

ACT No. XXXIX OF 1920.

[PASSED BY THE INDIAN LEGISLATIVE COUNCIL.]

(Received the assent of the Governor General on the 14th September, 1920.)

An Act to provide for the punishment of malpractices in connection with elections, and to make further provision for the conduct of inquiries in regard to disputed elections to legislative bodies constituted under the Government of India Act.

WHEREAS it is expedient to provide for the punishment of malpractices in connection with elections, and to make further provision for the conduct of inquiries in regard to disputed elections to legislative bodies constituted under the Government of India Act; It is hereby enacted as follows:—

PRELIMINARY.

Short title and extent.

1. (1) This Act may be called the Indian Elections Offences and Inquiries Act, 1920; and
(2) It extends to the whole of British India.

PART I.

AMENDMENT OF THE INDIAN PENAL CODE AND CODE OF CRIMINAL PROCEDURE.

Amendment of the Indian Penal Code.

1. (1) In section 21 of the Indian Penal Code, XLV of 1860, after the tenth entry, the following shall be inserted, namely, "*Eleventh* :—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election"; and after *Explanation 2*, the following shall be added, namely:—

"*Explanation 3*.—The word 'election' denotes an election for the purpose of selecting members of any

any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election."

(2) After Chapter IX of the same Code the following Chapter shall be inserted, namely:—

"CHAPTER IXA.

Of offences relating to elections.

171A. For the purposes of this Chapter—

(a) "candidate" means a person who has been nominated as a candidate at any election and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate thereat; provided that he is subsequently nominated as a candidate at such election;

"Candidate,"
"electoral
right"
defined.

(b) "electoral right" means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

171B. (1) Whoever—

Bribery.

(i) 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; or

(ii) accepts either for himself or for any other person any gratification 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:

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

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A

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(3) 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 what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

Undue influence at elections.

171C. (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

- (a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or
- (b) induces or attempts to induce a candidate or 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 interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

Personation at elections.

171D. Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

171E. Whoever

171E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both :

Punishment
for bribery.

Provided that bribery by treating shall be punished with fine only.

Explanation:—‘Treating’ means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

171F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment
for undue
influence
or persona-
tion at an
election.

171G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

False state-
ment in con-
nection with
an election.

171H. Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees :

Illegal pay-
ments in
connection
with an
election.

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

171-I. Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such

Failure to
keep election
accounts.

accounts

accounts shall be punished with fine which may extend to five hundred rupees."

3. (1) In section 196 of the Code of Criminal Procedure, 1898, after the words "Chapter VI" the words "or IX A." shall be inserted. ^{V of 1898.}

Amendment
of the Code
of Criminal
Procedure.

(2) In Schedule II to the same Code after the entries relating to Chapter IX of the Indian Penal Code the following shall be added, namely :— ^{XLV of 1860.}

"CHAPTER IX A.—OFFENCES RELATING TO ELECTIONS.

		Shall not arrest with- out warrant.	Summons.	Ballable.	Not com- poundable.	Imprisonment of either descrip- tion for one year, or fine, or both or if treating only, fine only.	Presidency Ma- gistrate or Ma- gistrate of the First Class.
171 E	Bribery						
171 F	Undue influ- ence and per- sonation at an election.	do.	do.	do.	do.	Imprisonment of either descrip- tion for one year, or fine, or both.	do.
171 G	False state- ment in con- nection with an election.	do.	do.	do.	do.	Fine . . .	do.
171 H	Illegal pay- ments in con- nection with elections.	do.	do.	do.	do.	Fine of 500 ru- pees.	do.
171 I	Failure to keep election accounts.	do.	do.	do.	do.	Fine of 500 ru- pees.	do."

PART II.

ELECTION INQUIRIES AND OTHER MATTERS.

Definitions.

4. In this Part, unless there is anything repugnant in the subject or context,—

(a) "costs" means all costs, charges and expenses of, or incidental to, an inquiry;

(b) "election" means an election to either Chamber of the Indian Legislature or to a Legislative Council constituted under the Government of India Act;

(c) "inquiry" means an inquiry in respect of an election by Commissioners appointed for that purpose by the Governor General, Governor or Lieutenant-Governor;

(d) "pleader"

(d) "pleader" means any person entitled to appear and plead for another in a Civil Court, and includes an advocate, a vakil, and an attorney of a High Court.

V of 1908. 5. Commissioners appointed to hold an inquiry shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters:—

- (a) discovery and inspection,
- (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses,
- (c) compelling the production of documents,
- (d) examining witnesses on oath,
- (e) granting adjournments,
- (f) reception of evidence taken on affidavit,
- and
- (g) issuing commissions for the examination of witnesses,

V of 1898. and may summon and examine *suo motu* any person whose evidence appears to them to be material; and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

Explanation.—For the purposes of enforcing the attendance of witnesses, the local limits of the Commissioners' jurisdiction shall be the limits of the Province in which the election was held.

I of 1872. 6. The provisions of the Indian Evidence Act, 1872, shall, subject to the provisions of this Act, be deemed to apply in all respects to an inquiry.

7. Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence on the ground that it is not duly stamped or registered.

8. (1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in an inquiry upon the ground that the answer to such question will criminate or may tend, directly or indirectly, to criminate him; or that

that it will expose, or tend, directly or indirectly, to expose him to a penalty or forfeiture of any kind;

Provided that—

(i) no person who has voted at an election shall be required to state for whom he has voted; and

(ii) a witness who, in the opinion of the Commissioners, has answered truly all questions which he has been required by them to answer shall be entitled to receive a certificate of indemnity, and such certificate may be pleaded by such person in any Court and shall be deemed to be a full and complete defence to or upon any charge under Chapter IXA XLV of 1860. of the Indian Penal Code arising out of the matter to which such certificate relates, nor shall any such answer be admissible in evidence against him in any suit or other proceeding.

(2) Nothing in sub-section (1) shall be deemed to relieve a person receiving a certificate of indemnity from any disqualification in connection with an election imposed by any law or any rule having the force of law.

Appearance
by pleader.

9. Any appearance, application or act before the Commissioners may be made or done by the party in person or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall, if the Commissioners so direct, be made by the party in person.

Expenses of
witnesses.

10. The reasonable expenses incurred by any person in attending to give evidence may be allowed by the Commissioners to such person, and shall, unless the Commissioners otherwise direct, be deemed to be part of the costs.

Costs and
pleaders'
fees, etc.

11. (1) Costs shall be in the discretion of the Commissioners, and the Commissioners shall have full power to determine by and to whom and to what extent

extent such costs are to be paid and to include in their report all necessary recommendations for the purposes aforesaid. The Commissioners may allow interest on costs at a rate not exceeding six per cent. per annum, and such interest shall be added to the costs.

(2) The fees payable by a party in respect of fees of his adversary's pleader shall be such fees as the Commissioners may allow.

12. Any order made by the Governor General or Governor or Lieutenant-Governor on the report of the Commissioners regarding the costs of the inquiry may be produced before the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or, where such place is within the local limits of the ordinary original civil jurisdiction of a chartered High Court, before the Court of Small Causes having jurisdiction there, and such Court shall execute such order or cause it to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

Execution
of orders
as to costs.

XLV of 1860, 13. Any person who has been convicted of an offence under section 171E. or 171F. of the Indian Penal Code or has been disqualified from exercising any electoral right, for a period of not less than five years, on account of malpractices in connection with an election shall be disqualified for five years from the date of such conviction or disqualification from—

Disqualifica-
tion of per-
sons found
guilty of elec-
tion offences.

- (a) being appointed to, or acting in, any judicial office;
- (b) being elected to any office of any local authority when the appointment to such office is by election, or holding or exercising any such office to which no salary is attached;
- (c) being elected or sitting or voting as a member of any local authority; or
- (d) being

(d) being appointed or acting as a trustee of a public trust :

Provided that the Governor General, in the case of an election to the Council of State or the Legislative Assembly, and the Governor or the Lieutenant-Governor, in the case of an election to his Legislative Council, may exempt any such person from such disqualification.

Maintenance
of secrecy
of voting.

14. (1) Every officer, clerk, agent or other person who performs any duties in connection with the recording or counting of votes at an election shall maintain and aid in maintaining the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who wilfully acts in contravention of the provisions of this section shall be punished with imprisonment of either description for a term not exceeding three months or with fine, or with both.