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## **Election Laws and Corrupt Practice in India**

**\*Akhil Kumar**

*\*, Assistant Professor, Department of Law, University of Rajasthan, Jaipur.*

In a constitutional democracy elections provide an opportunity to ascertain the popular will regard the governance of the country. Election is the act of choosing an individual usually for holding public office through free will of the people in a representative democracy. The word election is derived from the Latin verb “legere” meaning “to choose”. “Election” means the public choice of a person for office, usually by the votes of a constituent body.<sup>1</sup> According to Webster’s Dictionary, election connotes the act of choosing a person to fill an office or position by vote. According to Black’s Law Dictionary, “election” means the process of selecting a person to occupy a position or office usually public office.

In ensuring free and fair elections the role of the legal system is substantial. In a Democratic society or country like India where the people of the country are considered as sovereign, which in practical terms is otherwise. Hence it is important to conduct free and fair election so that the people may feel sovereign in the true sense.

### **CONCEPT OF FREE AND FAIR ELECTION**

This concept includes even preliminary stages to election such as delimitation of constituencies, preparation, revision or amendment of electoral rolls and many others. Mainly, concept of free and fair election relates to political liberty and equality. ‘Free and Fair’ in matters of election connotes that no one, under the electoral process, is in bondage of another, having his personal rights, social and political liberty, free thinking and choice subjected to a legal discipline. While exercising his right to vote one is not under undue influence of party discipline, religion, caste, creed, sex, language and also one is not under the strain of corrupt practices and so on. Thus, free and fair elections are the foundations of democratic form of government. To ensure the purity in elections the following essential conditions must be fulfilled:

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- (i) There should be a set of election laws which must cover the entire process of elections with the primary object to create and maintain that sort of atmosphere in which the electorate can choose their representatives by the exercise of their free will without any pressure or hidrance or undue influence from any quarter.
  - (ii) The election law must contain equal and justful demarcation of constituencies, principle of one man one vote and the secrecy of voting, a just procedure for casting votes and for counting and declaration of election results.
  - (iii) The conduct of elections must be assigned to an independent authority who can function impartially and who is free from external pressures from the party in power or executive of the day. There should not be any encroachment by government or other agency in exercise of his powers and duties assigned to him under law. The conduct of election should be left unhindered in the hands of the election machinery.
  - (iv) As a necessary requisite, there must be co-operation between the wings of government and citizenry, each of them discharging the duties assigned to them by law. Any civil authority or government official must not exercise a power unless exercise of it is authorised by some specific rule of law and the people should obey the law.
  - (v) The supervision of disputed elections should be assigned to some judicial authority who can determine the question whether there has been a valid election on the basis of facts and election law which should contain the requisite qualifications for candidates, the method of voting, definition of corrupt practices by candidates and their election agents, etc. and other cognate matters. The election disputes must be resolved expeditiously in conformity of the procedure laid down by law.

Thus, the cumulative effect of above all factors needs proper observance, implement and enforcement of all constitutional and other laws relating to elections. In short, to conduct election in conformity of law is to maintain the purity of it and non-conformity of such laws would result in impure elections.

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In *Indira Nehru Gandhi v. Raj Narain*,<sup>ii</sup> Justice HR. Khanna observed, “the principle of free and fair election is an essential postulate of democracy which in turn is a part of the basic structure of the Constitution of India. This leads us to peruse the provisions of the Constitution in the light of established principles of free and impartial election”. Khanna, J. further observed, “Democracy can indeed function only upon faith that elections are free and fair and not rigged and manipulated, that they are effective instruments of ascertaining popular will both in reality and form and are not mere rituals calculated to generate illusion of defence to mass opinion.”

### **Election Commission**

In order to ensure free and fair election, the Constitution provides for the establishment of an independent Election Commission armed with wide powers. Under article 324 superintendence, direction and control of elections are vested in a Chief Election Commissioner and such number of Election Commissioners as the President may fix. The Supreme Court was keen on taking a balancing approach in this regard. Though the Court recognized the right of the Commission to exercise all types of powers—legislative, executive, judicial—safeguards for avoiding excess and abuse of powers have also been ensured. According to the Court the Election Commission is the ‘executive charged with the duty of securing the due conduct of election’.<sup>iii</sup> In the case of *Mohinder Singh Gill V. Chief Election Commissioner*,<sup>iv</sup> the Court considered the limitations of the power of the Commission and observed: “The Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances. Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission shall act in conformity with, not in violation of such provisions but where such law is silent article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far as conformance to such canons

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can reasonably and realistically be required of it as fairplay in action in a most important area of the constitutional order, viz., elections. Fairness does impart an obligation to see that no wrong-doer candidate benefits by his own wrong.”

### **CORRUPT PRACTICES IN ELECTION:-**

Section 2(c) of the Representation of People Act, 1951 simply says that “corrupt practices” means any of the practices specified in Section 123 of the Act. The elaborate definition of various corrupt practices under Section 123 are —bribery,<sup>v</sup> undue influence,<sup>vi</sup> appeal on the ground of religion, race, caste, community or language and the use of appeal to religions or national symbols,<sup>vii</sup> promotion of enmity or hatred between different classes of citizens on the ground of religion, race, caste, community or language,<sup>viii</sup> propagation of sati,<sup>ix</sup> publication of false statements,<sup>x</sup> hiring of vehicles or vessels,<sup>xi</sup> incurring excessive expenditure,<sup>xii</sup> procuring the assistance of government servants,<sup>xiii</sup> and booth capturing.<sup>xiv</sup> Penal provisions are also in force for the offences of bribery, undue influence, personation, false statements, illegal payments and failure to keep election accounts<sup>xv</sup> and in addition several electoral offences<sup>xvi</sup> are prescribed by the Representation of People Act, 1951 itself.<sup>xvii</sup>

#### **(a) Bribery**

Since overspending of money in election ultimately influence the result,<sup>xviii</sup> and therefore, for his success, the election candidate or his supporters may resort to different forms of gifts, offers or promises of any gratification to voters or the competing candidates. Voters may be rewarded for their voting to a particular candidate or for not favouring him. Huge amounts may be spent for entertainment, free conveyance, treating voters or benefits may be given directly or indirectly in cash or kind to influential persons or to the common voters. Competing candidates may induce one-another to withdraw or not to withdraw or to stand or not to stand in election contest. The party in power and Ministers may also resort to huge discretionary grants or assurances during the eve of elections. Any gratification made with intent to pollute the purity of elections may cover within the corrupt practice of bribery defined under Sub-Section (1) of Section 123 of the

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Representation of People Act, 1951. The evidence produced by Shri RAJNARAYAN in the high Court the Smt. Indira Gandhi distribute wine and cash for his election is really bed and must be countable in bribery. 11

**(b) Undue Influence**

Reflection of true and popular will depends upon the freedom of choice to elect and vote for particular party or candidate or to have a free right to stand for an election. Nevertheless, an electoral right to vote certainly includes right to know about the policy and programmes of various political parties and about the suitability of their candidates and this necessarily gives a right of canvassing to all contesting candidates and their political parties to have the election campaign for obtaining favour from the electors. The essence of undue influence lies in between the right of free choice to elect and the right of the candidate to canvass and if the canvassing results in interference unduly into the free choice or judgement for vote, that interference requires to be regulated by law, because ‘mere influence’ is not a corrupt practice. An influence in elections amounts “undue” only when abuse of influence is exercised in contradiction of proper influence. Thus, legitimate canvassing or appeal to reason and judgement of the voters by lawful means persuading them to vote or not to vote for a candidate, is not vitiated under the law. Yet, any situation in which choice of candidate on merit is affected due to extraneous consideration like social, economic, political or religious constrains or any type of threat, fear or duress or falsehood which impedes or prevents the free exercise of the franchise of an elector, is prohibited under Section 123(2) of the Representation of People Act, 1951.

Election may be avoided if corrupt practices have been committed. Attempts to influence may not be unlawful and not restrained unless corrupt intent or abuses of influence is established against the candidate or his election agent. Therefore, an allegation of undue influence must be proved as strictly as a criminal charge and the principle of preponderance of probabilities would not apply to corrupt practice of undue influence envisaged by the Act. It is settled view that a charge of corrupt practice under the Act of 1951 has to be proved beyond reasonable doubt, because if this test is not applied a very

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serious prejudice would be caused to the elected candidate who may be disqualified for a period of six years from fighting any election.<sup>xix</sup>

**(C) APPEAL ON GROUNDS OF CASTE, RACE, COMMUNITY OR RELIGION**

In *S.R. Bommai v. Union of India*,<sup>xx</sup> the Supreme Court in this context laid do that introduction of religion into politics is not merely in negation of Constitutional mandate but also a positive violation of Constitutional obligation, duty, responsibility and positive prescription or prohibition specifically enjoined by the Constitution and the Representation of People Act, 1951. A political party that seeks to secure power through a religious policy or caste orientation policy, disintegrates the people on grounds of religion and caste. It divides the people and disrupts the social structure on grounds of religion or caste which is obnoxious anathema to the Constitutional culture and basic features. Appeal on grounds of religion offends secular democracy. The Court further pointed out that Section 123(3) of the Representation of the People Act dealing with the corrupt practice of appeal on the ground of religion is not confined to appeal to the candidate's religion.

Provision of law relating to the corrupt practice of appeal on the ground of religion, caste, etc. is a peculiar feature of Indian election law. Since the provision was drafted in general terms it became the duty of the Court to determine the crucial question what sort of appeals should be treated as a religious appeal or communal appeal.

**(D) Promoting Hatred or Enmity on the Ground of Religion etc.—Section 123(3-A)**

The black day in Indian history 6 December 1992, when a LARGE group of people destroyed the babri mosque shouting....“EK-DO, EK –DO...BABRI KO TOD DO.....”.Corrupt practices under Section 123(3), appeal on the ground of religion etc. and under Clause 123(3-A) of promotion or attempt to promote enmity or hatred between different classes of citizens on the ground of religion, caste, etc. are both closely related. If one is the cause, the other one is the intended result. In an appeal on the ground of religion, race, caste, community or language, the candidate may hope to get its advantage in the elections and may not bother for its effects on the society.

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**(e) Publication of False Statements**

The election law permits freedom of criticism of political nature at the time of election. It is in the interest of democracy that such criticism should be allowed. But in order to maintain purity and fairness of elections, character assassination and vilification of any candidate cannot be allowed. Therefore, in relation to a candidate, publication of false statements by means of election speeches, pamphlets, booklets, handbills, posters or through press or television, etc., is a corrupt practice under Section 123(4) of the Representation of People Act, 1951.

**(f) Free Conveyance of Voters**

Sub-Section (5) of Section 123 of the Representation of People Act, 1951 prohibits hiring or procuring of the vehicles or vessels for transportation of voters to or from the polling stations because this exercise may cause influence on voters and thereby hamper free exercise of their franchise.

**(g) Obtaining Services of Government Servant**

The role of *Shri Yashpal Kapoor* in the election of *INDIRA GANDHI'S* election is a living example of Obtaining Services of Government Servant in Indian election history. The Government servants are required so to conduct themselves as to inspire confidence in the public in regard to their impartiality so that there might not be any occasion for the people to think that the elections were not going to be held in a free, fair and pure atmosphere. To do so, they were asked in law, to avoid giving room for any suspicion that they were favouring any party or any candidate. Since the Government servants have a pivotal role in the public administration and in the implementation of policies made by the ruling political party, a Government servant should not take part in any election campaign or canvassing and that he should take scrupulous care not to lend his name, official position or authority to assist one political party or candidate as against any other. Rule 5(1) of the Central Civil Services (Conduct) Rules, 1964 expressly prohibits Government servants from taking part in politics and elections. Breach of official duty in connection with elections,<sup>xxi</sup> acting as an election agent<sup>xxii</sup> and influencing voters<sup>xxiii</sup> are electoral offences

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punishable under the Representation of People Act, 1951. In addition to this, procuring or obtaining of assistance of Government servants in elections is a corrupt practice defined under Section 123(7) of the same Act.

**(h) Booth Capturing**

Those who believe in the influence of muscle power in elections, do not believe in soliciting votes from the electorate by reasoning and argument. Snatching votes by terror and coercion is the very antithesis of democracy. In the States where booth capturing were reported to be rampant like Bihar, Uttar Pradesh, Haryana, parts of West Bengal and Andhra Pradesh, even well equipped private armies control the poll on behalf of the vested interests.<sup>xxiv</sup> In fact this has been one of the major reasons for the disenchantment of the people with the sanctity of electoral process itself thereby losing their faith in the democratic government. Though the Election Commission has taken stern measures<sup>xxv</sup> and some times issued direct warnings against booth capturing and rigging<sup>xxvi</sup> including shoot-at sight orders or countermanding of the poll and rescinding of voting at the booths affected by the booth capturing, but it had become a futile exercise. Since the early eighties, complaints regarding booth capturing have been steadily increasing,<sup>xxvii</sup> 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.

**OBSTACLES IN FREE AND FAIR ELECTION : CURRENT TRENDS**

**(a) Criminalisation of Politics**

Over the past few years we have been reading about corruption in public life in which politicians and officials have bled the nation filling their own coffers, diverted to personal use. Public funds have been misappropriated and have destroyed the moral and ethical environment of the nation. Corruption has become the norm in public life and honesty an aberration. Daily in the news papers, there are reports about the politicians who have



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either directly participated in crimes or have allegedly been guilty of abetting such activities through gangsters, musclemen and underworld dons. Corruption in public life and criminalisation of politics are two sides of the same coin. *Pappu yadav, Akhilesh pratap singh, D.P. yadav* and many more who use the criminal way to win the election which is strictly prohibited in our election system. In the early days criminals and goonda elements were by and large kept away from direct involvement in the political process, but today they have acquired a political base of their own and are a law unto themselves. Since it is the reach of power that determines the degree of immunity, persons with criminal antecedents have found a way to foist themselves on the Legislature.

The nexus between criminal gangs, police, bureaucracy, politicians and industrialists has come out openly in various parts of the country. The *Vohra Committee Report* gives enough hints to come to the conclusion that criminalisation of politics and corruption in high levels is destroying the very system and edifice of our parliamentary democracy, political authorities, the civil servants and even the judiciary.

**(b) Marketability and Defections**

*The Vote for Note Scam*, Cash for the election is some example for marketability in the election. The endless game of defections and toppling of governments is perhaps the most glaring example of the erosion of the democratic and moral values in the parliamentary life of India. In the era of outside support and the coalition governments in the States and at the Centre, it is an admitted fact that the representatives of the people in the Assemblies and Parliament accept money to support a particular Government. Hence, Members of Parliament or State Assemblies became a marketable commodity and a subject of sale and purchase or horse-trading. Politics of India gradually degenerated into a struggle for power for personal ends. General interest and well-being of the people is a secondary thing for the present day politicians. This is a depressing feature of India's parliamentary democracy.

**(c) Money Power in Elections**

*Jharkhand Rajya-Sabha election is crying shame on our democratic system.* Money power is a crucial factor in elections since modern devices of election propoganda are expensive. The availability of large funds ordinarily tends to increase the number of votes a candidate will receive. The history of election law has witnessed activism shown by the judiciary in interpreting the provisions of law relating to election expenses and attempt by the political leadership to nullify the effect of such activistic approach of the Supreme Court, by way of amending the provisions of law. According to Section 77(1) of the Representation of the People Act, 1951 ‘every candidate at an election shall, either by himself or his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent, between the date on which he has been nominated and the date of declaration of result thereof both dates inclusive’. Section 77(3) prescribes that the total of the amount mentioned in clause (1) shall not exceed such amount as may be prescribed.

Whether expenditure by a candidate’s political party, friends, and relatives, etc. could be treated as the expenses incurred or authorized by the candidate was the issue in many election petitions. The court’s earlier view was that expenses incurred by the political party, friends, etc. to advance the election prospects of a candidate did not fall within Section 77.<sup>xxviii</sup>

**(d) Communalism, Casteism and Mushrooming of Political Parties**

The M.L.A. of MIM *Akbarudeen Ovishi*’s statement is really a black point on our country. A country where all the religious community live with a religious spirit and brotherhood.... These types of statement and religious slogan which effect the election are really bed and affect our constitutional sprit..... It is common knowledge that however perfect the theoretical framework of a Constitution might be, its successful working rests in the last resort on a whole range of social, economic and political factors, on the culture and traditions of the country’s people and their attitude towards nationalism. The Constitution of India laid the foundations of democratic republic embodying the ideals of

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Constitutionalism as they have evolved in the Western political traditions. The Constitution promises secularism, social justice and political equality. It aims at promoting fraternity among all citizens assuring dignity of the individual and the unity and integrity of the nation.

Yet this constitution functions in a social environment not altogether conducive to the smooth operation of democratic institutions. The social matrix of the Indian society is deeply embedded in the complex Indian caste-structure. Communalism in India has been a long standing problem. One of the factors that has kept India back from advancing to nationhood, is the existence of different religions which keeps the nation divided in many aspects of life. Keeping in view the traditional background of Indian socio-political set-up, we must confess that religion, caste or community has continued to play its role in electoral politics. Various castes and communities are becoming more and more self-conscious as well as assertive and accordingly organised. Though, the elections have familiarised the masses with the technique of ballot-box democracy but they have also provided the masses with the increasing prominence of communalism and castism as a political factor, and with the means for asserting their interests and demands. The emergence of new elites through the means of elections presents new challenges to the working of the Constitution.

## **CONCLUSION**

The fundamental features of Indian democracy are parliamentary form of government, rule of law, free, fair and periodical elections, secular democracy, civil liberties, judicial review, unity and integrity of the nation. Thus, the concept of democracy as visualised by the Constitution presupposes the preservance of these ideals by the elected representatives of the people in Parliament and State Legislatures. But the political parties in our country have not risen to the expectations of ‘the people. They have shaken the people’s confidence in parliamentary democracy just for their selfish ends.

In our multi-party system, it seems that no single party is likely to secure majority in Parliament. The Anti-defection law permits split and merger of political parties and there

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is no provision in the Constitution which bars the legislators from frequently asserting their no-confidence against the government.

Castism and communalism have been frequently invoked for building sectarian vote-banks and for getting and remaining in power. The political parties are promoting this tendency. Social fragmentation which the Constitution desired to eliminate has been progressively on an increase. This trend has also given rise to regional splinter parties and has posed a danger to the unity and integrity of the nation. Thus, the purpose of common electoral roll or universal right to vote or to contest election seems to be defeated. Reservation of seats in the Legislature has become a tool of allurements of weaker Sections.

As a most essential requisite of free and fair elections, an independent authority, the Election Commission of India is entrusted with the task of conducting elections. Under Article 324, the office of Chief Election Commissioner is permanent but office of the other Commissioners is multi-member Election Commission. So far as removal of Election Commissioners is concerned, the Constitution and the Statute gives more protection to the Chief Election Commissioner.

Criminalisation of the politics is the greatest dangerous factor of the present political system. A large number of criminals have acquired political positions in the country and their number is increasing. The nexus between criminal gangs, police, bureaucracy, politicians and businessmen has been exposed. It is now an established fact that criminalisation of politics and corruption in high levels is destroying the edifice of our parliamentary democracy. The black money earned by notorious trades is misused to develop a network of muscle power to be used by politicians during elections for violence, booth capturing, rigging; intimidating voters and even killing rival candidates.

The most glaring example of the erosion of democratic and moral values is the evil of political defections. It is believed that corruption, bribery and lust of power is behind this problem. Sale and purchase of legislators and the defections or counter-defections are the root causes of instability in the present era of coalition governments. The object of Tenth

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Schedule has not been achieved due to the exclusion of ‘merger and split’ of political parties from the application of Anti-defection law.

Communalism and castism in India keeps the nation divided in many aspects of life including politics. These divisions among the masses directly strike with the secular democracy enshrined in the Constitution.

One of the vital evils inhibiting the system of democracy is the mounting of fighting elections. The law regulates election expenses with a view to ensure the fairness and avoid extraneous influence of illegitimate money power in elections. But there is no provision to regulate the flow of unaccounted funds into the coffers of political parties. To some extent even if the money contribution is regulated by law, there exist no ban on the assistance which may be given by the contributors in kind, e.g. providing vehicles, petrol, accommodation, pandals and other election materials, posters, pamphlets, etc. The loophole in the law is deliberate and conscious. It can be removed by amending the relevant provisions of law.

## **SUGGESTIONS**

1. In India the concept of negative voting is mentioned under the conduct of election rules, 1961. Due to the exclusion of the option of ‘none of the above’ on the EVM the voter’s right of secret ballot which is guaranteed under section 128 of Representation of People Act, 1951 is being violated. Further it is submitted that such violation is abridging art. 21 (3) of Universal Declaration of Human Rights and art. 25 (b) of International Covenant for Civil and Political Rights both has been ratified by India.
2. Election Commission has the power to disqualify a candidate. The High Court and Supreme Court should also be given the power to disqualify under writ jurisdiction.
3. Section 77 of Representation of People Act should be amended to include all the expenses that are incurred during election process by the candidate for the purpose of auditing and the assessment of assets and liabilities should continue throughout of the year.

4. Setting up of special courts for the speedy trial of cases against candidates and elected politicians.
5. The Chief Election Commissioner and the election commissioners should be elected by a collegium.
6. The candidates should be disqualified from contesting elections if charges are framed against him by the Court and not on the basis of conviction.
7. Media is supposed to be the watchdog of democracy hence it should cover real issues effecting people and not indulge in paid news.
8. The prime need of the country is to secure stability of the government.
9. Lack of morality, floor-crossing, defections and horse-trading is needed an immediate legal check.
10. Parliament must consider the legal infirmities existing in the provisions of election law relating to entry of criminals in politics. Classification between general criminals and sitting member criminals under Section 8 of the Representation of People Act, 1951 must be omitted.
11. An independent and impartial Election Commission is the essence of free and fair elections.
12. With regard to the eligibility of person who stands for election or becomes a member of the Legislative body, a need has always been felt that there should be some sort of minimum educational qualifications for them.
13. The corrupt practice of free carriage of voters may be avoided by installing sufficient polling stations in the constituency so as to make it easy within the reach of maximum voters to attend the polling station. The practice of free carriage of voters should be made a cognizable offence.
14. Only answer to the use of black money in elections is that the State should bear the main burden of electoral expenses. Mounting cost of fighting elections is the very root of political corruption. Report of the Indrajeet Gupta Committee on State funding should be considered by the government and its recommendations should be implemented. If the system of State funding is adopted, merit integrity and service to the nation would have a greater chance of recognition at the polls and our politics might well be freed from the incubus of some of the admittedly undesirable factor.

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15. As a perfect State India has a clear enunciation of humanism, secularism, civil liberties of the citizens and the Directive Principles of State Policy. The adoption of universal franchise has politically activated the masses in the country. But an environment of castism, communalism, linguism, regionalism as already mentioned, is an apparent weakness of society. This is obstructing the bright prospects of Indian democracy. Though literacy may not be a final. test of political maturity of the people, still it can reduce the adverse impact of unscrupulous factors on our Parliamentary institution Therefore, a rapid increase in mass literacy is necessary towards this end.

To sum up the project it can be say that the success of democracy depends on the due conduct of elections so as to ensure the reflection of the true popular will. Keeping this in vie while interpreting the provisions of law defining the corrupt practices of bribery, undue influence, appeal on the ground of religion, publication of false statements and procuring the assistance of government servants, the Supreme Court has formulated well-defined guiding principles to determine whether a particular action could be treated as corrupt practice or not. While formulating these principles the Court has examined the rationale of treating a particular action as corrupt practice in election, highlighting the theoretical foundation of various concepts in election law. In addition to alleviating the evil consequences of the lethargy of the political leadership, its suspect action in producing law reform in certain areas like election expenses have been diluted by the Supreme Court, by way of judicial activism. The decision of the Court in *Indira Nehru Gandhi v Raj Narain*, clearly establishes that in India the guardian of democracy is not the legislative wisdom but the wisdom of the highest Court of the land. One may expect that the Supreme Court will continue to guard our democracy in the coming century also.

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**ENDNOTES AND REFERENCES:**

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