, holding or attending any public meeting during 48 hours before the end of poll.
- c) Causing disturbance at election meetings.
- d) Printing of election pamphlets, posters, etc., without printers / publisher's name and address.
- e) Violation of maintenance of secrecy of vote.
- f) Influencing of voting by official connected with conduct of elections and police personnel.
- g) Canvassing within 100 meters of a polling-station or failure to obey the lawful directions of the presiding officer.
- h) Disorderly conduct and disturbance in or near polling station, including use of loudspeakers, etc.
- i) Misconduct at the polling station or failure to obey the lawful directions of the presiding officer.
- j) Illegal hiring or recurring of vehicles for conveying voters to and from polling stations.
- k) Unlawful removal of ballot papers from polling stations.

- l) Booth capturing.
- m) Fraudulent insertion of anything in the ballot box other than a ballot paper or unauthorized supply of ballot paper, etc.

Those found indulging in any of the above illegal acts are liable to imprisonment extending to 3 years or fine or both.

Breach of official duty in regard to elections:

- a. Breach of official duty in connection with preparation, revision or correction of electoral roll or the inclusion of any entry in or from the roll.
- b. No maintenance of secrecy of voting of voting.
- c. Any acts of officers at election for the furtherance of the prospects of the election of a candidate.
- d. Breach of official duty assigned in connection with conduct of elections.
- e. Acting as election agent, polling agent or counting agent by government servants.
- f. Acts of booth capturing committed by a person in the service of the Government

Punishment for breach of official duty is imprisonment up to 3 years and fine.

Bribery at an election:

Section 171-B defines bribery at an election as under: Whoever gives gratification to any person with the object of

- (a) (i) including him or any other person
- (ii) To exercise any electoral right, or
- (iii) Of rewarding any person for having exercised any such right, or
- (c) (i) accepts for himself or for any other person any gratification as reward for
- (ii) Exercising any electoral right or inducing or attempting to induce
- (iii) Any other person to exercise any such right-Commits 'bribery at an election'

However declaration of public policy or a promise of public action shall not be an offence under this section.

Offering money to a rival candidate for withdrawing his candidature is bribery at an election but payment of election expenses to a candidate is no bribery.

Penalties for Offences against Elections:

According to Section 171-E punishment for the offence of bribery (Section 171-B) is imprisonment up to one year or fine or both Bribery by treating is punishable with fine only.

The offence is not cognizable, bailable, not compoundable and triable by a first class magistrate or a metropolitan magistrate.

Section 171-F punishes *undue influence* or *personation* at an election (Sections 171-C and 171-D). *Mens rea* is an ingredient in the offence under Section 171-F and where corrupt intention is absent, the offence of *personation* cannot be committed. The punishment is of imprisonment upto one year or fine or both.

The offence of *undue influence* at an election is not cognizable while the offence of *personation* at an election is cognizable. Both the offences are bailable and triable by a magistrate of the first class.

But these punishments are very less and the constitutional review committees have several suggestions including enhancement of punishments for electoral offences. It also suggested that the limit for election expenditure should be increased as the, inflation rates are very high.

In Section 171-A clause (b) is suggested to be amended so as to include "not to withdraw" one's candidature in the definition of an 'electoral right'.

There is also an urgent need to increase the punishment of imprisonment in sections 171-E and 171-F, which should be enhanced from one year to two years. Punishment for the offence in Section 171-G is also to be enhanced from fine only to imprisonment up to two years with fine or with both. Similarly punishment for the offence in Section 171-H is enhanced from fine up to Rs. 500/- to imprisonment up to two years, or fine or both. In conformity with the amendment made in Section 77 of the Representation of the People Act 1951, that the expenses incurred by a political party to its candidates should be excluded.

Thus Election Commission from time to time issued various guidelines regarding corrupt practices during elections, electoral offences and breach of official duty in regard to elections. Moreover several commissions were appointed by the Central Government to examine various mechanisms to prevent the electoral offences.

In addition, there are fifteen electoral offences defined by the R. P. Act Viz., promoting enmity between classes in connection with election, convening a public meetings in contravention of law, disturbances at election meetings, printing of pamphlets or posters without observing the formalities prescribed by law, violating the law governing the secrecy of voting, assistance by officers on election duty for furthering the prospects of election of candidate, canvassing in or near polling station, failure to observe procedure for voting, illegal hiring or providing of conveyance at elections, breaches of official duty in connection with election, government servant acting as election agent, polling agent or counting agent, removal of ballot papers from polling station, and booth capturing.

CONVICTION AND ELECTION LAW

A constitution bench of the Supreme Court has in *K. Prabhakaran v. P. Jayarajan and Ramesh Singh Dalal v. Nafe Singh*¹ has rendered a momentous decision by a common judgment, which will have far reaching consequences as regards election law in our country. The decision has in a way given a tailspin to the election law as it has overruled two of its earlier judgments in *Shri Manni Lal (Manni Lal v. Parmai Lal)*,² and *Vidya Charan Shukla (Vidya Charan Shukla v. Purshottam Lal Kaushik)*,³.

The idea underlying article 191 of the Constitution⁴ and section 8(3) of RPA is to ensure purity and

1 (2005) 1 SCC 754

2 (1970) 2 SCC 462

3 (1981) 2 SCC 84.

4 Article 191 of the Constitution lays down certain disqualifications for candidates wanting to stand for election to the legislative assembly or legislative council of a state. Accordingly, a person shall be disqualified for being chosen as and for being a member of the legislative assembly or legislative council of a state. . (e) if he is so disqualified by or under any law made by Parliament.

probity in public life and to prevent criminalization of politics. Those who break the law should not make either houses of Parliament or the state legislature, as the case may be.

Sub-section (4) of section 8, however, is a saving clause which provides that if on the date of incurring disqualification a person is a member of a house, such disqualification shall not take effect for a period of three months from the date of such disqualification.

The purpose of this saving clause appears to be to enable the convicted person to file an appeal or revision within that period and to get the disqualification deferred until such appeal or revision is disposed of by the court.

The constitution bench⁵ framed three questions for decision as under:

- i. Whether an appellate judgment of a date subsequent to the date of election and having a bearing on conviction of a candidate and sentence of imprisonment passed on him would have the effect of wiping out disqualification from back date if a person consequent upon his conviction for any offence and sentenced to imprisonment for not less than two years was disqualified from filing nomination and contesting the election on the dates of nomination and election?
- ii. What is the meaning to be assigned to the expression "a person convicted of any offence and sentenced to imprisonment for not less than 2 year" as employed in sub-section (3) of section 8 of the RPA? Is it necessary that the term of imprisonment for not less than 2 years must be in respect of one single offence to attract the disqualification?
- iii. What is the purport of sub-section (4) of section 8 of RPA? Whether the protection against disqualification conferred by sub-section (4) on a member of a house would continue to apply though the candidate had ceased to be a member of Parliament or legislature of a state on the date of nomination or election?

To decide the first question the court had to perforce review the two decisions in *Shri Manni Lal* and *Vidya Charan Shukla*. In the former case the petitioner filed nomination for election to the

5 (2005) 1 SCC 754.

UP legislative assembly on 9-1-1969, the last date filing nominations. Two days later, *Parmal Lal* was sentenced to rigorous imprisonment for ten years under section 304 of the IPC. On 16-1-1969 he filed an appeal in the high court against his conviction. *Parmal Lal* was declared elected on 11-2-1969. His election was challenged on 30-9-1969. When the election petition against him was pending, the high court acquitted him of the offence under section 304. The judgment in the election petition was delivered about a month later, on 27-10-1969.

Reviewing the facts, the Supreme Court held that the acquittal of the respondent in appeal had the effect of completely wiping out the conviction.

An election petition is not a continuation of election proceedings. The court, accordingly, overruled the decisions in *Shri Manni Lal* and *Vidya Charan Shukla* as not laying down the correct law.⁶ The first question, was thus answered in the negative by the court.

What is the exact meaning to be assigned to the expression "sentenced to imprisonment for not less than 2 years" in section 8(3) of the RPA, was the second question to be decided by the court. Whether a person charged with several offences and held guilty under various provisions of the IPC and sentenced to varying terms of imprisonment, individually not exceeding two years but collectively or taken together exceed two years would attract the disqualification envisaged under the Act? (On this point the constitution bench was not unanimous. RC Lahoti CJ, Shivraj V. Patil, BN Srikrishna and GP Mathur JJ formed the majority. KG Balakrishna J dissented and wrote a dissenting judgment). In this context section 31 of the Cr PC is relevant:

31. Sentence in cases of conviction of several offences at one trial

(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code, sentence him for such offences, to the several punishments, prescribed therefore which such Court is competent inflict; such punishments when consisting of imprisonment to commence the after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

6 *Sarat Chandra Rbha v. Khagendranath Nath*, (1961) 2 SCR 133 and *B. R. Kapur v. State of Tamil Nadu*, (2001) 7 SCC 231 were referred.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason of only of the aggregate punishment for the several offences being in excess of the punishment, which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

(3) Provided that (a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years; (b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence,...

(4) For the purpose of appeal by a convicted person the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

The court has the power to convict a person to varying terms of punishments as per the offences proved. The court can direct these sentences to run concurrently or consecutively, i.e., one after the other. According to the majority view, in the case of the former it is the longest of the several terms of imprisonment and in the case of the latter it is the total term of imprisonment which shall be taken into consideration for the purpose of deciding whether the sentence of imprisonment is for less than two years or not. Also in the case of sentences running consecutively the total term of sentence shall not be in excess of the punishment that can be awarded by the court since for the purpose of appeal it is the aggregates of the consecutive sentences that shall be taken into consideration to decide whether the Court has gone beyond its power. The same principle is to be applied under section 8(3) of the RPA to determine disqualification. The disqualification is no start from the date of conviction and is to continue to operate for a further period of six years from the date of his release from imprisonment. Whether the person has been actually taken into custody to undergo the sentence of imprisonment is immaterial as the person could be out on bail, abscond, or get the sentence suspended under section 389 Cr PC.

It was submitted by the senior counsel for the respondent in Prabhakaran that the phrase "any offence" in section 8(3) should be interpreted to mean a single offence and unless and until the term imprisonment for any one of the offences out of the several offences for which the accused had been convicted and sentenced was two years or more, the disqualification enacted therein would not be attracted. It was also submitted that section 8 of the RPA being a penal provision should be construed strictly.

The majority (the judgment was written by RC Lahoti, CJ) held that the word 'any' may have one of the several meanings, according to the context and the circumstances. It may mean 'all'; 'each'; 'every'; 'some'; or 'one or many out of several'. The word 'any' may be used to indicate the quantity such as 'some', 'out of many', 'an infinite number'. It may also be used to indicate quality or nature of the noun which it qualifies as an adjective such as 'all' or 'every'...⁷

According to the majority the word 'any' in section 8(3) has been used as an adjective qualifying the word 'offence' to suggest not the number of offence but the nature of the offence. A bare reading of sub-section (3) shows that the nature of the offence included in sub-section (3) is 'any offence' other than any offence referred to in sub-section (1) or sub-section (2) of section 8. The use of adjective 'any' qualifying the noun 'offence' cannot be pressed into service to countenance the submission that the sentence of imprisonment for not less than two years must be in respect of a single offence. ⁸ (Supra note 1 at 779-80.)

In a forceful dissenting Judgment K.G. Balakrishnan J disagreed with the interpretation of section 8(3) given by the majority. Disagreeing with the argument of the counsel for the appellant that it is the total period of the sentence on various counts which is material for disqualification, the judge held that the word "any" used in section 8 (3) of the Act should not be construed so as to mean "more than one" or "all" or in a sense of plurality. According to him it was difficult to construe the words "not less than two years" used in section 8(3) by giving emphasis to the total period of imprisonment that a convict may undergo if all the periods of imprisonment for various offences are put together, when it is ordered to run consecutively. ⁹

The words in the provision are to be interpreted strictly and if only the person squarely comes within the four corners of the ordinary meaning of the words used in the section, the disqualification could be applied against him. If he has not been convicted for any offence, for the election. It is the gravity of the offence that matters and not the conviction for various minor offences and the total

7 (See the Law Lexicon, P. Ramanatha Aiyar, second Ed. , at 116. *Shri Balaganesan Metals v. M. N. Shanmugham Chetty*, (1987) 2 SCC 707 was also referred to)

8 (2005) 1 SCC 754.

9 Ibid

period of two year or more calculated by putting together all sentences. According to the judge, in order to tackle the menace of criminalization of politics the court should not interpret the words in a very expansive manner so as to include within its ambit the persons who are strictly not coming within its purview, especially when the disqualification is not only from contesting the election but is to continue for a further period of six years since the release. He, accordingly, upheld the decision of the high court and dismissed the appeal.

It is submitted that the view taken by Balakrishnan J seems to be more logical than the majority view. A distinction can be drawn between the words used in section 8 sub-section (1) on the one hand, and those used in sub-section (3) on the other, sub-section (1) of section 8 referring to disqualification speaks of conviction for 'an offence' by a person and sub-section (2) (c) and (d) refer to the words 'any provisions' of the Act concerned. Sub – section (3) indicates 'one out of many' and the 'disqualification' refers to sentence for 'any one offence' and not to many offences'. If the intention of the legislature was to the contrary the word used in sub-section (3) would have been 'offences' instead of the word 'offence'.¹⁰ This view can be further buttressed by referring to the definition of the word 'offence' as occurring in various legislations: "a thing made punishable by this code"¹¹ "any act or omission made punishable by any law for the time being in force."¹² Thus, the word 'offence' as used in section 8(3) should refer to a single offence and not to a series of offences. Also when there are neither guidelines laid down nor any judicial precedents for the magistrate to follow as to when can it be ordered that the sentences should run concurrently or cumulatively, it is safer to look at the sentences individually to decide the issue of disqualification, lest the court run the risk of deciding the issue arbitrarily. In the instant case since the respondent was not convicted for more than two years on any of the six counts he was sentenced, disqualification on that ground should not have been upheld by the majority court.¹³

Dissolution of Bihar Assembly by the apex court is a case study in itself.¹⁴ The court permitted the Election Commission to issue the date for elections when the matter was *subjudice*. Even after stating that the report of the governor was *malafide* and the dissolution of the Bihar Assembly was unconstitutional it did not restore the status quo ante. It held that election may be carried out taking into consideration practical realities and preparations for elections were already underway and large amount of resources had been invested by the Election Commission. Is not it a mockery of the system? Moreover the decision casts a doubt as to the governor being made a scapegoat in this exercise. Notice could not be issued against the governor as he enjoys immunity under article 361. But the repercussion of it was that principle of natural justice *audi alteram partem* – that nobody should be condemned unheard – was flouted. Moreover RPA is envisaged for the election process and we need not read provisions of RPA into the Constitution, which is complete and comprehensive in itself. The court's combined reading of section 73 of the RPA and article 172 (4) to drive home the point that an Assembly or House is deemed to be constituted the moment the results of the election are notified by the Election Commission and for this we need not wait for the first meeting is, therefore, ERRONEOUS.¹⁵

However election law got a boost by a momentous decision of the constitution bench of the Super Court in *K. Prabhakaran v. P. Jayarajan* and *Ramesh Singh Dall v. Nafe Singh*.¹⁶ The majority while interpreting sections 8(3) of the RPA to determine disqualification has laid down that the word 'any' has been used as an adjective qualifying the word 'offence'. Hence the expression " a person convicted of any offence" has to be construed as all offences of which a person has been charged and held guilty at one trial. It is submitted that this seems to be an erroneous interpretation and the dissenting judgment seems more reasonable when it says that the word 'any offence' has to be interpreted strictly and it is clear that in order to incur disqualification the person must have been convicted of any offences and sentenced to imprisonment for not less than two years. According to the judge, in order to tackle the menace of criminalization of politics the court

10 (See *Prabhakaran v. Jayarajan*, 2001 (3) KLT 641 at 649 (ker)

11 (Sec s. 40, IPC)

12 (Sec s. 2 (n) Cr PC, 1973 and s. 3(38), General Clauses Act, 1897)

13 See Thomas Paul conviction and election law 47 JILI (2005) page 373.

14 *Nitish Kumar v. State of Bihar*, AIR 2006 Supreme Court 1011

15 KN Chandra Sekharan Pillai and Jyothi Durga Prasad Supreme Court in retrospect and prospect 48 JIL / 2006 at P 16.

16 (2005) ISCC 754.

should not interpret the words in a very expansive manner so as to include within its ambit the persons who are strictly not coming within its purview, especially when the disqualification is not only from contesting the election but is to continue for a further period of 6 years since the release. The opinion of the court as far as section 8(4) is concerned is praiseworthy. It is of the view that once the House is dissolved and the person ceases to be member on the date of filing the nomination there could be no difference between him and any other candidate who was not such a member. The exception provided in the section was not to confer an advantage on a person but to protect the House since the number game is very important in the House. The legislators did not want the government to fall due to disqualification and ultimately a situation may arise where a higher court of appeal acquits the person. The provision of three months is provided in the section so as to enable such member to file an appeal or revision and get the disqualification deferred till the time it is disposed by the superior court. This is a welcome step and section 8(4) will not longer be available for misuse by the legislators.¹⁷

The recent Supreme Court Judgment on Conviction of People representatives, is thought provoking. The under trail prisoners are prevented from contesting elections. It is a welcome step. The convicted persons whose cases are pending in appellate courts are disqualified from membership. In order to strengthen the Indian Democracy, the judgments are to be implanted immediately.

17 KN Chandra Sekharan Pillai and Jyothi Durga Prasad Supreme Court in retrospect and prospect 48 JIL / 2006 at P 16.