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## **FACULTY OF JURIDICAL SCIENCES**

**COURSE: BALLB/BBALLB**

**SEMESTER SUBJECT:**

**ELECTION LAWS**

**SUBJECT CODE: BALLB**

**1004/BBALLB 1004**

**NAME OF FACULTY: PANKHURI SRIVASTAVA**

# Lecture-39



## LECTURE 39: ELECTORAL OFFENCES: OTHER PROVISIONS

### *Booth capturing, a new addition to the list of corruption practices and electoral offences*

Snatching votes by terror and coercion is against the essence of democracy. In fact this has been one of the major reasons for the disenchantment of the people with the sanctity of the electoral process itself thereby losing their faith in the democratic government. Though the Election Commission has taken sterner measures and has also issued direct warnings against booth capturing and rigging including shoot-at-sight orders or countermanding of the poll and rescinding of voting at the booths affected by the booth capturing, it had become a futile exercise. Since the early eighties, complaints regarding booth capturing have been steadily increasing, therefore, Sub- Section (8) was inserted in Section 123 of the Representation of People Act, 1951 by Amending Act No. 1 of 1989, specifying booth capturing by a candidate or his agent or any other person as corrupt practice.

In 1989 it was provided that for these purposes s 123(8) booth capturing shall have the same meaning as s 135A of that Act, which was also newly inserted by the same Act making booth capturing an electoral offence as well. The said Section 135 A reads as follows; ‘Whoever commits an offence of booth capturing shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine, and where such offence is committed by a person in the service of the Government he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine.

There are several reports suggesting that the first polling booth that was captured during an election was in 1957 in the Rachiyahi area of Begusarai district. But it is still not clear if that incident could be termed as Booth Capturing. Booth capturing, a common occurrence in the era of paper ballots, has reappeared in the 2014 Lok Sabha elections. But to an extent, it has been controlled by the introduction of Electronic Voting Machines. The Supreme Court in *Basanagouda vs. S.B Amarkhed* has noted that booth capturing wholly negates the election process and subverts the democratic set up which is the basic feature of the Constitution.

### *Filing of false affidavits as an electoral offence under the RP Act*

Filing of false affidavit or concealing any information in the affidavit filed by the candidate is considered as offence under Section 125A of RP Act. Any person who commits a forementioned offence will be punished with imprisonment for 6 month or fine or both. But, the matter of concern is that there is no clear provision for follow-up action in the event of candidates filing false affidavits. Hence, there are several complaints of the false statements in affidavits, which mislead the electors. *Ashwini Kumar Upadhyay vs. Union of India*

Advocate Ashwini Upadhyay filed a public interest litigation in the Supreme Court under Article 32 of the Constitution seeking to seek directions for making the filing of false affidavit in elections an

offence.

In his PIL citing nearing elections, Upadhyay sought directions to the Centre “to make false statement or declaration before the Election Commission, Chief Electoral Officer, District Election Officer, Presiding Officer or other similar authority, an electoral offence, in line with the Important Electoral Reforms proposed by the Election Commission of India”. He contended that the Law Commission of India had proposed to make filing false affidavit a cognizable offence with 2 years of imprisonment and that the offence should also be included under Section 8(1), which would attract disqualification from the elections.

However, the Government has been ignorant towards this suggestion. Upadhyay also relied on the recommendation of the Election Commission of India made on February 3, 2011, to amend Section 125A of the RPA, 1951, to provide that any complaint regarding false statement in the affidavit in connection with the nomination paper shall be filed before the Returning Officer concerned within 30 days from the date of declaration of the election and that it shall be responsibility of the RO to take proper follow-up action. Alternatively, a complaint can be filed directly before the Magistrate. He said the ECI has time and again stressed on the importance of candidates filing true information in their affidavits. The filing of false affidavits in matters of election can have extremely serious consequences as it affects the purity of elections and in order to make an informed choice, the elector has the right to know the correct information regarding the candidates. In *Krishnamurthy vs. Siva Kumar*, the Court has held that incorrect and false information interferes with the free exercise of the electoral right of the voter. It was contended that section 125A of RP Act makes filing of false affidavit an offence punishable with just six months imprisonment, but it was a much serious offence and should be included in the corrupt practices under section 123 of RP Act and hence the candidate must also be disqualified from contesting elections.

The Court held that filing of false affidavit is a serious offence and is against the concept of free and fair elections, but also noted that they cannot direct for a legislation as it is the duty of the Parliament. Next hearing of the matter is in the month of August, 2019.