



# **FACULTY OF JURIDICAL SCIENCES**

**COURSE: BALLB/BBALLB**

**SEMESTER SUBJECT:**

**ELECTION LAWS**

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**NAME OF FACULTY: PANKHURI SRIVASTAVA**

# Lecture-38



## LECTURE 38: ELECTORAL OFFENCES: OTHER PROVISIONS

Section 123(1) of RP Act and 171B/171E of IPC defines bribery as a corrupt practice as well as an electoral offence. The section vide clause (1) (i) says that whoever gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right, commits the offence of bribery. According to this sub-clause one way of committing bribery is by giving gratification. The object of the giver must be either to induce a person to exercise an electoral right or of rewarding him for having already exercised such right. Bribery has also been defined under clause (1) (ii) wherein it has been said that whoever accepts any gratification, either for himself or for any other person, as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right, commits the offence of bribery. Thus the second way of committing bribery is by accepting gratification. So bribery under this section is possible either by giving gratification as stated under the first part of the first clause or by accepting gratification as stated by the second part of the first clause. There is a proviso clause as well which clarifies that a declaration of public policy or a promise of public action shall not be an offence under this section.

According to the second clause of this section, a person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification. In other words, a gratification is deemed to have been given in any of the four cases, viz., where a person offers gratification, or where he agrees to give gratification, or where he offers to procure gratification, or where he attempts to procure gratification. The second clause, therefore, further explains 'bribery by giving gratification' which has been explained in clause (1) (i) of this section.

The third clause of this section further explains 'bribery by accepting gratification' which has been explained in clause (1) (ii) of this section. According to the third clause, a person who obtains, or agrees to accept, or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing something which he has no intention to do, or as a reward for doing something which he has not done, shall be deemed to have accepted the gratification as a reward.

Section 171E prescribes punishment which is simple or rigorous imprisonment for a term extending up to one year, or fine, or both.

## *Undue influence*

Section 123(2) of RP Act and section 171C/171F of IPC talks about undue influence at election, thereby making it both a corrupt practice and an electoral offence. Any person who directly or indirectly interfere or attempt to interfere with the free exercise of any electoral right commits the offence of undue influence and shall be punished with 1year imprisonment or fine or both as per provision of IPC. The offence is punishable under section 171 -F of the Code. Sub-section (1) of the section states that whoever interferes voluntarily, or attempts to interfere voluntarily, with the free exercise of any electoral right commits the offence of undue influence at an election. Actual interference and attempt to interfere have been treated at par.

The interference or its attempt must be with respect to free exercise of any electoral right. 'Electoral right' has the same meaning as given under section 171-A of the Code. Sub-section (2) explains the meaning of the expression 'free exercise of the electoral right' by including within it certain things while at the same time not prejudicing the generality of the provisions of sub-section (1). It says vide clause (a) that without prejudice to the generality of the provisions of sub-section (1), whoever either threatens any candidate or voter, or threatens any person in whom a candidate or voter is interested, with any kind of injury, it shall be deemed to be an interference with the free exercise of the electoral right of such candidate or voter, as the case may be, within the meaning of sub-section (1). It says vide clause (b) that without prejudice to the generality of the provisions of sub-section (1), whoever either induces a candidate or a voter or attempts to induce a candidate or a voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or of spiritual censure, shall be deemed to be an interference with the free exercise of the electoral right of such candidate or voter, within the meaning of subsection (1). Sub-section (3), while excluding certain things from being considered as interference, says that a declaration of public policy or a promise of public action, or the mere exercise of a legal right without any intention to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

In *Raj Raj Deb v. Gangadhar Mahapatra*, a candidate at an election represented himself as 'Chalanti Vishnu', a representative of Lord Vishnu, before the voters and impressed upon them that anyone not voting for him would commit a sin against the Hindu religion and sacrilege against the deity. He was held guilty under section 171-F for committing the offence defined under this section.