LAW OF
Parliamentary Elections

JPL

C425

JAYATISSA DE COSTA
LLM., Ph. D.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Price Rs. 350/-
NETT

KOHA JPL

PUBLIC LIBRARY
JAFFNA.

LAW OF PARLIAMENTARY ELECTIONS

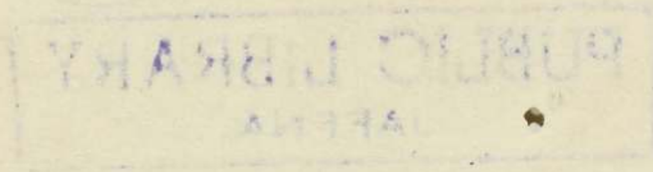
by

JAYATISSA DE COSTA

LL.B. (Ceylon), LL.M. (Lond.), Ph.D. (Sri Lanka)
Attorney at Law, J.P.U.M.
Sometime Lecturer in Constitutional Law, Sri Lanka Law College
Sometime Visiting Lecturer in Law, University of Colombo.

NATIONAL LIBRARY SECTION,
MUNICIPAL LIBRARY SERVICES,
JAFFNA.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org



OTHER BOOKS BY THE AUTHOR —

'Roman Law' (1975) — in Sinhalese

'Criminal Law' (1978) — in Sinhalese

'Legal History and Legal System of Sri Lanka' (1980) — in Sinhalese

'Jurisprudence' (1980) — in Sinhalese

'Elements of Criminal Law' (1980) — in Sinhalese

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

NATIONAL LIBRARY SECTION;
MUNICIPAL LIBRARY SERVICES,
JAFFNA.

TO

THE MEMORY OF

JOHANNES DE COSTA

MY FATHER

THIS WORK IS DEDICATED

AS A TOKEN OF REMEMBRANCE AND APPRECIATION

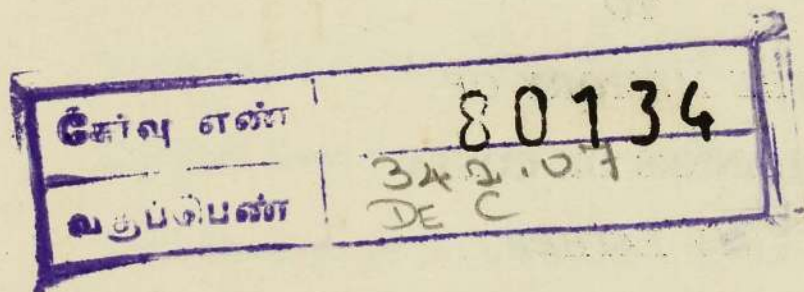
42500

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

FIRST PUBLISHED 1985.

All rights reserved

© Jayatissa De Costa



Printed in Sri Lanka,

by Frewin & Co. Ltd.,
36, Mudalige Mawatha,
Colombo 1.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

NATIONAL LIBRARY SECTION
MUNICIPAL LIBRARY SERV
JAFFNA.

FOREWORD

IT takes much effort to fulfil the democratic ideal because close attention has to be paid to the many ways in which democratic processes could be abused and to prevent such abuses proper constitutional and legal safeguards must be erected. The most important of such safeguards are those relating to elections. Dr. de Costa, who is an established academic writer and legal practitioner, has dealt with the law affecting election offences and election petitions under Sri Lankan law. To me it is a matter of some gratification that an old student of mine and a fellow Asian lawyer has chosen to write on this subject of enduring importance to the peace and prosperity of Sri Lanka. I rather think that Dr. de Costa and I share the belief that adherence to constitutionalism is the only way to strengthen the institutions of democracy. Only these institutions offer a framework within which the right of all citizens of Sri Lanka to lead a dignified life can be provided for. Given political willingness there are virtually no questions that cannot be solved through appropriate constitutional means.

Dr. de Costa begins his work with a short but informative introduction to the early history of the adoption of the elective principle in Sri Lanka. The advent of representative government surely forms an important part of any country's constitutional history. He has also dealt with the matter of proportional representation in a separate chapter thus giving a fair view of the major aspects of developments affecting general elections in Sri Lanka. The country's switch to a Presidential system of government, political scientists would argue, must increase the complexity of elections but the constitutional lawyer may prefer to confine himself to the study of the legal provisions.

Election offences do, surprisingly, turn out to be no different from other offences, notwithstanding their closeness to what is ultimately a political process. There are ingredients or elements of each separate offence which are determined by interpreting the text of the law. Case law is clearly important in the characterisation of facets of election offences for example, those that require a 'mental element' and others that may not. Moreover, the actual stages or acts the performance of which would complete the essential ingredients of the offence require a close study of cases. The author has undertaken to extract the rationes of a number of English, Sri Lankan and some Indian decisions. Considering the resemblance of many Sri Lankan provisions to the English and Indian statutes these references are unavoidable. In any case in areas of Public Law it seems entirely appropriate that countries of the British Commonwealth should want to refer to each other's experiences in interpreting what are essentially derived from English law and practice.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Dr. de Costa has referred to major works from England and India without in any way exaggerating their impact on the law of Sri Lanka developed by her own judges and lawyers. As may be expected the author has dealt with the leading amendments to the laws affecting elections thus completing his look at the manner in which the law has evolved over the years. I think this will prove helpful in case the author wishes to bring out an up-dated version in the future. To that end I wish Dr. de Costa all the best of endeavours. Many would welcome this book as it seeks to fill a noticeable gap, there being no other recent works on this topic.

Dr. T. K. Krishnamurthy Iyer LL.M., Ph.D.(London)
(formerly, lecturer in Oriental Laws, University of London)
Senior Lecturer, Faculty of Law,
National University of Singapore.

January, 1985.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

PREFACE

Even though this is a revised verson of a thesis which is prepared for the Ph.D. in the Faculty of Law of the University of Colombo, it had its origin in London, when I was reading for the LL.M. Degree as an Internal Student of the University of London in the field of Comparative Constitutional Laws in 1975/76. When I was preparing for seminars in the libraries of the Institute of Advanced Legal Studies, and the School of Oriental and African Studies, I had to consult a number of Text-books, Law Reports and Statutes in the field of Parliamentary Election Law. Having had that experience I had no difficulty in selecting that area for further research. I take this opportunity to thank Professor James S. Read, Dr. T. K. K. Iyer and Dr. E. Cotran of the School of Oriental and African Studies, University of London, who acted as my Supervisors for the LL.M. and encouraged me to do research in this area.

The law relating to Parliamentary Elections is an area in the Constitutional Law which is of equal importance to the academic, the Constitutional lawyer and the layman alike. Moreover, so far no serious attempt was made in this country to do any research in this field. 'The Law of Parliamentary Elections' by Mr. R. Weerakoon published in 1970 and the earlier work, 'The Law of Parliamentary Elections in Ceylon' prepared by Mr. Sylvan E. J. Fernando in 1947 were practical handbooks for the guidance of busy candidates for elections. However, these pioneering works rendered a useful service for the layman interested in this field.

The major part of the references for this work was made in the libraries of Sri Lanka Law College and the University of Colombo where I have functioned as the Lecturer in Constitutional Law and a Visiting Lecturer in law for a number of years.

Some general observations on the scope of the work and the method of treatment of the material can be made here. The statutes, decided cases both local and foreign and academic writings represent the main sources of the principles discussed.

It is inevitable that certain aspects of the subject receive more detailed treatment than the others. I have selected to deal with 3 major aspects in the law of Parliamentary Elections in Sri Lanka, namely, (I) The development of the elective principle (II) The election offences and (III) The election inquiries. Accordingly the book is divided into 3 parts.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Part I starts with a brief historical survey of the development of the elective principle in this country. The first chapter outlines the various Constitutions from the 19th century onwards and the gradual extention of the franchise and the introduction of the Proportional Representation. There is a separate chapter on the Proportional Representation in which different P. R. systems have been compared and the merits and demerits of the systems have been discussed. The failure of the simple majority system has been shown with examples from past General Elections of this country.

In Part II, which deals with the substantive law of election offences, statutory provisions have been dealt with in detail with special reference to the decided cases of this country as well as those of England and India. Some suggestions have been made in this area with a view to curb certain offences such as personation and some of the offences committed by the voters.

In Part III, the law relating to the Election Petitions has been discussed in detail with the necessary statutory provisions such as the Acts and Election Petition Rules in detail with reference to the decided cases. The question of agency in election law has been dealt with in a separate chapter. In this area also a few suggestions have been made with a view to eliminate the delays in election inquiries. My work in this area has been greatly facilitated by the availability of most of the earlier local election petition cases in the local law reports. However, I have discussed a number of unreported cases also.

Certain problems that have arisen or that may arise in future in view of the alleged large scale thuggery and personation in the recent elections, the Proportional Representation and the participation of persons on whom civic disabilities have been imposed, and the conflict of the Constitutional Provisions with those of the Election Acts, have been dealt with a view to resolve those in an epilogue to this work.

The main academic help I received in the preparation of this work was from Mr. S. Nadesan, Q.C., who functioned as my Supervisor. Accessible at all times and ever ready with guidance he helped greatly to the successful completion of this work. The entire work was done under his overall supervision and it was my good fortune to have him as my Supervisor.

On a number of occasions I availed myself with the advice of Professor G. L. Peiris, Dean of the Faculty of Law, University of

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Colombo and Dr. A. N. V. Chandrahasan, former Head of the Faculty of Law, University of Colombo, in resetting the original thesis. Several valuable suggestions have been made by Professor H. W. Tambiah, Q.C. a former judge of the Supreme Court of Ceylon and Sierra Leone. My friend, Dr. Anton Cooray, Head of the Faculty of Law, University of Colombo helped me immensely and I wish to state with gratitude that I was greatly benefitted by the suggestions made by him.

A number of my former students at Sri Lanka Law College and the Faculty of Law, University of Colombo helped me in the preparation of the Table of Cases and the Table of Statutes, of whom special mention must be made of Messers Nimal Kuruvitabandara and U. D. Karunasena.

I take this opportunity to thank the members of the staff of the libraries of Sri Lanka Law College and the Univrsity of Colombo in general and Mr. Marikar formerly of the University of Colombo Library in particular for the assistance given to me when I was using those libraries. Mr. E. R. S. R. Coomaraswamy, P. C., kindly permitted me to use his library. The late Mr. Hema Basnayake, Q.C. a former Chief Justice, Mr. Cecil Wijeratne, Attorney-at-Law, Mr. Palitha Fernando, State Counsel, Mr. K. Gunasekera, Attorney-at-Law, Mr. A. D. Francis, Attorney-at-Law and Mr. Raja Samaranayake, M.P., Attorney-at-Law, supplied me with materials on election law. Mr. Mahinda Jayaratne, (LL.B.) typed the manuscript. I am grateful to them for their help. I thank my wife Anoma, for the unfailing patience with which she has borne the inconvenience that the preparation of a work of this nature, inevitably involves.

This law is stated as at 8th August, 1984.

HENRY JAYATISSA DE COSTA
LL.B. (Cey.), LL.M. (Lond.), Ph.D. (Sri Lanka)
Attorney-at-Law, J.P.U.M.

496/3, Havelock Road,
Colombo — 6.
4th January, 1985.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Colombo and Dr. A. R. W. [illegible] former Head of the Faculty of Law, University of Colombo, [illegible] valuable [illegible] have been made by Professor [illegible] Q.C., a former judge of the Supreme Court of Ceylon and [illegible] My friend, Dr. Anton Cooray, Head of the Faculty of Law, University of Colombo, [illegible] that I am greatly benefited by the [illegible]

A number of my former students at Sri Lanka Law College and the Faculty of Law, University of Colombo helped me in the preparation of the Table of Cases and the Table of Statutes, of whom special mention must be made of [illegible]

I take this opportunity to thank the members of the staff of the Library of Sri Lanka Law College and the University of Colombo in general and Mr. [illegible] of the University of Colombo Library in particular [illegible] was using their [illegible] Mr. [illegible] P.C. [illegible] Q.C., a former [illegible] Attorney-at-Law, [illegible] Attorney-at-Law, Mr. A. D. [illegible] Attorney-at-Law, supplied me [illegible] I am grateful to them for their help. [illegible] the incompleteness [illegible] inevitably involves.

The law is stated as at [illegible]

[illegible]
[illegible]
Attorney-at-Law, [illegible]

[illegible]
Colombo.
[illegible]

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

CONTENTS

Foreword .. ..

Preface .. ..

PART I.

The development of the elective principle .. ..

Chapter		Page
1.	The historical development of the elective principle in Sri Lanka	1
2.	The proportional representation	14

PART II.

Election offences

3.	A general introduction to election offences	38
4.	Personation	48
5.	Treating	75
6.	Undue influence	90
7.	Bribery	110
8.	False statements	127
9.	Illegal practices	138

PART III.

Election inquiries

10.	Election petitions	154
11.	Agency	184
	Epilogue	195
	Statutes	216
	Table of cases	219
	Abbreviations	223
	Bibliography	224
	Index	227

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

PART I

CHAPTER 1

THE HISTORICAL DEVELOPMENT OF THE ELECTIVE PRINCIPLE IN SRI LANKA

Sri Lanka has today reached a stage where the legislature and the executive consists of persons elected by the people of the country. The Head of the executive is a President elected by the people. The 1978 Constitution has provided for the election of a President with full executive powers in place of the nominal Head of the State under the previous 1972 Constitution.[1]

The introduction of the elective principle to Sri Lanka, and its gradual expansion has had a direct bearing upon the power enjoyed by one individual during the rule of the Sinhalese kings being devolved upon the whole nation. It would therefore be of interest to look back at the gradual devolution of the power from the dictatorial power of the king to the people

According to D'oyly[2], the Sinhalese king has been the supreme power. He has had the power of life and death of his subjects. He had been a combination of the Executive, Legislative and Judicial powers. The system in short, had been an absolute monarchy. In the year 1815 after Sri Wickrama Rajasinghe, the hundred and eighty sixth king, was dethroned and Ceylon was converted to a British Colony the system of government that hitherto prevailed in the country experienced developments.

By the Kandyan Convention which was signed on the 2nd March 1815, in the audience hall of the King's palace by the Governor Brownrigg on behalf of the British Government, and the Kandyan Chiefs on behalf of the inhabitants of Kandy, the sovereignty of the Kandyan Provinces was vested in the British Sovereign.

---

1 Article 30 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

2 D'oyly — A Sketch of the Constitution of the Kandyan Kingdom (1835)—p 2

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Colebrooke Commission

In the year 1823, eight years after Ceylon was converted to a British Colony a Royal Commission was appointed by the British Government to report on the administration of some of its colonies including Ceylon. Lieutenant Colonel William Colebrooke who arrived in Ceylon in the year 1829 for this purpose submitted his report to the British Government recommending the establishment of Legislative and Executive Councils in Ceylon.

Constitution of 1833

The recommendations of Colebrooke regarding the formation of a Legislative and Executive Council were included in the 1833 Order-in-Council. It provided for the Constitution of an Executive Council which consisted of a Chairman and five official members. The Governor was the Chairman while the other official members were the commanding officer of the troops, the Colonial Secretary, the Queen's Advocate and the Government Agent of the Central Province.

The Governor was directed to consult the Council on all matters concerning administration and finances. He could however act on his own where matters were trivial. He could also reject the view of the council in any matter. Where such a situation arose the Governor was bound to submit his reasons for the rejection of the decision of the council, by way of a full report to the Secretary of State for the Colonies. The Legislative Council consisted of 15 members, nine of them were official members while the rest were unofficial members. The unofficial members were nominated by the Governor, who was also the President of the Council. The unofficial members were nominated from among the local Europeans, Burghers, Sinhalese and Tamils. Introduction of all Ordinances was entirely a function of the Governor. He also enjoyed the power to veto any legislation. The Order-in-Council also provided for the reservation of power by the Crown to amend, reject or confirm any legislation passed by the legislative council.

The provisions of the 1833 Constitution could be considered a significant step towards the development of the executive government in Ceylon. This no doubt was the first step towards the extension of a responsible government to the Colony. However the councils established under the 1833 Order-in-Council were mere nominal bodies, the

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

functions of which were advisory. The executive and legislative power was still concentrated in the Governor who was checked only by the Secretary of State for the colonies. The unofficial members who were nominated from among the citizens had no responsible role to play regarding the legislation. The most they could do was to place view of the section they represented. This could have been of no use to the majority whom they did not represent and of very little use to those whom they represented as they owed their appointments to the Governor. Dr. N. M. Perera in his booklet titled "Critical Analysis of the New Constitution" refers to this as a 'mockery of a legislature'.[3]

A reform of the constitution does not appear to have interested the majority of the Ceylonese population during this period for the obvious reason that they were not directly involved or represented in the government machinery. It has been only the Burghers and the local Europeans who had agitated and demanded more power for them in the legislature by way of amendments to the constitution. They had demanded for the increase of the number of unofficial members in the Legislative Council so that they could consolidate their power by having the majority since proficiency in English had been necessary for membership. As a result of continuous agitation the British Government decided to increase the number of unofficial members in the Legislative Council from 6 to 8. The two new members were to be appointed from among the Kandyan Sinhalese and Muslims. This amendment had been made in the year 1889.

By the end of the 19th century and the beginning of the 20th century a new generation of English educated Sinhalese inspired by the freedom fighters of India and the other Asian Countries made continuous demand for a responsible form of Government. In the year 1908, a memorandum demanding a constitutional reform was submitted to the Secretary of State for the colonies suggesting the abolition of the racial representation system and demanding the introduction of an elective principle in place of the nomination system. This memorandum which was signed by responsible members of all Ceylonese communities demanded that Ceylonese members too be included in the Executive Council.

---

3 Critical Analysis of the New Constitution of the Sri Lanka Government by N. M. Perera, p. 8

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Constitution of 1910

The next re-constitution of the legislature was by the Constitution of 1910. This provided for the legislative council to consist of 21 members. Eleven of them were to be official members and the rest unofficial members. Out of the 10 unofficial members 6 were to be nominated by the Governor while 4 were to be elected to represent the European Urban, European Rural, the Burgher and educated Ceylonese communities. The first member to be elected to represent the educated Ceylonese community was Sir Ponnambalam Ramanathan. The election result of the educated Ceylonese Electorate in the Legislative Council of 1912 was as follows [4].

Ponnambalam Ramanathan	..	1645
Dr. H. Marcus Fernando	..	981
Majority	..	664

This could be considered the beginning of the elective principle in Sri Lanka.[5] The total number eligible to vote was 2934. The principle was only extended to a limited number who satisfied certain educational and financial qualifications. Even up to this moment the majority in the legislature were official members. Elected members were a minority even among the unofficial members.

Constitution of 1920

The Constitution of 1920 for the first time gave a majority in the Legislative Council to unofficial members. It increased the number of members in the Legislative Council to 37. Fourteen of them were to be official members, while the remaining 23 unofficial members. Of 23 unofficial members 16 were to be elected, three by the Western Province and one each by the remaining 8 provinces. This could be described as the first instance where the elective principle was extended on a territorial basis. The remaining 5 elected members were to be elected, two by the Europeans, one by the Burghers, one by the Chamber of Commerce and one by the Low Country Products Association.

---

4 A Statistical Survey of Elections to the Legislature of Sri Lanka, 1911—1917 p. 79

5 However the members of Municipal Council in Colombo and Kandy were elected by a free vote in 1865.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Section 24 of the Order-in-Council of 1920 laid down the qualifications required for a person to be entitled to have his name registered as a voter. The section provided as follows :

"No person shall be qualified to have his name entered on any register of voters in any year, if such person[6] —

(*a*) Is not a British Subject; or

(*b*) Is a female; or

(*c*) Is not of the age of 21 years; or

(*d*) Is unable to read and write English, Sinhalese or Tamil; or

(*e*) Has not resided in the electoral district to which the register relates for a period of one year prior to the 31st day of July in such year; or

(*f*) Has been sentenced in any part of his Majesty's Dominions to death or penal servitude, or to imprisonment for an offence punishable with hard labour or rigorous imprisonment for a term exceeding three months; or

(*g*) Has been adjudged by a competent court to be of unsound mind; or

(*h*) Does not possess one of the following qualifications viz :—

(i) A clear annual income of not less than Rs. 600/-.

(ii) The ownership of immovable property either in his own right or in the right of his wife (but not as lessee, or usufructuary mortgagee) situate within the electoral district to which the register relates, for a period of one year prior to the thirty first day of July in such year, the value of which, after allowing for any mortgage debts thereon, is not less than Rs. 1,500/-.

(iii) The occupation as owner or tenant for the period of one year prior to the thirty first day of July in such year of any house, warehouse, counting house, shop, or other building (hereinafter referred to as qualifying property) situate within the electoral district to which the register relates, or the annual value of not less than :

---

6 Section 24 of the Ceylon Order-in-Council 1920

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

(*a*) Rs. 400/- if situated within the limits of any Municipal, Local Board or Sanitary Board town or any Urban District Council.

(*b*) Rs. 200/- if situated elsewhere provided that the qualifying property need not be throughout the period of qualifications the same property if the annual value is in no case less than Rs. 400/- or Rs. 200/- as the case may be, and if such property is in all cases situate within such area as aforesaid;

(iv) The term 'house', 'warehouse', 'shop' or 'other building' include any part of a building when that part is separately occupied for the purposes of any trade, business or profession, and any such part may, for the purpose of describing the qualification, be described as office, chambers, studio or by any like term applicable to the case and

(v) Where an occupier is entitled to the sole and exclusive use of any part of a building, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part."

In the case of the qualifications to be elected as members of the Legislature the literacy qualification was restricted to the knowledge of English.

Constitution of 1923

In 1923 it is said that only 2,04,997 which was about 4% of the total population of the country satisfied the above qualifications. This may sound unreasonable as a handful of the population was vested with the right of electing representatives which legislated to the entirety of the population. This in fact rendered the majority who did not enjoy the franchise at the mercy of the legislators who were in no way bound to pay heed to the needs of them. Looked from a different angle restriction of the franchise seems justified as the elective principle was quite new to the then uneducated Ceylonese community which if was not governed by the restriction could have led to nasty results, and the abuse of the franchise. Though the 1923 Constitution increased the number of members of the Legislative Council to 49, 12 being official members and 37 being unofficial members, the franchise remained unaffected.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In the year 1927 a special Commission was appointed under the chairmanship of Lord Donoughmore to report on the working of the Constitution in Ceylon. The Donoughmore Commission strongly reported on the large majority of the legislative council without any responsibility being imposed on them. This was described as a divorce of power from responsibiity. What in fact it meant was that the unofficial members who did not shoulder any responsibilities regarding the public administration of the country enjoyed a remarkable majority in the Legislative Cuncil.

Donoughmore Constitution

Based on the recommendations of the Commission headed by Lord Donoughmore, the Ceylon (State Council) Order-in-Council was introduced in 1931. This provided for a limited responsible government for Ceylon under the Donoughmore Constitution. The Legislative Council was to be replaced by a representative State Council. Provisions were made for the electon of 50 members on a territorial basis. The executive council was replaced by a Board of Ministers who were to have collective responsibilities over the affairs of administration.

Another noteworthy recommendation made by the Donoughmore Commission was the grant of the Universal Adult Franchise. Mr. A. E. Gunasinghe, a leader of the Labour Movement in Sri Lanka could be named as a person who vigorously canvassed the granting of the Universal Adult Franchise, while some other leaders were of the view that the people of Ceylon had yet to achieve, the political maturity, to justify the granting of the Universal Adult Franchise.

The following could be noted as the major reforms brought about by the Donoughmore Commission :

(1) The establishment of a State Council consisting of 50 elected members and 8 nominated members.

(2) The formation of the State Council with both legislative and executive powers.

(3) The members of the council to be divided into seven committees and the Chairman of each committee to be the Minister in charge of the functions of the committee.

(4) The Legal, Finance and Public Administration to be under 3 Secretaries appointed for this purpose.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

(5) The granting of the Universal Franchise to all those above the age of 21 years.

The first election under the Donoughmore Constitution was held in the year 1931. The State Council under the Donoughmore Constitution was felt to be much effective than the previous Executive and Legislative Councils. The part of the common man was seriously felt by the politicians and their involvement in the administration of the country by way of representatives gradually increased. The confidence placed by the Donoughmore Commission in the usage of the franchise by the common man appeared to be justified as it clearly showed a tremendous impact upon the working of the elected representatives.

The 1931 election to the State Council was contested on an individual basis. Party policies were not the consideration before the people. Persons were elected merely on their personal popularity. In 1935, a young group of educated men founded a political organisation on the basis of Socialist Policies. This was named as the Lanka Sama Samaja Party, and could be considered the first political party of Ceylon. At the 2nd election to the State Council held in 1936, Mr. Philip Gunawardena and Dr. N. M. Perera who contested the Avissawella and Ruwanwella Electorates respectively as candidates of the Lanka Sama Samaja Party were elected.

After the 2nd World War, repeated requests for constitutional reforms giving Ceylon more responsible status was made by the Board of Ministers to the British Government. In pursuance of their repeated demands a declaration was made by the British Government in the year 1943, that steps would be taken to examine the possibilities of granting full responsible government and inviting the Board of Ministers to submit proposals for the drafting of a constitution within the guide lines laid down by the declaration. Though a constitution was in fact drafted by the Board of Ministers in this connection, it was later withdrawn owing to a difference of opinion regarding the conditions and scope of the commission or conference that was to examine and consider the question of granting full responsible government to Ceylon with the hope that the commission would have the advantage of consulting the Board of Ministers. None of the ministers gave evidence before the Commission. However the Commission in its report pointed that Mr. D. S. Senanayake in valuable discussions he had with the Commission expressed his opinion.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The British Government while expressing its sympathy over the desire of the people of Ceylon to achieve dominion status incorporated the proposals of Lord Soulbury in the Order-in-Council of 1946. The Soulbury Constitution was below the expectations of the Board of Ministers. In 1945, the State Council accepted the following motion that was moved by Mr. D. S. Senanayake :

> "This House expresses its disappointment that His Majesty's Government have deferred the admission of Ceylon to full Dominion Status, but in view of the assurance contained in the White Paper of October 31, 1945 that His Majesty's Government will co-operate with the people of Ceylon so that status may be attained by this country in a comparatively short time. This House resolves that the constitution offered in the said White Paper be accepted during the interim period".

The resolution was passed by the State Council after the White Paper containing the proposals of the Soulbury Commission was published. Subsequently an Order-in-Council embodying the recommendations of the Soulbury Commission as a constitution was introduced.

Mr. S. W. R. D. Bandaranaike in address to the Sinhala Maha Saba referred to the Constitution of 1946 as follows : [7]

> "It is a fact that this Constitution is disappointing and falls far short of what we had a right to expect, although it is an advance in some respect in the existing constitution. After fifteen years of the Donoughmore Constitution, the next step should at least have been, full Dominion Status .... You will remember that even Mr. Senanayake's motion (Mr. D. S. Senanayake's) for the acceptance of the Secretary of State's proposals contained an expression of disappointment with the unsatisfactory nature of those proposals. I think that the position has now been sufficiently cleared to enable us to reach agreement amongst ourselves and achieve in a very short time our freedom. No more commissions from abroad will be required to settle our constitutional problems for us."

---

7 Speeches and Writing by S. W. R. D. Bandaranaike — p. 112.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Soulbury Constitution

The General Election for the first Parliament established under the Soulbury Constitution was held in 1947. The election was won by the United National Party under the leadership of Mr. D. S. Senanayake. Shortly afterwards, in the year 1947 an Order-in-Council called the Ceylon (Independence) Order-in-Council of 1947 was introduced for the purpose of removing the limitations on full responsible government imposed by the Soulbury Constitution of 1946. Thus the British Government ceased to have responsibilities over the Government of Ceylon. The Authority the British Government had to legislate for Ceylon ceased except at the request of the Parliament of Ceylon A Governor General was to replace the Governor.

A revision of the Soulbury Constitution was first indicated by Mr. S. W. R. D. Bandaranaike when he was elected Prime Minister in the year 1956. In his address to Commonwealth Nations in July 1956 Mr. Bandaranaike expressed Ceylon's intention of becoming a Republic within the Commonwealth. In the year 1959 a select committee was appointed to discuss the question of Ceylon becoming a Republic. With the death of Mr. Bandaranaike in the year 1959 the matter was abandoned.

Constitution of 1972

At the General Election 1970 the joint election manifesto of the Sri Lanka Freedom Party, the Lanka Sama Samaja Party, and the Communist Party requested a mandate from the people to permit the Members of the Parliament to simultaneously function as a Constituent Assembly to draft and adopt a new constitution. After the General Election the United Front Government under the leadership of Mrs. Sirimavo Bandaranaike established a Constituent Assembly and appointed Dr. Colvin R. de Silva, Minister of Constitutional affairs. The draft constitution prepared by the Constituent Assembly was adopted, thus making Ceylon the Republic of Sri Lanka, a republic within the Commonwealth of Nations.

Constitution of 1978

In the year 1978 the United National Party which came to power in 1977 introduced a new constitution replacing the former. The Constitution of 1978 brought about drastic changes in the elective

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

principle and the form of Government. It provided for an Executive Presidential System. A President with full executive powers who is the Head of the Executive and of the Cabinet Ministers, was provided for by the Constitution. A Proportional Representation System was also introduced for the election of Members of the Legislature in place of the former simple majority system. (see chapter 2).

The purpose of the above historical survey was not to deal in detail with the constitutional provisions but to give a brief account of the constitutional developments in order to show the devolution of the power from one personality to the nation as a whole.

As stated earlier the recommendations of the Donoughmore Constitution for the granting of the Universal Franchise has immensely contributed towards the present political developments in Sri Lanka. Though certain sections sought to criticise the recommendations of the Donoughmore Constitution for the granting of the Universal Franchise the people of Sri Lanka have shown sufficient maturity in the exercise of their vote.

Another significant development of the franchise was introduced by Act No. 11 of 1959. This Act amended the qualifying age fixed by the Ceylon (Parliamentary Elections) Order-in-Council of 1946 by reducing it from 21 to 18. The amendment reads as follows :

> "No person shall be qualified to have his name entered or retained in any register of electors in any year, if such person was less than eighteen years of age on the 1st day of June in that year".

The introduction of this was met with stiff opposition when it was discussed in Parliament. Many felt that the extension of the franchise to those above the age of 18, was a responsibility which could well be abused due to the immaturity in the youth. The Government of the day however considered those above 18 sufficiently mature to vest such a right in them.

The results of the elections held since the year 1947 have shown the ability of the people to reject a government they resent and elect another in its place. They have simply displayed their ability to use the vote as the golden weapon to which they are entitled under the democratic system of government.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

When looking back at the days when the Executive and Legislative councils consisted of members who had no direct dealings with the people, one could be proud of Sri Lanka's achievements without shedding one drop of blood. Today the situation is that even the Head of the Executive is elected by the vote of the people. All members of the legislature owe their membership to the people of the country.

By the Constitution of 1972, (The First Republican Constitution) Sri Lanka as a Republic ceased to owe allegiance to the British Government. Section 3 of the said Constitution provided :

> "In the Republic of Sri Lanka, Sovereignty is in the People and is inalienable".

It also provided for the sovereignty to be exercised through a National State Assembly of elected representatives of the people. The 1978 Constitution went a step ahead by including the power of government fundamental rights and the franchise within the framework of sovereignty.

Under the present Constitution (The Constitution of 1978) the people of Sri Lanka not only exercise the legislative and executive powers through their elected representatives, be on certain occasions directly exercise their legislative power.

Article 4 (*a*) of the Constitution provides :

> "The legislative power of the people shall be exercised by Parliament consisting of elected representatives of the people and by the people at a Referendum".

This responsibility placed upon the people in the governing of the country could said to be immense. With the gradual expansion of the constitutional powers of the people, today a situation has arisen where the people are called upon to express their choice on many issues concerning the government. The cumulative effect of all these rights would lose its importance if the law governing the elections on various matters is not strong enough to maintain the highest degree of secrecy it deserves and the efficiency needed to ensure a free election and an election that would clearly indicate and give the necessary weight to the view of the majority of the people. The laws governing the parliamentary elections

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

KOHA-DDL

as well as other elections including Referendum therefore should be constantly checked and developed to suit the requirements. For this purpose the laws governing election should be strong on two aspects namely :

(*a*) They should be satisfactory as to assure the secrecy of an election free of any influences or threats. In short it should be an election where the people are free to exercise their franchise freely.

(*b*) The election should be held under such circumstances and methods so as to assure that the wishes of the majority is sufficiently indicated in keeping with the principles of democracy that are so dear to the people.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

CHAPTER 2

THE PROPORTIONAL REPRESENTATION

The election of members to the supreme body or institution of state power should always be directed towards giving effect to the wishes of the majority of the people. All laws that have been enacted to govern elections of members to the legislatures of each country spring up from this fundamental principle. Where the laws are unable to give effect to the wishes of the majority it could lead to dangerous consequences where democracy is concerned. The introduction of the proportional representation system (P. R. System) to Sri Lanka could be considered an important development in its field of affairs.[1] Just as much as it is important to safeguard the right of the voters to cast their vote freely, it is important to see that the wish of the people is sufficiently indicated by the results of an election. Numerous methods have been adopted in various countries of the world to elect members to the various assemblies which rule their respective countries. Before dealing with the proportional representation system which has been introduced recently to Sri Lanka it would be appropriate to consider the elective principle that was hitherto practised in Sri Lanka in order to understand the proportional representation system more fully.

Since 1912, Ceylon has had elected members in its Legislative Councils. The elective principle had been introduced to the Ceylon Legislature with the reforms of 1910, though only a very limited number had been entitled to exercise the franchise then. The principle that was practised in Ceylon could be described as a majority system.

Majority system simply means that the candidate who receives the largest number of votes should be declared elected. For this purpose the country was divided into electorates. The system that was used in Sri Lanka till the introduction of the proportional representation system in 1978, could be described as a simple majority system. There is yet another system known as the absolute majority system which is more complicated and which is directed towards rectifying certain weak-

---

1 The P.R. principle was first introduced by Section 9 (2) of 1946 Constitution -i.e. election of 15 members to the Senate. The Section 9 (2) of the Ceylon (Constitution) Order-in-Council 1946, stated: "The election of Senators shall, whenever such election is contested, be according to the principle of proportional representation, each voter having one transferable vote".

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

nesses in the simple majority system. Under the simple majority system the candidate who receives the largest number of valid votes would be declared elected irrespective of the number of votes that may have been polled against him. This system would be effective where the contest is only between 2 candidates. However, where any election is contested by more than 2 candidates there is the danger of a candidate whom the majority of the electors did not wish to be elected, being elected. Where an election was contested between candidates A, B & C, let us assume that the total number of votes polled by each candidate was as follows ;

A	5,000
B	4,700
C	4,000

If the election had been held under the simple majority system, on the above results candidate A would be declared elected by a majority of 300 votes. However, it is clear that 8,700 voters have preferred other candidates to the victorious candidate. Thus it is said that the simple majority system may not on some occasions effectively indicate the wish of the majority. Many examples could be cited from the elections held in Ceylon where this situation had arisen. One such occasion was the by-election on 9.10.1972 to fill the vacancy of the Kesbewa Electorate which fell vacant due to the death of the sitting member. At the 1970 General Election this seat was won by the S.L.F.P. candidate by a majority of 14,606 votes. At the by-election held in 1972, 2 members of the Sri Lanka Freedom Party chose to contest this seat as one of them was refused nomination. Thus there was an official member of the Sri Lanka Freedom Party. The final result was a victory to the United National Party candidate who had polled a majority of 3,043 votes above his closest rival the independent candidate who had polled 19,549 votes, while the candidate of the Sri Lanka Freedom Party had polled 14,269 votes. Thus the United National Party's candidate was declared elected though 33,818 votes had been polled as against the 22,592 votes polled by him.

The same situation could also arise when the results of the whole country is considered. This however would be more serious as then a government which did not have the majority of the people on its side could be elected to power. In fact, from the results of elections held in Sri Lanka as well as in other parts of the world, where the simple majority system is practised, many instances could be cited where governments

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

that have been elected did not have an absolute majority when the total number of votes polled was considered. At the election held in July 1960, the total number of votes polled by each party was as follows :

S. L. F. P. ..	1,021,087	U. N. P.	..	1,128,003
		L. S. S. P.	..	224,995
		C. P.	..	90,219
		T. C. & F. P.	..	259,446
		Others	..	319,780
		Total	..	2,022,443

From the above results, it could be seen that the Sri Lanka Freedom Party which was elected to power at the General Election of July 1960 had polled 1,021,087 votes, while 2,022,443 votes had been polled by all the other opposition parties. The Freedom Party was however elected to govern the country as it had been able to win 75 seats in Parliament out of a total 151.

At the General Election held in Britain in 1945 the Labour Party which had won 393 seats in the House of Commons had been elected to power. The analysis of the results had however shown that the Labour Party had polled 119,92,292 while all other parties had polled 129,08,106. This again could be cited as an example where the party that was elected to power did not receive the support of the majority of the voters.

This is considered one of the most serious weaknesses of the simple majority system. If the fundamental principle of democracy could be considered that the view of the majority should prevail, then it may be open for one to say the simple majority system did not effectively indicate the wish of the majority. When one considers the simple majority system it is important to note that when an election is held under this system the aim of any political party, would be to win the majority of the seats contested. There would be no necessity to obtain the majority of the votes polled. This would compel the parties that are contesting an election under the simple majority system to concentrate in certain areas of the country where they could win seats in order to obtain the majority in the Legislature. This may even result in certain parties totally abandoning certain areas where they could win a larger number of seats. As it has been experienced in Sri Lanka this could lead to the formation of a coalition between parties merely for the purpose of winning the majority of seats in Parliament.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Has Not the Election of Sri Lanka Sufficiently Indicated the Wish of the Majority?

One of the main requirements put forward by those who were against the continuation of the simple majority system in Sri Lanka was that it has not on many occasions indicated the wish of the majority. The results of the General Elections held since 1956 have been often cited in support of this view. For instance the results of the 1970 General Election clearly showed that the political party which polled the largest number of votes was not elected to power. The number of votes polled by each party in 1970 is given below against the name of the party.

S. L. F. P.	....	1,834,843
U. N. P.	....	1,892,534
L. S. S. P.	....	434,336
C. P.	....	169,199
F. P.	....	361,294

According to the analysis of the results, it would be seen that the United National Party has been able to poll the largest number of votes. However, the result of the election was a humiliating defeat for the United National Party as it was only able to win 17 seats in Parliament while the Sri Lanka Freedom Party which had polled a lesser amount of votes received an unprecedented victory by winning 90 seats in Parliament. This was said to be a repetition of the situation that arose at the 1960 July General Election, where the Sri Lanka Freedom Party which polled 1,021,087 votes was able to defeat the United National Party which had polled 1,128,003 votes.

These two instances where a political party which had polled the largest number of votes had been voted out of power was cited by those against the continuation of the simple majority system to support their argument that the simple majority system not only failed to indicate the wish of the majority but on some instances went against it.

Though the above statement appear to be amply supported the results of the above mentioned elections, a more careful study may lead one to accept the fact that the simple majority system at the two given instances has gone against the wish of the majority cannot be held to be good. For example in 1970 the Sri Lanka Freedom Party, the Lanka Sama Samaja Party and the Communist Party fought the election as a

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

coalition. Therefore, the Sri Lanka Freedom Party did not field candidates where the Communist Party or the Lanka Sama Samaja Party contested. Thus the United National Party contested many more seats than the Sri Lanka Freedom Party did. Hence it was obvious that the United National Party should poll the largest number of votes. This is no way construed to mean that the largest number of voters wished the United National Party to be returned to power.

The results of the Kalutara Administrative District at the 1970 General Election would provide an illuminating illustration of this fact. The Kalutara Administrative District consists of 8 constituencies, namely Panadura, Horana, Bandaragama, Matugama, Bulathsinhala, Kalutara, Beruwala and Agalawatta. The Sri Lanka Freedom Party contested only 4 of the above seats at the 1970 General Election as the rest were contested by candidates of the Lanka Sama Samaja Party. The total number of votes polled by each party in the Kalutara District was as follows :—

U. N. P.	....	106,293[2]
S. L. F. P.	....	99,479
L. S. S. P.	....	92,994

At a glance, the above results would indicate that the United National Party has polled the largest number of votes in the Kalutara District. But when one considers the above results in the light of the number of seats contested by each party, it would be clear that the performances of the United National Party in the Kalutara District at the said elections had been comparatively poor. The results of the District under the Simple majority system effectively indicated this as the United National Party lost all the seats it contested in the Kalutara District.

In the same manner, both at the 1960 July and 1970 May General Elections the Sri Lanka Freedom Party contested a lesser number of seats than the United National Party, as it had formed a coalition with the Lanka Sama Samaja Party and the Communist Party at the 1970 General Election and as it had entered into a no contest pact with the same parties at the 1960 July General Election. At both the 1960 July and 1970 May General Elections the number of votes the Sri Lanka Freedom Party polled along with the other two parties always exceeded

2 A Statistical Survey of Elections to the Legislature of Sri Lanka—G.P.S.H.de Silva

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

the number of votes polled by the United National Party. In the majority of the electorates where the Sri Lanka Freedom Party was confronted with the United National Party the voters had indicated their preference in favour of the Sri Lanka Freedom Party. Under these circumstances the argument that the results of the 1960 July and 1970 May General Elections were against the wish of the majority does not appear to be reasonable.

The simple majority system is practised in many of the Commonwealth Countries, India, Canada, Britain are countries where this system is still in force.

Different Representation Systems

As against the simple majority system there is also a system which could be described as an absolute majority system. This system remedies the weakness in the simple majority system where a candidate who fails to obtain the majority of the votes polled is elected. In simple words this is a more complicated system which is a development of the simple majority system directed towards avoiding a candidate who does not command the support of the majority being elected.

In the year of 1770, a system which was known as alternative vote system was introduced in France. Bordy could be considered as the author of this system which provided for a preferential vote where an election is contested by more than two candidates. For example where an election is fought by three candidates the voter would be called upon to mark two preferences. The number of preferences to be indicated by the voters could be adjusted in accordance with the number of the candidates. At the first count only the first preference would be counted. If at the end of the first count no candidate has received fifty percent of the total valid votes polled there would be a second count. Before the second count commences the candidate who receives the least number of votes would be removed from the contest. If no candidate has received the necessary absolute majority at the end of the second count, the candidate who received the least number of votes at the end of the second count would be removed. Whenever a candidate is removed from the contest, the votes that he received would be distributed among the remaining candidates on the basis of the second preferences. Where a third count, when the votes of the candidate who was second removed from the contest is counted, if in a certain ballot paper the second

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

preference is in favour of the candidate who was first removed, then the second preference is ignored and the third preference is considered to see whether it is in favour of any of the remaining candidates. If so it is given to such candidate. However no voter is compelled to cast all three preferences, he may cast his vote for one candidate or indicate only his first and second preferences. Where a voter indicates only his first preference he runs the risk of having his vote wasted if the candidate in favour of whom he cast his vote gets the least number of votes.

The following example would be of some use to understand the working of the alternative vote or preferential vote system. Candidates A, B, C & D contest an election. At the end of the first count the total number of votes polled by each candidates was as follows :—

A	....	6,500
B	....	3,000
C	....	4,200
D	....	1,000

It would be seen that at the end of the first count no candidate has received an absolute majority. This therefore necessitates a second count. Candidate D who has received least number of votes would now be removed from the contest and his second preference would be considered, at the end of the second count let us assume that the results were as follows :—

A	....	6,575
B	....	3,800
C	....	4,300

According to the above results even at the end of the third count no candidate has received the absolute majority required to be declared elected. It would also be seen that 'A' has received 75 votes more at the second count, while B & C have received 800 and 100 votes respectively. Thus it is clear that only 975 of the 1000 votes polled by the removed candidate 'D' has been added to the remaining candidates. This is possible if only 975 of the voters who had voted in favour of 'D' had indicated their second preference. Therefore the 25 ballot papers in which no second preference was indicated would be rejected. On the above results a third count becomes necessary. Before the commencement of the third count, candidate 'B' who had received the least number

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

of votes at the end of the third count would be removed. The results at the end of the third count was as follows :—

A	....	7,300
B	....	7,325

At the end of the third count it is seen that 'C' who received only 4,200 votes at the end of the first count has now received 7,325 votes and would be declared elected. The reasons behind this being, a large number of voters who had voted in favour of 'B' indicating 'C' as their second preference. If during the second count any voter who had voted for 'B' had indicated his second preference in favour of 'D' the second preference would be counted.

The illustration given above amply demonstrates the difference between the simple majority system and the absolute majority system. If the above example was of an election held under the simple majority system after the conclusion of the first count 'A' candidate would have been declared elected, and a large number of voters would have had very little value. As the election was held under the absolute majority system it has been possible to elect a candidate whom the majority of the voters preferred against all others.

The Presidential Election in Sri Lanka is held under the absolute majority system, which clearly gives effect to the wish of the majority. In Sri Lanka at the end of the 1st count if no candidate obtains the required number of votes all candidates other than the first and second will be removed and their second preference would be considered. The absolute majority system of voting above discussed, though a democratic system, is one which is full of practical difficulties. Therefore, where an election is held on an electoral basis to elect members to a legislature it would not be an easy task to follow this method. However this could be considered an extremely efficient method for election where a Head of the State is to be elected.

There is also an absolute majority system which is known as the repeated ballot system. Here, an election would be held and where no candidate receives the required number of votes another is held in which only the two candidates who were placed first and second at the previous election would be permitted to contest. This system would be practicable where a limited number of persons such as members of a local body, or

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

even members of Parliament are called upon to elect Mayor or a Speaker. It would not be practicable to have completely fresh elections where all the voters of a country have to cast their votes. Even though it may be practicable it undoubtedly would be an unnecessary expenditure. This system however has been in force in France since 1950.

Comparison of Different Proportional Representation Systems

Under systems of proportional representation, the number of votes that a candidate or list must obtain is determined by the electoral formula. For example d' Hondt Highest average is found in Belgium and Israel, St. Lague highest average formula is used in Norway, and Hagenbach Bischoff method is used in Austria and Switzerland. Some countries e.g. Denmark and Netherlands combine those systems, and the electoral system of the Federal Republic of Germany combines features of both majority and proportional representation systems. The many variations of method testify to the difficulty of putting into practice a system which is very simple in principle.

The d' Hondt formula was invented by the Belgian Professor Victor d' Hondt in 1878.[3] This is also called the 'Highest average' or 'Largest average'. This method favours the largest party and, in fact, lowers the cut off point very little in constituencies electing few members and choosing among few competing party lists. If the total number of votes cast is designed as V, the total number of mandates as M, and the total number of parties as P, the threshold formula for the d'Hondt procedure will read:

$$T = \frac{V - I}{M + P - I}$$

This means that the smallest number of votes (T) required for representation will be a function not only of the size of the constituency and its share of seats but also of the number of parties. A fragmented party system lowers the cut off point but, by implication, also increases the over-representation of the largest of the parties, particularly if P is larger than M, since the votes for a number of the small parties must of necessity go unrepresented.

3 Encyclopedia of Social Sciences — Elections p. 13.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Two procedures were frequently suggested as alternatives to d'Hondt in the discussion in the Scandinavian countries, the 'method of the greatest remainder' and the St. Lague system of successive division by odd integers of the St. Lague highest average system. The method of the 'greatest remainder' lowers the threshold of representation to a minimum. The threshold formula is

$$T = \frac{V}{M\ P}$$

This is a direct invitation to proliferation of parties, since the threshold decreases rapidly within increases in the number of parties. The simple St. Lague formula does not go quite that far. In St. Lague method the formula is :

$$T = \frac{V - I}{(2\ M + P - 2)}$$

Its crucial contribution is the progressive increase in the cost of new seats. The greater the number of seats already won by a party in a given constituency, the more votes it will take to add yet another. The d'Hondt formula makes no distinction between first and later seats. The total votes cast for each party are divided successively by 1, 2, 3 .. The St. Lague method is to divide by 1, 3, 5 .. Thus if the first seat costs each party 1000 votes, the second seat will cost the party $\frac{(1000 \times 3)}{2}$ $= 1500$ votes and the third seat $\frac{(1000 \times 5)}{3} = 1667$ votes, and so on. This is definitely an advantage for small parties as it is easier for those parties to gain representation by that method.

Proportional Representation Without Party Lists

Both d'Hondt and St. Lague systems require the voter to elect several representatives at the same time and to choose among a number of lists of candidates usually prepared by competing political parties. The voters might have some influence on the fate of individual candidates on such lists, but it was nearly impossible to elect anyone not appearing on the initial lists. Therefore to remedy this situation various PR systems without party lists were introduced. Thomas Hare (1806 —

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

1891) an English political Professor introduced a system in which each district elect a number of representatives, the voters mark their first choice, second choice and so on. The total number of valid ballots is divided by the number of representatives to be elected and the number obtained this way would be the quota or the smallest number of preferences required for election. In other words according to Hare system the quota would be : $\frac{\text{Votes}}{\text{Seats}}$. But this was quickly shown to be too high and a slightly different system was introduced by H.R. Droop in 1868. According to Droop system the quota would be: $\left(\frac{\text{Votes}}{\text{Seats} + 1}\right) + 1$
This would be just enough to beat competitors for the last of the seats.

Cumulative Voting

All the PR systems generally provide minority parties with representatives proportionate to their strength. But according to the cumulative voting system which is used in the United States, in the State of Illinois in the election to the House of Representatives, each voter has 3 votes. He may cast one vote for each of 3 candidates one and half votes for each of 2 candidates or three votes for one candidate.

The university system which was abolished in England in 1948 by the Representation of the People Act, was an intermediate step between the simple transferable vote and the plan of PR. To be elected, a candidate must obtain a quota of votes varying with the number of members to be returned. In a 5 member constituency the quota would be just over 1/6 of the votes cast in a 6 member constituency just over 1/7, and so on.

Proportional Representation or Communal Representation ?

An analysis of the various representation system would clearly show that the PR system is popular in the plural societies, because the ethnic minorities in those countries had no faith in the majority representation. Sri Lanka, which is also a heterogeneous society, had a number of early constitution orders-in-council during the British period, in which provision was made for communal representation. The failure of the communal representation, which was summed up in the Donoughmore Commission Report.[4]

---

4 Report of the Donoughmore Commissions — (CMND 313) p. 39.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

".... the communal representation is, as it were, a canker on the body politic, eating deeper and deeper into the vital energies of the people, breeding self-interest suspicion and animosity, poisoning the new growth of political consciousness, and effectively preventing the development of a national or corporate spirit"..................

It is true that since the Donoughmore Constitution there was no communal representation in Sri Lanka, but there is nothing to prevent the formation of regional parties based on communal lines in view of the new electoral districts under the 1978 Constitution. Of the 22 electoral districts at least in 8 there are sufficient number of minorities to form regional parties or independent groups which in theory can send some members. e.g. in Nuwara-Eliya, Badulla, Kandy and Ratnapura districts a regional group consisting of Tamil voters of Indian origin can expect to get some seats. In Batticaloa, Trincomalee, Digamadulla, Puttalam and perhaps in Colombo district a Muslim group can get representation. In Vanni, a Sinhala group has a remote chance of sending 1 member. In Jaffna, Vanni, Trincomalee, Batticaloa and Digamadulla, a Ceylon Tamil group can get representation easily. Even though the PR is different from communal representation, in a divided society like ours which is divided as so many lines, regional groups or parties based on communal lines can become popular if the so called national political parties fail to win the support of the various ethnic groups.

Even today there are some countries in the Commonwealth which make provisions other than the proportional representation to represent the minorities in their legislature in view of the plural nature of their societies. e.g. in Maurituis'[5] in the elections to the legislative assembly, 62 members are elected by universal adult suffrage for 5 years and eight 'additional members' being the most successful losing candidates of each community are also elected. This election of 'best losers' system was introduced in order to maintain the balance between the four major communities living in Mauritius namely the people of Indian origin, Chinese, French and Creoles.

Multi-Member Constituencies

Since the year 1947 under the simple majority system there have been multi-member constituencies in Ceylon. The multi-member constituencies are created in areas where there is a considerable amount

---

5 Europa Year Book 1982 Vol. II p. 928.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

of voters belonging to a minority. Where there are multi-member constituencies each voter would be entitled to cast a number of votes equal to the number of seats. For example the Colombo Central multi-member seat returns three members of Parliament. The voters of that electorate would be entitled to cast three votes each. These three votes could be cast by the voters in any way they choose to cast. They could either cast all three votes in favour of one candidate or the three votes in favour of three candidates. The multi member system is directed towards giving the minority an opportunity of being represented in the legislature. Though this system has proved to be a success in some of the electorates, in some others the minorities have failed to obtain the representation despite the fact that they are entitled to more than one vote. For example at the 1965 General Election both the members returned by the Colombo South multi member seat were Sinhalese. They were elected uncontested. Since the creation of the Colombo South multi-member constituency in 1960 March and its abolition in 1977 it never returned a Tamil representative despite the fact that there were considerable amount of Tamil voters in the electorate and each of them had two votes to cast. The reason however could be that the voters were divided on the basis of the political parties to which they belonged and hence were not worried about the candidate so far as the party was represented in the legislature. On the other hand, the Akurana seat, the Beruwala seat and also the Nuwara-Eliya - Maskeliya seat have sufficiently served the purpose for which they were created by returning members representing the minorities.

All the above discussed methods of voting from the simple majority system to the absolute majority system if applied to election of members to a legislature it would be seen that the main aim of any political party would be to win as much as seats possible in order to gain power. The party would not be concerned as to the total amount of votes the party would poll if that does not affect the ultimate decision regarding the number of seats a party would be entitled to. This has been the main complaint regarding the election held under the simple majority system in Sri Lanka.

Sri Lanka having experienced eight General Elections held under the simple majority system decided in 1978 to replace the simple majority system with a proportional representation system. One of the main argument that was put forward against the continuation of the simple majority system was that members elected and the seats won by the political parties under that system was never proportionate to the number of votes polled by such political party. One could go further to say

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

that it was unreasonably out of proportion. This fact is very clearly indicated by the results of elections held under that system. At the 1970 General Election the United National Party which polled 1,892,584 (37%) of the votes was able to win only 17 seats in a Parliament of 151 seats while the Sri Lanka Freedom Party which polled 1,834,843 (36%) votes was able to win 90 seats in Parliament. The situation was repeated at the 1977 General Election where the Sri Lanka Freedom Party which polled 1,853,515 votes (29.5%) was able to win only 8 seats in Parliament, while the Tamil United Liberation Front which polled only 4,21,486 (6.72%) votes was able to win 18 seats.

The results of the 1977 General Election clearly tested the simple majority system and proved that it was an obsolete system which needed to be replaced, without any further delay. The United National Party which was able to obtain 50.64% of the total valid votes polled at the 1977 General Election was able to win 139 seats in Parliament thus obtaining an unprecedented majority. The Sri Lanka Freedom Party which according to the results of the election was the second strongest political party was reduced to a minority in Parliament. A member of the Tamil United Liberation Front which polled 14 lakhs lesser than the Sri Lanka Freedom Party was elected leader of the Opposition as it had won the second largest number of seats in Parliament. In view of the above defects of the simple majority system the 1978 Constitution provided for the adoption of a proportional representation system in place of it. Under the proportional representation system the Island is divided into twenty two electoral districts.

The Constitution of the Democratic Socialist Republic of Sri Lanka, promulgated in 1978 provided for the appointment of a delimitation commission by the President within three months of promulgation of the Constitution (Article 95.) It further provides that the delimitation commission should consist of three members. Article 96 of the Constitution provided for the creation of not less than 20 and not more than 24 electoral districts. The delimitation commission of 1981 has divided the country into twenty two electoral districts. Article 96 of the Constitution laid down certain guide lines to be considered by the Commissioners of the delimitation commission. The article provided that an electoral district could either consist of one province or a province could be divided into two or more electoral districts. Where a province is divided into two or more electoral districts, where ever possible an electoral district should consist of one or the combination of two or more administrative districts. For this purpose the commission should take into account the boundaries of the existing administrative districts.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The delimitation commission of 1981 except in one instance has converted the administrative districts of Sri Lanka into 21 electoral districts. Out of the administrative districts in the Northern Province, Jaffna has been made an electoral district. The Mannar, Mullaitivu and Vavuniya administrative districts have been combined together to form the Vanni Electoral District. The Ampara administrative district has been renamed the Digamadulla electoral district.

The Number of Members to be Returned by Each Electoral District

The Constitution also provided while laying down guide lines that the delimitation commission should decide the number of members to be returned by each electoral district. Article 98 (1) of the Constitution fixed the total number of members to be appointed at 196[4] Out of the 196 seats the Constitution provided that each province should be given four seats in addition to the number of members each electoral district would be entitled to in accordance with the number of registered voters in such electoral district.[5] Thus the nine provinces would be entitled to 36 seats out of the 196 seats in Parliament. Article 98 (3) to (7) provided for the distribution of the remaining 160 seats among the electoral districts. According to the provisions of the Constitution the total number of registered voters should be divided by 160. This amount would be the qualifying number. The total number of voters in each electoral district would be divided by the qualifying number in order to get at the number of members each district is to return. If after the distribution of seats among the electorates in this manner if all 160 seats have not been distributed, the remaining seats would be[6] distributed on the basis of the greatest remainder.

After its deliberations in 1981 delimitation commission divided the country into 22 electoral districts and allotted the number of seats to each electoral districts as follows :

1. Colombo District 21
2. Gampaha District 17
3. Kalutara District 11
4. Kandy District 12

---

4 Article 98 (1) Constitution of the Democratic Socialist Republic of Sri Lanka.
5 Article 96 (4) Constitution of the Democratic Socialist Republic of Sri Lanka
6 Article 98(3), (4), (5), (6) of the above Constitution.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

5.	Matale District	05
6.	Nuwara-Eliya District	06
7.	Galle District	11
8.	Matara District	09
9.	Hambantota District	07
10.	Jaffna District	11
11.	Wanni District	05
12.	Batticaloa District	04
13.	Digamadulla District	06
14.	Trincomalee District	04
15.	Kurunegala District	16
16.	Puttalam District	07
17.	Anuradhapura District	07
18.	Polonnaruwa District	05
19.	Badulla District	08
20.	Moneragala District	04
21.	Ratnapura District	10
22.	Kegalle District	10
	Total	196

Under the proportional representation system, it could be said that the country has been divided into a lesser number of multi member constituency in place of the previous large number of single member constituencies. The seats of the electoral district is divided on a proportional basis among the political parties that contest the electoral district. Under the present system there would be no more independent candidates. However there is provision for independent groups of candidates to contest electoral districts.

Where a political party or an independent group contests an election it should submit a list containing its candidates. The number of candidates in the nomination paper should be equal to the number of seats allotted to that particular electoral district plus 1/3 of that amount. For example where the electoral district is entitled to return 9 members the nomination paper should contain names of 12 candidates. The names of candidates should appear on the nomination paper in order of preference.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

At an election the party or independent group which polls the largest number of votes would entitled to have the first candidate according to its nomination paper declared elected. This is described as a bonus seat that is given to a party or an independent group which polls the largest number of votes in a district. Only the remaining seats would be distributed in proportion to the number of votes polled by each party.[7]

Under the Constitution a political party or an independent group in order to be entitled to a seat in an electoral district should obtain the minimum of 1/8th of the total number of the valid votes polled. All parties or independent groups which fail to obtain 1/8th of the total number of valid votes polled in the district will be removed and the number of votes they had received would be deducted from the total number of votes. This is called the relevant number of votes. The relevant number of votes is next divided by the number of the members to be returned by the electoral district minus one. This amount would be the resulting number. The number of the votes received by each political party is then divided by the resulting number in order to decide the number of seats each party is entitled to. When any seats are left after the seats are divided in the above manner the remaining seat is divided on the basis of the greatest remainder. The remainder would be the number of votes remaining after the votes received by a political party is divided by the resulting number. A few examples, would make this procedure clear. Results of the District Development Council election held in 1981 electoral district, Kalutara.

Total number of seats 8 :

Total number of registered voters		.. 469,501
Votes polled	..	.. 219,431
U. N. P.	..	.. 139,431
Independent Group	(1)	.. 56,986
,, ,,	(2)	.. 22,683

1/8th of the total number of votes polled is 27,387. Independent Group (2) therefore would not be entitled to any seat. Thus the relevant number of votes would be :

2,19,100 — 22,683 = 1,86,417

7 Article 99 (4) of The Constitution of the Democratic Socialist Republic of Sri Lanka

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In order to arrive at the resulting number of the votes, the relevant number of votes should be divided by the number of seats minus one.

Resulting number $\frac{1,86,417}{(8-1)} = 26,631$

The number of seats to each party is entitled, is divided by dividing the number of votes polled by each party by the resulting number.

U. N. P. $\frac{139,431}{26,361}$ 5 remainder 6,276

Ind. Gr. (1) $\frac{56,986}{26,631}$ 2 remainder 3,724

On the proportional basis the United National Party is entitled to five seats while the Independent Group (1) is entitled to two seats. One more seat should be added to the United National Party as a bonus seat as it has polled the largest number of votes. The final result therefore would be :

U. N. P.	..	6
Ind. Gr. (1)	..	2
Total	..	8

Assuming that the General Election of 1977 was held under the proportional representation system, let us now analyse the results of the Anuradhapura electoral district as it would be helpful to understand as to how seats are divided on the basis of the greatest remainder.

The total number of valid votes polled 173,416

U. N. P.	..	94,239
S. L. F. P.	..	70,663
U. L. F.	..	8,514

1/8th of the total number of votes would be 21,667. The U.L.F would therefore not be entitled to any seat.

The relevant number of votes 173,416 — 8,514 = 164,902

Resulting number $\frac{164,902}{(7-1)} = 27,483$

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

U. N. P. would be entitled to $\frac{94,239}{27,483}$ = 3 remainder, 11,789

S. L. F. P. would be entitled to $\frac{70,663}{27,483}$ = 2 remainder, 15,696

On the basis of proportion of votes the United National Party would be entitled to three seats. With the bonus seat for the largest number of votes, the United National Party would be entitled to four seats. There would yet be a seat remaining as the total number of seats is seven. This is decided on the basis of the greatest remainder. As the Sri Lanka Freedom Party has a remainder of 15,696 votes it would be entitled to the remaining seat. Thus the final result would be :,

U. N. P.	..	4
S. L. F. P.	..	3
Total	..	7

The proportional representation has been tested in Sri Lanka at the Local Government Elections of 1979 and 1983 and the Development Council Elections of 1981. Though the Development Council Elections were held on the same Electoral District basis as a General Election a successful assessment cannot be made of the working of the representation system on the basis of the D.C. Election as the Sri Lanka Freedom Party the second largest party boycotted the elections. Many have however, expressed their opinion as to the suitability of the proportional representation system for the election of members of Parliament in Sri Lanka.

One striking feature is that the proportional representation system would not be favourable to small political parties. It has also been said that the minimum of 1/8th would be quite a high degree which itself is against the principle upon which the representation system was introduced. As a result of this limit a considerable number of votes have been rejected at the Development Council elections that were held in 1981. Thus the principle of giving a value to as much votes as possible is contravened. This problem is more aggravated by the fact that 1/8th of the total votes polled in an electoral district like Colombo would be much greater than the number of votes upon which a political party is made entitled to a seat in an electoral district such as Moneragala. For

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

example assuming the General Election of 1977 was held under the proportional representation system the United Left Front would have polled 75,249 votes in the Colombo District. The Total number of votes polled in the Colombo District being 825,355 the above number would be less than 1/8th of the total votes polled. Thus 75,249 voters would be denied of a member of their choice in the District of Colombo.

At the same General Election the United National Party had polled 39,982 votes in the Moneragala District. This would make them entitled to three seats in Parliament. Therefore it is clear that 39,982 voters are given three members of their choice in one area, while 75,249 voters have been rejected in another area. The solution to this problem entirely depends on the delimitation. If efforts are made to create electoral districts with reasonably similar number of voters, representation could be made proportionate more effectively.

The proportional representation system has been often described as a system introduced in Sri Lanka with a view to discouraging small political parties. The argument in support of this is that it would be difficult to maintain the stability of a government if small groups of parties enter Parliament. If this was one motive in introducing the proportional representation system the Local Government election results clearly indicate that this has been sufficiently successful. The results indicate that the voters appeared to have preferred the two main political parties to the other minor parties. The minor political parties performed badly even in the areas which were considered to be their strongholds under the previous system.

The granting of a bonus seat could also be considered quite unreasonable if the motive behind the proportional representation system was to assure a fair representation. The political party which polls the largest number of votes is entitled to one seat as it is only the rest that is distributed in proportion to the votes polled by each party. Assuming the 1977 General Election was held under proportional representation system the United National Party would have been entitled to 19 bonus seats in nineteen electorates. The Tamil United Liberation Front polled 239,070 votes in the Jaffna District was able to win all eleven seats. This indicates that if the bonus system is done away with it would be helpful to maintain a fair representation.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The proportional representation system has only been helpful to reduce the unreasonably improportionate representation to a reasonably proportionate degree. An example from the 1977 General Election assuming that it was held under the proportional representation system would make this clear. The Tamil United Liberation Front contested the following districts at the 1977 General Election.

Jaffna
Wanni (Then Vavuniya, Mannar & Mulaitivu)
Trincomalee
Batticaloa
Digamadulla (Then Amparai)
Puttalam Electorate only in the Puttalam District.

The T.U.L.F. was able to poll 421,486 votes which was 6.72% of the total number of votes polled in the whole country. This would have made them entitled to seventeen seats in Parliament. The United Left Front which polled 385,806 which was 6.17% of the total votes polled would have been entitled to only 5 seats. Therefore the opportunity is still available for a political party which is strong in a few districts to obtain a large number of seats though political parties which may poll larger number of votes from the other districts may have a lesser amount of seats in Parliament. It may however be said that the possibility is very remote. The only solution to this problem would be to take a poll of the whole island and then proportionately nominate members of Parliament from each party. This does not seem practicable and also may not do justice by the minority population of the country.

Under the proportional representation system in Sri Lanka, there would be no by-elections. Once a seat falls vacant this fact would be brought to the notice of the Commissioner of Elections by the Secretary General of Parliament. Section 64 (1) of the Parliamentary Elections Act No. 1 of 1981 provides as follows :

"Where the seat of a Member of Parliament becomes vacant as provided in Article 66 of the Constitution (other than paragraph (9) of that article) or by virtue of the provisions of paragraph 13 (*a*) of Article 99 of the Constitution, the Secretary General of Parliament shall inform the Commissioner who shall direct the returning officer of the electoral district which returned such Member to fill the vacancy as provided for under paragraph 13 (*b*) of Article 99 of the Constitution".

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

This provision has been criticised by opposition members as undemocratic. It has been said that once a member has been elected by the people and he vacates his seat that the people should be given an opportunity of electing another member in his place. This argument has been countered on the basis that under the proportional representation system where the people are called upon to vote for a list of candidates put forward by a political party a vote is cast in favour of a political party and not in support of an individual. Therefore the argument is that the party should be given an opportunity of nominating a member in place of one who vacates his seat.

In the past, by-elections have been an effective method that was available to the people to express their opinion about the ruling party from time to time. Even the Government in power was able to assess its popularity by the results of by-elections held from time to time. The provision to do away with by-elections has been criticised on this basis.

The opposition parties have also sought to criticise the proportional representation system on the basis that it weakens the link between the member of Parliament and the voter. There appears to be some substance in this argument as the people of Sri Lanka have been used to electing their member of Parliament for more than five decades. They have looked up to the member of Parliament as a person who represents them in the legislature and who they could approach with all their grievances. The Members of Parliament too felt bound to pay heed to their electors as their electors entirely depended upon their responsibilities and any negligence of the constituencies they represented were entirely reflected upon their efficiency as members of Parliament.

Under the proportional representation system the question of a Member of Parliament representing a constituency would not arise as the voters are called upon to vote for a political party and not for an individual. The people would not be in a position to decide their member of Parliament unless the Political party to which such member belongs allocates any constituency to such members. On the other hand there would not be anything for any member to feel compelled to look into the affairs of any constituency as the affairs of a constituency unlike under the previous system could not reflect the efficiency of any single member.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

A matter in favour of the proportional representation system is that it has put an end to opposition electorates which often receive step-motherly treatment. Every electoral district would have government as well as opposition members in Parliament. Therefore in future there would be no room for complaints from members to the effect that their constituencies are being neglected by the government as they have returned opposition members.

Another defect that has been pointed out in the proportional representation system is that the people are not in a position to get rid of an unpopular member unless he is identified to be one by his own party. Though the majority of the voters in the electorate are against a particular member there would be no opportunity for the people to reject him if his name appears amongst popular candidates in a nomination paper. The people would vote for the party and the unpopular candidate would also be elected.

The results of the Dompe seat at the 1977 General Election could be considered in this connection. At the 1970 General Election the S.L.F.P. candidate won the Dompe Electorate by a majority of 22,373 votes. He later became a powerful Minister in the Government and was a powerful member of the party. At the 1977 General Election however, the people using power of their franchise defeated him by a majority of 2,397 votes. Had that election been held under the proportional representation system this candidate being a very powerful member of the Sri Lanka Freedom Party would have stood high in the order of preference in the party's nomination paper for the Gampaha District. Thus he would have been elected though the majority of the votes were against him. This weapon the people had has been snatched out of their hands by the proportional representation system. At present the people would be at the mercy of the party to identify and reject the unpopular candidates.

It is suggested that to overcome this difficulty we in Sri Lanka too can introduce a system similar to the Finnish method. In Finland,[8] the parties do not represent multi-candidate lists or indicate a preferred order among them, but submit a number of separate candidates. The voters then choose individual candidate only, but the votes are aggregated by the party within each constituency to determine the allocation of seats.

---

8 Parliaments of the World — Interparliamentary Union (1976) p. 119..

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Sri Lanka has yet to experience a General Election held under the proportional representation system. From the elections so far held the proportional representation system appears to be a more democratic system where the representation in Parliament is concerned. It certainly would assure that no political party would be over powerful in Parliament where the opposition would be reduced to a hopelessly helpless minority. If a strong and democratic opposition is a vital aspect in a Parliamentary Democracy, a General Election held under the proportional representation system would undoubtedly provide the former, it would be up to those elected to provide the latter.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

PART II

CHAPTER 3 ELECTION OFFENCES

— A GENERAL INTRODUCTION —

As stated earlier a free election could be considered the foundation of a true democracy. If an election is not conducted maintaining the highest possible degree of secrecy and free of any influences the very foundation upon which the democratic form of government is based will be lost. If the powerful minority is permitted to use its influence upon the majority in order to prevail upon them, no longer can the principle of free election exist. The laws governing Parliamentary Elections should therefore block whatever ways that may be available to expose the voters of the country to be influenced by others in the exercise of their free vote. It is this principle which makes it extremely important to check laws governing Parliamentary Elections constantly in order to make sure that no loopholes are left which could be made use of by undemocratic powerful elements [1].

Parliamentary Election Act No. 1 of 1981, the present statute which provides for Parliamentary Elections in Sri Lanka is undoubtedly a magnificent development in this process. The Act contains many safeguards towards the holding of free elections. Since the Parliamentary Elections Order-in-Council of 1946 was introduced many amendments, which were felt necessary to remedy practical problems were made. The Ceylon Parliamentary Elections Order-in-Council of 1946 closely followed the Prevention of Corrupt and Illegal Practices Act of England and the Indian Representation of People Act. A careful study of the Ceylon Parliamentary Elections Order-in-Council of 1946 would show that most of the corrupt and illegal practices found therein were those defined and created by the English Jurists and Courts of law in the 19th

---

1 In some countries however there are no special regulations governing election campaigns, e.g. in Austria, Belgium, Denmark, the Federal Republic of Germany, Sweden and Switzerland, the freedom of action of candidates is limited only by the ordinary rules of law, especially those relating to the maintenance of public order and defamation of character. This non-interference by the authorities is explained partly by the desire to show neutrality towards a candidate and partly by the existence of organised parties which in practice run the election campaign and are trusted not to abuse it.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

century. What in fact was included in the Ceylon Parliamentary Election law were those which appear to fit the election practices that prevailed in England in the 19th century. The amendments that were in fact devised towards meeting the problems that were faced after several Parliamentary elections were held under that law.

Though certain practices which were considered illegal practices by the English Jurists were included in our statutes also, there are certain differences between the corrupt and illegal practices created by the English Acts and those created by the Order-in-Council of 1946, and the Parliamentary Elections Act of 1981. For example, making or publishing a false statement in relation to the personal character or conduct of a candidate is an illegal practice under the English Law. In Sri Lanka however such conduct would amount to a corrupt practice. What a corrupt or an illegal practice is a matter left to the legislature of each country. Both categories of practices have however been prohibited by law as if practiced, they could have a tendency to influence the voters towards affecting a free election. This contention does not however suggest that there is no distinction between corrupt and illegal practices. In the case of *Barrow-in-Furness*[2], Field J. distinguishing between the two categories of practices stated that in order to make a person liable for a corrupt practice it is extremely important to establish a guilty intention. On the other hand to make a person liable for illegal practice it would be sufficient if it is established that the act was done by that person, an innocent intention would be no defence for an illegal practice.

According to the interpretation of Justice Field in the above case the prosecution in a case of illegal practice would be relieved of the burden of establishing the mental element. This only tends to show that in the case of an illegal practice the mere doing of the act, would make a person liable, while in the case of a corrupt practice the mental element would be an essential ingredient for the imposition of liability. Thus it appears that the legislature and the courts have considered illegal practices to be graver in nature than category known as corrupt practices. The basis of the distinction drawn by Justice Field appears to be that an illegal practice, makes it a mere commission a contravention of the law, while a practice in order to be considered corrupt, necessarily has the prerequisite mental element before the imposition of liability.

---

2 (1886) 4 O'M. & H. 77

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In conclusion it could be said that the legislature of each country is at liberty to decide what practice should be categorised either corrupt or illegal. Such practices which the legislature considers should be prohibited irrespective of the mental element could be categorised as illegal. However, it is certain that both types of practices have been prohibited by law, as being undesirable and as affecting the free exercise of the franchise and free election.

As in England the commission of the following offences have been categorised corrupt practices under the Parliamentary Elections Act No. 1 of 1981.[3]

(1) Personation
(2) Treating
(3) Undue Influence
(4) Bribery

In addition to the above four categories the following also have been included as corrupt practices under our law;

(*a*) the making or publishing, before or during any election for the purpose of affecting the return of any candidate any false statement of fact relating to the personal character or conduct of any candidate.

(*b*) the making or publishing, before or during any election for the purpose of affecting the return of any candidate any false statement of the withdrawal of any other candidate at such election.

Personation

The offence of personation is committed once a demand for a ballot paper is made in the name of another. For the commission of this offence it would not be necessary to establish that in fact the offender voted in the name of another. The Ceylon Penal Code also makes the offence of personation punishable under the Code. The ingredients of the offence under the Penal Code are the same as those of the corrupt practice under the Parliamentary Elections Act.

---

3 Parliamentary Elections Act No. 1 of 1981 — Sec. 81 and also the Parliamentary Elections Order-in-Council 1946, Sec. 58.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Treating

Treating is also an offence which the election law of Sri Lanka categorises as corrupt. Treating at an election could take many forms. It would be important to note, that in order to make treating a corrupt practice it would be essential to establish that the treating alleged was directed towards influencing the results of the election in question. Treating could be described as a corrupt practice that is generally excessively practiced. This has been urged as a ground for vitiating many elections held in Ceylon. Treating being a practice which could be effectively used to influence voters it is important to define the laws governing the corrupt practice of treating to leave no room for the purpose of escaping the corrupt practice by pleading other forms of charitable acts. It is equally important to draw the line dividing other acts of treating from that falling within the scope of the corrupt practice. As it will be discussed in the chapter on Treating, Courts of Law have held on numerous occasions that where treating was done solely for charitable purpose or where the persons treated were persons who were supporters of the candidate charged with the corrupt practice of treating, such treating does not amount to the corrupt practice of treating.

The important matter with which courts of law would be concerned, is whether the treating was directed towards influencing the results of an election. If it has been so directed, the question as to who the persons treated were, will not arise. In order to commit the corrupt practice of treating it is not necessary to treat voters, even if the persons treated were not voters who had a vote, if the court is satisfied that the treating of some voters was done to impress the voters and influence the results of the elections, that would amount to the corrupt practice of treating.

Treating is a corrupt practice that could be committed by a voter as well. If the treat is accepted by a voter with the corrupt intention of affecting or influencing the results of an election then such voters who accept such treat commits the corrupt practice himself[4].

Bribery

The corrupt practice of bribery, in nature is very similar to that of treating. Bribery, just as much as treating, is a corrupt practice that

---

4 Section 78 of the Parliamentary Election Act No. 1 of 1981.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

could have a tremendous effect upon the results of an election. Both the practices would enable the more powerful and affluent candidate to have tremendous influence upon the supporters of the others. In England under the common law, general bribery and general treating are grounds to challenge the election of a candidate. This is done by establishing that these corrupt practices have been so excessively practiced beyond all hope of a free election. In other words that the treating and bribery prevented the majority of the electors from exercising their franchise freely or electing the candidate of their choice.

Undue Influence

Undue influence is a corrupt practice which influences voters to surrender their right to vote to the power of another. The power either be spiritual or material. In this connection it would be advisable to draw a distinction between influencing voters and unduly influencing them. A candidate may by the power of his oratory, or efficiency of his organisation influence large numbers of supporters to vote for him. This undoubtedly is not the influence the law contemplates and prohibits as corrupt. It is essential that the influence should be undue in order to hold that a candidate has committed the corrupt practice of undue influence.

The undue influence contemplated in the section may be of many forms. Section 79 of the Parliamentary Elections Act enumerates the various influences which include threats of violence as well as influencing utterances made at religious assemblies. Seeking to influence voters by way of threats and violence is undoubtedly a serious threat to free elections especially in a democratic form of government.

The section providing for the corrupt practice of undue influence in the Ceylon Parliamentary Elections Order-in-Council has been consistently amended by subsequent legislation. This has been necessary due to the various instances that had been experienced in the holding of elections. The practical difficulties arisen has necessitated amending legislation to make spiritual influence also undue within the meaning of the section.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

False Statements

Under the law of Sri Lanka two more practices have been categorised as corrupt practices. Making or publishing false statements of fact affecting the personal conduct or character of a candidate during an election or a false statement regarding the withdrawal of a candidate amounts to a corrupt practice under the law of Sri Lanka. The English law however categorises this as an illegal practice. The making of false statements is also a corrupt practice which would quite easily be committed. If statements made at propaganda meetings affect the personal conduct of a candidate those could very effectively poison the minds of the voters against the candidates, especially the uneducated and illiterate voters could easily believe and lose faith in the candidate they prefer if false statements affecting his character are made.

Illegal Practices

Other than the above mentioned corrupt practices there is also a category of practices known as illegal practices. As mentioned earlier the mere commission of the act irrespective of the intention would make persons liable so far as illegal practices are concerned. Illegal practices could be broadly divided into two categories on the basis of the persons who could commit them, namely,

(*a*) Illegal practices that could be committed by voters.

(*b*) Illegal practices that could be committed by candidates or their agents.

The Parliamentary Elections Act No. 1 of 1981 has made plural voting an illegal practice[5]. Under Section 42 of the Act a person who votes at 2 or more electoral districts at the same election or who votes more than once in the same electoral district would be committing an illegal practice.

Sections 83—88 of the Parliamentary Elections Act No. 1 of 1981 deal with illegal practices. The sections make the conveyance of voters an illegal practice, except under certain circumstances. Certain types of contracts and payments have also been made illegal practice.

---

5 Section 42 — Parliamentary Elections Act No. 1 of 1981.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The publishing of false statements concerning the utterances or activities at an election of any candidate or the conduct or management of an election by a candidate has been made an illegal practice. It should be noted that where the false statement concerns the personal conduct or character of a candidate it falls within the category of corrupt practices.

The employment for payment persons as polling agents, clerks and messengers exceeding a reasonable number would be an illegal practice under the Act. The employment however should be for the purpose of promoting an election. This is an illegal practice that could be committed either during, before or after an election. The purpose of this provision appears to be to control employment being used for the purpose of affecting the results of an election. Though employment of persons for payment with a view to affect and influence them would fall within the scope of bribery also bribery being a corrupt practice it would be necessary to establish the fact of employment as well as the intention of the employer to use it as a device of influencing the voters. As employment excessively has been made an illegal practice a person would be guilty of it even if he escapes the corrupt practice of bribery by the mere fact of employment, beyond a reasonable number.

Printing, publishing, posting or distributing advertisements, hand-bills, placards or posters referring to an election which does not bear upon its face the names and addresses of its printers and publishers would be an illegal practice. This however is an illegal practice that could be committed only by a candidate or an agent of his.

It was also a requisite under the Ceylon (Parliamentary Elections) Order-in-Council[6] that all candidates should furnish a return of all expenses incurred by them in respect of the election within 31 days of the results of the election being published in the Government Gazette. Where a candidate or his election agent fails to comply with this requirement he is guilty of an illegal practice. It is also an illegal practice to furnish a false declaration in respect of the election expenses. The present Parliamentary Elections Act of 1981 does not have a corresponding section creating an illegal practice of that nature.

---

6 Ceylon (Parliamentary Elections) Order-in-Council Section 70.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Offence Committed by the Voters

In addition to the corrupt practices and illegal practices, there are certain other categories of offences which can be committed by voters at a Parliamentary election. Some of those offences under the Parliamentary Elections Act of 1981 and the Registration of Electors Act of 1980 have been adopted from the Ceylon (Parliamentary Elections) Order-in-Council of 1946, while some others have been created for the first time. These offences can be broadly divided into a number of groups. They are :

(*a*) Offences relating to the preparation of electoral registers.
(*b*) Offences relating to nominations
(*c*) Offences committed in the course of election campaign
(*d*) Offences relating to hand bills and posters.
(*e*) Offences relating to printing of election publications.
(*f*) Offences committed on the polling day
(*g*) Offences relating to poll cards and ballot papers
(*h*) Offences committed by the postal voters
(*i*) Offences relating to the declaration of secrecy of elections
(*j*) Offences relating to defacement of election notices
(*k*) Offences committed by employers
(*l*) Offences committed by members of the families of candidates

In addition to these according to Section 67 of the Parliamentary Elections Act No. 1 of 1981, certain offences could be committed by persons who had lost their civic rights by virtue of a resolution passed by Parliament in terms of Article 81 of the Constitution. Persons who had lost their civic rights are not voters but this provision which had been the target of many criticisms levelled by opposition political groups would be discussed in detail in the last chapter, the Epilogue.

According to section 12 (6) of the Registration of Electors Act No. 44 of 1980, every person who, at any revision of any register in any year, knowing that he or any other person is not qualified to have the name of himself or such other person entered or retained in such register, claims or applies or induces or aids or abets such other person to claim or apply, for the entry or retention of the name of himself or of such other persons, as the case may be, in such register, shall be guilty of an offence and shall, on conviction before a Magistrate, be liable to a fine not exceeding rupees five hundred or imprisonment of either description not exceeding one month, or to both such fine and imprisonment.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

It is not uncommon in this country specially in the urban areas that a large number of persons who are not qualified to have their names included in electoral registers, include their names in such register. This is very common in areas where there are popular schools because some parents have their names included in electoral registers of the houses in those areas in order to get residential qualifications for the admission of their children to those popular schools. This can be illustrated by the fact that the lowest percentage poll, i.e. 72.4% was recorded in Colombo West electorate at the 1977 General Election where as a vast rural electorate Mannar recorded 92.7% poll at the same election. The low polling in Colombo West electorate can be attributed to the fact that a large number of popular schools are situated in that electorate and accordingly a large number of parents from other parts of the island have registered their names in the electoral registers pertaining to that electorate long before the election for the school admission purposes of their children. But one cannot completely rule out the possibility of entering names of persons who are not qualified to have their names entered in the electoral registers solely for the purpose of getting more votes for a particular candidate or candidates. In future that offence can be checked to a greater extent because according to proportional representation system, there will not be individual candidates as voters would vote for a party or an independent group. Once the personal factor is eliminated from the contest it is less likely that the supporters of parties and various independent groups will go to the extent of having names of persons who are not qualified to have their names entered entering in electoral registers.

Similarly according to Section 12 (4) of the Act[7], every person who being in possession of information required in the course of revision of the electoral registers fails to give such information or wilfully give, any false information, is guilty of an offence.

Offences relating to nomination papers, ballot papers and official poll cards are enumerated in Section 66 of the Elections Act[8]. According to that section it is an offence to forge or fraudulently destroy any nomination paper and it is also an offence to deliver any nomination paper knowing the same to be forged. Similarly it is an offence to forge or counterfeit or deface or destroy any ballot paper or the official mark on

---

7 Section 12 (4) of the Registration of Electors Act No. 44 of 1980.

8 Section 66 of the Parliamentary Elections Act No. 1 of 1981.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

any ballot paper. Supplying any ballot paper to any person without due authority is also an offence. Taking away of any ballot paper out of any polling station is also an offence under the same section.

These offences relating to nomination papers and ballot papers can be minimised to a very great extent if the general public co-operates with the election officers and police officers who are on duty.

Under normal circumstances an average voter will not remove ballot papers out of polling stations. But there is the possibility of a hired voter who, inside the enclosure meant for the marking of the ballot paper hiding it and removing it out of the polling station after putting a paper of the same size into the ballot box. In this connection it must be pointed out that putting into any ballot box, anything other than the ballot paper is also an offence. Therefore, if the polling officers and the polling agents are vigilant they can challenge this. The Act must be amended in such a way to enable arresting any person who puts anything other than a ballot paper into a ballot box. That offence must be made nonbailable offence, so that through the fear of remand, hired persons will think twice before they commit the offence.

The offences committed in the course of the election campaign can again be sub-divided into 3 main categories, such as :

(i) Offences relating to processions

(ii) Offences relating to display of hand bills and posters, and

(iii) Offences relating to election literature

Even though it is an offence to display hand bills, placards etc. on public places during the period commencing from the first day of the nomination period and ending on the day following the day on which a poll is taken, very often these provisions are violated. If we educate the average voter politically then he will condemn the violation of the provisions of the Acts, and then only the authorities can enforce these provisions effectively. Moreover in future there will be less significance attached to big processions and display of hand bills etc. as more prominance will be given to the political broadcast and telecast as these media have become very popular. Even then it is up to the major political parties not to resort to very big "shows of strength" regarding processions and meetings if they are genuinely interested in reducing those offences committed by the voters, as peace officers alone cannot check those.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

CHAPTER 4

PERSONATION

Where voting at an election is based on a registered qualification there has always been a tendency towards personation. The opportunity afforded for personation by the appearance of person's name in a register being considered the prerequisite to voting, has been much felt in every part of the world where voting at elections is based on a registered qualification.

This has therefore compelled Governments to take stern measures by way of legislation to counter personation. Prior to the introduction of registering of voters in England an inquiry into the voters title had taken place at the poll. According to Rogers :

> "When the inquiry into the voters title took place at the poll, personation was hardly possible, but the voting on registered qualification affords an opportunity for such a fraud". [1]

As stated by Rogers where a system of registering voters did not exist it was up to the voter to satisfy the returning officer that he in fact was an elector who was entitled to cast a vote. Thus there was opportunity for the returning officer to inquire into the title of the voter before deciding on the question of issuing a ballot paper. This however had been full of practical difficulties though the opportunity for personation was much less under it. Thus a system of registering of voters had been introduced. Under this system the officials, after collecting the necessary data prepare the registers of those entitled to vote. The registers so prepared are kept for the inspection of the public and it is open for any person to object to the name of any person appearing in the register of voters.

Section 5 of the Parliamentary Elections Act No. 1 of 1981, provides that the appearance of the name of person in the Register of Electors would be conclusive evidence for the purpose of determining whether such person is or not entitled to vote at an election held under the Act. Under these circumstances legislation has been introduced to curb personation, which is a dangerous threat to free elections, to the minimum possible degree. Commenting on this matter Blackburn J. states as follows in the case of *Gloucester*:-

1 Rogers on Elections — 20th Edition — Vol. II. p. 350.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

"With the ballot Act and secret voting it becomes very dangerous if any one goes to vote and contrives to get a vote registered in the name of another person when he has no right to vote, for unless the vote of a personator is objected to there is no machinery provided for enabling us to examine upon which side the vote was given in order to strike it off".[2]

Under the Parliamentary Elections Act certain precautions have been taken to check on electors being impersonated. Each candidate is entitled to have his polling agents at every polling station. It is up to the candidate to select persons from those to whom the electors in the area are well known. Under the Order-in-Council of 1946 it was the candidate who was entitled to nominate the polling agents by a letter addressed to the Presiding Officer. Under the present Parliamentary Elections Act however, the nominating of agents is done by the Secretary of a recognised political party or the group leader of an Independent Group. The Act also provides for the delegation of this power by the Secretary of a recognised political party or its authorised agents or the group leader of an Independent Group, to not more than one candidate in each polling division.

The polling agent of any recognised political party or independent group is entitled to object to the issuing of a ballot paper by the returning officer on the ground that he is not the person whose name appears on the electoral list. It is also open to the agents to object on the grounds that the elector who has applied for a ballot paper has already voted or has been disqualified from voting. When such an objection is raised by the polling agent the presiding officer cannot refuse to issue a ballot paper to such elector, when such a situation arises the presiding officer is required to request the elector to whose voting on objection has been raised to make a declaration. Once the declaration is made either certifying that he is the person whose name appears on the electoral list or that, he has not voted before or has not been disqualified from voting, as the case may be, the presiding officer is bound to issue a ballot paper to such elector.[3] Making a false declaration in this connection is an offence punishable under the Act. If an elector to whose voting an objection has been raised, refuses to make the required declaration the presiding officer may refuse a ballot paper to such person.

---

2 (1873) 2 O'M. & H. p. 52

3 Section 43 of the Parliamentary Election Act No. 1 of 1981.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In England Section 24 of the Ballot Act of 1872 provided as follows:

"A person is guilty of personation, who at an election for a County, or Borough or at a Municipal Election applies for a ballot paper in the name of some other person whether that name be that of a person living or dead or of a fictitious person or having voted once at such election, applies at the same election for a ballot paper in his own name".

Following the English Ballot Act, in India and Ceylon too, legislations were enacted against personation. In Ceylon personation was originally made a corrupt practice under the Ceylon (Legislatve Council) Order-in-Council of 1923, and an offence under the Penal Code. The original provisions in the Order-in-Council of 1923 were considered to be insufficient as it had no provisions to make a candidate liable for personation abetted by him or an agent of his. Bertram C. J. referring to this matter in the case of *Rambukwella v. Silva* observed :

"The charge of abetment of personation could not be proceeded with owing to a defect in the Order-in-Council which does not make a candidate responsible for personation which he or his agent may have abetted".[4]

This abetment of personation was first made an offence in the Ceylon (Parliamentary Elections) Order-in-Council of 1946. The original Section 54 of the Order-in-Council of 1946, provided :

"Every person who at an election applied for a ballot paper in the name of some other person whether that name be that of a person living or dead or of a fictitious person or who having voted once at any such election applies at the same election for a ballot paper in his own name, shall be guilty of the offence of personation which shall be a cognizable offence within the meaning of the Criminal Procedure Code".

4 (1924) 26 NLR 233

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The abetment of personation was penalised by Section 58 (1) of the Ceylon (Parliamentary Elections) Order-in-Council of 1946 which reads :

"Every person who commits the offence of personation or aids, abets, counsels or procures the commission of the offence of personation shall be guilty of a corrupt practice".

The original Section 54 of the Ceylon (Parliamentary Elections) Order-in-Council, which defines the offence of personation was amended by a subsequent amendment. Section 35 of the Act No. 10 of 1969 repealed the original section of the principal Act (Order-in-Council) and replaced it with a new section which reads :

Every person who at an election,

(*a*) Votes in person or by post as some other person whether that other person is living or dead or is a fictitious person, or

(*b*) Votes more than once in or under his name at such election, shall be guilty of the offence of personation which shall be a cognizable offence within the meaning of the Criminal Procedure Code.

For the purpose of this section, a person who —

(*a*) has applied for a ballot paper for the purpose of voting in person, or

(*b*) has made an application to be treated as a postal voter, or

(*c*) has marked whether or not validly, and returned a ballot paper issued for the purpose of voting by post shall be deemed to have voted".

The same definition of the offence of personation appears in Section 77 of the Parliamentary Elections Act No. 1 of 1981.

An analysis of the above mentioned provisions both in England and Sri Lanka would show that a person could be made liable for the personation on two different occasions. They are:

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

(*a*) Where a person makes an application for a ballot paper in the name of some other person, or,

(*b*) Where a person makes an application for a ballot paper in his own name at an election having voted once at the same election.

The fact however, which is common to both occasions is that the application made by the offender is an application for a ballot paper to which he is not legally entitled.

The Mental Element in Personation

The mental element necessary for the commission of the offence of personation is a matter which comes up for judicial discussions. A careful scrutiny of the definition of the offence under the Ballot Act of England as well as Ceylon (Parliamentary Elections) Order-in-Council would distinctly show that the definitions are wide enough to include even a person who innocently applies for a ballot paper or votes a second time, as the definitions do not contain the words "corruptly" or "wilfully". According to Joseph Baker[5] :

> "The principle is that personation is only a bad act against the election law if corrupt. That this much be the intention of the legislature as far as it can be gathered is perfectly clear from the several enactments which relate to personation".

He further states that to suppose that the legislature intended to make a person who perfectly honestly or on some mistaken belief applies for a ballot paper in the name of some other person, or votes a second time is liable for the offence of personation, is to impute an intention to the legislature which is absurd.

The corrupt intention necessary for the constitution of the offence of personation was discussed in the English case of *Stepney*[6], Denman J., delivering his judgement in this case stated :

---

5 Joseph Baker, The Law of Parliamentary Elections, p. 184.

6 (1886) 4 O'M. & H. 44

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

"Personation is a very serious offence, it is not merely a misdemeanour, it is a felony, and it cannot be committed unless there be a corrupt intention".

It has also been added that unless there be corruption and a bad mind and intention in personating it is not an offence. Where it is done under an honest belief that the man is properly there for the purpose of voting it was held that no offence has been committed.

In *Stepney* it was held, that it might be contended that the legislature having great horror of personation very properly determined to strike at the fact and omitted all questions of corrupt mind and intention. This is, it is said the case in great many statutes, where it is the fact that is struck at and where the question of mind does not interfere. Therefore, though some doubt may be entertained that if a man did an act which the Act says is personation, whether one should not in point of fact find all the consequences and find him therefore guilty of personation; this was held to be a very incorrect construction of the statute.

In the above mentioned case, a voter who was registered as a voter in two divisions of a Borough, voted twice unaware of the fact that he was entitled to only one vote, though he was wrongly registered in two divisions. The question before court was whether his vote should be struck off because he has been guilty of the corrupt practice of personation by voting a second time. The court held that personation had not been committed as there was no corrupt intention and the first vote was good.

Though there is no provision as to the necessity of a guilty intention to constitute the offence of personation, it could today be considered settled law that a corrupt intention is an essential ingredient for the commission of the offence of personation. Rogers, referring to the commission of the mental condition in the English Ballot Act of 1872, remarks[7]:

> "It is difficult however, to believe that the legislature intended the innocent commission of such an act to be a felony. It has accordingly been held that it is of the essence of the offence of personation that the act be committed corruptly".

---

7 Rogers on Elections 20th Edition, Vol. II, p. 351.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Similarly in the case of *Gloucester*[8], it was held that an agent who is intended to be charged with the corrupt practice of personation must be shown to have procured it with a corrupt intention. If the agent is not aware that such persons are not entitled to vote and acts honestly there can be no personation.

In *Hexam*[9], where the facts were similar to those of the *Gloucester* case, Justice Cane, delivering the judgement stated "persons might be guilty of aiding and abetting personation who corruptly induced a person to vote, although he was not guilty of personation because he did not know that he was not entitled to vote".

In the Ceylon case of *Perera v. Jayewardene* [10], a general reference was made to all the election offences enumerated in Section 58 of the Ceylon (Parliamentary Elections) Order-in-Council. It was held in that case that it is an essential ingredient of the offences enumerated in Section 58 of the Order-in-Council that the offender should commit the criminal act with a corrupt mind. It was further held following the *Stepney* case, that where a statute does not unequivocally provide that a corrupt mind is not an essential ingredient for an offence, an act cannot be held to be a corrupt practice unless done with a corrupt mind. Therefore, under the Parliamentary Elections Act also it is settled law that in order to find a person guilty of the corrupt practice of personation the mental element would be necessary. It would be seen that the Parliamentary Elections Act just as the former Order-in-Council makes the commission of the offence of personsation a corrupt practice. The act does not define personation as a corrupt practice. The definition is only in regard to the offence of personation. The commission of the offence of the personation is made a corrupt practice by a different section.

Section 81 of the Parliamentary Elections Act provides :

> "Every person who commits the offence of personation or aids or abets, counsels or procures the commission of the offence of personation .... shall be guilty of a corrupt practice".

---

8 (1873) O'M. & H. 52

9 (1892) 4 O'M. & H. 143.

10 (1948) 49 NLR 241.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Thus it could be seen that the mental element comes in only when the offence is made a corrupt practice. All the above mentioned judgements have considered the question of intention on the basis that the legislature could not have intended to make a person guilty of a corrupt practice where the act in question has been committed innocently. However, the question would arise as to whether the corrupt intention is an ingredient of the offence which prosecution is bound to establish in order to bring home a charge of personation. The words in the section does not in any way suggest that the legislature intended to cast such a burden on the prosecution on a charge of personation. It would be that an innocent act would be a defence available to a person charged with personation. This fits into the above mentioned argument that legislature could not have intended to make a person who has had acted innocently, guilty of a corrupt practice. This however cannot be considered to mean that the corrupt intention is a matter to be established by the prosecution.

Stage When Personation is Complete

The next matter which warrants consideration is as to when the offence of personation could be considered to be completed. The words, both in Section 24 of the English Ballot Act and Section 77 of the Parliamentary Elections Act No. 1 of 1981 though different, the meaning appears to be the same on this point. The English Ballot Act provides that a person who applies for a ballot paper under the circumstances mentioned would commit the offence of personation.

Section 77 of the Parliamentary Elections Act No. 1 of 1981 provides that a person who votes in person or by post as some other person whether that other person is living or dead or is a fictitious person, or votes more than once in or under his own name at such election shall be guilty of the offence of personation.

Sub-section (2) of the same section provides :

"For the purpose of this section, a person who —

(*a*) has applied for a ballot paper for the purpose of voting in person; or

(*b*) has made an application to be treated as a postal voter; or

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

(c) has marked, whether or not validly, and returned a ballot paper issued for the purpose of voting by post shall be deemed to have voted."

It would thus be seen that the net result of both the Acts is to make a person liable for the offence of personation as soon as an application is made for the ballot paper irrespective of whether he has voted or not.

Chand[11], referring to this matter states :

"The offence is complete the moment an application is made for a ballot paper by a person. The offence is complete even though the polling officer has refused to issue a voting paper. The offence is also complete if an application has been made but no vote has been recorded. To constitute personation the application for the voting paper must be made by a person in the name of some other person whether living or dead or is a fictitious name. It is no defence to plead that the person who has been personated is dead or is a fictitious person".

Chand has referred to the Indian Election Act and the Indian Penal Code which makes personation an offence. The words used in the Indian Act being almost similar to the corresponding section in the English Ballot Act, this could be regarded relevant to our law too.

The question as to when the offence of personation is complete has been discussed in some Ceylon cases also. The question came up, for consideration before the Supreme Court in the case of *Ahamed v. Aliyar Lebbe*[12]. The Petitioner of this case had filed the petition challenging the election of the respondent to represent the Kalmunai Electoral District in Parliament. One of the several grounds in which the election was challenged was that the respondent who was a candidate for the particular electoral district at the election in question had indicated to the presiding officer that two women to whom the opposing polling agent had objected to, were known to him, and that they were genuine voters whose names appeared on the register. In the appeal it was argued on behalf of the respondent that the offence being complete at that stage,

---

11 P. N. Chand, Law and Practice of Elections and Election Petitions.

12 (1969) 73 NLR 73

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

there could be no abetment as it was admitted that the application for the ballot paper was made before the respondent arrived at the polling booth. The Supreme Court held that "A person does not commit the offence of personation at the polling booth during a Parliamentary Election if, after impersonator has already applied for a ballot paper claiming to be a person whose name appears on the register of electors, if he tells the presiding officer upon objection taken by a polling agent as to the impersonator that the impersonator is the person impersonated.

Dealing with the evidence available against the respondent Sirimanne J. stated as follows :

"All that the evidence shows is that the respondent 'Identified' the two women as people whom he knew as voters from his area. He further said that the Presiding Officer should issue ballot papers to them if their names are in the register. There is no evidence at all that the respondent represented to Gnanasekeram that the two women were identical with any of the persons whose names appeared in the electoral register. Had he done so it would have been the simplest thing for the petitioner to put that question to Gnanasekaram (Presiding Officer) in examination in chief or even in re examination".

Thus it could be seen that the petitioner in the opinion of Their Lordships, has not been able to establish even the fact that the respondent identified the two women as voters whose names appear on the electoral register. As stated by Sirimanne J. the evidence only established that the respondent identified the two women as voters in the area. It was also argued on behalf of the respondent that the respondent was not present when the two women made applications for ballot papers and that as he had come only after the application had been made he could not have abetted an offence which had already been committed. Counsel for the petitioner sought to counter this argument on the grounds that the offence of personation was also committed at the time the ballot paper was dropped into the ballot box, and the respondent by his conduct facilitating the second offence had committed its abetment. Justice Sirimanne dealt with this position as follows :

"It was argued for the respondent that as admittedly the respondent was not present when the two women applied for the ballot papers and thereby committed the offence, he could not thereafter abet

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

the commission of an offence which had already been committed. For the petitioner it was submitted that the offenders who were 'voting in person' would be committing the offence again when they actually put the ballot paper into the ballot box, and that the second offence was abetted by the respondent. As I hold that the appeal must succeed on the first two grounds I think it unnecessary to decide this third point".

Samarawickrama J., however, dealt with the argument regarding the inability of the respondent to commit the offence of abetment as follows :

"At the stage at which the respondent came into the polling booth it was still possible for him to abet the offence of personation either by assisting the applicant for ballot papers to obtain them without having to make the declaration referred to in Section 43 (1) of the Order-in-Council or by instigating the applicants, if they were not disposed to make the declarations to proceed to make the declarations and cast their votes".

Justice Samarawickrema had dealt with this argument on the basis that the Presiding Officer could under certain circumstances refuse to issue a ballot paper to a voter who makes an application for one. As stated by His Lordship the respondent could have abetted the offence of personation if he had facilitated the impersonation to compel the Presiding Officer to issue ballot papers to them even though an application had already been made by them. In other words the Presiding Officer could have requested the two women to sign the declaration before ballot papers were issued to them. Had the voters a discretion make a declaration the Presiding Officer would have had refused to under the Order-in-Council to refuse to issue a ballot paper. In the view of His Lordship if the respondent had intervened on that occasion and requested the impersonator to make a declaration and proceed to vote the respondent could well have committed the abetment of personation even though he was not present when the application for the ballot paper was made.

It is respectfully submitted in this connection that the offence of personation should be distinguished from the act of actual voting. Even if the evidence is that a person made an application for a ballot paper in the name of another and that the Presiding Officer for whatever

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

reasons refused to issue one, that would be sufficient to establish a charge of personation. Therefore, the actual issuing of ballot paper does not in any way have a bearing on a charge of personation. The question therefore arises as to whether the two women had not in fact committed the offence the moment the application for the ballot paper was made. In the light of these circumstances it was argued on behalf of the respondent that a person cannot abet an offence already committed.

Mathais Hamy v. Gunatilake[13], is another case in which the question as to when the offence of personaton is complete, came up for decision. This was a case under section 169 (*d*) of the Penal Code which makes personation an offence punishable under the Penal Code.

The accused on the polling day made an application for a ballot paper and stated that his name was Richard Jayawardene. On being objected to by an election agent, the Presiding Officer questioned him and satisfied himself that the accused was trying to personate another voter and no ballot paper was therefore issued to him. It was contended in appeal by counsel for the appellant that what was disclosed by the evidence was nothing more than a preparation for the offence and the accused could have changed his mind at any moment. Wijewardena S.P.J. rejecting this contention held that the offence of personation was complete once the application for the ballot paper was made.

Referring to the argument of counsel for the appellant Wijewardena J. stated :

> "This argument ignores the fact that Section 169 (*d*), makes anyone who 'applies for a voting paper', in the name of any other person guilty of the offence of personation at an election. It is not necessary to prove that the person charged obtained the voting paper in the name of any other person. The evidence shows that the accused did every thing that he had to do with regard to his application for a voting paper".

If then, an application for a ballot paper in the name of another person would be sufficient to constitute the offence of personation what would be the positon if a wrong name appears on the electoral register and a person makes an application for a ballot paper?

---

13 (1947) 48 NLR 373.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Joseph Baker[14], deals with this matter in the following words :

"If at an election a man applies for a ballot paper in a name other than in his name of origin or by the name in which he was originally known but in a name which appears in the register of voters and which was inserted therein by overseers in the belief that it was the name of the applicant and for the purpose of putting him on the register he is entitled to vote, and is not a person who applies for a ballot paper in the name of some other person whether that name be that of a living, dead or fictitious person so as to be guilty of the offence of personation".

The legislature has never said, says Baker, that if there has been a mistake in putting a name of a man on the voter's register the man should not vote.

The question of appearance of the wrong name on the register of voters arose in the case of *Rex v. Fox*[15]. In that case the defendant Patrick Fox was living in a certain house in a certain street. However, the register of voters indicated that the person living in that particular house was James Cummings. There was no doubt at all that in putting the name of James Cummings on the register the overseers intended to put on the register the man who was living in that particular house and that they intended to put the defendant. On the polling day the defendant appeared before the Presiding Officer and said that he was James Cummings named upon the register. It was held that he was entitled to vote as there was no other person by that name and that it was clear that the name incorrectly appeared on the register as a result of a mistake on the part of the overseers. If however there had in fact been a person by the name of James Cummings and the defendant knowing that had adopted the name it would have been a clear case of personation.

Considering the facts of this case it is clear that the defendant made the application for a ballot paper not in his own name but in the name of another person. In view of the above considered definition of the offence of personation it would be considered settled law that in order to impose liability on a person charged with personation it would be

---

14 Joseph Baker, The Law of Parliamentary Elections, p. 184.
15 16 Cox c.c. p. 166.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

sufficient to show that he made an application for a ballot paper in the name of another person. Their Lordships in the case of *Rex v. Fox* have emphasised on the fact that there was in fact no one by the name of James Cummings. This matter was construed to be a fact in favour of the defendant. It is not however, the fact that there was no person by the name of James Cummings means that the application made by the defendant was made in the name of a fictitious person. According to the section under the Parliamentary Elections Act No. 1 of 1981, it is clear that where an application is made in the name of a fictitious person, it constitutes the offence of personation. The case of *Rex v. Fox* would therefore be a clear instance of an application for a ballot paper being made in the name, of a fictitious person. The only matter in favour of the defendant is the absence of the mental element that is necessary to impose liability for a corrupt practice. From the evidence it was clear that Patrick Fox did not have the dishonest intention of substituting himself for another voter. He merely exercised his legal right in the name he believed he was registered in the electoral list.

In Sri Lanka once the electoral register is completed, it is kept for the inspection of the voters. This affords an opportunity for those whose names may incorrectly appear on an electoral register to bring it to the notice of the relevant authorities with the necessary proof of the correct name.

There could also be instances, where two persons of the identical names are registered in the register for the same electoral district or where a person who has a similar name to that of a registered voter making an application for a ballot paper.

A similar issue came up for discussion in the case of *Gloucester*[16]. In this case it was proved that there were two persons of the same name living in the same street at the time of the election, but as one of them had not come to live there until it was too late for him to have his name put up on the register it was clear that he was not the man meant to be upon the register. The right elector voted first and upon the second man applying for a ballot paper he was taken before a Magistrate and committed for trial. It was held that if the second man was aware when he applied for the ballot paper that he was not the man meant to be upon the register then he was guilty of personation. However if he had made a mistake as to what he was about or honestly believed that he was entitled to vote then he was not guilty of the offence of personation.

---

16 Supra

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In the above instance it is clear that the intention of the person who made the application for the ballot paper was held to be material. Thus a person who honestly believing that he is entitled to vote make an application for a ballot paper in the name of some other person or in his own name will not be made liable for the offence of personation merely because he had made the application.

A comparison of the case of *Rex v. Fox* with that of *Gloucester* would show that on both occasions the intention or the mental element has been held to be material. In the case of *Gloucester* referred to earlier if the application for the ballot paper was made dishonestly, yet the argument would have been open to the defendant that he made the application in his own name and not in the name of another. This however could be resolved by drawing a distinction between the making of an application in a similar name and the making of an application in ones own name. Where the application has been made on a similar name, the mental element necessary to impose liability on a charge of impersonation would more often that not be available.

General Personation

The question as to whether personation of a general nature is sufficient to vitiate an election and to unseat a member irrespective of the proof of agency, merits consideration. Fraser[17] commenting on this matter, states :

> "It has been seen that an election will, be set aside at common law on the ground of general bribery, general treating or general undue influence even though it cannot be traced to the candidate or any agent of his, but there is no such law in regard to general personation".

The English law regarding general personation was discussed in *Belfast*[18] where it was stated :

> "It has, been said and evidence has been given on that basis that if the, personation was general in its nature, it might unseat the member, irrespective of the agency at all. With that view we admitted some evidence in the early part of the case, but it is now perfectly apparent that nothing of the kind could be maintained".

---

17 Hugh Fraser, Law of Parliamentary Elections, p. 136.

18 (1886) 4 O'M. & H. 105.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Only 13 cases of personation were held to be proved in this case. Referring to this matter it was stated :

> "It would be impossible, even if such were the law, that 13 cases of personation out of a constituency of over 8,000, and where there were upwards of 3,500 who voted for the successful candidate, could be said to so infect the whole constituency as to make the election void at common law. .... I do not think that personation could be successfully alleged irrespective of agency against the respondent, in a case such as this" Joseph Baker[19] expressing his view on this matter states that personation should be shown to be committed by an agent of the successful candidate before the court could declare the election void and the seat forfeited.

Blackburn J. delivering the judgement in the case of *Gloucester*[20], explains the English law pertaining to this subject. Referring to the forfeiture of the Parliamentary seat of a successful candidate who is found guilty of personation he remarks :

> "This is a very serious penalty on the sitting member, and though in a great many cases it may be felt that for a small error on the part of the agent it is rather hard that the successful candidate should lose his seat, yet where he has employed an agent who is capable of doing such a thing as persuading another fraudulently to personate and obtain a vote, knowing he was not entitled to it, he properly enough suffers the penalty of having trusted such a person with the management of the election".

In the Ceylon case of *Saravanamuttu v. De Mel*[21], in which the question of abetment of personation was discussed, Dias J. making a general reference to all the corrupt practices under the Ceylon (Parliamentary Elections) Order-in-Council, specifically stated that the charge of personation or abetment of personation should be proved by strong and cogent evidence. In the words of Dias J.,

---

19 Joseph Baker, the Law of Parliamentary Elections, p. 185.

20 (1880) 4 O'M. & H. 105

21 (1948) 49 NLR 529

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

KOHA-JPL

"under the charge of abetment of personation the burden of proof rests heavily on the petitioner to establish beyond reasonable doubt to any satisfaction that a corrupt practice was committed in the election by the respondent or with his knowledge or consent by an agent of the candidate".

Identification made at a polling station by candidate or his agent has been considered in a number of Indian cases also. According to Chand[22] :

"If identifications are being made at a polling station by a candidate or his agents, and a case of personation is proved there is a very strong presumption that such personation was procured by them".

In the Indian case of *Muzaffarnagar*[23], where after careful consideration of the evidence the court came to the conclusion that a voter had been personated by some person unknown, it went further and held that as identifications were being made at the polling station by the agents of the respondent who himself was present the personation was committed with the connivance of the respondent or his agents. Here it should be noted that the person who committed the offence of personation was not known though court was satisfied that personation had taken place. The candidate was made responsible solely on the basis that the personation was committed with the connivance as the evidence indicated that the candidate and his agents identified the personator as a genuine voter.

In the Ceylon case of *Ahamed v. Aliyar Lebbe*[24], too identification by the candidate was alleged. This case was however decided on the basis that the candidate identified the personators as voters though did not state that they were the persons whom they claimed to be. Therefore the question of identification by the candidate was not decided as an issue in that case.

Though a candidate may commit the abetment of personation by identifying a personator as a genuine voter it should be noted that a candidate cannot be found fault with for preventing a personator. As observed by Chand :

---

22 Supra

23 2 Hammonds Indian Election Petitions, p. 200

24 Supra

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

"A person or an election agent who has an opportunity of preventing a personated vote from being recorded yet takes no action cannot thereby necessarily be said to have induced or procured personation".

In the case of *Stepney*[25], where the question was discussed Cave J. stated :

"There is no doubt that certain voters who were disqualified, by being employed for pay, in the election did vote, which they have ought not have done. They were however called and said they did not know they were disqualified, and that is quite possible as they were persons who could not be expected to study the Act of Parliament. For the reason however it is incumbent on the agent who employs them to warn not to vote. But I come to the conclusion that he did not procure them to vote though I do not think he took enough trouble to prevent them from voting, that would not amount to the offence with which he is charged and of which therefore he must be acquitted".

Thus it would be seen that no duty lies upon the shoulders of a candidate to prevent the corrupt practice of personation being committed even though he may have had every opportunity of doing so. Obviously the law in this connection is concerned only regarding the commission and not the omission.

Punishment for Personation

In England a person convicted of the offence of personation or of abetting or procuring personation is liable to a term of rigorous imprisonment for a term not exceeding 2 years. In Sri Lanka penalties have been imposed for personation by the Parliamentary Elections Act No. 1 of 1981, and the Ceylon Penal Code which makes personation an offence. Section 77 of the Parliamentary Elections Act creates the offence of personation which is punishable under Section 81 of the same Act as a corrupt practice.

---

25 Supra

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Section 81 which is the penal section regarding all corrupt practices provides, for a mandatory jail term in the case of a person convicted of corrupt practice of personation. This is a clear indication that the Legislature considered the corrupt practice of personation to be much more serious in nature than the other corrupt practices.

Mr. S. W. R. D. Bandaranaike[26], as Minister of Local Administration in moving a Bill to make special provision for the conduct of polls at the General Elections of members of Municipal Councils, referred to the seriousness of the offence of personation and the punishment necessary in the following words :

> "This personation has been going on to a very great extent and some provisions must be made to ensure that the penalty imposed on a person proved to have been guilty of the offence of personation is more than at present. Our original intention was to provide only a jail sentence without the alternative of a fine, but it was pointed out that these tender hearted Magistrates and Judges that we have might feel inclined not to impose a severe sentence and if compelled to impose only a sentence of imprisonment, might defeat the entire object of the provisions by, let us say, sentencing a person to imprisonment, till the rising of court, or some detention of that sort. Therefore we have made provision for imposing a sentence of imprisonment for a period not exceeding one year, or a fine of not less than Rs. 250/- or more than Rs. 1000/- or a combination of both which we hope will ensure that the penalty imposed on those who are found guilty of this offence will to some extent, be commensurate with the seriousness of the offence itself".

This clearly shows thinking behind the introduction of the following section of the Parliamentary Elections Order-in-Council.

Section 58 of the Ceylon (Parliamentary Elections) Order-in-Council which provided the punishment for personation reads as follows :

> "Every person who commits the offence of personation shall on conviction by a District Court be liable to a fine not less than Rs. 250/- and not exceeding Rs. 1000/- or to rigorous imprisonment for a term not exceeding 12 months or to both such fine and such imprisonment".

---

26 Towards a New Era — S. W. R. D. Bandaranaike, p. 180

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In the case of *Attorney General v. Dharmasena*[27], the accused one Subasinghe Arachchige Dharmasena was charged under Section 58 of the Ceylon (Parliamentary Elections) Order-in-Council with having committed the offence of personation by making an application for a ballot paper in the name of Walpola Kankananlage Chandradasa. The accused on being charged pleaded guilty and the magistrate imposed a fine of Rs. 100/- on him. The Attorney General moved for the revision of the proceedings on two grounds. One of which was that the sentence was illegal as the minimum fine provided for the offence of personation was Rs. 250/-.

Dias J. delivering the judgement in this case stated :

"The law provides a minimum fine. Had the Magistrate taken the trouble to consult the Order-in-Council, he would have seen that a fine of Rs. 100/- for the offence of personation is quite illegal. I would go further, I do not think this is a case which can adequately be punished by a mere fine at all. Offences of personation are hard to detect and difficult to prove. Where such an offender is brought to book, it is expedient in the public interest that the punishment should fit the crime".

Accordingly the order imposing a fine of Rs. 100/- was quashed and the accused was sentenced to four months rigorous imprisonment.

In keeping with the judgement of Dias J., Section 58 of the Parliamentary Elections Order-in-Council was amended by Section 37 of Act No. 10 or 1964. The section provides for the imposition of a jail term not exceeding 12 months on a person who is convicted of the corrupt practice of personation. The present Parliamentary Elections Act also provides for a mandatory jail term of 12 months on a person convicted of personation.

Personation as an Offence and the Restrictive Measures

As stated by Dias J. in the case of *Attorney General v. Dharmasena*, personation is an offence which is not easy to detect, specially where it is practiced by an organised gang backed by powerful elements. Therefore public resentment has naturally increased against personators and in the interest of the public all measures should be taken to eradicate personation at elections.

---

27 (1948) 49 NLR 95

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

It is clear that personations have been possible where voters are uneducated and are unaware of their rights. An analysis of the suspected cases of personation at the elections from 1947 to 1965 March would support this contention.

General Elections	*Suspected cases of Personation (as reported to the Police)*
1947	1022
1960 March	125
1960 July	175
1965	122

Educating the voters is no doubt a successful method to counter personation at an election. However many more precautionary measures are available under the law of Parliamentary Elections in Sri Lanka. The question as to whether a Presiding Officer could refuse a ballot paper to a person whom he feels is a personator is an issue of concern. Under the Parliamentary Elections Act as well as under the earlier Ceylon (Parliamentary Elections) Order-in-Council a Presiding Officer is bound to issue a ballot paper to a person who says that he is a person whose name appears on the electoral register. However, where an election agent objects to such a person, the Presiding Officer is required to request that person to make a declaration stating that he is the person whose name appears on the electoral register, and when such declaration is made the Presiding Officer would have no alternative but to issue a ballot paper to such person. The Presiding Officer would have a discretion to refuse to issue a ballot paper if such person refuses to make a declaration.

Can a Presiding Officer question a person in order to satisfy himself that such a person is not a personator? In England a Presiding Officer is entitled to ask certain questions from a person who has applied for a ballot paper in order to satisfy himself as to the identity of such person. Under the English law a person is not required to make a declaration as in Sri Lanka. Sirimanne J. in his judgement in the case of *M. C. Ahamed v. Aliyar Lebbe*[28], referred to this matter as follows :

> "Our election law is based substantially on the English Election Law. In England, in place of the Declarations referred to the above, a Presiding Officer is empowered to put 'certain prescribed questions'. In the case of electors who vote in person, the questions are as follows :

---

28 Supra

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

(1) Are you the person registered in the register of Parliamentary Electors for this election as follows (read the whole entry from the register)?

(2) Have you already voted here or elsewhere at this By-election (or General Election) otherwise than as proxy for some other person?

If these questions are clearly answered as 'I am' and 'I have not', the Presiding Officer would be bound to issue a ballot paper.

Samarawickrema J., in his judgement in the same case expressed his view as to the power of the Presiding Officer to refuse a ballot paper to a person who has applied for it. He stated :

"I may add, however, that it appears to me that a Presiding Officer, may refuse a ballot paper to a person who applies for one, if it appears to him that the person is manifestly unable to exercise the franchise by reason of unsoundness of mind or drunkenness and perhaps, if the request for a ballot paper is, on the face of it, absurd".

It must be mentioned with respect that this appears to be an undue expansion of the power of a Presiding Officer, and it certainly would not be an easy task to set out the guide lines which should govern the discretion of the Presiding Officer in this matter. Even a person who appears to be of unsound mind should be issued a ballot paper, if he could come to the polling booth and apply for a ballot paper in his own name. Could the Presiding Officer refuse a ballot paper to such a person on the ground or unsoundness of mind? What is the yardstick that the Presiding Officer is expected to use in deciding on the question of unsoundness of mind? If however a person due to unsoundness of mind or otherwise does not make an application for a ballot paper the question of issuing a ballot paper to such person would not arise.

It is not clear as to what was meant by the term 'if it appears to be on the face of it'. This appears to be quite a vague term. This becomes obvious when it is viewed in the light of the fact that the Parliamentary Election law only requires the name of a person to appear on the electoral register in order to entitle him to a ballot paper. If this condition is satisfied the question an absurdity would not arise.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The fact that the Presiding Officer should be empowered to pose certain questions in order to ascertain the identity of a person who applies for a ballot paper no doubt is an essential matter to which thought should be given. Merely getting a person to sign a declaration could prove to be inadequate to meet atttempts of personation.

It must also be pointed out that the declaration as well as the questions asked in England are directed towards getting the alleged personator to certify that he is in fact a personator and that he is the person whom he claims to be. It would certainly be effective if the Presiding Officers are empowered to question an alleged personator with a view to find out as to whether he is in fact a personator. If questions could be asked regarding the other registered voters from the same family as the person whom the alleged personator claim to be, and other such questions which would clearly show whether the person to whom an objection is raised as a personator or not, it would be very useful in this connection.

Thinking of amendments to the election law in those lines would offer effective remedies to control the tendency of persons to resort to personation at elections. At the Referendum held in December 1982, it was alleged that a personator had been successful in personating a person who had been a candidate at the Presidential Election held in October, 1982.[28A] (Just a few months before the Referendum) This may be the first time in the history of Parliamentary elections of Ceylon, that an allegation of the personation of such a person had been made.

The Parliamentary Elections Order-in-Council as well as the Parliamentary Elections Act, provide for measures aimed at preventing such situations. Each candidate is entitled to have an agent of his at a polling booth. Where a person attempts to personate a candidate who had stood for the Presidential Election, the polling agent of such party should be able to object to it unless some sort of threat of violence had prevented him from doing so. In the absence of any such violence it would only be reasonable to infer either that corrupt practice has been committed with the connivance of such agent or that the agent did not do his duty properly.

28A Hansard Vol. 21, No. 18 of 24th December, 1982, Column 2213

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

It is therefore up to the candidates to be careful when appointing their polling agents. If the appointment of polling agents is done with care, it should certainly reduce personation to a minimum.

The Usage of Indelible Ink

Using of indelible ink at elections to a certain extent would prevent a person who had voted once voting on behalf of another voter at a different polling station. This system appears to be an obsolete one as there have been instances where chemical solvents had been used to dissolve the impression.

Mr. E. F. Dias Abeysinghe, the then Commissioner of Elections in his report on the elections to the second National State Assembly of Sri Lanka, has expressed his views regarding the usage of ink in the following words :

> "In my view the system of marking the voters with indelible ink before they are given ballot papers should be given up now". I have always felt that the need to mark a voter with indelible ink is a blot in our national character. We are not a nation of criminals who need to be finger printed to prevent us from voting twice, 99% or more of our voters would not do so whether indelible ink is used or not. The need to mark everyone because of a small criminal element seems unworthy.
>
> Leave alone the ethical consideration, political circumstances also support disposing of the indelible ink operation. With a one day General Election, a ban on transport of voters, an increase in polling stations, having a fewer number of electors registered in them, the issue of official poll cards to all electors with punishment of rigorous imprisonment for personation (without the alternative of a fine) attempts at impersonation have lessened. In addition virtually every adult now has an identity card. Some provision could be introduced by which in cases of doubt a check against the identity card could be made. Again indelible ink is obtained from abroad at considerable expense. There has been some thinking that despite sampling and certificates by the producers before the ink is purchased, the ink too is not really indelible enough. The need to continue it can be considered further now.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

From another angle, with a change in the system of elections, the keenness of the competition amongst candidates will be less. Supporters could be less keen to consider even impersonation. It would be timely therefore to consider doing away the use of indelible ink".

As suggested by the former Commissioner of Elections in the above quoted chapter the use of indelible ink has not proved to be a necessity. On the other hand indelible ink if effective could only prevent a person who has already voted, from voting again. Indelible ink cannot be in any way restrict a person from impersonating another. As elections in Sri Lanka are held on one day indelible ink could be helpful. However in the case of a by-election, or any other election where the whole country does not go to the poll on the same day, it would not be necessary to get a person who has already voted to personate another as if a person so chooses people who have no vote at that particular election could be made use of.

As suggested by the former Commissioner of Elections, if provision is made for the Presiding Officer to check the identity card of a person if any doubt arises, personation could be eliminated quite soon.

Mr. Dias Abeysinghe has also stated that with the change of the system of elections, persons would be less interested in personation. He obviously has referred to the introduction of the Proportional Representation system. No doubt it is correct that the competition amongst candidates has lessened to a considerable degree under this system. However it does not seem logical to conclude that this would in any way have a bearing on those interested in personation as the competition would now be on a larger scale.

Where a Genuine Voter Appears at the Polling Station when He has Already been Personated

There is provision under the Parliamentary Elections Act in Sri Lanka[28], for a person who has already been personated, to yet cast his vote after making a declaration to the Presiding Officer. However the ballot paper that would be issued to such a person would be different in

---

28 Section 45, Parliamentary Elections Act No. 1 of 1981.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

colour and would be called a "tendered ballot paper". At the time the votes are being counted the tendered ballot papers are not counted, but they are separately sealed with the ballot papers of the candidate in whose favour it has been cast. On a scrutiny at the trial of an election petition the tendered votes would also be considered and if proved valid on an application made by a party it could be added to the votes polled after striking off the vote of any person who had committed personation. In the Ceylon case of *Dias v. Amarasuriya*[29], a scrutiny was claimed on the ground that the unsuccessful candidate had a majority of lawful votes, and the petitioners limited their application to votes obtained by personation and argued that these votes should be struck off and the tendered votes added to those polled. It was held that the petitioners were entitled to have the votes declared void by reason of personation excluded, and the tendered votes added in cases where tendered votes have been submitted.

Personation as an Offence in Sri Lanka

Personation, unlike any other corrupt practice, has not been an offence that could be committed at a large scale. This could well be one reason why general personation, unlike general bribery or general intimidation is not a ground to vitiate an election if it cannot be attributed to a candidate or an agent of his. This position is the same under the English Common Law.

The measures to counter personation is not taken on the basis that it could seriously affect the election but on the basis that the commission of this offence amounts to the deprivation of a right of a citizen. In short the opportunity given to a citizen to exercise his right to elect members to the legislative body which exercises the legislative power of the people. In the case of Presidential Election, it will be the right to elect the Head of the Executive and the legislative power. The deprivation of such a right is a serious matter and should certainly be held in contempt.

At the recent Referendum in Sri Lanka it was alleged that even a Presidential Candidate who had contested the Presidential Election a few months before referendum had been personated. This undoubtedly is a very serious matter. It would be open for a person to say that even the election staff, including the Presiding Officer may have had a hand

---

29 (1931) 33 NLR 169

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

in this matter if in fact such a person had been personated. In the circumstances it appears to be of some importance to amend the law in terms of giving the Presiding Officer and his men to act on their own when suspicion arises regarding the identity of a person who had made an application for a ballot paper. In Sri Lanka a system of National Identity Cards had been introduced and as suggested by the former Commissioner of Elections the Officers can request the production of the identity card if the necessity of doing so arises.

I would like to make special mention of a referendum where the people are called upon to exercise the legislative right directly. On such occasions there appear to be reasons why stricter measures should be adopted to prevent personation. During a referendum the Governmental forces may inspire unruly elements to take advantage of the fact that a referendum does not change a government, in order to resort to various corrupt practices of which personation could be a main one. Mass impersonation if practiced could give an incredible twist to the true intention of the people, impersonation even if proved could have no legal bearing on what has been shown to be the results. This is a point at which a deviation from the common law principles would be desirable by introducing legislation empowering the Supreme Court to declare a referendum null and void if mass impersonation has been successfully proved. The suggestion is made on the basis, that there may be a tendency towards personation at a referendum much more than at an election due to the fact that it would be a direct clash between the powerful government and the lesser powerful opposition while the Government would continue to remain in power irrespective of the results of the referendum. This may inspire those having tendency towards personation to practice it in favour of a government in power, while the opposition would have less courage to counter it.

In conclusion it should be stated that the provisions presently available in Sri Lanka to curb personation have proved to be effective. However, the above suggested measures would leave no room even for mild allegations of personation.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

CHAPTER 5

TREATING

Treating for the purpose of influencing voters at an election has been made a corrupt practice under the earlier Ceylon (Parliamentary Elections) Order-in-Council 1946 and the present Parliamentary Elections Act No. 1 of 1981. In England the Corrupt Practices Prevention Act of 1853, first provided against treating at an election.

The Act provided :

> "Any candidate at an election who corruptly gives or provides or pays for any meat, drink, entertainment or provision directly or indirectly, to or for any person in order to be elected, will be deemed guilty of the offence of treating".

The Corrupt and Illegal Practices Prevention Act of 1883, was later introduced with the necessary remedy. Section 1 (1) of the Act provided:

> "Any person who corruptly by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing, any meat, drink, entertainment, or provision to or for any person, for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be guilty of treating".

A person who accepted a treat was made liable for treating by Section 1 (2) of the same Act, which provided :

> "Every elector who corruptly accepts or takes any such meat, drink, entertainment or provision shall also be guilty of treating".

Almost the same words of that section of the English Act has been included in the Ceylon (Parliamentary Elections) Order-in-Council. Section 55 of the Order-in-Council[1] provides as follows :

---

1 New Section 78 of Parliamentary Elections Act No. 1 of 1981.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

"Every person who, corruptly, by himself or any other person, either before, during or after an election, directly or indirectly gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays or engages to pay wholly or in part the expense of giving or providing any meat, drink, refreshment or provision of any money or ticket or other means or device to enable the procuring of any meat, drink, refreshment or provision, to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election or on account of any such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election, and every elector who corruptly accepts or takes such meat, drink, or refreshment or provision or any such money or ticket or who adopts such other means or device to enable the procuring of such meat, drink refreshment or provision shall be guilty of the offence of treating".

It could be seen from the above provisions that treating during, before or after the election, as well as accepting the treat has been included within the scope of the offence both in England and in Sri Lanka. Unlike the offence of personation the words in the section specifically provide that a corrupt intention is essential for the commission of the offence of treating. The treating should be done for the purpose of influencing the voters to affect the election. The Act not only makes it an offence to treat persons during, before or after an election, it even makes a person who accepts a treat, liable if it is accepted with the corrupt intention of affecting the election.

Corrupt Motive

The question as to what constitutes a corrupt motive for the purpose of making a person liable for the offence of treating, has been the subject of much discussion. Joseph Baker, referring to the corrupt intention in treating states[2];

"There is inherent in a great many people the habit of giving and accepting drink, and in the excitement of election time one must expect to find more indulgence in such habit rather than less. It is therefore not sufficient in order to make out a case of treating to

2 Joseph Baker, The Law of Parliamentary Elections p. 144

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

show that this kind of refreshment has taken place. We must be careful to see that the treating is administered for the purpose of influencing votes".

It appears to be clear that in order to make a person liable for the corrupt practice of treating the corrupt intention is essential and that what is contemplated in the section is not mere simple treating, but a form of treating purposely calculated towards affecting the results of an election.

As it was held in *Brecon*[3], "treating to be corrupt must be treating under circumstances and in a manner that the person who treated used meat and drink with a corrupt mind, that is with a view to inducing people by the tampering of their appetites to vote or abstain from voting and in doing so to act otherwise than they would have done without the inducement of meat or drink. It is not the law that eating and drinking are to cease during elections."

Treating for the purpose of influencing a voter has been described in *Great Yarmouth*[4], as getting the voters through their mouths and through their stomachs, by supplying them with food and giving them drink.

It has been decided that whether an act amounts to treating within the meaning of the section is a question of fact, and entirely depends on the facts of each case. In *St. George's*[5], where this matter was discussed it was stated, "the question of treating will have to be decided on the facts of each case. Treating may be innocent and prima facie it is innocent, but it may be given under such circumstances as to lead the Tribunal to conclude that it was corrupt. The question of corrupt treating must be in each case a question of fact. If the refreshments provided are excessive, if the occasions are numerous, and if there are circumstances calculated to excite suspicion, a corrupt intention might be inferred.

---

3 (1871) 2 O'M. & H. 43
4 (1906) 5 O'M. & H. 198
5 (1896) 5 O'M. & H. 89

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Joseph Baker in his book on the 'Law of Parliamentary Elections' refers to the intention that is necessary to consitute the offence of treating. He states[6] :

> "Since the intention of the Legislature in construing the word corruptly was to make it a question of intention, this must be ascertained, as all questions of intention must, by looking at the outward acts of the parties, and seeing the degree and extent and then drawing the conclusion from the facts".

The acts of a candidate or his agent, which would amount to treating was discussed in *Wallingford*[7]. The question which came up for discussion was as to when and under what circumstances a candidate could be made liable for the offence of treating, for the acts committed by him or by his agents. The view expressed in that case was that a candidate could be made liable for the corrupt practice of treating if he either by himself or by his agents, in any way is accessory to providing meat, drink or entertainment for the purpose of being elected, with an intention to produce an effect upon the elections.

It was also said that a candidate would commit the corrupt practice of treating where the intention is by such means to gain popularity and thereby to affect the election, or if it be that the person afraid that if they do not provide entertainment and drink to secure the strong interest of the public and of the person who take drink whenever they can get it for nothing, they can become unpopular and therefore provide it in order to affect the election. In short it would be clear that the circumstances under which the treating was done would be immaterial where it could be shown that the treating was done with the intention of inducing the voters to affect the elections.

Form of Treating Necessary

Having dealt with the definition of the offence of treating and the intention necessary to establish a charge of treating it would now be appropriate for us to deal with the form of treating that would be necessary for the constitution of the offence. In societies where treating each other is quite common today, it would be certainly a difficult task

---

6 at p. 116

7 (1869) 1 O'M. & H. 85

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

to distinguish between simple treating and that which amounts to the corrupt practice. It has been stated that the Legislature did not intend to include forms of treating which occasionally exist between social equals, or that form of treating which exist in relation to business matters.

In **Norwich**[8], where this matter was discussed it was held that it is not at all uncommon for persons when they have struck a bargain to cement it with a drink and it is obvious that the treating referred to in the Act has no reference to treating of that sort. It applies to that sort of treating which exists where the Superior treats the Inferior, the treating which gives the treator influence over the person treated, and secures to the former the goodwill of the latter.

A candidate could be liable for the corrupt practice of treating where the treating was done by an agent of his with his consent. The personal liability of a candidate in such a case was discussed in *Hexham*[9]. Cave J. delivering the judgement of that case stated, "if the candidate was bona fide ignorant of what had taken place then I think he would not be personally liable for treating. But on the other hand if he was ignorant mala fide he should be. I do not think that mere carelessness is sufficient unless it is of so gross a character as to compel the conclusion that the ignorance is mala fide, that is to say, that the respondent suspected that something was wrong, and chose wilfully to shut his eyes in order that he might be able to say at some future time that he did not actually know what was going on".

In order to commit the corrupt practice of treating, what is essential, as earlier observed, is that the treating should be done with the corrupt intention of influencing the voters to affect the elections. It could therefore be seen that it is not an absolute necessity that those who were treated should be voters for the commission of the offence of treating. Even if non-voters are treated to influence the voters by such action, it would clearly amount to the corrupt practice of treating.

---

8 (1886) 4 O'M. & H. 90

9 (1892) 4 O'M. & H. 143

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In *Tamworth*[10], the question which came up for adjudication was whether the offence of treating could be committed by treating persons who did not have a vote. Willes J. referring to this matter in his judgement states: "treating of women in order that they might influence their fathers, brothers or sweethearts would unquestionably avoid the election".

In the Ceylon case of *Illangaratne v. G. E. de Silva*[11], a similar question arose. In this case, two election petitions were filed, challenging the election of the respondent Mr. G. E. de Silva as a member for the Kandy Electoral District, at an election held on the 23rd of August, 1947. One of the petitioners challenged the election of the respondent on the ground that the respondent was guilty of the offence of treating, in that he himself, his agents and other persons acting on his behalf, with his knowledge and consent, did before and during the election provide meat, drink refreshments and provisions to voters and other persons for the purpose of corruptly influencing the said voters to cast their votes at the said election. According to the facts of the case there had been floods a few weeks before the election and many persons, some of whom were not voters, had been the unfortunate victims of the flood, who had lost their homes and belongings as a result. The contention of the petitioner was that the respondent treated the flood victims with the intention of influencing the voters or with the intention of thereby gaining popularity which would affect the elections.

It was stated by the petitioner that the respondent had brought food and mats to the camp where the flood victims were kept and that this was done with the object of influencing the inmates to vote for him. Windham J. delivering his judgement stated, "I am not satisfied with the evidence of the petitioner that the respondent brought food in his car to the Kingswood Camp. I am satisfied that his only motive in succouring the refugees was to alleviate their distress. Many other public spirited citizens were doing the same thing with the same motive. The charge of treating must therefore fail".

---

10 (1869) 1 O'M. & H. 86

11 (1948) 49 NLR 169

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The important matter here was that all the inmates of the camp were not voters of the particular electorate. However the significance of this point loses its importance as the case was decided on the ground that the treating was done with no intention of influencing the voters.

Acts of charity have been in many English cases held not to be treating within the meaning of the Act. In *Haggerston*[12], the respondent in a time of distress distributed tickets which could be exchanged for food, and a letter was published in a local newspaper by one of his agents to the effect that more tickets will be distributed, and this was done. The Judges differed as to whether this amounted to bribery or treating and the election was not avoided. The facts in the case of *St. George's*[13] were similar to those of the *Haggerston*[14] case. The respondent was the President of a philanthropic society. In time of distress a large number of tickets many of which bore the name of the respondent were distributed. Each ticket entitled the possessor for food or coal, and the respondent alluded to such distributions in his speeches. It was held in this case that this did not amount to bribery or treating. It was however stated that this would have amounted to treating, if the giving of the tickets were coupled with a request for the individuals vote.

The question as to whether treating one's own supporters would amount to treating was the question that arose in the Ceylon case of *Tarnolis Appuhamy v. Wilmot Perera*[15]. In this case the petitioner challenged the election of the respondent as a member of Parliament for the electoral district of Matugama. Treating was one of the grounds on which the petitioner had based his petition. The question that came up for adjudication was whether treating one's own supporters whose votes were assured in one's favour would amount to treating.

Nagalingam J. referred to this matter in his judgement as follows:

"The scene is laid at Bopitiya in the house of one William Appuhamy, where the witness Sadiris Appuhamy, who admittedly was a polling agent for the respondent states that on the 10th of September, food and drink including arrack was given to about 25 persons who

---

12 (1896) 5 O'M. & H. 95

13 Supra

14 Supra

15 (1948) 49 NLR 361

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

were workers of the respondent. His evidence is supported by that of the Headman of the area, Don Dias Karawita, who says that as he went along the road at about 7.00 p.m. he saw people being given drinks out of a bottle which had a label of arrack. The agency of William Appuhamy is denied by the respondent, but assuming agency to be established, do the facts prove the charge? Section 55[16] penalises the giving of food and drink to persons with a corrupt motive to influencing him to vote or refrain from voting. But where persons who are admittedly workers of a candidate and whose ballots are well known to be secure in favour of that candidate are provided with meat and drink not for influencing their votes, for there is no need for any influence at that stage but as part of ordinary amenities to which any worker is entitled, such conduct and action falls outside the sphere contemplated by the section".

The Amount of Treating

The amount of treating has been held to be immaterial where a corrupt motive of influencing the voters has been established against a person. It would however be important to note that the amount of instances of treating would be a fact which could be made use of in order to prove that a corrupt intention did exist. In other words, where the instances of treating are more, a corrupt intention could be more easily inferred than where the instances of treating are less. This however should not be misunderstood to mean that where treating has been done only once, a charge of treating cannot be established. Where the corrupt intention has been proved the number of instances of treating loses its importance.

As it has been stated by Joseph Baker :[17]

"Treating does not depend upon the amount of drink. The smallest quantity given with the intention will avoid the election. But in considering whether the intention does exist, it is important to see on what scale and to what extent it was done".

In the case of *Wallingford*[18], the question of the amount of treating was discussed. Blackburn J. in his judgement referred to this matter as follows :

---

16 Section 55 of the Ceylon (Parliamentary Elections) Order-in-Council, 1946.
17 Supra at p. 313
18 Supra

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

"Every thing is involved in the question of intention, and it becomes important to see what the amount of treating is. The statute does not mean or say that it shall depend upon the amount of drink. The smallest quantity given with the intention will avoid the election. But when we are considering as a matter of fact the evidence to see whether a sign of that intention does exist we must as a matter of common sense, see on what scale and to what extent it was done".

In the Indian case of *Himachal Pradesh*[19], the question of the amount of money spent on treating was discussed. In this case the question arose as to whether the treating was done by the respondent or his agent, after it was established that in fact some amount of money had been spent on treating. The learned Trial Judge decided the question by referring to the amount spent on treating. It was stated, "it appears to us that the amount of money shown to have been spent in this connection is so insignificant that even if it had been proved that the money came from Dr. Parmer (the respondent) we could hardly be able to say that it was spent with a corrupt motive".

In the Ceylon case of *Fernando v. Cooray*,[20], the connection between the number of instances of treating and the inference of a corrupt motive was considered. In this case it was held that a single instance of treating if done with a corrupt intention is sufficient to invalidate an election although it may be more difficult to infer a corrupt intention from one isolated act than from several acts of the same kind. The election petition was filed under Article 37 of the Ceylon (Legislative Council) Order-in-Council 1923 against the return of the respondent as member of Colombo South Constituency of the Legislative Council at a by-election held on the 28th of June, 1930. Dalton J. delivering the judgement of this case stated, "the intention must be for the purpose of corruptly influencing the person who is treated, or any other person to give or refrain from giving his vote as laid down in Section XLIV of the Order-in-Council. It has been urged for the respondent that R. Hendrick Perera had expressed his intention of voting for Dr. Cooray before he was treated, but that is not conclusive evidence of the matter for there may still in such a case be an intention to fortify the voter in his determination to vote for the person treating him, or to confirm his vote and those of others whom one may have reasons to think are going to support one. In both those latter cases treating has been held to be corrupt treating".

---

19 (1950) Indian Elections Cases 1935 to 1950 by H. S. Doabia — Vol. II, p. 394
20 (1930) 32 NLR 121

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

A general reference to the many instances of treting, which have been challenged before Courts of Law, and which have thus been considered by Court of Law, would be of importance and would make a chapter on the subject more complete. The instances of treating could be categorised under 3 main headings, namely;

(i) Treats in the form of parties
(ii) Treats for charitable purposes
(iii) Treats to one's own supporters

Treats to one's own supporters and those for charitable purposes have been discussed earlier. It has been held more than once, that treats in the nature of charity, will not usually fall within the scope of the section. Treats to supporters have always been left outside the scope of the section on the basis that by treating one's own supporters there would be no influencing of voters, as the support of the votes of one's own suppporters would be assured irrespective of treating.

The category of treats known as treats in the form of parties could be called the most controversial out of all, as whether it falls within the scope of the section or not depends entirely upon the circumstances under which the treat was given. In *Great Yarmouth*[21], the respondent organised a party at the New Town Hall to all this friends and supporters. An advertisement was published in one of the local newspapers, advertising the party. The advertisement invited all his friends to attend and meet the retiring member and stated that there would be a band and tea. It was estimated that more than 700 persons attended the meeting. All expenses regarding the party were borne by the respondent, who contested the election which was held on the 16th of January, 1906, The party was given in October, 1905. The court held that there was no corrupt intention and that the respondent was not guilty of treating.

The case of *East Cork*[22] is also a case where the question of a treat in the nature of a party was discussed. A large meeting had been held in support of the respondent, and an agent of the respondent had ordered lunch and drinks for those who attended the meeting at a nearby restaurant. Subsequently the agent had met the respondent with the bill and received a cheque from the respondent for the expenses. It was

21 Supra

22 (1911) 6 O'M. & H. 335

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

revealed by evidence that prior to issuing the cheque the respondent did not have any knowledge of the party. The judges decided that the corrupt intention which was necessary to establish the charge of treating had not been proved.

In *Lichfield*[23] a totally different question was taken up. There was no evidence to show that the respondent or his agents served or paid for the drinks which were served. The only evidence available was that the respondent went to a Public House, where people were drinking and addressed them. It was contended on behalf of the petitioner, that this evidence was sufficient for the court to infer that the drinks were in fact served by the respondent or his agents. Willes J. refusing this contention stated, "a case of treating is not proved by merely showing that a candidate went to a Public House to address a meeting where drinking was going on, unless it is proved that drinking was more than might be expected to take place at a house where people drink together. It does not appear to me that, that would be sufficient to bring my mind to the conclusion that necessarily the candidate paid for the drink that was supplied there. The case of treating was not made out unless it is shown that an extraordinary amount of drink was consumed which could not have been paid for by the persons there".

The Time of Treating

The time at which the offence of treating is committed would be material. It should be noted that the section makes a person liable for the corrupt practice of treating if the treating is done for the purpose of influencing the voters, during, before or after the election. Therefore the time at which the treat was given would be of importance in this connection.

Hugh Fraser[24] referring to this matter states that a person would not be liable for the corrupt practice of treating, for treating persons unless it is shown that there was a connection between the treat and some event before the election. In his own words :

> "In order to make treating after an election, corrupt, it would appear that it must have been in pursuance of a previous understanding".

---

23 (1869) 1 O'M. & H. 24

24 Hugh Fraser, The Law of Parliamentary Elections p. 122.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In *Brecon*[25], the question of subsequent treating arose. Lush J. delivering the judgement set out the law in this connection as follows :

"I am therefore driven to the conclusion that the treating which the Act calls corrupt as regards a bygone election must be connected with something which preceded the election, must be the complement of something done or existing before and calculated to influence the voter while the vote was in his power. An invitation given before, to an entertainment to take place afterwards, or even a promise to invite, or a practice of giving entertainments after an election which it may be supposed the voters would calculate on, would, if followed up by the treat afterwards; give it the character of corrupt treating. But when the entertainment was as it is proved in this case to have been, not only mentioned but not even thought of till after the election was over, no such entertainment even having been given before, it cannot, in my judgement, be deemed corrupt treating within the meaning of the Act, even if its object was, as my brother Ballantine contended, to gain a hold upon the voters and secure their future support".

In the case of *Carrickfergues*[26], the case was decided on the same basis. The sitting member had served drinks to some of the persons who had come to see him, and to congratulate him. In this case of course, it was revealed that the member was not aware as to whether the persons who visited him were voters of the electorate or not. In fact as disclosed later only 2 persons were voters. The fact that was contended on behalf of the respondent was that, he had made no prior arrangement and that he only served those who came to see him at his residence. It was held that under these circumstances it cannot be said that the treating amounted to the corrupt practice within the meaning of the Act.

Where the treating had been done before the election too, a person could be liable under the Act, if it could be shown that the corrupt intention necessary was present. However, where the difference of time between the election and the treat is so large, courts would always hesitate to infer that the treat was given with the corrupt intention of influencing the voters.

---

25 Supra

26 (1869) 1 O'M. & H. 264

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In *St. George*[27], it was stated that though the question would be relevant in drawing a conclusion as to whether the treating was done with a corrupt intention, it does not mean that a corrupt act would be less corrupt because it was done a long time before an election is in prospect. The length of time before which the treat was given has come up for decision in many English cases.

In the case of *Youghal*[28], Parliament was dissolved in August. The evidence of the case disclosed the fact that the respondent along with his agents treated the voters in the month of July. This was held to be treating within the meaning of the Act. Similarly in the case of *Hexam*[29], the treating was done 8 months prior to the election, by the respondent and one of his agents. Treating was held to have been committed in this case too. The case of *St. George*[30] could be cited as a case in which it was held that the treating has not been committed on account of the length of time between the treating and the election. In this case the respondent had stood drinks to all the members of a political club who were present 3 years before the election. This was held not to be treating.

The General Treating

General treating too has been considered to be a ground on which an election could be challenged successfully. Where it can be shown that treating has been done in a general nature with a view to affect the election, this would be sufficient to challenge the election on the ground of treating. Rogers[31] referring to the principle behind this states :

> "Freedom of election is at common law essential to the validity of an election. If this freedom be by any means prevented, generally, the election is void at common law".

General treating as a ground of avoiding an election has been discussed by Keogh J. in his judgement in the case of *Drogheda*[32], where he states, "take then the case of an organised system of treating. I am speaking now of a case of which nothing could be traced to a candidate or his agent, but supposing at the head of every street food and drink

---

27 Supra
28 (1869) 1 O'M. & H. 291
29 Supra
30 Supra
31 Rogers on Elections, Vol. II, p. 322
32 (1869) 1 O'M. & H. 258

NATIONAL LIBRARY SECTION;
MUNICIPAL LIBRARY SERVICES,
JAFFNA.
Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

were provided in large quantities, and places for eating and places for drinking opened, as to which it was known that every voter who wished to go thither and seek for food and drink would receive it, provided he was a voter upon the side of a particular candidate, and that that was an organised system of debauching the voters of a particular borough, although all the while not traceable to the member or his agents, so as to disqualify him at future electons, is it to be supposed for a moment that such an organised system as that would not defeat an election?. I take it that it is well settled that it would do so, and that there is no possibility of contesting that proposition".

Punishment for Treating.

In England, once a sitting member is found guilty of the corrupt practice of treating it would be the duty of the court to declare the election to be void, and inform the House of Commons of the decision of the court, and thereafter he would be subject to the other incapabilities, mentioned in the Act.

In Ceylon, the Ceylon (Parliamentary Elections) Order-in-Council, 1946[33] penalises those who are found guilty of corrupt practices including treating. Section 58 of the Order-in-Council[34] provides for the punishment of the offenders and incapacities. It provides that :

> "Every person who commits the offence of treating, undue influence or bribery, shall be guilty of a corrupt practice and shall on conviction by a District Court be liable to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and such imprisonment".

Sub section 2 of the same section [35] provides :

> "Every person who is convicted of a corrupt practice shall, by conviction, become incapable for a period of seven years from the date of his conviction of being registered as an elector or of voting at any election under this Order or for being elected or appointed as a Senator or Member of Parliament and if at that date he has been elected or appointed as a Senator or Member of Parliament, his election or appointment shall be vacated of such conviction".

---

33 Now Parliamentary Elections Act No. 1 of 1981.
34 Now Section 81 of Parliamentary Elections Act No. 1 of 1981.
35 Now Section 81 (2) of Parliamentary Elections Act No. 1of 1981.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In England in early times treating if corrupt, was treated as a specie of bribery. It was only subsequently that a separate corrupt practice of treating was created. In Sri Lanka Chapter IXA of the Ceylon Penal Code which deals with election offences has made provision regarding all corrupt practices with the exception of treating. This may be due to the fact that our Penal Code which is a carbon copy of the Indian Penal Code was enacted in the nineteenth century when the British rulers were following the position in England where treating was treated as a species of bribery. The difference between treating and bribery will be discussed in the Chapter on Bribery.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

CHAPTER 6

UNDUE INFLUENCE

Using undue influence in order to prevent the voters from exercising their legal right freely, has been made a corrupt practice. The election, it is said ought to be free and no man by force of arms nor by malice or menacing, should disturb any to make free election.

In England, Section 2 of the Corrupt and Illegal Practices Prevention Act, 1883 provided :

> "Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict, by himself, or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence".

The definition of the corrupt practice of undue influence contained in the above section would clearly indicate that various kinds of improper influences fall within the scope of the corrupt practice. Not only threats of physical violence, even threats of spiritual violence have been included in the definition of the offence. A person who by way of a fraudulent device interferes with the free exercise of the right to vote of a elector could be made liable for the corrupt practice of undue influence. It would however be essential to establish that all actions of the offender were aimed at compelling, prevailing or inducing upon any elector to give or refrain from giving his vote to a candidate of his choice, at the election in question.

In Ceylon too, undue influence has been made a corrupt practice, under the Ceylon (Parliamentary Elections) Order-in-Council of 1946[1] and the Penal Code of Ceylon. The definition contained in the Order-in-Council, by subsequent amendments has been made broader in its

1 Now under the Parliamentary Elections Act No. 1 of 1981.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

scope. The original section of the Order-in-Council of Ceylon was similar to Section 2 of the Corrupt and Illegal Practices Prevention Act of England. By subsequent amendments however, influencing utterances made at a religious assembly as well as distributing handbills and displaying placards, posters, banners or flags have been included within the scope of the offence. Under the Ceylon Order-in-Council[2], a person who holds a public meeting at a place of worship for the purpose of promoting the candidature of a candidate could also be made liable for undue influence.

According to Hugh Fraser[3], in England, apart from statutes if it could be shown that by reason of undue influence there had not been freedom of election, the election would be declared void. In other words, undue influence, if it was so extensive as to prevent a true election, would at common law render the election void, and this is so even though it could not be proved that the candidate or any agent of his was responsible for such influence.

Section 56 (1) of the Ceylon (Parliamentary Elections) Order-in-Council which defined the corrupt practice of undue influence, provides:

> "Every person who directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who by abduction, duress, or any fraudulent device or contrivance impedes or prevents, the free exercise of the franchise of any elector, or thereby compels, induces, or prevails upon any elector either to give or refrain from giving his vote at any election shall be guilty of the offence of undue influence".

A comparison of the above section with Section 2 of the Corrupt and Illegal Practices Prevention Act of England would show that almost the same words of the English section have been included in the Ceylon Order-in-Council.

---

2 Section 56 of the Order-in-Council, now reproduced in Section 79 of the Parliamentary Elections Act.

3 Hugh Fraser, Law of Parliamentary Elections p. 123

80134

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Another sub section to the original Section 56 of the Ceylon (Parliamentary Elections) Order-in-Council was introduced by Section 20 of the Act No. 11 of 1959. This sub section deals with the uttering of influencing words in a religious assembly and with displaying of banners, posters etc. Section 56 (2) of the Order-in-Council provides :

"Every person who, at any time during the period commencing on the day of nomination at any election and ending on the day following the date of the poll at such election,

(*a*) utters at any religious assembly any words for the purpose of influencing the result of such election or inducing any elector to vote or refrain from voting for any candidate at such election or

(*b*) for such purpose distributes or displays at any religious assembly any handbill, placard, poster, notice, sign, flag or banner, or

(*c*) holds or causes to be held a public meeting at a place of worship for the purpose of promoting the election of any candidate at such election"

shall be guilty of the offence of undue influence."

The above section, fixes the time between which the corrupt practice could be committed in the manner laid down there. The scope of sub-section 2 of Section 56 came up for discussion in *Hemadasa v. Sirisena*[4], In this case the question as to what was meant by a religious assembly and as to what is meant by a place of worship, arose.

The petitioner claimed in his petition, that between the nomination day and the polling day, words were uttered at a religious assembly for the purpose of influencing the results of the election, by the persons named in the petition and such persons were either agents of the respondent or acted with his knowledge or consent. Abeysundara J. dealing with all instances of alleged influencing utterences stated, "it was argued by counsel for the appellants that the expression 'any religious assembly' in Section 56 (2) (*a*) of the Order-in-Council includes a gathering of persons who are awaiting the commencement of any religious proceeding at any place or who, having attended such proceedings are in recess during an adjournment of such proceedings or are lingering at such

---

4 (1966) 69 NLR 201

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

place after the conclusion such proceedings. We do not accept counsel's interpretation of the aforesaid expression because in our view it is only when actually attending any religious proceedings that a gathering of persons becomes a religious assembly".

Section 36 of the Act No. 10 of 1964, introduced two more sub sections to the original Section 56 of the Order-in-Council. Sub-section 3 of Section 56, introduced by Act No. 10 of 1964, deals with the influencing which could be exercised by any member or official of a religious order or organization on any member or an adherent of such religious order or organisation. Section 56 (3) of the Order-in-Council, provides:

"Any member or official of a religious order or organization —

(*a*) who denies, or threatens to deny, to any member, or adherent of that order or organization, or to any member of the family of such member or adherent, any spiritual ministration, service or benefit, to which such member or adherent would in the ordinary course have been entitled; or

(*b*) excludes, or threatens to exclude, such member or adherent from such order or organization, in order to induce or compel such member or adherent to vote or refrain from voting for any candidate at any election, or to support or refrain from supporting any political party at such election, or on account of such member or adherent having voted or refrained from voting for a candidate at such election, or having supported or refrained from supporting any political party at such election, shall be guilty of the offence of undue influence".

Sub-section 4, of Section 56, introduced by Section 36 of Act No. 10 of 1964 dealt with the influence used by the employer over their employees. Sub-section 4 provides :

"Any person who, being the employer of any other person —

(*a*) terminates or threatens to terminate such employment; or

(*b*) denies or threatens to deny to such other person any benefit or service which such other person already enjoyed, or would have enjoyed, in the ordinary course of such employment,

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

in order to induce or compel such other person to vote or refrain from voting for any candidate at any election, or to support or refrain from supporting any political party at such election, or on account of such other person having voted or refrained from voting for any candidate at such election, or having supported or refrained from supporting any political party at such election, shall be guilty of the offence of undue influence".

The purpose of prohibiting the use of influence in an improper manner is to assure a free election. It should however be noted that, by undue influence what is meant is only an abuse of the influence one could have over the others, in order to affect the results or the election. This aspect of the matter was well explained in *South Meath*[5]. In this case it was said "the law cannot strike at the existence of influence. The law can no more take away from a man who has property or who can give employment, the insensible but powerful influence he has over those whom, if he has a heart, he can benefit by the proper use of his wealth, than the law could take away his honesty, his good feeling, his courage, his good looks, or any other qualities which gives a man influence over his fellows. It is the abuse of influence with which alone the law can deal. Influence cannot be said to be abused because it exists and operates. Thus a natural quality or status of a candidate or an agent of his, though may well influence the voters it cannot be considered undue, unless it is abused in some form".

Form of Undue Influence

As stated earlier undue influence could be of many forms according to the statute law. It would now be appropriate to discuss the various forms of undue influence in detail.

Where it could be shown that one has made use of, or had threatened to make use of any force, violence, or restraint or where he had threatened to inflict or had inflicted any temporal or spiritual injury, damage, harm or loss, with the intention of affecting the elections, he can be made liable for the corrupt practice of undue influence. A distinction has been drawn between this sort of intimidation specifically mentioned in the statute and common law intimidation. As it was stated in the case of

---

5 (1892) 4 O'M. & H. 142

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Drogheda[6] by Bramwell B., "first of all there is statutory intimidation, that contemplated by statute, if one may use such expression, that is, an intimidation contemplated by the statute which avoids the seat, where a candidate or his agent is guilty of it. But besides that there is another intimidation that has been called a common law intimidation, and it applies to a case where the intimidation is of such a character, so general and extensive in its operation, that it cannot be said that the polling was a fair representation of the opinion of the constituency."

Blackburn J. in the case of *Stafford*[7], dealing with this matter expressed the view, that if it is established that intimidation has taken place to such an extent as not let the election be free, though not traced to any agent of the candidate, it would make the election void. In the Ceylon case of *Tarnolis Appuhamy v. Wilmot Perera*[8], the difference between the standard of proof necessary to establish a charge of general intimidation and one of undue influence was discussed by Nagalingam J. In his words, "though in order to sustain a charge of general intimidation it is necessary neither to prove the agency of the intimidators in relation to the candidate on whose behalf the intimidation was exercised nor to establish that any particular voter or voters were in fact intimidated, it is essential however, that before an election can be declared void on the ground of the exercise of undue influence, proof must be adduced both of the agency of the person or persons guilty of undue influence and of the person or persons intimidated."

In *Stafford*[9], it was established that an agent of the respondent incited a mob to beat and molest people on the day of the election. This terrified many of the voters of the electorate who did not go to cast their vote on the polling day. This was held to be a clear case of undue influence which warranted the declaration of the election void. Referring to the actions of this nature which would prevent voters from casting their vote peacefully, Blackburn J. stated in *North Norfolk*[10], "where a person, in order to prevent another from voting, or to force him to vote, either beats him or threatens injury to his person or to his house, or the like, that is undue influence .... Where such a thing is done and is brought home to the agent, according to my view it avoids the elections".

---

6 (1874) 2 O.M. & H. 156
7 (1869) 1 O'M. & H. 240
8 (1948) 49 NLR 361
9 Supra
10 (1869) 1 O'M. & H. 240

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In *North Meath*[11], the election of the respondent was challenged on the ground of undue influence. There was evidence of physical violence used by agents of the respondent. The respondent was however not made responsible for the corrupt practice as there was evidence to the effect that the respondent intervened with the intention of restoring peace.

Where a propaganda meeting in support of a candidaete is obstructed and disrupted by the agents of the opposing candidate does it amount to undue influence under the Act? This question came up for decision in the Indian case of *Nimar Mohammadan Rural Constituency*[12]. In this case it was established that the agents of the respondent disturbed an election meeting of the petitioner by shouting and throwing stones and bottles at the stage. The disturbance created by the agents of the respondent was said to be so great that the speech of one of the prominent leaders who had gone to address a big gathering in the petitioner's support could hardly be audible in spite of the arrangement of loud speakers and the police had to request that the petitioner stop his meeting so that no breach of peace might take place.

It was stated in the judgement of this case that "this conduct of the agents of the respondent amounted to the corrupt practice of undue influence, because the disturbances created at the meeting and the throwing of stones was an attempt to tell the electors who would be inclined to support the petitioner's candidature, or the persons who pleaded for support for the petitioner, what to expect if they were found to be supporting the petitioner".

In the case of *North Kendrapara General Constituency*[13], The evidence indicated that the petitioner was not permitted to proceed by persons who threatened to cause harm to him if he proceeded further. It was held that if it was established that the persons who conducted themselves in such a manner as not to permit the petitioner to proceed were agents of the respondent, it would have been a clear case of undue influence under the Act. In this case however, the election was not avoided as the petitioner failed to establish that the respondent was either directly or indirectly responsible for this incident.

---

11 (1892 — 1893) Day's Election Cases, p· 144
12 (1946) H. S. Doabia, The Indian Election Cases Vol. I, p. 277
13 (1937) H. S. Doabia, The Indian Election Cases Vol. II, p. 411

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Intention in Undue Influence

The requisite intention necessary to constitute the offence of undue influence came up for discussion in *Subasinghe v. Jayalath*[14]. In this case the Supreme Court held that the use or the threat of force or violence must have been made with the requisite intention set out in the Section [15]. Where the relevant evidence does not establish beyond reasonable doubt the existence of such an intention, an adverse finding of an Election Judge will be set aside in appeal if the conclusion drawn by him from the relevant facts was not rationally possible. In this context, if the conclusion is to be drawn from circumstantial evidence, the ordinary principles relating to circumstantial evidence must apply.

In order to make a person liable for the corrupt practice of undue influence, is it necessary to establish that the intimidation was directed towards any particular person, or would it be sufficient if it is established that the intimidation was made in general without mentioning any individual?. In *North Durham*[16], this question was amply discussed by Bramwell B. It was his view that a close examination of the words of the Act would show that it was absolutely necessary to establish that the intimidation was directed towards an individual. It was stated, "when the language of the Act is examined it will be found that the intimidation to be within the statute must be intimidation practiced upon an individual. I do not mean to say upon some one person only, so that it would not do if practiced upon two or a dozen but there must be an identification of some or more specific individuals affected by the intimidation. I will not say influenced by it, but to whom the intimidation was addressed, before it could be intimidation within the statute, otherwise it comes under the head of general intimidation".

The Ceylon (Parliamentary Elections) Order-in-Council[17], does not make specific reference to undue influence directed towards a candidate. In India however there are several cases where candidates were confronted with violence, and where it was successfully traced to the agency of the respondent it has been held to amount to the corrupt practice of the undue influence. *Allah Dad Khan v. Mohamed Azam Khan*[18], is a case where a different question arose. The election of the

---

14 (1966) 69 NLR 121

15 Section 56 of the Ceylon (Parliamentary Elections) Order-in-Council 1946.

16 (1874) 2 O'M. & H. 153

17 Now the Parliamentary Elections Act No. 1 of 1981

18 (1938) H. S. Doabia, The Indian Election Cases Vol. II, p. 314

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

respondent was challenged in this case on the ground of undue influence. The petitioner led evidence to the effect that the agents of the respondent had threatened a candidate who had handed over his nomination papers that if he did not withdraw his nomination in favour of the respondent he would be met with a serious opposition. Dismissing the election petition, it was stated in the judgement, "it is alleged in the petition that Sardar Ghulam Faried Khan was **threatened with serious opposition unless he withdrew in favour of the respondent**". It is doubtful if an allegation of this nature even if proved would amount to the corrupt practice of undue influence. If one candidate says to anothert tha the latter would be very strenuously opposed, it can only be regarded as an ordinary election propaganda and cannot, under any circumstances be called undue influence'. The allegation regarding the exercise of undue influence seems to have been recklessly made by the petitioners". As a matter of interest it could be noted that the respondent who was the successful candidate had won the election polling, 1,515 votes as against his only opponent who had secured only 2 votes. The election results, it appears, had substantiated the prior warning of the agents of the respondent.

Where it has been established that intimidation has been exercised by the respondent or his agents, is it the duty of the Election Judge to examine whether the results of the election would have been different had there been no intimidation ?. This question was considered by the Supreme Court of Ceylon in *Saravanamuttu v. Joseph de Silva*[19]. De Kretser J., answering this question in the negative cited with approval the statement of Keogh J. in *Drogheda*[20].

It had been urged in *Drogheda* that the onus was on the petitioner to show that the undue influence led to the majority obtained by the respondent because it was impossible for the respondent to prove the negation of it. Keogh J. refusing to agree with this contention stated, "I must say at once that the argument put forward by the respondent is one from which I wholly and entirely dissent. It is subversive in my mind, of the whole principle of freedom of election. It is said by the counsel for the respondent that freedom of election is secured provided the majority are shown to have had the power of recording their votes.

---

19 (1941) 43 NLR 294

20 Supra p. 252

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

I deny that altogether. This was not solely a contest between the respondent and the petitioner. There is another and greater interest than belongs to either of them, there is the public interest. The humblest individual in the whole of the constituency has as good a right without fear or intimidation to come into the Court House upon the day of election as the richest man upon the register, and as good a right as the great majority of the constituency. Take it that a candidate has by the most legitimate means obtained the votes of nine-tenths of the constituency in his favour, yet it is of vital importance to the public weal that the remaining tenth should be able to record their votes and to express their opinions. If the majority are not only to send their own representative to Parliament, and of course the majority must do, but if they are to drive by terror and with ignominy and with scorn and with denunciation the minority from the poll, what becomes of freedom to this country?"

The statute law also recognises the "infliction of any temporal injury, damage, harm, or loss or the threat thereof, as undue influence. According to Rogers[21] this provision is directed against the more indirect, but equally "undue" influence brought to bear by customers upon tradesmen, landlords upon tenants, or employers upon employed. It appears that this provision will thus apply where some sort of influence is exercised by a person on those who are in some way dependant upon him. The words of the section clearly indicates that even an indirect threat would suffice to establish a case of undue influence under this provision.

In *East Kerry*[22], a certain person was asked by an agent of the respondent to sign the nomination paper of the respondent, but had refused to do so. Apparently the person had been a customer of the agent who had made the request. On his refusal to sign the nomination paper the agent had said that he would remember it for a hundred years, and the same night had sent in a bill for an account, with a covering letter stating that he need not expect any time. It was held that these facts sufficiently proved that influence which is undue had been exercised over the customer by the agent of the respondent, and the election was avoided.

---

21 Rogers on Elections, 20th Edition, Vol. II, p. 332

22 (1910) 6 O'M. & H. 85

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

An instance, where it can be shown that an employer used his influence as employer to prevent his employees from voting for or not voting for a particular candidate would fall within the scope of undue influence under the above provision. In the case of *Lichfield*[23], the position was slightly different. In this case it was established that one B had left the employment of one S a couple of years ago. At the election B had supported the candidate of S. After the election B was taken back as an employee by S. At the trial it was proved that S would not have taken back B if he did not vote in favour of S's candidate. The contention of the petitioner to the effect that this amounted to undue influence was rejected as there was no evidence of a prior promise by S.

Spiritual Undue Influence

The infliction of spiritual injury, damage, harm or loss, the threat thereof falls within the definition of the offence of undue influence as defined in the Section 56[24] of the Ceylon (Parliamentary Elections) Order-in-Council, 1946. This provision, it could be said is directed against the improper exercise of spiritual influence by the clergy. This would be of great importance in places where the clergy exercises a tremendous amount of influence over the laity.

The question as to whether the natural influence possessed by the clergy in some parts of the world would fall within this category was discussed by Fitzgerarld J. in *Longford*[25]. It was his view that holding out of a hope of a punishment if or if not a certain person is voted for, only falls within this offence. In the words of Fitzgerald J. "in considering what I call here undue clerical influence, it is not my intention in any way to detract from the proper influence which a clergyman has, or by a single word to lessen its legitimate exercise... The Catholic priest has, and he ought to have, great influence. His position, his sacred character, ensure it to him... In the proper exercise of that influence on electors the priest may counsel, advise, recommend, entreat, and point out the true line of moral duty, and explain why one candidate should be preferred to another, and may, if he thinks fit, throw the whole weight of his character into scale, but he may not appeal to the fears, or terrors, or superstition, of those he addresses. He must not hold out hopes of reward here or hereafter and he must not use threats of temporal injury, or of disadvantage, or of punishment hereafter".

---

23 (1869) 1 O'M. & H. 24

24 Now Section 79 of the Parliamentary Elections Act No. 1 of 1981.

25 (1870) 2 O'M. & H. 7

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

As stated by Fitzgerald J., it should not be misunderstood that this provision prohibits the clergymen from taking part in politics. In most countries clergymen take an active part in politics. Some of them have even gone to the extent of contesting seats. It is however an offence for the clergy to appeal to the superstitious beliefs of the people in order to influence them in the exercise of their franchise.

In the Indian case of *Hoshiarpur West* (*Mohammadan*) *Constituency*[26] it was established that certain persons who addressed the election meetings of the petitioner had requested the people not to vote in favour of the respondent in the name of God. Considering the facts of this case, it was stated in the judgement that there appeared to be no intention to use spiritual influence. Referring to this expression it was stated "they are lightly used in ordinary speech, there being no intention in the mind of the speaker to enlist the aid of God on his side, but merely the mention of the name of God, to add emphasis to his request. We accordingly hold that this part of the allegation of undue influence is not established".

In *Sheokaran Singh v. Sahib Ram*[7], certain expressions made by the agents of the respondents were held to fall within the scope of the offence of undue influence. The agents of the respondent in that case were proved to have gone to a place called Bishnoi Village and stated that the Unionist Party, of which the petitioner was a member had sanctioned the opening of a big slaughter house in Lahore, where cows were to be slaughtered, and Hindu members thereof were for all purposes Muslims, and that to vote for a Unionist Party candidate was to vote for a Muslim, killer of cow, and that persons who voted for the petitioner would be visited with the curse of the mother cow, and that the persons who voted for the petitioner would go to hell. It was also established that the people of the Bishnoi Village had a special reverence for the cow. On the above facts it was held that it was a clear case of spiritual undue influence.

It should be stated that it is not necessary to establish that the threat of spiritual injury came from a clergyman. Act does not restrict the operation of this provision only to clergymen. If it could be established that spiritual injury has been exercised it should be sufficient to avoid the election irrespective of the person who exercised such influence.

---

26 (1937) H. S. Doabia, the Indian Election Cases Vol. I, p. 267
27 (1938) H. S. Doabia, The Indian Election Cases Vol. 1, p. 297

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In *Gloucester*[28], the agents of the respondents had printed and distributed some cards similar to ballot papers on which the names of all the candidates were printed with a mark opposite the name of the respondent. It was also stated on the card that if any voter marked his ballot paper otherwise than the way in which the card was marked his vote would be invalidated. It was stated on behalf of the petitioner that this was a fraudulent contrivance within the meaning of the section. Blackburn J. refusing to accept this contention held that the agents of the petitioner who issued the card had no intention to mislead, although possibly in some cases the card might have that effect.

Fraudulent Devices

If some device is used to deceive the voters to vote in favour of a candidate it would fall within the scope of the offence of undue influence according to this provision. The secret ballot is used for elections according to the law to assure that the electors can exercise their right free of fear. In *Down*[29], the question arose what if a certain candidate had spread that he could ascertain the way a voter had voted by some method, whether it would amount to a fraudulent device within the meaning of the section. In that case the agents of a candidate had publicly stated on several occasions that they had discovered a plan by which they would be able to discover how each voter had voted. They had also distributed among the voters 10,000 copies of a newspaper, containing an article to the effect that they fully substantiated their statement. Barry J. was of the view that this amounted to a fraudulent device within the meaning of the Act. Fitzgerald J. however dissented from this view on the ground that the petitioner could not specify or ascertain the individuals affected by it.

Denman J. in *Stepney*[30], discussed the requirements in order to avoid an election on the ground of fraudulent device or contrivance. In this case it was proved that the respondent on the polling day had printed and sent a card to every voter in which it was stated, "To secure the return of Mr. T., poll early and mark your voting paper as below". A diagram of the ballot paper was printed below the above words with a mark against the name of the respondent. Thereafter the following

---

28 (1873) 2 O'M. & H. 52

29 (1880) 3 O'M. & H. 120

30 (1886) 4 O'M. & H. 44

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

words followed. "Be careful not to sign your voting paper nor make any other mark except the cross as shown above, or your vote will be lost". The words 'nor make any other mark' and 'vote will be lost' were in conspicuous large letters while the others were in small letters.

The question before the court was whether the circulation of such a document was itself sufficient to disqualify the respondent as having been an act deliberately done by his election agents in order to trick voters into the belief that their votes would be thrown away if they voted for the petitioner. Denman J., dealing with this matter in his judgement stated, "I do not think that it could be held upon a true construction of the Section 2 that in the absence of any proof that any one or more voters had been prevented or impeded in the free exercise of the franchise by the perusal of such cards, the mere sending of them with the intent that they should have that effect could rightly be held to amount to the offence of undue influence within that section. It appears to me that the section deals with two classes of misconduct, the first consisting of using or threatening to use force, etc. or inflicting or threatening to inflict injury, etc. in order (that is to say, with the intent) to induce an elector to vote or refrain from voting; the second consisting of the successfully impeding or preventing the free exercise of the franchise of any elector by abduction, duress, or any fraudulent device or contrivance; and that, as regards the latter class of misconduct, there must be proof that some elector or electors had been actually impeded or prevented before it can be held that the offence has been committed".

It is clear that Denman J. has drawn a distinction between the two classes of cases which fall within Section 2 of the Corrupt and Illegal Practices Prevention Act, 1883 of England. According to him the proof of the facts necessary to establish the two varieties of charges are different. Where the alleged incident is one of using or threatening to use force or even spiritual influence, it would not be necessary to establish that in fact the voters were unduly influenced. It would be sufficient if it is established that force was used or threatened to use. Where however it is alleged that certain electors were abducted or impeded in the free exercise of their right to vote, it would be necessary to prove that those persons were in fact subject to duress. The same view has been expressed by Fitzgerald J. in *Down*[31].

---

31 Supra

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The Ceylon (Parliamentary Elections) Order-in-Council 1946, by subsequent amendments[32] has extended the scope of the offence of undue influence considerably. After those amendments making influencing utterances at a religious assembly would amount to undue influence. The important question that would arise in this connection is as to what would constitute a religious assembly within the meaning of the section.

Religious Assemblies

In the Ceylon case of *Hemadasa v. Sirisena*[33], the question as to what is meant by a religious assembly was amply discussed by Abeysundara J. In this case the petitioner claimed that between the nomination day and polling day words were uttered at religious assemblies, for the purpose of influencing the results of the election by the persons named in the particulars, and such person was either an agent of the respondent or one who acted with his knowledge or consent.

It was argued on behalf of the petitioner that a crowd of people who were gathered awaiting the commencement of a religious ceremony constituted a religious assembly within the meaning of the section. Dealing with this matter in detail in his judgement, Abeysundara J. refused to agree with this contention of the petitioner. He stated "it was argued by counsel for the appellants that the expression 'religious assembly" occurring in Section 56 (2) (*a*) of the Order-in-Council includes a gathering of persons who are awaiting the commencement of any religious proceedings at any place or who having attended such proceeding are in recess during an adjournment of such proceedings. We do not accept counsel's interpretation of the aforesaid expression because in our view it is only when actually attending any religious proceedings that a gathering becomes a religious assembly".

The alleged utterance of influencing words had taken place where people had gathered to witness the foundation stone being laid to construct a new building for the temple. The witnesses who gave evidence

---

32 Act No. 11 of 1959 and Act No. 10 of 1964.
33 (1966) 69 NLR 201

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

had stated that the influencing utterances in favour of the respondent were made by the Chief Priest of the temple before the commencement of the ceremony of laying the foundation stone. Referring to this evidence it was stated, "as Bhikku Saranatissa's utterance was made before the commencement of the ceremony of laying the foundation stone we hold that the persons to whom the utterance was made were then not attending any religious proceedings and therefore were not a religious assembly. Consequently we hold that the evidence does not in law establish that Bhikku Saranatissa committed the offence of undue influence under Section 56 (2) (a) of the Order-in-Council."

According to the evidence led in this case there had been a film show at a place between the school hall in a temple and the house where the priests lived which is popularly known as the "legumge". After the film show the Chief Priest had addressed the people who had gathered to see the film show and had requested them to vote for the respondent. The question thus arose in this case whether the people who had gathered to see the film show of places of historical and religious value in Ceylon and India constituted a religious assembly within the meaning of the section.

It was also suggested by the petitioner that the Chief Priest by addressing the gathering assembled between the school hall and the "legumge" of the temple had held an election meeting at a place of worship within the meaning of the section 56 (2) (*c*) of the Ceylon (Parliamentary Elections) Order-in-Council and had committed the offence of undue influence. Refusing to accept both contentions Abeysundara J. stated in his judgement, "the persons present at the cinematographic film show of places of historical and religious interest in Ceylon and India were not attending any religious assembly. There is no evidence that the ground between the school hall and the "legumge" was used by Buddhists as a place of worship and therefore it cannot be said that those who assembled there for the cinematographic film show were having a public meeting at a place of worship. We hold that the evidence does not in law establish that the gathering of people whom Bhikku Saranatissa addressed after the cinematographic show was a religious assembly within the meaning of the section 56 (2) (*a*) of the Order-in-Council or that those people were having a public meeting at a place of worship within the meaning of the section 56 (2) (*c*).

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Degree of Proof Necessary

The degree of proof necessary to establish a charge of undue influence was discussed in *Illangaratne v. G. E. de Silva*[34]. In this case among other grounds the petitioner urged in his petition that the respondent was guilty of the offence of undue influence in that he himself, his agents and other persons acting on his behalf with his knowledge and consent did before and during the election threatened to inflict temporal damage, harm and loss upon persons in order to induce or compel the said persons to refrain from voting at the said election. Windham J. delivering the judgement dealt with the degree of proof which was necessary to establish a charge of undue influence. It was his opinion that a charge of undue influence has to be proved beyond reasonable doubt and that in such a charge a strong suspicion is insufficient.

Dealing with this matter Windham J. said, "evidence has been called to prove that on three unrelated occasions during his election campaign the respondent in a fit irascibility, upon learning or suspecting that certain former supporters of his had gone over to the side of Mr. Illangaratne, threatened these persons that he would see that they were removed from their present jobs. The charge in respect of one of these incidents has admittedly not been established because there was no evidence that the persons concerned were voters.

Of the remaining two incidents the first was testified to by witness Piyasena, an estate dispenser, who stated that the respondent after endeavouring without avail to pursuade him to keep his promise to work for him, threatened that he would see that Piyasena was out of the estate very soon. The witness Pethaiya corroborated the incident except as regards the vital offending words, stating that he did not stay to hear them. The respondent himself, while admitting the incident denied having made the threat and in this he was corroborated by the witness Sunderamany. Piyasena impressed me as a witness more favourable than did Sunderamany, and this coupled with the impression which the respondent made in court as having a irascible temperament which might easily lead him to make such a threat in a moment of petulance, although he might not mean to carry it out. These considerations make it highly probable that the threat was made. Nevertheless,

---

34 (1948) 49 NLR 169

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

viewing the conflicting evidence as a whole I am not satisfied beyond a reasonable doubt as to where the truth lay. In these circumstances I cannot hold the charge to be proved".

Windham J. in the above judgement has made it clear that in order to establish a charge of undue influence it would be necessary to prove the facts beyond a reasonable doubt.

In *Pelpola v. Gunawardene*[35], Windham J. held that when undue influence is alleged in an election petition the electoral numbers in the register, of the persons who were unduly influenced should be given in the particulars.

Punishment for Undue Influence

In Sri Lanka, the Ceylon (Parliamentary Election) Order-in-Council[36] and the Penal Code penalise offenders who commit the corrupt practice of undue influence. Under Section 58 (1) of the Order-in-Council[37], any person who is convicted of the offence of undue influence shall be liable to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding 6 months or to both such fine and imprisonment.

Exercising undue influence at an election is also an offence punishable under the Penal Code of Sri Lanka. Section 169 (*c*), of the Penal Code contains the definition of the offence of undue influence. It provides :

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

(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

35 (1948) 50 NLR 132

36 Now the Parliamentary Elections Act No. 1 of 1981

37 Now reproduced in Section 81 (1) of the Parliamentary Elections Act No. 1 of 1981

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

(*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 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.

The above definition of the offence of undue influence as contained in the Penal Code clearly shows that the material fact is the interference with an electoral right. By the sub section 2 of section 169 (*c*), of the Penal Code threatening and using spiritual influence on voters have been included within the scope of the offence.

Sub-section (3) of the same section provides that a mere exercise of a legal right without intent to interfere with an electoral right shall not be deemed to be an interference with an electoral right within the meaning of this section. According to the words of this section it appears that even if a legal right is exercised with the intention of interfering with an electoral right it would amount to the offence of undue influence.

A comparison of the definition in the Penal Code of Sri Lanka with that in the Ceylon (Parliamentary Elections) Order-in-Council [38], will show that the definition appearing in the Order-in-Council is wider in its scope. The Penal Code however, as it contains the words electoral rights has kept its scope open. If any act could be shown to have interfered with an electoral right that would be sufficient to establish a charge of undue influence under the Penal Code. It is doubtful however, as to whether the circumstances which are specified in the Order-in-Council, such as holding meetings at a place of worship could be shown to be an interference with an electoral right to make a person liable for the offence of undue influence under the Penal Code.

---

38 Now the Parliamentry Elections Act No. 1 of 1981

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Section 169 (*f*), of the Penal Code penalises the offenders who commit the offence of undue influence. It provides :

"Whoever commits the offence of undue influence at an election shall be liable on summary conviction to a fine not exceeding five hundred rupees".

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

CHAPTER 7

BRIBERY

The Parliamentary Elections Act contains the definition of the corrupt practice of bribery in Sri Lanka. Section 80 of the Act[1] has provided a definition for the offence which is wide enough to include within its scope all forms of bribe giving and taking. In Sri Lanka, bribery has also been made an offence under the Bribery Act. However, we are here concerned only with the offence of bribery as a corrupt practice in the field of the law relating to the Parliamentary elections.

In England, bribery as a corrupt practice under the Corrupt and Illegal Practices Prevention Act 1883, would avoid an election only if the act of bribery could be traced to the candidate or an agent of his. According to the English Common Law however, if it could be shown that bribery has been so extensively practiced that there could not have been any possibility of a free election, it would be sufficient to avoid an election though the corrupt practice cannot be traced to the candidate or an agent of his.

General Bribery

The question of general bribery, as a ground to vitiate an election has been discussed in many English cases. In *Lichfield*[2], this matter was explained by Willes J. as follows :

"With respect to bribery the law is perfectly clear. Bribery at Common Law, equally as by Act of Parliament, avoided any election at which it was accused. If there were general bribery, no matter from what fund or by what person, and although the sitting member and his agents had nothing to do with it, it would defeat an election, on the ground that it was not a proceeding pure and free as an election ought to be but that it was corrupt and vitiated by an influence which coming from no matter what quarter, had defeated it and shown it to be abortive"

---

1 Earlier Section 57 of the Ceylon (Parliamentary Elections) Order-in-Council.

2 (1869) 1 O'M. & H. 24

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The same judge in *Tamworth*[3], following his decision in *Lichfield* went a step further to explain as to why it was reasonable to avoid the election without any proof of the sitting member being responsible for the corrupt practice. In the own words of Willes J. "general bribery unquestionably, from what quarter it comes, will vitiate an election, even without proving any such connection, probably because of the propriety of acting upon the presumption that it must have been from some person so interested in the member, or so connected with his agent, that it ought to be attributed to the one or at least to the other."

In England, the corrupt practice of bribery has been defined in Sections 2 and 3 of the Corrupt Practices Prevention Act, 1854. Section 2 of the Act, consists of 5 sub-sections, which describe the offence of giving a bribe. Section 3 on the other hand consists of 2 sub-sections, which describe and define the offence of receiving a bribe.

Section 2 provides :

'A person is guilty of bribery who,

(1) Directly or indirectly by himself or by any other person on his behalf, gives lends or agrees to give or lend, or offers, promises or promises to procure, or to endeavour to procure any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter or to or for any other person, in order to induce such voter to vote or refrain from voting, or corruptly does an such act as aforesaid on account of any voter having voted or refrained from voting at any election.

(2) Directly or indirectly by himself, or by any other person on his behalf, gives or procures or offers or promises, or promises to procure or to endeavour to procure, any office, place or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any voter having voted or refrained from voting at any election.

The first sub-section of Section 2 of the Prevention of Corrupt Practices Act, provides for a situation where any money or valuable

---

3 (1869) 1 O'M. & H. 85

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

consideration is given or promised to give to a voter, with the corrupt intention of persuading such voter to give or refrain from giving his vote. Sub-section 2 of the same section contemplates a different situation where a voter is promised or given employment with a view to influencing him, in making his choice at an election.

The above mentioned sub-sections deal with a situation where a gift mentioned in the sub section is given or promised to be given in order to assure that a voter gives or refrains from giving his or her vote.

Sub-section 3 and 4 of the above section provides for such cases, where an act of bribery is committed for the purpose of inducing the return of a person to serve in Parliament.

Sub-section 3 and 4 of the Section 2 of the above act respectively provide :

(*a*) A person is guilty of bribery who, directly or indirectly by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person, in order to induce the return of any person to serve in Parliament or the vote of any voter at any election.

(*b*) A person is guilty of bribery who, upon or in consequence of any such gift, loan, offer, promise, procurement, agreement procures or engages, promises or endeavours to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

Sub-section 5 of the Section 2 of the above act deals with a situation where any some of money is paid or is caused to be paid, with the intention that the money is expended for the purpose of bribery at an election. The sub section reads :

"A person is guilty of bribery who, advances or pays or causes to be paid any money to or for the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election; but this has no application

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

to any money paid or agreed to be paid for or on account of any legal expense bona fide incurred at or concerning any election".

As stated earlier, Section 2 of the above act, describes and defines the corrupt practice, in relation to offering bribes at an election. Section 3 however, defines the offence in relation to accepting a bribe with the intention of voting or refraining from voting at an election. Section 3 of the act, it could be said, provides against candidates and their agents.

Section 3 of the Act[4] which consists of two sub sections read :

(1) A person is guilty of bribery, who being a voter before or during any election directly or indirectly by himself or by any other person on his behalf, receives, agrees or contract for any money, gift, loan, or valuable consideration, office, place or employment for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election.

(2) A person is guilty of bribery, who being a voter after any election directly or indirectly or by himself or by any other person on his behalf receives any money, or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

Thus it could be seen that a voter could be guilty of the corrupt practice of bribery where the money or valuable consideration is accepted during the elec ion as well as after the election, if it could be established that the purpose of the bribe was to induce any voter to vote or refrain from voting for a particular candidate.

Position in Sri Lanka

Having dealt with the provisions of the Prevention of Corrupt Practices Act of England with regard to the corrupt practice of bribery, it would now be appropriate for us to examine in detail the provisions of the Ceylon (Parliamentary Elections) Order-in-Council[5] which makes bribery a corrupt practice in Ceylon.

---

4 Corrupt Practices Prevention Act, 1854 of England.

5 These provisions are now reproduced in Parliamentary Elections Act No. 1 of 1981

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Section 57[6] of the Ceylon (Parliamentary Elections) Order-in-Council which consists of 9 sub sections, defines the corrupt practice of bribery. Under this section offering as well as receiving bribes for the purpose of influencing the results of an election has been included in the definition of the offence. Sub-sections (*a*) and (*b*) of Section 57 could be said to be almost similar to sub sections (1) and (2) of the Prevention of Corrupt Practices Act of England.

Section 57 provides :

(*a*) Every person who directly or indirectly, by himself or by any other person on his behalf, gives, lends or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector, or to or for any person on behalf of any elector or to or for any other person, in order to induce any elector to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector having voted or refrained from voting at any election under this Order;

(*b*) Every person who, directly or indirectly, by himself, or any other person on his behalf, gives or procures, or agrees to give or procure or offers, promises or promises to procure or to endeavour to procure any office, place or employment to or for any elector or to or for any other person, in order to induce such elector to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any elector having voted or refrained from voting at any election under this Order.

The above stated sub sections (*a*) and (*b*) of Section 57 of the Order-in-Council provides for situations where money, valuable consideration or employment is given or promised to induce a voter to give or refrain from giving his vote at a particular election. The next two sub sections of the section, deals with the persons who either give or receive money, valuable consideration or employment to procure the return of any person as a Member of Parliament, or to induce the vote of any elector at any election under the Order-in-Council.

---

6 Now Section 80 of the Parliamentary Elections Act No. 1 of 1981

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Sub-sections (*c*) and (*d*) of the Section 57 respectively provide:

(*c*) Every person who, directly or indirectly by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the return of any person as a Member of Parliament, or the vote of any elector at any election under this Order shall be deemed guilty of the offence of bribery.

(*d*) Every person who upon or in consequence of any such gift loan, offer, promise, procurement, or agreement procures or engages, promises or endeavours to procure, the return of any person as a Member of Parliament or the vote of any elector at an election under this Order shall be deemed guilty of the offence of bribery.

Sub-section (*e*) of Section 57 of the Order-in-Council could be said to have the very words used in sub section 5 of the Section 2 of the Prevention of Corrupt Practices Act of England. It prohibits the advancement of money for the purpose of spending for bribery at an election.

Section 57 (*e*) reads :

(*e*) Every person who advances or pays or causes to be paid any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election under this Order or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election, shall be deemed guilty of the offence of bribery.

Sub-sections (*f*) and (*g*) of Section 57 deals with persons receiving money during or after an election. A comparison of the two sub sections would show that sub section (*f*) refers to electors who receive money or valuable consideration during or before an election, while sub section (*g*) refers to any person who receives any money or valuable consideration after the election. It is however common to both sub sections that the receipt of the money or valuable consideration should be done with the intention of affecting the voting at an election under the Order-in-Council.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Sub-sections (*f*) and (*g*) of Section 57 provide as follows :

(*f*) Every elector who, before or during an election under this Order, directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any such election shall be deemed guilty of the offence of bribery.

(*g*) Every person who, after any election under this Order, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having. induced any other person to vote or to refrain from voting at any such election, shall be deemed guilty of the offence of bribery.

Under the Ceylon (Parliamentary Elections) Order-in-Council a person could be made liable for the offence of bribery if at any time such person applies to a candidate to receive any money or valuable consideration for voting, refraining from voting or for assisting a candidate at any election. Sub-section (*h*) of Section 57 of the Order-in-Council which provides for this reads as follows :

(*h*) Every person who directly or indirectly, by himself or by any other person on his behalf, on account of and as payment for voting or for having voted or for agreeing or having agreed to vote for any candidate at an election, or on account of and as payment for his having as isted or agreed to assist anycandidate at an election, applies to such candidate, or to his agent or agents for the gift or loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration or for any office, place or employment or for the promise of any office, place or employment, shall be deemed guilty of the offence of bribery.

Sub section (i) of the Section 57, which is the last sub section deals with a situation where bribery is made use of to prevent persons from contesting elections. Thus under the law of Sri Lanka if bribery is made use of to make a person to become a candidate or to refrain from becoming a candidate it would fall well within the corrupt practice of bribery under the section 57 (i) of the Order-in-Council.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Sub-section (i) reads :

(i) Every person who, directly or indirectly, by himself or by any person on his behalf, in order to induce any other person to agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate gives or procures any office, place, or employment or agrees to give or procure or offers or promises to procure or to endeavour to procure any office, place, or employment to or for such other person, or gives or lends, or agrees to give or lend, or agrees to give or lend, or offers or promises to procure or to endeavour to procure any money or valuable consideration to or for any person or to or for such other person, or to or for any person on behalf of such other person, shall be deemed guilty of the offence of bribery.

Having dealt with the statutory provisions and the definition of the corrupt practice of bribery, it would now be appropriate for us to consider the various aspects of bribery with reference to decided.

Intention in Bribery

The intention necessary to establish a charge of bribery as a corrupt practice is a subject which has drawn much attention. Dealing with this question Rogers[7] states with reference to the Prevention of Corrupt Practices Act of England, that where it could be established that the giver of the bribe had a corrupt intention, it would be sufficient to prove the charge independent of the intention of the recipient. It is stated :

"Where the intention of the giver is proved to be corrupt, the intention of the recipient becomes immaterial so far as concerns the offence of bribery by the former".

It would thus be clear that a mere offer would be sufficient to constitute the offence of bribery provided the intention of the offeror to interfere with the election has been established.

---

7 Rogers on Elections, 20th Edition, Vol. II, p. 269

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The intention of a person who has been charged with the corrupt practice of bribery would purely be a matter of fact and should be gathered from the circumstances of the case. In *Kingston-upon-Hull*[8], Bucknill J. dealing with this question stated, "you cannot allow a man to say 'I did not intend to do that which amounted to bribery', if when you look at all things which he said, there is only one conclusion to draw, and that is that he has done that which he said he did not intend to do".

The courts of England have on many occasions been confronted with the question, as to whether the fact that money or any valuable consideration has passed after an election would be sufficient to constitute the offence of bribery in the absence of any evidence of an antecedent promise. There has been a difference of judicial opinion regarding this matter. In some cases it has been held that independent of a promise prior to the voting or refraining from voting for a particular candidate a person could be held liable for the corrupt practice of bribery, if it could be shown that the money was in fact paid for the purpose of voting or refraining from voting for a particular candidate. The basis of this argument has been that the intention is corrupt as the money has been paid for the purpose of voting though in fact there had been no reference to the matter before the election or before the vote was cast.

Lord Cranworth, L.C., delivering the judgement in *Cooper v. Slade*[9], strongly expressed the view that an antecedent promise was not necesary to establish a charge of bribery where the bribe has been given after the election. In the words of Lord Cranworth, "the Legislature could not mean to impose two penalties for the same transaction, namely one for the promise to give money in order to induce a person to vote, and another for afterwards giving the money for having so voted. I thought I was bound to discuss from my consideration altogether any previous promise that had been made; that the Act did not refer to a payment pursuant to a promise previously made, but to a payment afterwards without any previous promise, and it occured to my mind that the reasonable construction to be put upon the Act was, that if a man gave money to a voter as a reward for having voted for him, that being the moving cause of the vote, it must be corrupt payment within the meaning of the Act".

---

8 (1911) 6 O'M. & H. 389

9 (1858) 6 H. L. C. 746

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In *Stroud*[10], Bramwell B., expressed a view contrary to that expressed by Lord Cranworth in *Cooper v. Slade*. It was his view that a corrupt intention cannot be attributed to a person where a payment of money has been made after an election independent of a promise pursuant upon which the payment had been made. According to him merely because a sum of money had been paid to a person on account of voting a person cannot be made liable for the offence of bribery. It was stated, "I rather think that the word "corruptly" would not apply to any case where the payment was merely on account of the voting, unless there was other reason for giving the money".

In *Harwich*[11], Lush J., favoured the view of Lord Cranworth in *Cooper v. Slade* He too expressed the view that where a payment of money had been made after an election on account of a person having voted or refrained from voting for a particular candidate it would amount to the offence of bribery even in the absence of any evidence of an antecedent promise. The situation, according to him, could have been different if the charge was one of treating. Delivering his judgement Lush J. stated, "I think that there is a material distinction between treating after an election and giving a money reward after an election.... Treating is prima facie an innocent act, and to make it a corrupt practice it must appear to have been done with a corrupt motive, and when given after an election is over, must be shown to have been given in fulfilment of an antecedent promise or expectation held out in order to influence the vote. But the payment of money as a reward for having voted is corrupt in itself: it tends to destroy the independence of the voter, and is demoralising in its influence on all the parties concerned".

The question as to whether a corrupt intention would be necessary, arises only where money has been paid after an election. The basis of the above decisions which support the view that evidence of an antecedent promise was essential is that in the absence of such a promise it would not be possible to establish that the money had been paid with a corrupt intention. In a case where the money or the valuable consideration has passed before the election this question would not arise as on such occasions it should be sufficient to establish the charge, if it is shown that the money was paid for voting or for refraining from voting for a particular candidate. It would be important to note that in

---

10 (1874) 2 O'M. & H. 184

11 (1880) 3 O'M. & H. 61

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Section 2 (1) of the Prevention of Corrupt Practices Act of England where the offence of bribery is defined, the word 'corrupt' is used only in the definition of bribery after voting or after an election.

Section 2 (1) reads as follows :

"A person is guilty of bribery who, directly or indirectly by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises or promises to procure, or to endeavour to procure any money or valuable consideration to or for any voter, or to or for any voter, or to or for any person on behalf of any voter or to or for any other person in order to induce such voter to vote or refrain from voting, or corruptly docs any such act as aforesaid on account of any voter having voted or refrained from voting at any election".

In the above definition it is clear that the word 'corrupt' is used in such a way as to mean the aforesaid acts would amount to bribery, only if done corruptly on account of any voter having voted or refrained from voting at any election. In *Bradford*[12], where this matter was discussed, it was held that though an act mentioned in the section was done before a voter had voted would be bribery in the absence of proof to the contrary, the same act if done after the voter had voted, is not bribery, unless it is shown to have been done corruptly.

Money given for Charity

As it has been stated above a person would commit the corrupt practice of bribery where he gives, lends, or agrees to give or lend or promises or procures any money or valuable consideration for any voter or any other person in order to induce the voting at an election. It would be appropriate at this stage to discuss as to whether money or any valuable consideration given for a charitable purpose would fall within the above definition.

In many cases where it was shown that the money or the valuable consideration passed for a charitable purpose, it has been held that it did not amount to the corrupt practice of bribery. There could however be an exception if it could be shown that the amount paid, though for a

---

12 (1869) 1 O'M. & H. 36

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

charitable purpose was so excessive as to influence the voters at an election. The accepted position however is that a gift for a charitable purpose cannot be said to be a bribe within the meaning of the section, merely because it may have had a bearing on the voters unless it could be established that the gift was made with the intention of influencing the voters. In the cases where money spent on a charitable purpose has been held to amount to the corrupt practice of bribery, it has always been established that the money spent was not normal and that indirectly it had been spent with the intention of influencing the voters.

In *Stafford*[13], where this question arose, it was shown that a candidate who was in the habit of spending 300 dolars on charity during Christmas time every year, increased this amount to 720 dollars during the Christmas immediately prior to the election. This amount was held to be out of the normal and thus to fall within the scope of the corrupt practice of bribery.

The majority of English and local decisions however favour the view that money spent for the purpose of charity does not fall within the meaning of the Act. This has been based on the fact that the intention of the Legislature was only to prohibit an act done with the intention of influencing the voters at an election. As it was stated by Baron Bramwell in *Stroud*[14], "The legislature .... intended to prohibit acts done with the specific object of influencing the mind of the individual voter to whom they had relation by the particular temptation held out to him, but it did not intend to prevent an act being done to a person, kind and good in itself merely because it had a tendency to make that person favourable to the person doing it".

In the Ceylon case of *Tarnolis Appuhamy v. Wilmot Perera*[15], the question whether money spent on charitable purposes amounted to the corrupt practice of bribery under the Ceylon (Parliamentary Elections) Order-in-Council was adequately discussed by Nagalingam J.

In this case it was alleged that a sum of money paid by the respondent to a public worshiping place amounted to the corrupt practice of bribery. Nagalingam J. refusing to accept this position stated in his judgement,

---

13 (1869) 1 O'M. & H. 230
14 (1874) 2 O'M. & H. 184
15 (1948) 49 NLR 360

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

"It is not unimportant to determine, even on the facts as found, whether payments to religious or charitable institutions can be said to amount to bribery within the meaning of the provision in the Order-in-Council. The part of the section material for the purposes of the present discussion is sub section (*a*) of section 57, which provides, leaving out the words which are inapplicable, that every person who gives money to an elector or to any person on behalf of an elector or to any other person in order to induce an elector to vote or refrain from voting should be deemed guilty of the offence of bribery.

Now, I cannot quite see how payments to the funds of a temple can be said to be a gift of money to an elector or to any other person to induce an elector to vote or refrain from voting. The essence of bribery consists in the acquisition of some personal gain or remuneration by the person bribed. In the case of payments to temple funds no person gains any pecuniary benefit or advantage directly for himself or for any other person. One can however understand a payment made towards a private chapel owned by one or more individuals as amounting to a bribe, but in the case of a public place of worship, I do not think it is possible to hold that a payment towards its funds can be said to amount to a bribe within the meaning of the Order-in-Council.

It is however true to say that such a payment may have the effect of gaining for the candidate popularity with the electors and may tend to enlist their sympathies in his favour. Though such payments may be the means of providing facilities to the people of the area to obtain religious or spiritual solace, comfort or benefit, nevertheless it is clear that such a payment falls far short of a giving of money or other valuable consideration as contemplated by the Order-in-Council".

In the above judgement of Justice Nagalingam, he has sought to draw a distinction between money spent on a public place of worship and a private one. It has been his position that money spent on a place of worship will not cease to fall within the meaning of the act merely because it was spent on a place of worship.

According to Nagalingam J., the question as to whether a sum of money paid to a charitable institution falls within the meaning of the Order-in-Council should be decided by looking at the persons who benefited by the Act. If the payment has been paid to a public institution the payment would not amount to the corrupt practice of bribery, not withstanding the fact that it would have influenced the voters.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Citing from English cases Nagalingam J. had further pointed out that payments such as the one discussed in the above case are never regarded to be bribes under the English law. He cited with approval the following passage from the judgement of Justice Channel in *Nottingham*[16]. Channel J. referring to the same question states, "it really is indeed clear that gifts to hospitals, churches, chapels, libraries and clubs of all sorts have never been considered bribery. The legislature has not yet forbidden them although certainly one motive in such cases is, I suppose, always the popularity resulting in the constituency from the gifts or possibly the fear of unpopularity resulting in refusing, which is, of course, quite the same thing".

In the Indian case of *Major Ganada Singh v. Rai*[17], it was established that the respondent had donated Rs. 1,000/- and a land to construct a Brahaman Bawan. The evidence also proved that the respondent was a prominent member of the Brahaman Community. The court however held that this did not constitute bribery as the contribution was not made with a view to induce the Brahaman voters to vote for the respondent, and the corrupt motive was not proved.

Drought Relief

In *Wadigamangawa v. Gunawardena*[18], it was argued on behalf of the appellant that for general bribery the elements set out in the definition of Bribery in Section 57 of the Order-in-Council become relevant and therefore the charge must indicate who conceived the culpable intention to bribe and the name of the giver which facts were wanting in Paragraph 4. Therefore he stated paragraph 4 of the petition contained no charge at all. The Supreme Court rejected this argument and held that in a charge of general bribery that is not necessary. According to its judgement even drought relief can become bribery within the meaning of the Order-in-Council.

The Chief Justice Neville Samarakoon in dismissing the appeal said, "About 8000 families spread over the length and breadth of this electorate have received this gift. Corrupt motive has also been established in evidence. The appellant admits that of the 39,000 persons in the electorate who received drought relief the majority were electors.

---

16 (1911) 6 O'M. & H. 292

17 (1938) H. S. Doabia, India Election cases Vol. II, p. 94

18 (1980) Anamaduwa Election Petition Appeal, Election Petition No. 6 of 1977.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The proportion has not been stated or established. Just half the number would be 19,500 voters. The total registered votes for the electorate was 53,002. Of these 79 were spoilt votes. The total count of valid votes was 32,924 out of which the appellant polled 16,497 which is less than the figure of 19,500. The whole of his vote could include voters who received drought relief".

Giving Employment

The corrupt practice of bribery could also be committed by giving or procuring of any office or place or employment. The corrupt practice could be committed in this manner if the place of employment is procured with the intention of affecting the free election. *Hugh Fraser*[19], drawing a distinction between an act aimed towards affecting an election and a genuine transaction, states :

> "In order to ascertain whether the employment amounts to bribery or not, it is useful to inquire whether it is a case of fair work for fair pay; if so generally speaking there would be no bribery, but a genuine transaction. If on the other hand there is only a nominal employment, it may well be a cloak for bribery".

In the case of *Penryn*[20], a voter who had applied to the agent of the respondent for employment was given 1 month's employment, fortnight before the election and fortnight after the election. The only available evidence was that he was asked whether he intended to vote for the respondent, and that the voter had answered 'yes'. Willes J. delivering his judgement refused to hold that this amounted to bribery under the Prevention of Corrupt Practices Act. It was his opinion that the facts did not constitute colourable employment by the agent of the respondent. In the words of Willes J. "unless the employment was colourable, unless, that is to say, it was employment only in name, and it was shown that the money either was given for doing nothing, or was given in excess for the services rendered by the voter, there was no bribery".

As it was described by Willes J. in *Penryn* wages paid to a person employed by a candidate or an agent of his will amount to bribery only if it could be shown that the money paid though apparently was for the service rendered, was in fact paid as a bribe to influence the voter.

---

19 Hugh Fraser, The Law of Parliamentary Elections p. 102
20 (1869) 1 O'M. & H. 127

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In the Indian case of *Sadid-Ud-Din v. Murtaza*[21], the respondent prior to the election executed an agreement between himself and one of his rivals, in which he stated that he would render all assistance to secure employment to one Niwaz Khan. This it was held amounted to the corrupt practice of bribery.

In England there had also been the practice of employing persons for the purpose of the election campaign and making payments to them. This had been made use as a cover for bribery. Under the present law however employing persons in this manner and paying them wages would be illegal. The question as to whether illegal employment and the payment of wages would fall within the scope of bribery has been discussed by Rogers.[22] According to him, the question as to whether illegal employment amounts to bribery should be decided regard having had to the nature of the employment, the number employed, and wages paid to them. He however states that in order to come within the scope of bribery it is necessary that the illegal employment should have been made by the candidate or an agent of his. Even if the employment is not illegal under the law, payment of wages could fall within the scope of bribery if it is established that the persons were employed so as to influence them.

Number of Instances Required

The question as to how many instances and what amount of bribery should be proved to avoid an election has arisen in many cases. The settled law regarding this question could said to be that a single act of bribery, however trifling the amount, may avoid an election.

In *Perera v. Samarasinghe*[23], the Sri Lanka Freedom Party Government was defeated on a 'No Confidence' motion in the House of Representatives on December 3rd 1964. On that date the respondent was the Member of Parliament for Kolonnawa, in addition to being the General Secretary of the ruling party and a Junior Minister in the Government. Shortly after the defeat of the Government, but before the actual dissolution of Parliament, the respondent who was later to become a candidate seeking re-election to the House of Representatives, contacted

---

21 (1937) H. S. Doabia, the Indian Election Cases Vol. I, p. 107

22 Rogers on Elections, 20th Edition, Vol. II, p. 274

23 (1966) 71 CLW 57

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

the Commissioner of the Industrial Exhibition, a public servant in charge of a Government—sponsord project, and made a request to him that as many people as possible from his electorate be given employment at the Exhibition. Thereafter the Commissioner received about 45 applications from persons seeking employment, each bearing an endorsement made by the respondent to the effect that it was "strongly recommended". Of this number, about 28 applicants were given employment. In respect of 3 such employees who were voters in his electorate, the Supreme Court held that the respondent was guilty of bribery within the meaning of Section 57 (*b*) of the Ceylon (Parliamentary Elections) Order-in-Council 1946, in as much as the respondent had procured employment for each of such person in order to induce such person to vote or refrain from voting at the impending election.

Can drunkenness be an answer to a charge of the corrupt practice of bribery? In the case of *Montgomery*[24], it was stated that the agent of the respondent was drunk and had committed the corrupt practice of bribery acting under the influence of liquor. In this case the evidence showed that the agent was an addict. Willes J. in the circumstance stated that drunkenness would be no answer to a charge of bribery. If however, it is shown that a person was so drunk as to be incapable of having the intention of inducing a voter to vote or refrain from voting, in such a case a charge of bribery cannot be established for an essential ingredient of the offence would be wanting.

Punishment for Bribery

The punishment for the corrupt practice of bribery in Sri Lanka is provided for by Section 58 [25] of the Ceylon (Parliamentary Elections) Order-in-Council. The punishment for the corrupt practice of bribery is similar to that imposed on persons convicted of the corrupt practices of treating and undue influence. A person convicted of bribery under the Ceylon (Parliamentary Elections) Order-in-Council, will be liable to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding 6 months, or to both such fine and imprisonment. He would in addition be subject to the incapabilities mentioned in Section 58 (2) of the Order-in-Council[26].

---

24 (1892) Day's Election Cases 151.

25 Now Section 81 of the Parliamentary Elections Act No. 1 of 1981.

26 Now Section 81 (2) of the Parliamentary Elections Act No. 1 of 1981

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

CHAPTER 8

FALSE STATEMENTS

There are two main categories of false statements known to the election law. They are those false statements which fall under the corrupt practices and those which fall under the illegal practices. In Sri Lanka false statements relating to the personal character and conduct and false statements regarding withdrawal of a candidate come under the corrupt practices while certain false statements such as those concerning the conduct of a candidate appearing in newspapers come under illegal practices. In this chapter it is proposed to deal with those false statements which fall under corrupt practices, as there will be a separate chapter on illegal practices.

According to Section 58 (1) (*d*)[1] of the Ceylon (Parliamentary Elections) Order-in-Council which deals with false statements relating to the personal character or conduct of a candidate reads as follows :

> "Every person who makes or publishes, before or during any election, for the purpose of affecting the return of any candidate, any false statement of fact in relation to the personal character or conduct of such candidate shall be guilty of a corrupt practice".

Ingredients of the Offence

As regards false statements affecting personal character or conduct it seems that four conditions must be fulfilled before making it a corrupt practice in the field of election law. They are :

(1) There must be a statement of fact as opposed to an expression of opinion.

(2) The statement of fact complained of must be untrue.

(3) The statement of fact must be in relation to the personal character or conduct of the candidate.

(4) The statement must be made for the purpose of affecting the election of the candidate.

---

1 Reproduced in Section 81 (1) (*c*) of Parliamentary Elections Act No. 1 of 1981.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

KOHA
JPL

A mere defamatory statement would not constitute a false statement within the meaning of the Act. This matter is dealt with in Rogers[2] as follows :

"To constitute the offence first of all there should be a false statement of fact. The mere statement of a defamatory opinion unless coupled with the grounds upon which it is formed is not a statement of fact. But only false statements of fact made in relation to the personal character or conduct of a candidate are within the section".

In *Sunderland*[3], Pollock B. said, "I utterly decline to give any thing like a definition .... In the first place, it is obvious to everybody that a mere argumentative statement of the conduct of a public man, although it may be in respect of his private life is not always, and in many cases certainly would not be, a false statement of fact".

In *Ellis v. National Union of Conservative and Constitutional Associations*[4], Buckly J. said "The language of the statute is "false statement of fact" and that language must be used in contrast to a false statement of opinion". Again in Cockermouth[5], Darling J. said, "There is a great distinction to be drawn between a false statement of fact which affects the personal character or conduct of a candidate and a false statement of fact which deals with the political position or reputation or action of the candidate. If that were not kept in mind, this statute would simply have prohibited at election times all sorts of criticism which was not strictly true relating to the political behaviour and opinion of the candidate".

Statement of Fact or Opinion?

The distinctions to be borne in mind therefore are that the statement has to be a statement of fact as distinct from a statement of opinion and that such statement of fact must relate to the personal character and conduct of the candidate distinct from his political position, reputation, action or conduct. In *Ellis v. National Union etc.*[6], the words complained of 'Radical Traitors', were held not to fall within the provision.

---

2 Rogers on Elections, 20th Edition, Vol. II, p. 366
3 (1895) 5 O'M. & H. 62
4 (1900) No. 44 Solicitors Journal p. 750
5 (1901) 5 O'M. & H. 155
6 Supra

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

KOHA
JPL

In England, in *Sunderland*[7], a variety of false statements were alleged to have been made by circulars and pamplets, but the petition failed. In the course of his judgement, Pollock B. gave two illustrations of false statements of fact within the meaning of the section arising out of innocent acts, viz; The statement that a candidate in a country constituency had shot a fox, and that a candidate, who was a temperance man, had drunk a glass of sherry. The learned judge doubted whether such expression as 'paying wretched wages', 'sheltering under a radical shuffle' etc. would come within the section.

In *Monmouth*[8], the respondent made the following statements :

1. "I charge Mr. S. with living in London on the profit of cheap foreign labour, the labour of Italian workmen employed by him at wage of nine pence a day. He dares to posture as the champion of British industries". This was made in a letter published in a local paper.

2. "I charge Mr. S. with living in London on profits of cheap foreign labour, and with paying his election expenses out of those profits, which he is making by the employment of cheap foreign labour — the labour of Italian workmen employed at a wage of nine pence a day — and with posturing as the champion of British industries while living on the profits he derives from cheap foreign labour in a business which competes directly with the product of British labour in this very neighbourhood". This was made in a printed bill.

3. That his opponent was living comfortably well off in London, and that his fortune was derived entirely from foreign manufactured goods. This was made in a speech.

At the same election the respondent's election agent and another agent made the following statements :

4. That it was time to clear Parliament of members who befriended England's enemies, insulted Englishmen, and were not willing to uphold the rights and liberties of England's sons. This was made in a newspaper.

---

7 Supra

8 (1901) 5 O'M. & H. 171

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

5. That it was by means of 'sweating' cheap foreigners upon which the opposing candidate dependent for an income. His firm had closed their paper mills at Walthamstow-mills which formerly gave employment to a large number of English factory hands-and they had removed them and re-opened them in Italy, because in Italy they could obtain an abundant supply of starving Italians for a wage of nine pence a day. Was it any wonder that Italy today reeked with anarchy and that the masses in her cities lived perpetually down to the point of hunger and typhus when men and women, the heads of families, were being sweated by foreign capitalists, such as the opposing candidate, for a wage of nine pence a day. They would also like the opposing candidate to inform his Nonconformist supporters whether his Italian paper mills did not run steadily on both Sundays and week-days. This was made in a newspaper.

6. That the enemy were supplied with reliable information and with smuggled ammunition by the opposing candidate. This was made by means of a cartoon in a newspaper.

The Court decided that the Act had been infringed, and that it was no defence that the opposing candidate and his supporters had themselves to thank to some extent for these attacks, owing to charges having been made by persons in the employment of the opposing candidate against the respondent that he had treated coolies employed by him in South Africa with cruelty.

In the Indian case of *Sheokaran Singh v. Sahib Ram*[9], the allegation was that the petitioner was a drunkard, that he had been taking bribes and had become a Mussalman and that to vote for him was to vote for a Mussalman, a drunkard and a bribe taker. It was held that ('if the statement had been correct') this would have constituted a false statement. In the same case it was alleged that in speeches made by the respondent's agents they led the voters to believe that the petitioner's main supporter had secured his Ministership at the sacrifice of Bhakra Dam Scheme, which would have solved the question of bread for the hunger and famine stricken people and that the said main supporter had received a distinct undertaking from the petitioner that he would not agitate for the scheme, and it was further alleged "that the said agents induced voters to believe that the Congress would get for the non-occupancy tenants full Biswadati rights in the lands they cultivate while the peititioner's party would bring about their ruin and ejectment".

9 (1938) H. S. Doabia, Indian Election Cases, Vol. I, p. 297

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The court held that as the statements related to public or political conduct, these were not false statements and that they were not even statements of existing facts, but on the contrary, they related to the petitioner's future alleged political or public conduct or programme in case he was returned to the Legislature.

In Ceylon according to the majority decision in *Wimalasara Banda v. Yalegama*[10], there was evidence that in the course of a speech a speaker had made an allegation that Mr. Munaweera, the defeated candidate had taken a bribe of Rs. 75,000/- and acted treacherously against the former Prime Minister. In delivering the judgement of the appeal H. N. G. Fernando C.J., held that except for other reasons the election of the respondent should have been declared void in consequence of the making of false statement by a speaker at this meeting.

However, Sri Skandarajah J., in a dissenting judgement analysed the relevant sections of the Ceylon (Parliamentary Elections) Order-in-Council and held that in order to succeed the petitioner had to prove that the statements in question,

1. Is a statement of fact,
2. Relates to the personal character or conduct of another candidate, viz; Munaweera,
3. Is false,
4. Was made or published
   (*a*) by an agent of the respondent or
   (*b*) with the knowledge or consent of the respondent; and
5. Was made or published for the purpose of affecting the return of Munaweera.

According to Sri Skandarajah J., as what meaning the speaker intended by the words he uttered is not an element of this charge, no burden rested on the petitioner to prove either beyond reasonable doubt or even on the balance of probability that the utterance was made intending a sinister meaning. The real test is, "what would be the impression created by the words in question in the mind of a reasonable man or the ordinary voter? When the Election Judge placed the burden of proving the meaning intended by the speaker on the petitioner he seriously misdirected himself on the law". Accordingly for this reason alone Sri Skandarajah J. thought that the appeal should be allowed.

10 (1966) 69 NLR 361

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The above statement which was alleged to have been made by an agent of the respondent at an election meeting, the only evidence as to that fact consisted of a report P 56 which was produced at the trial by an Inspector of the C.I.D. who had received it at his office about 3 weeks later. A police Sergeant testified that he sent that report and that it was com iled from the notes taken down by him of a speech made by a person at the meeting. He had made the notes at the meeting in an exercise book and afterwards dictated the report to his brother. P 56 was the original or a carbon copy of what the brother had written at dictation.

It was held by H. N. G. Fernando C.J. and T. S. Fernando J., that the police officer's report P 56 was not admissible under Section 35 of the Evidence Ordinance in proof of any statement mentioned in the report as, 'Record' in that section must be given a generic meaning as 'Book' and 'Register', and a report like P 56, or even the original notes, did not bear such a character. In holding that the court overruled *Illangaratne v. De Silva*[11]. where Windham J. held that a police officer's report, purporting to have been made in similar circumstances, was admissible under Section 35 of the Evidence Ordinance as being an 'Official Record'.

However, Sri Skandarajah J., in his dissenting judgement thought that Windham J's view that a police officer's official report of a speech at an election meeting is admissible and is not any the less admissible from the fact that his original rough note made during the actual course of the speech, and rough draft of the report made immediately afterwards, have since been lost or destroyed. It is the report itself which is admissible, and nothing in the law requires the production of the rough note or draft of such a report.

The majority decision of *Wimalasara Banda v. Yalagema*, has resulted in difficulties regarding proof of the contents of reports made at the election meetings by the police officers because it is the usual practice of the police officers, who are under a duty to bring offenders to justice, to get those reports which have been made in pursuance of official directions issued by their superior officers, and filed in those superior officer's offices. Since the report in question in that case (P 56) is a true and correct record of what the police officer heard at the meeting, according

---

11 (1948) 49 NLR 169

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

to the evidence, Sri Skandarajah J's view that it is admissible in evidence under Section 160 [12] of the Evidence Ordinance warrants further consideration.

If we analyse the Section 160 of the Evidence Ordinance in the light of what Monir [13] has stated about the identical section of the Indian Evidence Ordinance which says :

> "According to the section if a witness though having no recollection of the facts, is sure that the facts were correctly represented in the document at the time he wrote it or read it, the document may be evidence on the witness swearing to that fact".

then it will be seen that P 56 can be admitted in evidence under Section 160 of the Evidence Ordinance. Therefore, it is respectfully submitted that the document P 56 should have been admitted in *Wimalasara Banda v. Yalagema.*

In *Kobbekaduwa v. J. R. Jayewardene & Others*[14] it was alleged that the second respondent made a speech in which he stated :

> "It was seen over the television at the handing over of the nomination, who is the suitable person to be the President of this country. Mr. Hector Kobbekaduwa without going to the Election Commissioner to hand over the nomination papers sent Mr. Ratnasiri Wickrema-nayake, the party Secretary instead; yet it was possible for everyone to view the modesty our President behaved on that occasion".

The petitioner stated that the above statement was a false statement of fact in relation to the personal character, for the purpose of affecting the Presidential Election. The counsel for the petitioner specified that the falsity in the second respondents above statement lay

---

12 Section 160 — 'A witness may also testify to facts mentioned in any such document as is mentioned in Section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration — A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

13 Law of Evidence by Monir, 4th Ed., p. 939

14 Election Petition S.C. No. 3 of 1983 (Presidential Election Petition, 1982)

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

in the ascertion that Mr. Kobbekaduwa had all the nomination papers delivered to the Commissioner by Mr. Ratnasiri Wickramanayake, the Secretary of the party to which Mr. Kobbekaduwa belonged. It was held by Sharwananda J. that there is nothing expressly derogatory of the personal character of the petitioner, and as the reference is his conduct qua candidate for Presidency on the occasion of his submitting the nomination papers to the Commissioner of Elections. The statement, Sharwananda J. says, does not cast any reflection or aspersion on the honour or veracity of purity of the man beneath the public, at the worst it is merely a criticism of the petitioner's public conduct. Such criticism according to Sharwananda J. does not come within the mischief envisaged by law.

Dealing with the argument that the statement which is sandwitched between two expressions of opinion, should be considered in its context that it would have conveyed to the audience the inference that while the first respondent (the President) was modest Mr. Kobbekaduwa was arrogant the learned judge said that the fact that the speaker had described the first respondents conduct as modest, it does not follow from his omission to comment on Mr. Kobbekaduwa's behaivour that he intended to draw the inference that Mr. Kobbekaduwa was arrogant. According to Sharwananda J., no imputation or asperision is cast when one candidate is praised and nothing is stated about the other.

Publication Necessary.

It is also a requirement that the statement should be made or published. The question of malice would not arise if it could be established that the statement was in fact made or published. The statement should however be a false statement. A statement although relates to the personal conduct or character of a candidate may not fall within the scope of the section if it cannot be proved that the statement is a false one.

In the Indian case of *Bannerjiee v. Mukerje*[15], the petitioner claimed the respondent distributed a leaflet which had the following reference to him who was a candidate at the election in question.

"After going to the Council as a representative of the Congress, he disobeyed the Congress and stayed on in the Council when Congress

15 (1937) H. S. Doabia, Indian Election Cases, Vol. II, p. 15

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

directed the leaving of the Council and in fact did not hesitate to utter a shameless lie in public denying the fact of his being elected with Congress help".

It was the contention of the petitioner that this section of the leaflet was false and was a reflection on his personal conduct. He therefore claimed that the respondent was guilty of a corrupt practice. The respondent, while admitting that he published the leaflet maintained that what was stated in the leaflet was true. He in fact led evidence in support of this.

It was held that though it was indisputable that the statement referred to the personal conduct of the petitioner, it did not fall within the section as the evidence failed to establish that the statement was a false one.

Does every false statement fall within the meaning of the section? This question has been dealt with in many English cases. The settled view it could be said that every false statement would not fall within the meaning of the section. In order to make a person liable for making or publishing false statements it is essential to prove that the words used were sufficient to impute some thing which is discreditable to the candidate.

Standard of Proof Required.

As regards the standard of proof of a charge of making false statement of fact in relation to the personal character and conduct of a candidate G. P. A. Silva J., held in *Semasinghe v. Bandara*[16], that as such a charge is also a corrupt practice falling into the same category as bribery, treating, undue influence etc. which are enumerated in Section 58 of the Ceylon (Parliamentary Elections) Order-in-Council and there is no justification to make a distinction in the onus of proof in respect of these different corrupt practices. Accordingly such a charge too must be proved beyond reasonable doubt. In coming to that conclusion Silva J. dissented from Nagalingam J's view in *Don Phillip v. Illangaratne*[17] that, where the allegation is that the respondent or his agents are guilty of making false statements of fact the falsity of the statement is prima facie established when there is a denial on oath and that it is for the party who asserts that a statement alleged to be false is true to establish beyond reasonable doubt the truth of that statement.

---

16 (1966) 69 NLR 155
17 (1949) 51 NLR 561

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In Sri Lanka, belief in the truth of the statement made is no ground for avoiding culpability in the field of making false statements relating to the personal character of a candidate. The position is different in England, where according to Fraser[18], even if all the conditions are fulfilled it will be a defence if the person making the statement can prove that he had reasonable grounds for believing and did believe the statement made by him to be true.

False Statements Regarding Withdrawal.

There is another category of false statements in the area of corrupt practices in the law of Parliamentary elections in Sri Lanka. These deal with making or publishing false statements of withdrawal of any candidate. Section 58 (1) (*e*)[19] of the Ceylon (Parliamentary Elections) Order-in-Council provides that :

> "Every person who, makes or publishes, before or during any election, for the purpose of promoting or procuring the election of any candidate, any false statement of the withdrawal of any other candidate at such election, shall be guilty of a corrupt practice".

In England however publishing false statements of withdrawal of another candidate is not a corrupt practice but an illegal practice. Similarly publishing false statements regarding personal character of a candidate is also an illegal practice according to English law.

Ingredients of the Offence

The ingredients of the offence of making false statements regarding withdrawal of a candidate was discussed in the Indian case of *Bellary Mohammadan (Rural) Constituency*[20]. According to the report of the Election Commission in that case, where it was alleged that a false statement to the effect that the petitioner had withdrawan from election was made by the respondent, it must be proved that the statement,

(i) contains false information
(ii) it was made by the respondent or his agent, and
(iii) it materially affected the result of election.

---

18 Hugh Fraser, Law of Parliamentary Elections, 3rd Edition, p. 169

19 Now reproduced in Section 81 (1) (*d*) of Parliamentary Elections Act No. 1 of 1981

20 (1948) H. S. Doabia, Indian Election Cases, Vol. I, p. 169

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In *Bellary Mohammadan (Rural) Constituency*[21], the only document alleged to contain such false information that has been exhibited is a telegram sent to the Secretary of the Primary Muslim League. It runs as follows: "Hazrat Ghouse Shah in Bellary presently. He has ordered Abdul Razaak to withdraw unconditionally. Shah Sahib Ghouse has requested all his followers to vote for Haji Ismail. Inform Muslim voters accordingly. Sirajuddin Munir". It purports to have been sent by Sirajuddin Munir.

It was held that in connection with it the following questions have to be considered :

(*a*) firstly whether it contains false information,

(*b*) secondly, whether it was sent by Sirajuddin Munir,

(c) thirdly, whether Sirajuddin Munir was an agent of the counter petitioner and

(*d*) whether it materially affected the result of the election.

The Commission held that for the petitioner to succeed on the charge of making false statements regarding withdrawal of Abdul Razaak, he must prove the first point and in addition either the second and the third or the fourth.

Punishment for False Statements.

The punishment for the corrupt practice of making false statements in relation to the personal character or conduct of a candidate or of the withdrawal of any other candidate is provided for by Section 58[22], of the Order-in Council. The punishment for false statements is similar to that imposed on persons convicted of the corrupt practices of treating, undue influence and bribery. A person convicted of making false statements under the Order-in-Council, will be liable to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding 6 months, or to both such fine and imprisonment. He would in addition be subject to the incapabilities mentioned in Section 58 (2) of the Order-in-Council[23].

21 Supra

22 Now Section 81 of the Parliamentary Elections Act No. 1 of 1981.

23 Now Section 81 (2) of the above Act

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

CHAPTER 9

ILLEGAL PRACTICES

Apart from the corrupt practices discussed above, there is also a category of practices known as illegal practices, which if committed would vitiate an election under the Ceylon (Parliamentary Elections) Order-in-Council 1946 [1]. It would be appropriate for us to consider the distinction between corrupt practices and illegal practices before attempting to discuss the various illegal practices in our law.

Distinction Between Corrupt Practices and Illegal Practices.

In many cases attempts have been made to draw a distinction between the category of practices known as corrupt practices from those known as illegal practices. The main distinction drawn between corrupt and illegal practices is that, an illegal practice is a practice which the Legislature had determined to prevent irrespective of the intention of the person who would commit it. In the words of Field J. [2], "A corrupt practice is a thing the mind goes with. An illegal practice is a thing the Legislature is determined to prevent whether it is done honestly or dishonestly. There in the case of an illegal practice the question is not one of intention, but whether in point of fact the Act has been contravened".

According to the above view of Field J., it would be no defence to state that the person who committed the act, acted bona fide, where it is alleged that he has committed an illegal practice, as the only question to be solved would be as to whether he has acted in contravention of the provisions of the Act of Parliament or not. Sankey J., in the case of *Oxford* (*Borough*)[3] completely endorsed the view of Field J. In his judgement he stated, "I agree that if an act is clearly an illegal practice intention is immaterial. I am not quite so certain, although it is not necessary to decide it, whether intention may not have some bearing upon the question whether an act is illegal".

Though Sankey J. has endorsed the view of Field J., on the question as to whether the intention would be material where it has been proved that an act prohibited by the Legislature has been committed, he has

1 Now under Parliamentary Elections Act No. 1 of 1981.
2 In Barrow-in-Furness, (1886) 4 O'M. & H. 82
3 (1924) 7 O'M. & H. 49

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

kept the important question of, as to whether an illegal act could be committed without an intention, open.

Various Illegal Practices.

Under the Ceylon (Parliamentary Elections) Order-in-Council[4], a number of illegal practices have been mentioned. Many of them refer to election expenditure and various practices resorted to by candidates at elections. We shall now proceed to consider the illegal practices enumerated under the Acts in detail.

Section 66 of the Ceylon (Parliamentary Elections) Order-in-Council. makes expenses in excess of a maximum fixed by law, an illegal practice, The section reads :

> "Subject to such exception as may be allowed in pursuance of this Order, no sum shall be paid and no expense shall be incurred by a candidate at an election or his election agent, whether before, during or after an election, on account of or in respect of the conduct or management of such election, in excess of five thousand rupees or of an amount equal to twenty cents for each elector on the register, whichever amount is less :
>
> Provided that there shall not be included in such amount any expenditure incurred by the candidate for his personal expenses, nor the fee, if any, paid to the election agent not exceeding one thousand rupees.
>
> Any candidate or election agent who knowingly acts in contravention of this section shall be guilty of an illegal practice".

(The Present Parliamentary Elections Act No. 1 of 1981, has no parallel as under the present system voters vote for recognised political parties or independent groups).

There is a similar provision in Section 8 of the Corrupt and Illegal Practices Prevention Act 1883 of England. This could be considered as a category of illegal practices which could only be committed by a candidate or an agent of his. The words in the section clearly provide that the illegal practice could be committed at any time before or after an election.

---

4 Now under the Parliamentary Elections Act No. 1 of 1981

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

However, it should be noted that it has been held that the words 'Knowingly' in the section should be construed to mean, knowingly at the time the payment was made. In *Berwick-upon-Tweed*[5], Avory J., dealing with this matter stated, "The words knowingly in this section means, knowing at the time the payment is made, or the expense is incurred that is on account or in respect of the conduct or management of the election, and if when the total of those expenses is added up that total is in excess of the maximum, then the agent or the candidate as the case may be, has knowingly acted in contravention of the section".

The question as to from when the expenses incurred should be calculated in order to get the total amount of expenditure was an issue in the case of *Rochester*[6]. In this case counsel for the respondent contended that the section specifically refers to expenses incurred by a candidate and that the respondent at the time he incurred the expenditure in question was not a candidate as the dissolution and the issue of the writ had not taken place. Cave J. refusing to agree with this contention said, "When a man begins to incur expenses with regard to an election there is nothing to prevent him from appointing an election agent. In some cases canvassers are set to work and committees are formed long before the dissolution or the issue of the writ. If those expenses are not to be returned as election expenses, the words of the Act, as to the maximum of expenditure are set at naught".

As it has been stated by Cave J., though a person becomes a candidate only after handing over the nomination papers he would start his election campaign long before the handing over of the nominations. Under such circumstances if the expenses are counted only after the nominations, the purpose of the section would be lost.

In many subsequent cases the view that the time when the election is supposed to commence for the purpose of the section should not be after the dissolution, found support. In *Great Yarmouth*[7], Channel J. adopted the view that for the election expenses the time of the commencement of the election should not be after the dissolution. He stated, "I quite adopt the view which has been put forward by other judges that the time when the election is supposed to commence .... certainly is not limited to the commencement of the active part of the election by the occurrence of a vacancy or by the issue of a writ".

---

5 (1923) 7 O'M. & H. 20
6 (1892) 4 O'M. & H. 157
7 (1906) 5 O'M. & H. 180

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The maximum amount of expenditure that could be incurred by a candidate was fixed by Section 41 of Act No. 10 of 1964, which amended the original section of the Order-in-Council. Members of Parliament have on many occasions complained against the amount and have stated that the maximum amount should be reviewed in the light of the increasing prices.

Illegal Expenditure.

Section 67 (1)[8] of the Ceylon (Parliamentary Elections) Order-in-Council provides that certain types of expenditure if incurred by a candidate would be illegal. In simple words the section prohibits candidates from incurring expenses for the purposes mentioned in the section.

The section reads :

"No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at any election, be made-

(*a*) on account of the conveyance of electors to or from the poll, whether for the hiring of vehicles or animals of transport of any kind whatsoever, or for railway fares, or otherwise; or

(*b*) to or with an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice or an account of the exhibition of any address, bill, or notice.

Sub section 2 of the same section[9] makes the persons who incur the above mentioned expenses guilty of an illegal practice. It provides :

"Subject to such exception as may be allowed in pursuance of this Order, if any payment or contract for payment is knowingly made in contravention of this section either before, during or after an election the person making such payment or contract shall be guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of this section, shall also be guilty of an illegal practice".

---

8 Now reproduced in Section 83 (1) of Parliamentary Elections Act No. 1 of 1981.

9 Now sub section 2 of the Section 83 of Parliamentary Elections Act No. 1 of 1981.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

It would be important to note that the illegal practice of receiving money for the purposes prohibited by the Order-in-Council, is an illegal practice that could be committed even by an elector. However, the above sub section is subjected to several exceptions.

Section 67 (4) (*b*), has been introduced to the original section by an amendment in 1964 namely by the Section 42 of the Act No. 10 of 1964. This could be considered an exception to the provision prohibiting the conveyance of electors to the polling station. The sub section provides :

> "Where electors are unable at an election to reach their polling stations from their place of residence without crossing the sea or a branch or arm thereof or a river, means may be provided for conveying such electors by sea to their polling stations, or to enable them to cross the river in order to reach their polling stations, and the amount of payment for such means of conveyance may be in addition to the maximum amount of expenses allowed by this Order"[10]

Thus it could be seen that under the circumstances mentioned in the above sub section it would not be an illegal practice to provide transport to electors or to exceed the maximum amount fixed by the statute. In England, originally the law expressedly authorised payment for conveyance of voters to the polling station. However, the present law of England is similar to the law of Sri Lanka in this respect. It prohibits the conveyance of voters to the polling station.

Rogers[11], referring to the section in the English law which provides an exception to the rule that voters cannot be conveyed, states :

> "It is noticeable that the section only authorises conveyance *to the poll* by sea, payment for conveying electors home again is not expressly authorised".

---

10 The 1st part of this sub section is reproduced as sub section 4 (*b*) of Section 83 of the Parliamentary Elections Act No. 1 of 1981.

11 Rogers on Elections, 20th Edition, Vol. II, p. 360

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In *Lichfield*[12], the question of using vehicles arose. According to the evidence placed before court, about 40 or 50 vehicles were sent to a district for the purpose of conveying voters to the poll, and the respondent made payment for the stabling and the baiting of the horses and the feeding and putting up of the drivers. This payment was held to have been made on account of the conveyance of electors to or from the poll.

Dealing with the position taken up by the respondent that the friends of the respondent had put up the horses, men and the vehicles gratuitously Bruce J. stated that in view of the evidence placed before court it was not necessary to consider the question whether there would have been anything illegal in the friends of the candidates putting up vehicles, horses and men gratuitously.

In the Ceylon case of *Thilakawardena v. Obeysekara*[13], the question of using vehicles to convey electors in contravention of the Ceylon (State Council Elections) Order-in-Council 1931 arose. The petition by which the election of the respondent to the Avissawella seat was challenged, alleged that the respondent was guilty of the illegal practice of contracting for payment for motor vehicles for the conveyance of voters to and from the poll.

According to the facts of the case, the respondent who was a candidate for the Avissawella seat had met one Alwis who had been a friend of his, a few days before the election and had told him that he was relying on friends and relations for the lending of vehicles on the election day. The respondent had also made a public statement to the effect that he was not going to spend any money for the provision of vehicles to carry voters to the poll as the law did not permit him to do so, and that he entirely depended on friends and relations for vehicles for the purpose of conveying electors.

Mr. Alwis who had been working for one Dr. Paul, a candidate for the South Colombo Division had promised the respondent that he could manage it. Mr. Alwis had stated that as he was getting vehicles from his friends for Dr. Paul on the 13th of June the day on which the election for the Colombo South seat was held, would be able to get the same vehicles for the respondent on the 20th of June, the day of the election for the Avissawella seat.

12 (1895) 5 O'M. & H. 35
13 (1931) 33 NLR 126

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

At the election for the Colombo South seat which had been held on the 13th of June, however, Dr. Paul had been unsuccessful and Mr. Alwis had found that the people were getting tired of lending vehicles. As the election day for the Avissawella seat was drawing close, Mr. Alwis had thought that he should keep the promise he made to the respondent and to hire the necessary cars disboeying the instructions of the respondent.

Delivering his judgement Macdonell C. J., stated that the act of the agent in hiring cars and providing them with petrol was outside the authority given to him and that the candidate was not responsible for the illegal practice committed by the agent.

It was contended by counsel for Mr. Alwis that from the evidence it was clear that he was unaware that he was acting in contravention of the section of the Order-in-Council. It was also pointed out by the counsel that the word 'knowingly' was used in the section. It was therefore his submission that Mr. Alwis who was the second respondent had not committed an illegal practice under the Order-in-Council.

During the course of his judgement, dealing with this question Macdonell C. J., stated, "Section 64 (2) of the Ceylon (State Council Elections) Order-in-Council 1931 is almost identical in wording with Section 7 (2) of the English Act of 1883, and the difference is immaterial to the matter before me. What is the meaning of the word 'knowingly' in this sub section, what must be the knowledge possessed by the person paying or contracting to pay? I think what is meant by the word 'knowingly' is that the person paying or contracting to pay must know that he is paying or contracting for payment for the hiring of vehicles on account of the conveyance of the voters to and from the poll and for the purpose of promoting or securing the election of a candidate. If he has that degree of knowledge, then he is guilty of an illegal practice even though he may be ignorant that thereby he is breaking the law."

Macdonell C. J. also cited with approval the judgement of Pickford J. in *East Dorset*[14], where Pickford J. expressed the view that a candidate cannot be held liable for an act done by an agent of his outside his authority. In the own words of Pickford J. "Now I think that if a candidate says to another person, 'Get me cars, get me as many cars

---

14 (1910) 6 O'M. & H. 60

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

as you can', and that person hires some cars, that would be in all probability sufficient to make the candidate responsible. On the other hand, if the candidate says, 'Will you lend me some cars? and the person to whom he said it says 'Yes, I will, and my friends will lend you some too,' and the candidate then says, 'Well, send them up', I am not at all sure that that would make him responsible for the hiring by that person to whom he was speaking ...."

Section 67 (4) (*c*)[15] of the Ceylon (Parliamentary Elections) Order-in-Council provides that a person could at his own expense make arrangements to go and return from the poll by any public transport service. Such expenditure would not fall within the category of illegal practice.

The Section provides :

"The conveyance of a person at his own expense to or from the poll at any election in, or the use by any person at his own expense for the purpose of the conveyance of himself to or from the poll of any public transport service provided by the Ceylon Transport Board, the Ceylon Government Railway, or the Colombo Municipal Council, shall be deemed not to be an illegal practice within the meaning of this section".

This sub section had been added by Act No. 10 of 1964, when the Colombo Municipal Council was operating a public transport service. That was the reason why the Municipal Council too had been included in the section.

Transporting Feeble Persons.

Under the Ceylon (Parliamentary Elections) Order-in-Council[16], there is also provision to make arrangements to provide transport to feeble persons. Section (4) (*d*)[17], of the Order-in-Council which provides for this reads :

"Where the returning officer for any electoral district is satisfied, upon written application in that behalf made to him by any person, or on behalf of such person by any other person (Not being a

---

15 Now Section 83 (4) (*c*) of Parliamentary Elections Act No. 1 of 1981.

16 Now under the Parliamentary Elections Act No. 1 of 1981.

17 Now under Section 83 (4) (*d*) of Act No. 1 of 1981.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org
NATIONAL LIBRARY SECTION,
MUNICIPAL LIBRARY SERVICES,
JAFFNA.

candidate or his election agent), so as to reach such officer seven days before the day on which a poll is to be taken at any election in that district, that such person is unable, by reason of any physical disability, to convey himself to and from the poll on foot or in any public transport service referred to in paragraph (*c*) of this sub section, the returning officer may give such person written authority to use any vehicle, vessel or animal for the purpose of conveying himself to and from the poll, and accordingly the use of a vehicle, vessel or animal for the purpose of such conveyance by such person shall be deemed not to be illegal practice within the meaning of this section".

In 1970, Section 67, was amended by Act No. 9 of 1970 which included sub section 56. The sub section authorises a police officer on his own motion or after an investigation on a complaint made by any person, that a vehicle, vessel or animal is being used to convey voters in contravention of this section, to seize such vehicle, vessel or animal and to detain it until the conclusion of the poll.

Illegal Expenditure.

The payment of money, or the entering into a contract for the payment of any money to or with an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill or notice, or on account of the exhibition of any address, bill, or notice has been made an illegal practice by Section 67 (1) (*b*),[18] of the Order-in-Council.

In the English case of *Pontefract*[19], the election of the respondent was challenged on the ground of illegal practice. It was alleged that certain boards covered with placards were exhibited at a certain place. There was however no evidence that the respondent or his agents made any payments, or contracted to make any payments for the hiring of the premises upon which the boards were exhibited, although in two or three instances they had, after the election converted the boards for their own use. It was held that the evidence led in court failed to establish an illegal practice.

---

18 Now Section 83 (1) of Parliamentary Elections Act No. 1 of 1981.

19 (1893) Day's Election Cases, p. 126

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

It is important to note that Section 67 (1) (*b*), refers to an elector. Therefore the illegal practice could only be committed by making payment or entering into a contract under the circumstances contemplated in the section, with an elector.

Section 67 (4) (*a*)[20], of the Order-in-Council provides an exception to the rule above mentioned. The section reads :

"Where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements a payment to or contract with such elector, if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section."

Sub section 3 of Section 67[21] of Order-in-Council, which has been added by Act No. 9 of 1970, has provided that no person should hire or lend any vehicle, animal or vessel for the purpose of conveying voters, an hour before the commencement of the poll, and one hour after ending of the poll. This is an illegal practice to which even persons other than the candidate or their agents could be made liable. This too however is subject to the exception mentioned in the sub section itself.

Sub section 3 of Section 67 provides :

"Subject to any such express exceptions as are or may be made by or under this Order, a person shall not let, lend, employ, hire,borrow or use, or aid or abet any other person to let, lend, employ, hire, borrow or use any vehicle,vessel or animal, in any electoral district during the period commencing one hour before the time of the opening of the poll at any election in that district, and ending one hour after the time of the closure of such poll

(*a*) for the purpose of the conveyance of voters to or from the poll; or,
(*b*) for any other purpose, other than —
(i) any legitimate business; or
(ii) any official business, that is to say, the performance of any duty or the discharge of any function accruing from or connected with or incidental to any office, service or employment, held or undertaken or carried on by him.

---

20 Now Section 83 (4) (*a*) of Act No. 1of 1981

21 Now Section 83 sub section 3 of Act No. 1 of 1981.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Any person knowingly acting in contravention of this sub section shall be guilty of an illegal practice".

Illegal Employment.

A candidate contesting an election would be permitted to employ paid employees for certain limited purposes. Only certain types of employment have been allowed under the Order-in-Council. Employing any person other than those specified in Section 68[22] of the Order-in-Council would amount to an illegal practice under the Ordinance. Not only the employer but even the employee would be liable if he knew that he was employed in contravention of the law and yet remained in employment.

Section 68 of the Order-in-Council provides :

"No person shall, for the purpose of promoting or procuring the election of a candidate at any election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever except for the purpose or in the capacities following :—

(*a*) One election agent and no more

(*b*) a reasonable number of polling agents for each polling district having regard to the need to revoke the appointment of any polling agent for that polling district during the poll ;

(*c*) a reasonable number of clerks and messengers having regard to the area of the electoral district and the number of electors on the register of electors for such district.

Subject to such exception as may be allowed in pursuance of this Order, if any person is engaged or employed in contravention of this section, either before, during or after an election, the person engaging or employing him shall be guilty of an illegal practice".

---

22 In the present Parliamentary Elections Act this section is reproduced as Section 85 but without making any reference to an election agent. That means Section 68 (1) (*a*) had been taken away.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In England the Corrupt and Illegal practices Prevention Act 1883 made a similar provision. Section 17 of the Act made employment other than those provided for by the Act illegal. Section 68 of the Order-in-Council provides that a reasonable number of clerks and messengers may be employed. This would purely be a question of fact which should be decided having regard to the area and the number of registered voters. In England, however the number of clerks to be employed is specified in the section. Section 17 of the Corrupt and Illegal Practices Prevention Act provides: (According to first schedule of the Act)..

In a county or division of a county, one election agent.
One sub agent for each polling district.
One polling agent in each polling station.
One clerk and one messenger for the central committee room, or if the electors exceed 5,000, then one clerk and one messenger for every 5,000 electors and the same for the surplus if any.
One clerk and one messenger for each polling district where the electors in a polling district exceeds 5,000, one clerk and one messenger for every 5,000 electors and one clerk and one messenger for the surplus if any, but these clerks and messengers may be employed in any polling district where their services may be required.

The question as to whether the clerks and messengers could be substituted arose in *Walsall*[23]. There it was decided that clerks and messengers might be substituted for others during the election, provided that on any one day the total number of clerks and messengers employed did not exceed the maximum number provided by law.

Election Literature

It is also a requirement under the law of Parliamentary elections in Sri Lanka as well in England that where-ever bills, posters or placards are published by candidates the name and the address of the printer and publisher should be printed on them. If any bill, placard or poster is published by a candidate without the address of the printer it would amount to an illegal practice under Section 68[24] (A) of the Order-in-Council.

---

23 (1892) Day's Election Cases 73

24 Now section 86 of the Parliamentary Elections Act No. 1 of 1981.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Section 68 A of the Order-in-Council provides :

"A candidate or an election agent, who prints, publishes, distributes or posts up or causes to be printed, published, distributed or posted up any advertisement, handbill, placard or poster which refers to any election and which does not bear upon its face the names and addresses of its printer and publisher shall be of an illegal practice".

This section has been introduced by Act No. 16 of 1956. The section it could be said, is aimed at dealing with anonymous posters etc., to affect the election of an opposing candidate. The purpose of this section is to deal with documents which are of doubtful authority; so that the printer might be asked who authorised him to issue such a document.

It could be seen from the words used in the section that it is not an absolute necessity that the name of the candidate or that of the publisher should appear on the poster. It would be sufficient if the name of the printer is mentioned on the poster. In *North Louth*[25], this question was discussed and it was held that if a name of a printer is mentioned on a leaflet an election agent would not commit an illegal practice by using it without describing himself as the publisher.

False Reports in News Papers.

In Sri Lanka, according to the Section 84 of the Parliamentary Elections Act No. 1 of 1981 where there is published in any newspaper any false statement concerning or relating to

(*a*) the utterances or activities at an election of any candidate, or any recognized political party or independent group which is contesting such election,

(*b*) the conduct or management of such election by such candidate, or any such recognized political party, or independent group,

and such statement is capable of influencing the result of such election, then, every person who at the time of such publication was the proprietor, the manager, the editor, the publisher or other similar officer of that newspaper or was purporting to act in such capacity, shall each

---

25 (1911) 6 O'M. & H. 154

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

be guilty of an illegal practice unless such person proves that such publication was made without his consent or connivance, and that he exercised all such diligence to prevent such publication as he ought to have exercised having regard to the nature of his function in such capacity and in all the circumstances.

Election Expenses Return

It was also a requisite under the Ceylon (Parliamentary Elections) Order-in-Council that all candidates should furnish a return of all expenses incurred by them within a specified period[26] after the conclusion of the election. Where a candidate or his election agent fails to comply with this requirement they shall be guilty of an illegal practice under the Order-in-Council. It would also be an illegal practice to furnish a false declaration as to election expenses.

According to *Somadasa v. Saddasena*[27], expense incurred by an agent other then an election agent need not be set out in the return sent to the returning officer in conformity with the requirements of Section 70 of the Ceylon (Parliamentary Elections) Order-in-Council. Expenses incurred on their own responsibility by persons who held public meetings in support of the candidate cannot come under the provisions of Section 70 (1) (*e*); such persons, even if they are held to be agents for the purpose of election law, are not "election agents".

The provisions relating to election returns contained in the Ceylon (Parliamentary Elections) Order-in-Council have no parallel in the present Parliamentary Elections Act No. 1 of 1981.

Excuse for Corrupt or Illegal Practice.

The statute has made provision for exonerating the candidates in certain cases of corrupt and illegal practice committed by their agents. According to Section 73 of the Order-in-Council[28], where upon the trial of an election petition respecting an election of a member of the Parliament, the Election Judge reports that a candidate at such election

---

26 According to Section 70 (1) of the Order-in-Council within 31 days after the publication of the results of the election in the Gazette.

27 (1967) 69 NLR 469

28 Now Section 89 of Parliamentary Elections Act No. 1 of 1981.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

has been guilty by his agents of the offence of treating or undue influence or of any illegal practice in reference to such election, and the Election Judge further reports, after giving the Attorney-General an opportunity of being heard, that the candidate has proved to the Court —

(*a*) that no corrupt or illegal practice was committed at such election by the candidate or his election agent and the offences mentioned in the said report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent; and

(*b*) that such candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at such election; and

(*c*) that the offences mentioned in the report were of a trivial, unimportant and limited character; and

(*d*) that in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents, then the election of candidate does not, by reason of the offences mentioned in such report, become void, nor does the candidate become subject to any incapacity under the Order-in-Council."

An Election Judge or a Judge of the Supreme Court has power to except innocent act from being illegal. According to Section 74 of the Order-in-Council[29], where on application made, it is shown to an Election Judge or to a Judge of Supreme Court by such evidence as seems to the Judge sufficient,

(*a*) that any act or omission of a candidate at any election, or of his election agent or of any other agent or person, would by reason of being the payment of a sum or the incurring of expense in excess of any maximum amount allowed by this Order, or of being a payment, engagement, employment, or contract in contravention of this Order or of otherwise being in contravention of any of the provisions of this Order, be but for this section an illegal practice; and

29 Now Section 90 of the Parliamentary Elections Act No. 1 of 1981

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

(*b*) that any such act or omission arose from inadvertence or from accidental miscalculations or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith,

and in the circumstances it seems to the Judge, after giving the candidates, the returning officer and any elector within the elctoral district an opportunity of being heard, to be just that the candidate in question and the said election and other agent and person, or any of them, should not be subject to any of the consequences under this Order of the said act or omission, the Judge may make an order allowing such act or omission to be an exception from the provisions of this Order which would otherwise make the same an illegal practice, payment, employment or hiring, and thereupon such candidate, agent or person shall not be subject to any of the consequences under this Order of the said act or omission.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

PART III

CHAPTER 10

ELECTION PETITIONS

In Sri Lanka, the election of a candidate as a Member is avoided by his conviction for any corrupt or illegal practice.[1] The return of a Member is a serious matter and not to be lightly set aside, therefore a judge ought not to upset an election unless satisfied beyond all doubt that the election is void. [2]

In Sri Lanka, the election in respect of any electoral district shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge, namely —

(*a*) that by reason of general bribery, general treating or general intimidation or other misconduct or other circumstances whether similar to those enumerated before or not, a section of electors was prevented from voting for the recognised political party or independent group which it preferred and thereby materially affected the result of the election.

(*b*) non-compliance with the provisions of Parliamentary Elections Act No. 1 relating to elections, if it appears that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance materially affected the result of the election[3].

The election of a candidate as a Member shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge, namely —

(*a*) that a corrupt or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent or by any agent of the candidate;

---

1 Section 91 of Parliamentary Elections Act No. 1 of 1981

2 Per Dalton J., in *Lateef v. Saravanamuttu*, (1932) 34 NLR 369 at 377 quoting Baron Martin in *Warrington* case, 1 O'M. & H. 44.

3 Section 92 (1) of Parliamentary Elections Act No. 1 of 1981.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

(*b*) that the candidate personally engaged a person as a canvasser or agent or to speak on his behalf knowing that such person had within seven years previous to such engagement being found guilty of a corrupt practice under the law relating to the election of the President or the law relating to Referenda or under the Ceylon (Parliamentary Elections) Order-in-Council, 1946 or under Parliamentary Elections Act, by a court of competent jurisdiction or by the report of an Election Judge;

(*c*) that the candidate personally engaged a person as a canvasser or agent or to speak on his behalf knowing that such person had been a person on whom civic disability had been imposed by a resolution passed by Parliament in terms of Article 81 of the Constitution, and the period of such civic disability specified in such resolution had not expired;

(*d*) that the candidate was at the time of his election a person disqualified for election as a Member[4].

Public Importance of Election Petitions.

An election petition is not a matter between party and party in which technicalities should be permitted to defeat the object of the petition. This principle has been fully accepted and recognized by our courts in more than one occasion. e.g. Nagalingam J., in *Don Alexander v. Leo Fernando*[5], has observed that "Once an election petition is presented the matter ceases to be one exclusively between the petitioner and the respondent. In fact, it becomes a matter in which the whole electorate, not to say the whole country, has an interest and any order disposing of the application should therefore be made from the largest stand point of the state".

According to Dias J., in *Saravanamuttu v. R. A. de Mel*[6], since certain fundamental rights of the citizen are involved in an election petition inquiry, it is not merely a contest between two litigants but a matter in which whole electorate, not to say the whole country has a vital interest.

---

4 Section 92 (2) of Parliamentary Elections Act No. 1 of 1981.

5 (1948) 49 NLR 202

6 (1948) 49 NLR 529 at 152

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In *Rambukwella v. Silva*[7], Bertram C.J., observed, "In the trial of an election petition the public interest has also to be guarded. It is not an investigation in which the petitioner and the sitting Member alone are concerned. The voters also have rights as well as candidates. The electorate is entitled to have the result of the election declared according to law."

Every election petition according to Article 144 of the Constitution shall be tried by the Court of Appeal.

Who May Present an Election Petition?

An election petition may be presented to the Court of Appeal by some person claiming to have had a right to be returned or elected at such election, or some person alleging himself to have been a candidate at such election[8].

Time Limit for Presentation.

Every election petition shall be presented within 21 days of the date of publication of the results of the election in the Gazette. Provided that an election petition questioning the return or the election upon the ground of a corrupt or illegal practice and specifically alleging a payment of money or other act to have been made or done since the date aforesaid by the Member whose election is questioned or by an agent of the Member or with the privity of the Member in pursuance or in furtherance of such corrupt or illegal practice may, so far as respects such corrupt or illegal practice, be presented at any time within 28 days after the date of such payment or act[9].

According to the order made by the Supreme Court in *Wimalasuriya v. Wadigamangawa*[10], in computing the time limit of 21 days for filing election petitions, public holidays, Saturdays and Sundays must be excluded.

---

7 (1924) 26 NLR 231 at 253

8 Section 95 of Parliamentary Elections Act No. 1 of 1981.

9 Section 108 (1) of Act No. 1 of 1981

10 (1981) Anamaduwa Election Petition of 1980.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Other Requirements.

An election petition shall state the right of the petitioner to petition. It shall state the holding of and result of the election; it shall contain a concise statement of the material facts on which the petitioner relies; it shall set forth full particulars of any corrupt or illegal practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt or illegal practice, and shall also be accompanied by an affidavit in support of the allegation of such corrupt or illegal practice and the date and place of the commission of such practice; it shall conclude with a prayer as, for instance, that the election in respect of any electoral district should be declared void, and shall be signed by all the petitioners[11].

According to Rule 4 of the Parliamentary Election Petition Rules, 1981, form of an election petition must be prepared according to the specimen form given in that Rule or a similar form must be used. According to Rule 3, the presentation of the petition shall be made by delivering the petition together with 2 copies thereof at the office of the Registrar of Court of Appeal. If required the Registrar or the officer of his department to whom the petition is delivered, shall give a receipt.

Parties to a Petition.

A petitioner shall join as respondents to his election petition,

(*a*) where the petition, in addition to claiming that the election of all or any of the returned candidates is void or was undue, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates, other than the petitioner, and where no such declaration is claimed, all the returned candidates;

(*b*) and any other candidate or person against whom allegation of any corrupt or illegal practice are made in the petition.

Any candidate not already a respondent to an election petition shall, upon application in that behalf made by him to the Election Judge, be entitled to be joined as a respondent to such petition;

11 Section 98 of the Parliamentary Elections Act No. 1 of 1981.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Provided that no candidate shall be entitled to be joined of his own motion as a respondent to such petition under the preceding provisions of this section unless he has given such security for costs as the Election Judge may determine.[12]

In *Rajapakse v. Kadirgamanathan*[13], the petitioner sought a declaration that he was duly elected if a scrutiny or re-count showed that he had polled a majority of lawful votes. He made only the Returning Officer a respondent. He failed to make the successful candidate a party. It was held that in an election petition the successful candidate should be made respondent and accordingly the petition was dismissed. It was further held that the petitioner could have amended his petition during the time allowed to him by the law, but the court has no power to add the successful candidate as a party to the petition.

In *Wijewardena v. Senanayake*[14], it was held that the requirement of Section 80 A of the Ceylon (Parliamentary Elections) Order-in-Council 1946, that in an election petition, the petitioner shall join as respondent every person against whom allegations of any corrupt practice are made in the petition is mandatory. Failure to comply with it would render a 'charge' of undue influence liable to be dismissed. In such a case the Election Judge has no power, before the trial commences, to add as parties persons who should have been joined in the petition.

Overlapping of Provisions.

The fifth amendment to the Constitution of 1978 has restored the Ceylon (Parliamentary Elections) Order-in-Council for the purpose of by elections. Accordingly 18 by-elections were held on 18th of May 1983 and a number of election petitions were filed. One of those petitions, the election petition No. 7 of 1983 was filed in respect of Mahara Electoral District. The petitioner in that election petition had made President J. R. Jayewardene as a respondent. The State Attorney on behalf of the Attorney-General, filed a motion before the President of the Court of Appeal for a dismissal of the petition in limine on the ground that the President of the Republic cannot be made a respondent.

---

12 Section 97 of Act No. 1 of 1981

13 (1965) 68 NLR 14

14 (1971) 74 NLR 97

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

According to Article 35 of the Consititution the President is immune from all court proceedings. But according to Section 80 (A) 1 (*b*) of the Ceylon (Parliamentary Elections) Order-in-Council a petitioner shall join as respondent to his election petition every person against whom allegation of any corrupt practice is made and that provision is mandatory.

While it is true that the Constitution overrides the provisions of any other Act, in this case if the person holding the office of the President violates the election laws of the land or resorts to corrupt practices the only remedy seems to be the impeachment of the President the jurisdiction of it would be shared by the Parliament and the Supreme Court. In practice this will never happen as only the government party can get the required majority in the Parliament for impeachment procedure. Therefore, it is unfair for the opposition political parties who would be without a legal remedy if the person holding the office of the President violates the election laws and resorts to corrupt practices and illegal practices during a Parliamentary Election or a by-election. It is suggested that provision must be made enabling any person including the President to be made a respondent in an election petition. But there must be adequate safeguards to prevent misuse of such a provision. For an example a heavy security can be required from a person who is alleging a corrupt or illegal practice against the President.

Security for Costs.

One of the most salutary provisions in the Parliamentary Elections Act No. 1 of 1981 is the Rule 11 of the Parliamentary Election Petition Rules 1981, which governs the quantum of security to be furnished by the petitioner for costs of the election petition. In the past a large number of election petitions were dismissed for insufficiency of security. If the election petitions are not merely matters affecting parties but also matters of public importance, then the technicalities like, the insufficiency of security must not be allowed to prevent election petition inquiries. If and when the insufficiency is discovered a certain time should be given to the petitioner to furnish the deficit.

According to Rule 11, at the time of the presentation of the petition or within three days afterwards, initial security in a sum of twenty thousand rupees shall be given on behalf of the petitioner for the payment of all costs, charges and expenses that may become payable by the petitioner. The court may, at any time during the hearing of an election

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

petition, determine the number of charges constituting each ground on which the petitioner relies and order the petitioner to give additional security calculated at the rate of five thousand rupees for each such charge for the payment of all costs charges and expenses that may become payable by the petitioner. The security determined under this paragraph shall be payable on behalf of the petitioner within seven days from such determination. If the security as in this rule provided is not given by the petitioner, no further proceedings shall be had on the petition and the respondent may apply to the court for an order directing the dismissal of the petition and for the payment of the respondent's costs. The costs of hearing and deciding such application should be paid as ordered by the court and in default of such order shall form part of the general costs of the petition.

In an early case *Tilakawardena v. Obeysekera*[15], the respondent moved that the petition be dismissed on the ground that security of Rs. 5,000/- given was inadequate as there were more than 3 charges. According to Section 12 of the Ceylon (State Council Elections) Order-in-Council 1931, a deposit of Rs. 5,000/- on account of first three charges and for subsequent charge was necessary. In this case the petitioner stated 17 cases of bribery, 26 cases of treating, and at least 14 cases of conveyance of voters. It was argued on behalf of the petitioner that the word 'charge' means form of misconduct coming under the description of corrupt or illegal practices and any number of acts can be proved under it and therefore the petition consisted of 3 charges only. Drieberg J., held that the petition contained only 3 charges, within the meaning of Section 12 (2) of the rules in the sixth schedule to the Ceylon (State Council Elections) Order-in-Council 1931.

In a number of later cases *Tilakawardene v. Obeysekara*, was followed. Some of those cases are, *Vinayagamoorthy v. Ponnambalam*[16], *Costa v. Jayawardene*[17] and *Mohamed Mihular v. Nalliah*[18].

Even after the enactment of Ceylon (Parliamentary Elections) Order-in-Council 1946, which repealed the State Council Elections Order-in-Council, there was no departure with respect to the amount of security and increase of amount of security when there were more charges than 3. The provisions in this respect were the same in both Orders-in-Council.

---

15 (1931) 33 NLR 65
16 (1936) 40 NLR 178
17 (1943) 44 NLR 341
18 (1944) 45 NLR 151

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In *Perera v. Jayawardene*[19], which was an interlocutory matter, in connection with an election petition the counsel for the respondent of the election petition submitted that *Tilakawardene v. Obeysekara*[20], was wrongly decided in that as Drieberg J., held that the word 'charge' in similar context meant the particular types of misconduct such as bribery, treating etc. and that therefore, any number of acts, instances or cases of a particular label of misconduct would constitute one charge. That is to say, any number, say a hundred instances of bribery would come under one generic charge of bribery and any number, say a hundred cases of treating would come under one generic charge of treating etc.

It was also argued that as the decision of *Tilakawardene v. Obeysekerra*[21], was based on the law of England, where a fixed sum that is £ 1,000 is given as security for any number of charges, where as under our law as existed then security increased as the number of charges increased. The Supreme Court rejected this contention and affirmed the decision of *Tilakewardene v. Obeysekera.* Soertsz S.P.J., delivering order said, "Elections bring candidates in contact with tens of thousands of voters and within the 24 days available to the petitioner for the giving of security it would hardly be possible to sift the cases sufficiently to make a final selection of them and to stand committed to them. Moreover, generally speaking, a few cases or instances of an illegal or corrupt practice could hardly create the kind of impression that an Election Tribunal would require or, at least desire, before it avoided an election with all the serious consequences that such an order would entail. That is why it would be reasonable to suppose as Drieberg J., points out, that both in England and here, it is not an unusual feature in election petitions to find numerous instances and cases of corrupt practices relied upon".

In *Rupasinghe v. Karunasena*[22], G.P.A. Silva J. following *Tilakawardene v. Obeysekera*[23], held that the principle to be gathered from the long line of consistent decisions commencing from the judgement of Drieberg J. is that so long as any number of complaints form one species of charges, this is to be considered as one charge and not a number of them.

---

19 (1947) 49 NLR 1
20 Supra
21 Supra
22 (1965) 69 CLW 49
23 Supra

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

An interesting situation arose in *Anamamaduwa Election Petition*, 1980, where the counsel for the respondent objected to the petition on the ground that the security furnished was not the corrrect security in that it was over and above the required amount. The Supreme Court, however rejected this argument.

Notice of the Petition.

Notice of the presentation of an election petition, accompanied by a copy thereof shall, according to Rule 14 of the Parliamentary Election Petition Rules, 1981 be served by the petitioner on the respondent or be delivered at the office of the Registrar of Court of Appeal for service on the respondent, within 10 days of the presentation of the petition. In *Aron v. Senanayake*[24], which was an application by the respondent to an election petition to have the petition dismissed on the ground that the petitioner had failed to comply with the provisions of Rule 18 of the State Council Election Petition Rules, which required that notice of the presentation of the petition and of the nature of the security should be given to the respondent or his agent, it was argued on behalf of the petitioner that failure to give notice was a formal defect and as there was no express provision for dismissal of the petition the English Parliamentary Election Rules which say that no formal objection should avoid a petition, should be followed. But Akbar S. P. J. rejected this argument and dismissed the petition. This was followied in *Piyadasa v. Hewavitharana*[25], where Martenz S.P.J. held that the failure to give notice of the nature of the security in the manner required by the State Council Election Petition Rules 1931 is a fatal defect, rendering the petition liable to be dismissed.

Objections to the Petition.

Any objection to an election petition must be filed within a reasonable time. According to *Sarawanamuttu v. de Silva*[26] which was an election petition under the Ceylon (State Council Elections) Order-in-Council 1931, Objections to an election petition other than those provided for in the Election Petition Rules must be taken within a reasonable time and the respondent should be confined to the objections he has filed and objections taken at the hearing cannot be entertained.

---

24 (1936) 38 NLR 133
25 (1936) 40 NLR 418
26 (1948) 49 NLR 561

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

According to Rule 7 of the Election Petition Rules 1981, the respondent in a petition complaining of an undue return and claiming the seat for some person may lead evidence to prove that the election of such person was undue, and in such case such respondent shall, 6 days before the day appointed for trial, deliver to the Registrar of Court of Appeal, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, and the Registrar shall allow inspection of office copies of such lists to all parties concerned;and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the Court, upon such terms as to amendments of the list, postponement of the inquiry; and payment of costs, as may be ordered.

In *Peiris v. David Perera*[27], the Supreme Court held that in view of the time limit of 6 days prescribed in Election Petition Rules made under Ceylon (Parliamentary Elections) Order-in-Council, the Court could not give an opportunity for the respondent to file belated recriminatory objections against the candidate for whom the seat was claimed.

Amendment of the Petition.

The amendment of an election petition is governed by Section 99 (1) and Section 108 (2) of the Parliamentary Elections Act No. 1 of 1981. According to Section 99 (1), the Election Judge may, upon such terms as to costs or otherwise as he may deem fit, allow the particulars of any corrupt or illegal practice specified in an election petition to be amended or amplified in such manner as may in his opinion, be necessary for ensuring a fair or effective trial of the petition so however, that he shall not allow such amendment or amplification if it will result in the introduction of particulars of any corrupt or illegal practice not previously alleged in the petition.

Similarly, according to Section 108 (2), an election petition presented in due time may, for the purpose of questioning the return or the election upon an allegation of a corrupt or illegal practice be amended with the leave of the Election judge within the time within which an election petition questioning the return or the election upon that ground may be presented.

---

27 (1969) 72 NLR 232

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The scope of amendment of particulars relating to a charge in an election petition was discussed in *Pelpola v. Gunawardena*[28], where Windham J., held that in an election petition defects in the particulars relating to a charge may be amended if no prejudice has been caused to the respondent. When undue influence is alleged, the electoral numbers, in the register of the persons who were unduly influenced should be given in the particulars. Where, in the column setting out the persons said to have been unduly influenced, there was reference to persons whose names were set out in the corresponding particulars relating to general intimidation. It was held in this case that there was no objection to the names set out in those particulars relating to general intimidation being incorporated in the particulars relating to persons said to have been unduly influenced. It was held further in this case that so long as the individuals were mentioned by name the petitioner was entitled to endeavour to prove that certain persons being agents of the respondent committed certain acts of undue influence against other persons named or should the particulars be struck out by reason of the nature of the acts having been given in such terms as threatening, kicking and striking, particular act of undue influence to each particular person said to have committed undue influence.

In *Ponnambalam v. Kunasingham*[29], Weerasooriya J. after considering the law relating to amendment of election petitions came to the following conclusions :

(1) Where an election petition is sought to be amended by the addition of a new paragraph, the terms of which are set out in the application for leave to amend, the date of amendment of the original petition — for the purpose of determining whether it was amended within the time specified in Section 83 (2) of the Ceylon (Parliamentary Elections) Order-in-Council, is the date on which the application for leave to amend it is allowed by the judge. No further act on the part of the petitioner by way of amendment, is necessary.

(2) The validity of an order allowing an application for leave to amend an election petition cannot be questioned by the judge who subsequently tries the election petition.

---

28 (1948) 50 NLR 132

29 (1953) 55 NLR 418

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

(3) When an election petition is amended, the petitioner need not give security afresh in respect of the charges included in the original petition. The only fresh security, which he must give within 3 days after the amendment, is in respect of the additional charges.

The circumstances under which the court will not permit amendment of particulars in an election petition, was discussed in Romiel v. Senanayake[30], where Sansoni C.J. held that an order to amend particulars, is entirely within the discretion of the court and it will probably excuse errors such as occasional errors in the dates given etc., but if the number of errors in respect of dates alone is so large that court can only conclude that the petitioner has been either negligent or had deliberately sought to mislead the respondent and the court by supplying wrong information the petitioner cannot be allowed to amend them.

The scope of the discretion given to an Election Court to amend particulars was discussed in Herath v. Seneviratne[31], where towards the close of the case for the petitioner respondents, after some 10 dates of trial, counsel appearing for them moved, in consequence of a statement made by the respondent — appellant, during his cross-examination to amend the particulars by adding a new charge of making a false statement concerning the character of the opposing candidate. This amendment was allowed by the Election Judge without appreciating the gravity of the prejudice to the appellant which arose upon his being required to face a new charge of which he had no warning earlier.

H. N. G. Fernando, S.P.J., delivering the judgement of the Supreme Court held that Rule 5 of the Election Petition Rules, 1946, which provides that particulars may be ordered to prevent surprise and unnecessary expense, and to secure a fair and effectual trial" does not permit the Election Judge to admit a new particular which is substantially a new charge never contemplated in the original petition.

The question whether the allegation of fresh instances of corrupt or illegal practices can be permitted after the expiry of period prescribed for filing an election petition by way of amendment or amplification of

---

30 (1966) 68 NLR 255
31 (1967) 70 NLR 145

80134
Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

particulars came up for discussion in *Senaynayake v. de Silva*[32], where the petitioner, who was the unsuccessful candidate at an election held in May, 1970, challenged the validity of the election of the successful candidate (1st respondent) on the ground that the 1st respondent committed the corrupt practice of undue influence in contravention of sub section (4) and (1) of Section 56 of the Ceylon (Parliamentary Elections) Order-in-Council. When the petition was originally filed it contained only the charge, namely, the charge under Section 56 (4). It was only after the expiry of the period during which an election petition could be filed, that the charge under Section 56 (1), was added with the leave of the Election Judge, despite objections raised by the 1st respondent. The Election Judge allowed the application for amendment because he was of opinion that the facts alleged in the charge under Section 56 (4) constituted a corrupt practice not only under Section 56 (4), but also under Section 56 (1). At the end of the hearing of the petition the 1st respondent was found guilty only on the additional charge introduced by way of amendment.

There were also two charges against the 2nd and 3rd respondents as agents of the 1st respondent of having committed the illegal practice of using and/or hiring vehicles in contravention of Section 67 (3) of the Order-in-Council as amended by Act No. 9 of 1970. These charges too were held to have been proved.

The Supreme Court held that the Election Judge had no power to allow the application for the amendment of the election petition by the addition of a corrupt practice not already specified previously in the petition. There are essential differences between the elements that go to prove offence under Section 56 (4) of the Order-in-Council and those that are required to prove an offence under Section 56 (1). Section 80 (c) of the Order-in-Council as amended by Act No. 6 of 1970, must be interpreted in the light of the limitations prescribed in Section 83 (2). The word 'amendment' in Section 83 (2) has a meaning very different from that of the word amendment' in Section 80 (c.) Section 80 (c) (1) permits the Election Judge to allow the amendment or amplification of particulars, after the expiry of the period prescribed for filing an election petition, within a very limited area only.

---

32 (1972) 75 NLR 409

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In delivering the judgement the Supreme Court summarised the limits within which the particulars of an election petition can be amended as follows :

(1) The amendment must relate to a corrupt or illegal practice already specified in the petition.

(2) The amendment must be necessary in the opinion of the court for ensuring a fair and effective trial of the petition, and

(3) Even if the amendment proposed complies with these two requirements the court shall not allow such amendments if it will result in the introduction of particulars of any corrupt or illegal practice not previously alleged in the petition.

The third limitation is the most important of the three because while the first and second leave latitude to court, the third does not.

Amalgamation of Petitions.

The amalgamation of election petitions in Sri Lanka is governed by Rule 5 of Parliamentary Election Petitions Rules, 1981, which states that where more petitions than one are presented relating to the same election or return, all such petitions shall be dealt with as one petition, so far as the inquiry into the same is concerned. Even in the past the practice of Election Courts of this country was to amalgamate and try all the election petitions relating to the same electorate. eg. after the General Election of 1965, two petitions were filed against the successful candidate of electoral district No. 27, Bandaragama and they were amalgamated and tried together.

Withdrawal of an Election Petition.

Rules 20 and 21 of the Parliamentary Election Petition Rules 1981, govern the withdrawal of an election petition. Rules 20 provides :

(1) An election petition shall not be withdrawn without the leave of the Court; and such leave may be given upon such terms as to the payment of costs and otherwise as the Court may think fit.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

(2) Before leave for the withdrawal of an election petition is granted, there shall be produced affidavits as required by this rule by all the parties to the petition and their Attorneys-at-Law and by all the said parties who were candidates at the election; but the Court may on cause shown dispense with the affidavit of any particular person if it seems to the Court on special grounds to be just so to do.

(3) Each affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(4) The affidavits of the applicant and his Attorney-at-Law shall further state the ground on which the petition is sought to be withdrawn.

Rule 21 gives the form of application to withdraw an election petition. The same shall be signed by the petitioner or his agent.

As an election petition is a matter in which not only the petitioner but the whole electorate takes an interest where serious charges such as general intimidation, undue influence and contracts with the state have been made, it is necessary that some investigation should be made as regards the charges before an election petition can be permitted to be withdrawn[33]. In the English case of *Devonport*[34], where the petition charged the sitting Member with corrupt practices, the court adjourned an application to withdraw in the absence of full affidavits by the persons who had been sent by the petitioners to make inquiries as to the sufficiency of the evidence, the Public Prosecutor stating that he had no time to substantiate the result of these inquiries; the Public Prosecutor having in the interval satisfied himself by independent inquiries that there were good grounds for withdrawing the petition, the court allowed the withdrawal.

---

33 Per Nagalingam J., in Don Alexander v. Leo Fernando (1948) 49 NLR 202
34 (1886) 2 Times L. R. 345

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The failure to adduce evidence in an election petition cannot be treated as a case of an application to withdraw the petition according to *Duraiyappah v. Martin*[35], where an earlier case *Abraham Singho, v. Gunawardena*[36], in which Swan J. held that the functions of an Election Judge under our Order-in-Council are purely judicial, and that accordingly when no evidence is led on the charges the judge is not bound to proceed any further and must dismiss the petition, was followed.

In *William v. Premachandra*[37], Soertsz S.P.J., thought where a petitioner seeks to withdraw an election petition the court has power under Rule 21 of the Parliamentary Election Petition Rules 1946 to order the petitioner to pay, in addition to the costs of the respondents a sum of money on account of the time of public servants who had been occupied in dealing with the petition.

Substitution of Petitioners.

According to Rule 23 of the Parliamentary Election Petition Rules 1981, any person who might have been a petitioner in respect of the election to which the petition relates may, within 5 days after such notice is published by the petitioner, give notice in writing signed by him or on his behalf, to the Registrar of the Court of Appeal, of his intention to apply at the hearing to be substituted for the petitioner but the want of such notice shall not defeat such application, if in fact made at the hearing.

The time and place of hearing the application shall be fixed by the Court but shall not be less than a week after the application for leave to withdraw has been left at the office of the Registrar as herein before provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the Registrar of an intention to apply to be substituted as petitioners, and otherwise in such manner and such time as the Court directs.[38]

On hearing of the application for withdrawal any person who might have been a petitioner in respect of the election to which the petition relates, may apply to the Court to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition.[39]

---

35 (1971) 74 NLR 481
36 (1953) 54 NLR 546
37 (1947) 49 NLR 56
38 Rule 24 of Parliamentary Election Petition Rules, 1981.
39 Rule 25 (1) of Parliamentary Election Petition Rules, 1981.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The Court may if the Court thinks fit, substitute as a petitioner any such applicant as aforesaid, and may further, if the proposed withdrawal is in the opinion of the Court induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in such security the original petitioner shall be liable to pay the costs of the substituted petitioner[40].

Abatement of the Petition.

The death of a sole petitioner, or of the survivor of several petitioners, abates an election petition[41]. But the abatement of a petition shall not affect the liability of the petitioner, or any other person to the payment of costs previously incurred[42]. The death of a respondent however, does not abate a petition. Similarly an election petition is not abated by reason only of a dissolution of Parliament and accordingly in the event of such dissolution such petition shall be heard or continued to be heard, and determined as though Parliament had not been dissolved but was in session[43]. Similarly if before the trial of an election petition a respondent resigns, or gives notice in writing to the Court that he does not intend to oppose the petition, the petition will continue whether or not any person has applied to be admitted as respondent[44].

Special Features of an Election Inquiry.

An election petition inquiry is different from a criminal trial or an ordinary civil proceeding. As an election petition is a matter affecting the entire electorate the Legislature has provided for an expeditious trial in the statute itself. The Section 99 (2) of the Parliamentary Elections Act No. 1 of 1981, provides that :

> "Every election petition shall be tried as expeditiously as possible and every endeavour shall be made to conclude the trial of such petition within a period of six months after the date of the presentation of such petition. The Election Judge shall make his order deciding such petition without undue delay after the date of the conclusion of the trial of such petition".

---

40 Rule 25 (2) of the Parliamentary Election Petition Rules, 1981
41 Rule 27 of the Parliamentary Election Petition Rules, 1981
42 Rule 27 of the Parliamentary Election Petition Rules, 1981
43 Rule 26 of the Parliamentary Election Petition Rules, 1981
44 Rule 29 of the Parliamentary Election Petition Rules, 1981.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Even if there is an appeal to the Supreme Court against the determination of an Election Judge the Supreme Court shall, as far as practicable give priority to it over other business of the Court [45].

On the expiration of the time limited for making petitions, the petition is deemed to be at issue[46]. The place of trial of an election petition shall be in or as near as practicable to the electoral district to which the petition relates[47]. The time and place of each election petition shall be fixed by court and not less than 14 days notice thereof shall be given to the petitioner and respondent by letter directed to the address left by such petitioner or respondent with the Registrar of Court of Appeal or, if no such address has been left, by notice in the Gazette[48].

It is settled law that in matters relating to the summoning of witnesses and the admissibility of evidence, the law applicable to Civil Trials before a District Court should be followed in an Election Court. Sirimane J., in *Yasapala v. Munasinghe*[49], after considering Section 11 of the Civil Courts (Special Provisions) Act No. 43 of 1961, and Section 78 (A) 3 of the Ceylon (Parliamentary Elections) Order-in-Council, took the view that in such matters the law applicable to Civil Trials before a District Court should be followed in an Election Court, rather than the provisions of the Criminal Procedure Code.

In view of the peculiar nature of an election petition inquiry sometimes it might become necessary for the Election Judge to study the political back ground of the particular electorate to which the petition relates at the inquiry. In this context, in *Chelvanayakam v. Natesan*[50], K. D. de Silva J., said, "A brief survey of the political history of the Kankesanturai Constituency during a period of about 16 years immediately preceeding this election and the part played by the petitioner and the respondent in the political and the social life of the country, with particular reference to the Jaffna Peninsula, is helpful in understanding some issues of fact which arise in this case".

---

45 Section 102 (5) of Act No. 1 of 1981
46 Rule 15 of Parliamentary Election Petition Rules, 1981.
47 Section 94 of Act No. 1 of 1981.
48 Rule 17 of the Parliamentary Election Petition Rules, 1981
49 (1966) 70 C.L.W. 48
50 (1954) 56 NLR 251

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Striking of Votes at a Scrutiny.

The law relating to striking off of votes at a scrutiny is contained in Section 110 of the Parliamentary Elections Act No. 1 of 1981.

Section 110 provides :

(1) On a scrutiny at the trial of an election petition the following votes only shall be struck off, namely :—

(*a*) the vote of any person whose name was not on the register of electors assigned to the polling station at which the vote was recorded ;

(*b*) the vote of any person whose vote was procured by bribery, treating, or undue influence;

(*c*) the vote of any person who committed or procured the commission of personation at the election;

(*d*) where the election was a General Election, the vote of any person proved to have voted at such General Election in more than one electoral district;

(*e*) the vote of any person, who by reason of the operation of paragraphs (*e*), (*f*), (*g*), (*h*), (*i*) and (*j*) of Article 89 of the Constitution, was incapable of voting at the election;

(*f*) the vote of any person who, not being entitled to vote in person at the election by reason of sub section (1) of Section 26, voted in person at the election.

(2) The vote of a registered elector shall not except in the case specified in paragraph (*e*) of subsection (1), be struck off at a scrutiny by reason only of the voter not having been or not being qualified to have his name entered on the register of electors.

(3) On a scrutiny, any tendered vote proved to be a valid vote shall, on the application of any party to the petition, be added to the poll.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

KOHA-JPL

According to *Munasinghe v. Corea*[51], on a scrutiny the Election Judge is not entitled to add a tendered vote unless he is in a position to strike out the corresponding impersonated vote. Before a person can be issued a tendered ballot paper under Section 45 of the Ceylon (Parliamentary Elections) Order-in-Council 1946, that person must show that he is "a particular elector named in the register". Where there are two or more voters with identical names in the register and the address given is not descriptive enough to identify any one of such voters with one or other of the entries, it is not possible for any one of them to prove that he is a 'a particular elector', within the meaning of the section.

Determination and Report of Election Judge.

Section 100 and 101 of the Parliamentary Elections Act, govern the determination and the report of Election Judge as to corrupt or illegal practice. Section 100 provides :

"At the conclusion of the trial of an election petition the Election Judge shall determine whether the Member whose return or election is complained of, or any other and what person, was duly returned or elected, or whether the election was void, and shall certify such determination in writing.

Such certificate shall be kept in the custody of the Registrar of the Court of Appeal to be dealt with as hereinafter provided".

Section 101 Provides :

"At the conclusion of the trial of an election petition the Election Judge shall also make a report setting out —

(*a*) whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, or by his agent, and the nature of such corrupt or illegal practice, if any; and

(*b*) the names and descriptions of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice :

---

51 (1953) 56 NLR 265

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Provided, however, that before any person, not being a party to an election petition nor a candidate, is reported by an Election Judge under this section, the Election Judge shall give such person an opportunity of being heard and of giving and calling evidence to show why he should not be so reported.

Such report shall be kept in the custody of the Registrar of the Court of Appeal to be dealt with as hereinafter provided."

Relief which may be Claimed.

The different reliefs available to a petitioner of an election petition are as follows[52].

(1) A declaration that the election in respect of any electoral district is void.

(2) A declaration that the return of any person elected was undue.

(3) A declaration that any candidate was duly elected and ought to have been returned.

Recount of Votes.

Miscount of ballot papers is a sufficient ground, on which relief may be granted by way of a recount of votes. An inspection of ballot papers will be allowed for this purpose. In *Kaleel v. Themis*[53], Pulle J., held that miscount of ballot papers is a valid ground on which an Election Judge may grant relief under Section 80 (*b*) and 80 (*c*) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946. The provisions of sub-sections 1 to 5 of Section 49 and sub sections 7 and 8 of Section 48 do not necessarily point to the non-existence of a jurisdiction to order a recount of ballot papers. Similarly in *Kuruppu v. Hettiarachchi*[54], Canekeratne J., held that where a petition is one complaining of an undue return on the ground that on a proper counting the petitioner would have had a majority of lawful votes an inspection of ballot papers will be allowed. According to *Duraiappah v. Martin*[55], an application

52 Section 96 of the Parliamentary Elections Act No. 1 of 1981.
53 (1956) 58 NLR 396
54 (1948) 49 NLR 201
55 Supra

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

for a recount of votes will not be allowed by an Election Judge if the returning officer's evidence satisfies the judge that the original count was virtually a proper and a correct count. It would appear that there has been no case in England in which a court ordered a recount after two counts by a returning officer had shown an almost identical result.

A scrutiny differs from a recount in that a recount being only ordered when there has been no proper count according to law.

Awarding the Seat to a Defeated Candidate.

The question of awarding the disputed seat to a defeated candidate, where, the fact of disqualification of the winning candidate was well known came up for discussion in *Peiris v. David Perera,*[56] where the respondent had contested a seat in a Parliamentary election earlier and in consequence of a report sent by the Supreme Court to the Governor-General under Section 82 (c.) (2) (*b*) of the Ceylon (Parliamentary Elections) Order-in-Council, he became disqualified for a period of 7 years for being elected a Member of Parliament. Nevertheless, he contested the same again at the by-election held on 23rd September, 1967.

At the by-election the decision of the Supreme Court resulting in the disqualification of the respondent was made known to the whole electorate and was a matter of public notoriety in the constituency, but it was claimed on the respondent's behalf before the electorate that the decision was constitutionally invalid in law in view of a previous decision of Supreme Court in a different election petition appeal, viz. *Thambiayah v. Kulasingham*[57].

There were, apart from the respondent two other candidates at the by-election. The respondent secured the largest number of votes and was declared duly elected. In an election petition filed against him, his election was declared void. The appeal filed by him against the decision of the Election Judge was dismissed. In the election petition the petitioner had also asked for determination that the candidate who secured the second highest number of votes was duly elected and ought to be returned. When their claim was dismissed by the Election Judge they lodged this appeal. It was held by H. N. G. Fernando C.J. and

---

56 (1969) 72 NLR 232

57 (1948) 50 NLR 25

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Weeramantry J., (Sirimanne J. dissenting) that, in a Parliamentary election, vote cast by a voter with knowledge of the facts constituting a candidate's disqualification for election is a vote thrown away and should be treated as not cast. Therefore, in as much as the disqualification of the respondent was definite and certain and was known to the whole electorate prior to the date of the election, all the votes which were cast in favour of the respondent were wasted votes and the seat must be awarded, as claimed, to the candidate who was placed second at the poll. In such a case ignorance of the law does not excuse, and the existence of any uncertainty in the minds of voters in regard to the disqualifying legal effect of the known facts grounding the disqualification is not a ground for not awarding the seat to the candidate next at the poll. The English law on this subject is applicable in Ceylon by virtue of Section 86 (2), read with Section 80, 81 and 85 (1) (*f*) of the Parliamentary Elections Order-in-Council.

It was held further by H. N. G. Fernando C.J., and Weeramantry J. that the power of an Election Judge to determine that a candidate, other than the Member returned, was duly elected, may be exercised without resort to a scrutiny of votes in a case where there was either public notice to all the electors of the disqualification of the Member returned or where the disqualification or the facts causing it were notorious to all the electors. Accordingly, in this case, where the fact of the disqualification of the Member who was returned, was known not to some only of the voters but to all the voters, it was not necessary that the scrutiny of votes contemplated in Sections 80 (*d*) and 85 (1) (*f*) of the Order-in-Council should be actually held and that the invalid ballot papers should be physically rejected before the seat is awarded to the second candidate.

In holding that, the court overruled *Peiris v. Samaraweera*[57,A], where it was held that declaration of a defeated candidate as being duly elected, can be obtained only after a scrutiny at which certain votes cast in favour of the successful candidate have been struck off in one or more of the ways set out in (*c*) to (*f*) of Section 85 (1) of the Parliamentary Elections Order-in-Council and such scrutiny is therefore imperative whenever the relief set out in Section 80 (c) of the Order-in-Council is claimed on the ground of voters having cast their votes for a candidate whose disqualification was notorious.

A57 (1967) 71 NLR 250

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In this the fact that a report had been sent by the Appeal Court informing that a corrupt practice has been committed by the respondent was published on behalf of the petitioners during the election campaign. Therefore the voters must be presumed to have been aware of that fact. On the other hand the respondent gave much publicity to the judgement in *Thambiayah v. Kulasingham* and the voters were aware of that fact as well. The Appeal Court judges, who sent the report, were not required and did not express any view whether their report was an effective one. There was only one decision of the Supreme Court on that point, and that was Thambiayah's case. It was against this background the majority of the voters of that electorate voted for the respondent. The majority decision of the Supreme Court was that the votes cast for the respondent must be regarded as votes thrown away, because according to H. N. G. Fernando C.J. and Weeramantry J. in a Parliamentary election a vote cast by a voter with knowledge of the facts constituting a candidate's disqualification for election, is a vote thrown away and should be treated as not cast. Therefore according to H. N. G. Fernando J. in as much as the disqualification of the respondent was definite and certain and was known to the whole electorate prior to the date of the election, all the votes which were cast in favour of the respondent were wasted votes and the seat must be awarded as claimed to the candidate who was placed second at the poll.

Can it be said that the respondent who was relying on a decision of the highest court of the island namely the Supreme Court which was hitherto not overruled was subjected to a "*definite and certain*" disqualification in the minds of the average voter? It is respectfully submitted that there could have been uncertainties in the minds of a substantial number of voters as there was much propaganda on behalf of the respondent during the election campaign that the true position regarding the respondents' disqualification was governed by the Supreme Court decision in *Thambiayah's* case. Therefore it is respectfully submitted that it is unfair to assume that there was a 'definite and certain' disqualiication in the minds of all those who were relying on a judgement of the Supreme Court and voted for the respondent, as they had no knowledge at the time of the election that the law, as interpreted by the Supreme Court would be dissented from.

Election Petition Appeals.

An appeal to the Supreme Court lies against the determination of an Election Judge under Section 100 of the Parliamentary Elections

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Act No. 1 of 1981 or against any other decision or order of an Election Judge[58]. This is different from the earlier procedure where an appeal to the Supreme Court lay only on a question of law[59]. Any such appeal may be preferred, either by the petitioner or by the respondent in the election petition, before the expiry of a period of one month next succeeding the date of the determination or decision against which the appeal is preferred[60].

Notice of the filing of a petition of appeal, accompanied by a copy of the petition, shall, within 10 days of the filing thereof, be served by the appellant on the other party or each of the other parties to the election petition and on the Attorney-General. Such service on a party may be effected in any manner prescribed in the Parliamentary Election Petition Rules, 1981 [61].

Every appeal preferred under Section 102 of Act No. 1 of 1981, shall be heard by the Supreme Court in terms of Article 130 of the Constitution and shall, as far as practicable, be given priority over other business of that court. The court may give all such directions as it may consider necessary in relation to the hearing and disposal of each appeal.[62] The Attorney-General is entitled to appear or be represented in any election petition appeal[63]. According to Section 103 [64], at the time of filing of a petition of appeal or within 3 days afterwards, security for payment of all costs, charges and expenses that may become payable by the appellant shall be given on behalf of the appellant. The security which shall be given by a deposit of money is ten thousand rupees.

The powers of the Supreme Court in an election petition appeal are given in Section 104 [65]. They are :

(1) The Supreme Court may, affirm, vary or reverse the decision of the Election Judge.

---

58 Section 102 of the Act No. 1 of 1981
59 Section 82 A (1) of the Ceylon (Parliamentary Elections) Order-in-Council, 1964
60 Section 102 (2) of Act No. 1 of 1981
61 Section 102 (3) of the Act No. 1 of 1981
62 Section 102 (5) of Act No. 1 of 1981
63 Section 102 (6) of the Act No. 1 of 1981
64 Section 103 of the Act No. 1 of 1981

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

(2) Where the Supreme Court reverses the determination of the Election Judge, it shall decide whether the Member was duly returned or elected or whether the election was void, and a certificate of its decision shall be issued.

(3) The Supreme Court may order that the election petition shall be tried a new in its entirety or in regard to any matter specified by that court and give such directions in relation thereto as that court may think fit.

(4) The Supreme Court may, make any order as to the costs of the appeal and as to the costs of the election petition.

Referring to the appellate jurisdiction of the Supreme Court in election cases, Rose C.J., in *Remalingam v. Kumaraswamy*[66], said, "This court in the present context, must strictly confine its judicial functions within the sphere of the limited jurisdiction which it does possess, and cannot travel outside those limits in order to exercise over Election Judges some form of unregulated supervisory control.

According to *Subasinghe v. Jayalath*[67], when a conclusion drawn by an Election Judge from the relevant facts is not supported by legal evidence or is not rationally possible, it is liable to be set aside in appeal because such a wrongful inference on facts is a question of law that can be canvassed in an election petition appeal.

In dealing with the term 'question of law' in Section 82A of the Ceylon (Parliamentary Elections) Order-in-Council, the Supreme Court held in *Jayasena v. Illangaratne*[68], that the Supreme Court as an appellate court in election petitions will not interfere —

(1) unless inferences have been drawn on a consideration of inadmissible evidence or after excluding admissible evidence or

(2) if the inferences are unsupported by legal evidence or

(3) if the inferences are not rationally possible from the evidence or are perverse.

---

65 Section 104 of the Act No. 1 of 1981
66 (1953) 55 NLR 145 at 151
67 (1966) 69 NLR 121
68 (1969) 73 NLR 35

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Sirimanne J., in *Ahamed v. Aliyar Lebbe*[69], also thought that an Election Judge's inferences which are unsupported by evidence would raise a question of law giving a right of appeal.

The scope of the power of the Supreme Court to order a new trial in an election petition was discussed in *Daniel Appuhamy v. Illangaratne*[70], where Basnayake C.J., held that after the Section 82 (*b*) of the Ceylon (Parliamentary Elections) Order-in-Council was amended, it enabled the Supreme Court in an election petition to decide whether the Member whose return or election was complained of in the election petition, or any other and what person, was duly returned or elected or whether election was void or order that the election petition shall be tried anew. Accordingly, the Supreme Court ordered a new trial in that election peittion.

There were several attempts when the Ceylon (Parliamentary Elections) Order-in-Council was in operation to prefer a second appeal in election petitions, namely an appeal to the Privy Council. In one of those instances, in *Senanayake v. Navaratne*[71], the Privy Council held that where a party who is dissatisfied with the determination of an Election Judge prefers an appeal to the Supreme Court on a question of law under Section 82A of the Parliamentary Elections Order-in-Council, no appeal will be entertained by the Privy Council from the decision of the Supreme Court, even if the jurisdiction of the Election Judge to deal with the subject matter at issue is challenged.

Another unsuccessful attempt was made in 1972 to prefer an appeal from the decision of the Supreme Court of an election petition appeal to the Court of Appeal of Ceylon, then existed. In *de Silva v. Senanayake*[72] Fernando P. delivering the order of the Court of Appeal of Ceylon held that an Election Judge or the Supreme Court on appeal determining an election petition is not dealing with a civil cause or matter within the meaning of Section 81 (1) (D) of the Court of Appeal Act 44 of 1971 and accordingly an application does not lie to the Court of Appeal for leave to appeal against a decision of the Supreme Court in respect of an appeal from the judgement of an Election Judge in an election petition concerning a Parliamentary election.

---

69 (1969) 73 NLR 73
70 (1964) 66 NLR 97
71 (1954) 56 NLR 1
72 (1972) 75 NLR 265

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Before the introduction of the Parliamentary Elections Act No. 1 of 1981, the Supreme Court exercised its revisionary powers in election matters only in respect of a matter of law in the most exceptional cases only. For example in *Avissawella Election Petition of* 1977, the petitioner appealed to the Supreme Court against the High Court Judge's order overruling certain preliminary objections regarding insufficiency of security by way of a revision application. The Divisional Bench of the Supreme Court consisting of Samarawickrema J., Thamotheram J., Wanasundara J. and Colin Thome J., in allowing the revision application said, "we are not unmindful of the fact that election jurisdiction is a special one in which there is only a limited right of appeal on a matter of law. We think that this court should exercise its powers in revision only in respect of a matter of law in the most exceptional cases".

The position under the Parliamentary Elections Act No. 1 of 1983, however, is different because under Section 102 of the Act an appeal to the Supreme Court can be preferred against any decision or order of an Election Judge.

High Incidence of Election Petitions in Sri Lanka.

In Sri Lanka after the first General Election in 1947, there had been a large number of election petitions as seen from the following table—

General Election		*Number of Election Petitions*	*No. of Successful Election Petitions*
1947	..	19	3
1952	..	19	1
1956	..	04	1
1960 March	..	04	Nil
1960 July	..	13	Nil
1965	..	43	11
1970	..	08	02
1977	..	09	02

Moreover, after the first Presidential Election in 1982, there was an election petition, S.C. No. 3 of 1982. Again in 1983, 18 Parliamentary by-elections were held on the 18th of May and 9 election petitions were lodged at the Court of Appeal against 8 of those successful candidates.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The main reasons for the very high incidence of election petitions, is obviously the practice of various election offences by the candidates and their agents, including political parties. If one compares the the position in Sri Lanka with that of England, one will observe that elections were very corrupt in England in the 19th century and the early part of the 20th century. Accordingly there were a large number of election petitions in that era. However, mainly due to the development of highly organised political parties, in England elections are conducted without corrupt or illegal practices and for the past 60 years there were only a handful of disputed elections in England. If one considers that in England there are more than 600 seats in the House of Commons, the number of disputed elections in Sri Lanka, where the number of seats is comparatively few, the number of election petitions is very high.

Expediting the Election Petition Trials.

Even though election petitions and appeals should be given priority over other business of the Court of Appeal and the Supreme Court, it is very unfortunate that election petition trials have taken a very long time for the final determination. This can be illustrated by the contents of the following table.

Electorate	*Date of Filing Election Petition*	*Date of Final Disposal*	*Time Taken to Dispose Petition*
Kankesanturai	May 1952	July 1954	2 years and 2 months
Kandy	May 1952	June 1954	2 years and 1 month
Hewaheta	August 1960	August 1964	4 years
Balapitiya	April 1965	October 1968	3 years and 4 months
Kalawana	August 1977	November 1980	3 years and 3 months

To expedite the trials and appeals of election petitions one can obtain valuable information from the past election petitions. Even though there is a requirement that these inquiries must be given priority over the other business of the courts that provisions is not strictly implemented. Therefore Legislature must again pass an Act to clarify its intention in this regard. It is suggested that day to day proceedings must be adopted in election inquiries. A minimum time limit must be given to conclude the hearing of the petition. If necessary proceedings must continue on Saturdays, Sundays and other holidays.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

It has been the practice in this country in the election petition inquiries to raise a number of objections to the petition on more than one occasion for example, at the very outset inadequacy of the security can be taken as a preliminary objection and after the ruling on that objection and after a possible appeal on that objection if the petition is taken up for trial again, at that stage the same respondent is at liberty to take up another objection, for example misjoinder of parties. This is a very unsatisfactory state of affairs as each objection will delay the petition by a couple of months. It is also suggested that formal proof of documents must be dispensed with, where the parties agree. Unchallenged evidence can be led where the parties agree. Interrogatories and discovery of documents can be introduced subject to the overall control of the court.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

CHAPTER II

AGENCY

The question of agency is an issue that quite often arises in election petitions as a candidate could be made liable for the acts of his agent. On many occasions candidates have been made to pay the penalty for the deeds of persons whom the petitioners have been successful in establishing to be such candidates agents. The failure to prove agency would result in the candidate dissociating himself with the activities of such persons. Thus the question of agency could arise as a deciding point in an election petition. Dealing with this question Rogers states, that to conceal agency is to relieve the candidate from the consequences of corruption practised on his behalf[1]. It is therefore important to establish agency in an election petition as the failure to do so may result in the malpractices which may have been committed on behalf of a candidate being separated from the acts for which a candidate is responsible.

Who is an Agent.

The question as to who is an agent has arisen for adjudication in in our as well as English courts, and this question could said to be adequately dealt with in decided cases. The principles of agency have been defined by way of guidelines laid in order to identify an agent of a candidate. It is however admitted that the question of agency should be decided in the light of the facts of each case. It is important to note at this stage that in order to make a candidate liable for the activities of a person on the basis of agency it is not necessary to establish that the candidate had appointed such person as an agent. Agency for this purpose should not be confused with an authorised agent appointed under the election law. The definition of an agent for this purpose has been defined in quite a broad manner with a view to including within its scope various types of persons.

A person who is authorised or unauthorised to act as an agent may satisfy the requirements necessary to treat him as an agent of a candidate in order to make such candidate liable for the acts of such person. This has been clearly stated by Channell J., in the case of *Great Yarmouth*[2], in the following words:

---

1 Rogers on Elections, 20th Edition, Vol. II, p. 387

2 (1906) 5 O'M. & H. 198

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

"The law of agency in election matter has been very fully brought before us, and one thing which is quite clear — not only upon this question of agency but upon some of the other questions which with we have to deal — is that the ablest judges have always said that you cannot lay down definite rules applicable to all cases. But there are principles, and the substance of the principle of agency is that if a man is employed at an election to get you votes, or if, without being employed, he is authorised to get you votes, or if although neither employed no authorised, he does to your knowledge get you votes and you accept what he has done and adopt it, then he becomes a person for whose acts you are responsible in the sense that, if his acts have been of an illegal character, you cannot retain the benefit which those illegal acts have helped to procure for you".

The above words of Justice Channell, were cited with approval by Sirimanne J., in the Ceylon case of *Jayasena v. Illangaratne*[3]. It could thus be seen that the institution has been very broadly defined under the English law with a view to including all persons who in any way would have assisted a candidate to obtain votes at an election. Where however the petitioner cannot establish the fact that the candidate authorised or employed such person it would be essential to establish that the candidate was aware of the fact that such person was getting votes or in other words working with a view to have such candidate elected and that the candidate accepted it. A careful analysis of these words would show that either a direct or an indirect authorisation by the candidate would be an important matter in the establishment of agency.

Canvassers

Canvassing for a candidate would certainly be a circumstance which may lead a court of law to conclude that such person has acted within the scope of an agent in terms of the election law. In England however, the decisions of Election Committees on the question whether canvassing is proof of agency, are rendered of little use by the fact that in most, if not all of them, evidence was also given of payment by the alleged agent, for some of the election expenses; and it therefore is difficult to ascertain whether that fact, or the fact of canvassing, had most weight with the committee. Generally speaking it may be said that canvassing by authority, express, or implied of the candidate or his agents is usually sufficient to establish agency.

---

3 (1969) 73 NLR 40

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In the case of *Shrewsbury*[4], it was stated that agency is not established by merely showing that a person has gone about with a candidate and had canvassed. Channell B., delivering the judgement held that canvassing only affords premises from which a judge, discharging the functions of a jury may conclude that agency is established.

It should therefore be clear that by showing that a particular person merely canvassed for a candidate a petitioner cannot successfully discharge the burden of establishing agency. In fact it would be very dangerous to make a candidate responsible for the acts of a person who had merely gone with him or canvassed for him. It would be extremely important to establish a link between the person who had canvassed for the candidate to show that the candidate appreciated the service rendered to him by such person and that such person was directly or indirectly held out by a candidate to the general public as a person who is so connected with his election campaign. In order to establish this factor, the canvassing done by the particular individual on behalf of the candidate and the appreciation of it by the candidate would certainly be of considerable weight. In the case of *Norwich*[5], Martin B., referring to the issue of a canvasser being treated as an agent stated,

> "Mr. Justice Blackburn, Mr. Justice Willes and myself unanimously came to the conclusion that any person authorised to canvass was an agent".

A comparison of the words used in the case of *Norwich* with those used in the case of *Shrewsbury* would clearly show that in the former the court held that the canvasser was authorised by the candidate to canvass while in the latter it was a case of a person canvassing for the candidate and going about with him. It is absolutely clear that the judges in the case of *Shrewsbury* refused to accept that the evidence showed any express or implied authorisation by the candidate. Hence it was held that agency had not been proved.

Employees.

Persons employed by a candidate for the purpose of an election, depending on the circumstances and the purpose for which they have been

---

4 (1870) 2 O'M. & H. 36
5 (1869) 4 O'M. & H. 90

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

employed may or may not be an agent of the candidate in terms of the election law. In the case of *Windsor*[6], it was held that a messenger employed to carry cards from the polling booths to the committee room is, not an agent. Here it should be noted that the person is connected to the canuidate as he is directly employed by him. However, the purpose for which such person is employed, is also an important fact which has a bearing in deciding the issue of agency. It appears that the degree of responsibility reposed on a person by a candidate is a matter that governs the question of agency where such person is an employee employed by the candidate. In the case of *Hereford*[7], Justice Blackburn, analysed this position in the following words :

> "As you go lower down you require more distinctly to show that the act was done by a person whom the candidate would be responsible for. As you come higher up it is more as if the candidate had done it himself".

Justice Blackburn was here referring to the order of superiority of the employees. Thus a messenger or a peon though may under certain circumstances satisfy the requirement of agency, it would be a difficult task to establish that such a person did in fact act as an agent of the candidate. However, where the employee stands higher in the order, for example, where such a person is employed as a private secretary to the candidate the proof of agency would be more easy. To quote the words of Blackburn J., the action of such a person would appear to have been done by the candidate himself.

Newspapers as Agents

There have been instances where even editors of Newspapers have been held to be agents of candidates. Here too the main consideration would be the connecton of the Newspaper with the candidate. The petitioner should be able to show that the Newspaper was so linked with the candidate so that a reasonable person could consider the publication in the Newspaper to be directly or impliedly approved by the candidate concerned.

---

6 (1869) 1 O'M. & H. 3

7 (1869) 1 O'M. & H. 195

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In the Indian case of *Gandasing v. Rai*[8], it was proved that certain Newspapers carried on extensive propaganda for the respondent and against the petitioner and that the respondent purchased as many as 20,000 copies of various issues of those papers. It was held that the editors of the papers can be regarded as agents of the respondents, especially when the latter did nothing to dissociate himself with their scurrilous writings.

It is clear from this judgement that the failure of the candidate to dissociate himself with the writings has been considered important. Apparently the learned judges have thought it fit to construe the failure of the candidate to dissociate himself to mean implied approval. The evidence that the candidate purchased 20,000 copies of the Newspapers in question too may have influenced the judges in deciding that the Newspaper editors had acted as agents of the candidate.

In the Ceylon case of *Jayasena v. Illangaratne*[9], it was held that a petitioner cannot be successful in establishing agency, even by showing that the editor of the particular newspaper was a member of the political party to which the respondent belonged. In this case it was sought to establish that a newspaper acting as an agent of the respondent did commit the corrupt practice of making false statements at the election in question, regarding the personal conduct and the character of the opposing candidate. Court refused to accept the contention that the newspaper acted as an agent of the candidate on the basis that the newspaper was published for the purpose of helping the political party to which the respondent belongs.

Political Parties as Agents.

Under certain circumstances the question as to whether a political party or an organization could be considered an agent of a candidate may arise. In the area of election law pertaining to agency, this may arise as an important and an equally difficult question to answer. It is generally difficult to say as to what amount of participation in the actual conduct of an election by a political party would constitute its members agents of the candidate.

---

8 (1938) H. S. Doabia, Indian Election Cases Vol. II, p. 94
9 (1969) 73 NLR 35

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Vicarious Liability.

The relationship between a candidate and an agent is a matter of importance when one is confronted with the question of the degree of responsibility that should be imposed upon the candidate for the acts of the agent. In the case of *Norwich*[10], Martin B., delivering the judgement referred to the vicarious liability of a candidate for the acts of his agents, in the following words.

> "Mr. Justice Blackburn, Mr. Justice Willes and myself unanimously came to the conclusion that any person authorised to canvass was an agent, and does not signify whether he has been forbidden to bribe or not. If the candidate had told him 'honestly' do not bribe, if bribery was committed that bribery would affect him.
>
> .... The relation is more on the principle of master and servant than of principal and agent. It has been arrived at after full consideration, and it is a conclusion by which I am prepared to abide. A master is responsible for an act of negligence on the part of his servant notwithstanding the directions he may have given".

The important matter is that the relationship between the candidate and his agent has been described to be one of master and servant for the purpose of making a candidate liable for the actions of an agent. Martin B., has sought to describe the relationship as one of master and servant as he has expressed the opinion that instructions given by a candidate to an agent against the commission of corrupt practices would be no defence if the proof of agency has been successful.

It in fact is necessary that the law should act strict when deciding the question of responsibility that should be imposed upon a candidate for the actions of his agent. Though this may seem harsh it would be of importance as it is the agent who resorts to this sort of practices during an election. If this matter was construed leniently candidates may have the opportunity of reaping the benefit of the illegal practices of an agent and at the same time of escaping liability for such acts.

---

10 (1869) 1 O'M. & H. 9

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Justice Mellor referred to this matter in the case of *Barnstaple*[11] as follows :

"I quite think the election law is a cruel and somewhat hard law, yet it is too settled for an election judge to act contrary to it. I say that if an agent although he may be no agent to the candidate, be employed by the agent of a candidate, he is sort of a subordinate agent, and if he is employed by persons who have authority to employ people to further the election of a particular individual, and in the course of canvassing makes use of a threat or a promise, such an act will make the candidate liable, however innocent the candidate may be, or however careful the candidate may have been to avoid such conduct .... He cannot take the benefit of the services of the individual and repudiate them at the same time".

Though Justice Mellor, has expressed the opinion that the law is cruel in making a candidate responsible for the corrupt acts of an agent which acts the candidate had been careful to avoid, the effects upon the system of free elections would have been far more cruel had the law taken a mere lenient approach to this matter. It would have left us in a situation where an agent plays a dominant role in the election campaign acts corruptly with or without the connivance of a candidate, and yet the election of the candidate cannot be challenged, though the election of such candidate could be the direct result of the corrupt acts of his agent.

In the case of *Harwich*[12], Justice Lush approved the view that the relationship between a candidate and an agent is much more intimate than that of a principal and agent. In the words of Justice Lush,

"The relationship between a candidate and a person whom he constitute his agent is much more intimate than that which subsists between an ordinary principal and agent. The closest analogy is that of a sheriff and his under-sheriff and bailiffs. For, as regards the seat the candidate is responsible for all the misdeeds of his agent committed within the scope of his authority, although they were done against his express directions, and even in defiance of them".

---

11 (1874) 2 O'M. & H. 105
12 (1880) 3 O'M. & H. 69

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Thus it is clear that the relationship between a candidate and an agent is a broad and intimate one. It certainly is beyond the ordinary relationship of principal and agent where the question of vicarious liability arises. If this relationship was not defined in this strictly intimate manner it would have resulted in the many corrupt practices committed on behalf of a candidate been disregarded and ignored which would have in effect destroyed the very foundation of filing election petitions.

Rogers[13] seeking to distinguish between the principle of legal agency from that of election agency expresses his opinion as to the distinction in the following words :

> "It is obvious that the principles of legal agency, derived as they are from the transactions of private life, cannot be applied with strictness to cases of electioneering agency. A candidate at an election professedly seeks an office of trust for the benefit of the public: the public therefore, is the party mainly interested, nor is it too much to require that, in seeking to obtain such an office, the candidate should employ trustworthy agents and become responsible for their conduct. Besides, it is not to be expected that any express directions to bribe, treat or unduly influence electors, or any distinct recognitions of such acts if done — such as would be required in an ordinary inquiry before a court of law could usually be brought home to candidates. If the principles of agency, therefore, held by courts of law were not relaxed in the consideration of election petitions, the very object of the inquiry would be defeated".

As it is correctly pointed out by Rogers, it is the public interest that demands a relaxed definition of the relationship between the agent and the candidate. In the absence of such relaxation it would be open to candidates to use their agents for the commission of corrupt practices with impunity.

Traitorous Agent

It is settled law both in England and in Sri Lanka that a candidate is not responsible for the acts of an agent who does a corrupt act with a view to betray him. The English case *Stafford*[14] was followed in *Perera*

---

13 Rogers on Elections, Vol. II, p. 388
14 (1869) 1 O'M. & H. 230

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

v. Jayewerdena[15] on this point. In *Perera v. Jayewardene* there was evidence that a certain Libellous pamphlet, attacking the respondent's opponent was distributed from a car by one Fonseka. But the circumstances under which the distribution had taken place according to Windham J. in particular the throwing out of the pamphlets in full view of three uniformed policemen, and stopping of the car although it was not challenged, by themselves raised more than a suspicion that Fonseka was deliberately asking to be apprehended by the police for distributing from a moving car. Accordingly the court came to the conclusion that the circumstances of its distribution give rise to such a suspicion that Fonseka distributed them with a view to betray the respondent. Hence the court held that it would be quite unsafe and improper to allow the petition to succeed on that ground.

Proof of Agency

The method by which agency could be established and the degree of proof necessary have been considered in many decided cases. No doubt the question of agency has to be proved in the light of the facts and circumstances of each case. It would not be easy to lay down a general guide line regarding this matter. Generally it is considered sufficient if the fact of agency is established by circumstances arising out of the general features of the case, the conduct or connection of the parties, the subsequent recognition of the acts of the supposed agent, or at least the absence of any disapproval of such acts. And it is usually proved by inferences from a variety of facts, each of which taken singly, may not furnish any conclusive or even material evidence against the party accused, but the total of which combine to establish to the satisfaction of court the connection between the candidate and the alleged agent.

The degree of proof necessary to prove agency has been held to be the proof beyond reasonable doubt. In the Kalawana Election Petition[16]. Abdul Cader J., cited with approval the following passage of the judgement of Justice Meller in the ***Bolton*** case.

> "There is nothing more difficult or more delicate than the question of agency, but if there be evidence which might satisfy a judge, and if he be conscientiously satisfied that the man was employed to canvass, then it must be held that his act bind his principal".

---

15 (1948) 49 NLR 241
16 Muttetuwegama v. Pilapitiya — (1981)Elections Petition No. 5 of 1977

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Justice Abdul Cader in the course of his judgement has stated that the proof that is neccsssary to establish agency was the proof beyond reasonable doubt.

In the case of *Premasinghe v. Bandara*[17], it was argued on behalf of the petitioner that the standard of proof necessary to establish agency is not as heavy as that required to establish substantive charges of election offences. This argument was made on the strength of the judgement of Sri Skandarajah J., in the Balangoda Election Petition inquiry. In this case Sri Skandarajah J. expressed the view that though the other elements of a charge should be established by the petitioner beyond reasonable doubt, he need not do so in regard to agency. Sri Skandarajah J. sought to justify this proposition on the basis that quite often efforts were made to conceal agency and that it was therefore very difficult for a petitioner to establish agency at an election petition inquiry. In the circumstances it was the view of the learned judge that the courts of law should be more lenient regarding the proof of agency.

G. P. A. Silva J., however did not agree with this position. Referring to the proposition laid down by Sri Skandarajah, J, G. P. A. Silva J., stated :

> "While I am prepared to agree that agency must be given a very wide meaning in election law, and not a restrictive meaning in the sense that agency may be proved by surrounding circumstances and not necessarily by an express appointment, with all deference to my brother, I am disinclined to relax the requirement as to the degree of proof even in the case of agency. For agency is as much an essential element of the offence as any other when the charge is that a candidate through his agent committed an election offence. It would therefore be illogical consistently with the view I have formed, for a court which insists on the proof of an election offence beyond reasonable doubt to be satisfied with a lower standard of proof in respect of one of the essential ingredients. If I may draw an analogy from a trial of a criminal offence, the vicarious liability sought to be established in an election case against a respondent to a petition through an agent is similar to such liability being brought home to an accused on the footing of a common intention or through an unlawful assembly or conspiracy charge with others. In any one

---

17 (1966) 69 NLR 155

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

of these cases the element that would establish vicarious liability should be proved beyond reasonable doubt in the same way as the other ingredients that would establish the substantive offence with which the accused are charged. I therefore hold that the allegation of agency too must be proved by a petitioner beyond reasonable doubt".

Justice G. P. A. Silva has dealt with this question on the basis that agency is also an essential ingredient necessary to impose liability on the candidate. He has therefore expressed the view that there is no justification in relaxing the degree of proof in respect of one ingredient while the degree of proof in respect of the other ingredients remain at a higher standard.

The proof of agency being the foundation of the imposition of liability, it appears to be reasonable that courts of law should be careful before deciding on the question of agency. The proof of agency in an election petition could well result in an elected member losing his seat in the Legislature of the country. It could also result in the loss of civic rights of a candidate for the actions of another person. In the circumstances it undoubtedly is fair, that the law should require a very high standard of proof before deciding to accept agency. This is perhaps the basis upon which the law expects agency to be proved beyond reasonable doubt, as in criminal cases.

On the other hand, as stated by Justice Sri Skandarajah efforts are made more often than not to conceal agency and thereby repudiate the actions of a third person. The law however, cannot move any further to assist the petitioner in an election petition by relaxing the degree of proof necessary as the consequences a person would have to face on the successful proof of agency are serious. In any event the law has specifically laid down that where agency has been proved, the fact that the agent has acted without the consent of the candidate, or in defiance of his instruction would be no excuse. The basis of this construction is to help an innocent petitioner from the acts of a candidate who seeks to repudiate the acts of the agent by establishing that the corrupt acts were committed without his consent. Where the consequence a person has to face are of a serious nature it does not seem fair to relax the law any further from what it is at present.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

EPILOGUE

The law governing elections in Sri Lanka has taken giant strides during the past few decades. Since independence, though there has been a constant development in the law relating to this field, never has it taken so significant changes as those we have experienced during the past few years.

We have experienced, the Constitution of this country change twice within the course of mere 7 years. The present Constitution has been amended nine times. The introduction of the constitutional system of the referendum has also been done. All those matters would only total up to show, that the country in its process of rapid development, both socially and politically has adjusted its constitutional system to equip itself to successfully avert the obstacles it may confront.

In this work in the areas of the development of the elective principle, election offences and election inquiries in the field of Parliamentary election law in Sri Lanka, it is nothing but fit to give some thought to the recent developments in the law, discussing the difficulties that are likely to arise as they are seen by us. Making predictions regarding how effective the new provisions would be of academic interest. It is sought to deal with a few aspects of the recent developments in the election law with a degree of critical analysis in view of situations that may arise in future.

The Present Law Governing Elections and the Future

It has been of utmost importance to carefully analyse the present law governing elections, with a view to suggesting any amendments by way of safeguards to the holding of free elections. During the past too, it was natural for parties which lost elections to make statements alleging that the elections were undemocratic, where people were unable to exercise their franchise freely. It does not seem an exaggeration to state that such allegations have increased to a considerable degree during the recent times. We have seen occasions where political parties publicly condemned certain actions of the governing party during the recent Presidential Elections and also the Referendum. It is not our desire to go into the allegations made in order to express an opinion as to whether such allegation are well or ill founded. However, it is important to give thought to the factors that may have left room for different political parties to express such opinion.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

It would not be forgotten that the United National Party, as an opposition political party which contested the by-election for the Dedigama seat in 1973, critically condemned the attitude of the then governing party at such election. Today the United National Party is at the receiving end when similar criticism is levelled by opposition parties of the day. If thuggerism is practised by a political party it would hardly be necessary to say that such practice would be in violation of the fundamental principles of democracy and of the provisions of the election law. On such occasions it would be the duty of the law officers of the country to take the necessary steps irrespective of any party allegiances. However the situation arises where it is alleged that the governmental powers were used to set the forces of thuggerism in motion. In such a situation the law officers of a country however efficient they may be would be helpless as the governmental forces would directly prevent them in being impartial in the performance of their duty.

Reference to this matter is of importance as the allegations earlier referred to have always been against the governing party. At the Dedigama by-election of 1973, it was alleged that the law officers turned a blind eye to what was happening in contravention of the provisions of the election law. Recently allegations were made that law officers were not performing their duty as some of the officers appeared to be interested in the results of the election.

What then is the solution to this grave problem? Can any provision help in the eradication of this type of thuggerism? In my opinion no provision in the election law could help to overcome this problem. No stern measures could eradicate this so long as the law officers and the governmental forces are undemocratic. The solution may however be available in two ways. Namely :

(1) The appointment of law officers who are unbiased, who are free of any political ideologies, with full assurance to be free of any political interference. An independent body or force is meant by this.

It would no doubt be an extremely difficult task to make such a force available. Some may even go to the extent of calling this an unpragmatic or unrealistic solution. However it does not appear to be difficult to assure them impunity of political interference in the performance of their duty. Such an assurance would undoubtedly be an

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

incentive to the performance of their duty impartially. Until this objective is achieved it would be difficult to expect, the law officers however honourable they may be to be impartial in the performance of their duty, specially at an election where they come in direct conflict with the governmental forces. It could be suggested to make the law officers completely independent as far as possible. Their promotions and transfers could be entrusted to a body which does not come under any ministry. The body could be made one free of any political influences.

(2) The second factor which would immensely help in the eradication of undue influence is to politically educate the people of the country. It is certainly pathetic, to state that most of the electors of our country do not appear to understand the gravity of the franchise, though they exercise it and have exercised it at many elections. For most of them this appears to be an occasion to rejoice themselves. They do not seem to understand that the right they exercise is something we have achieved after long struggles and that it is something that is too precious to lose. If the people are educated politically the law officers as well as the electors who would be more learned where their political rights are concerned would be more careful and would more appreciate the franchise which would tremendously help in the eradication of undue influences at elections. It would therefore be important to follow the more developed countries in introducing this education at the primary school itself. It would be necessary to educate the children of our country as to the holding of elections and the right an elector exercises. Where every elector of a country has such an education as a base or a foundation it would not be difficult to create a mass opposition to undue influence in such a society. Thus a situation would someday arise where the society would intelligently refuse to surrender their rights to a handful of thugs or the influence of governmental power.

Just as equal as the above mentioned factors would be a democratic leadership in order to save an election from undue influences referred to above. If the leaders of political parties do not only preach, but seriously practice the democratic principles, and firmly condemn within their parties the usage of undue influences at elections it is clear that elections would be pure. Even if all the above stated requirements are achieved, it could help little to assure a free and democratic election in the absence of political parties which are truly wedded to democracy.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

If it is the view of a political party that an election should be won at the expense of anything nothing could pose a more serious blow to the holding of free elections.

Recently many political leaders were quoted to have said that certain seats should be won at whatever cost. They were also reported to have said that certain seats should be won even if all other seats were lost. What does this in simple language mean? Does not it encourage the uneducated party supporters to resort to undemocratic methods in order to achieve their leaders desired objective? All these only go to show that the root cause of all these anti democratic elements would be found connected to the desire to see their party in power. I would therefore make bold to say, that if all parties with their leadership make a bold and genuine effort to assure elections free from violence, its achievement would not be an impossible task. It is regrettable to state that such genuine efforts are quite rare.

Where such allegations are levelled against a party in power, it would not be a solution to remind such opposition parties of the past and to state that they too were responsible for such acts in the past. The only intelligent course of action would be to take steps to stop such actions by ones own party members. It is strange to note that no party has so far taken disciplinary action against any of its members for practicing violence at elections.

As stated earlier, an independent force of law officers, along with politically educated electors supported by genuinely democratic political parties could only eradicate influence at elections. It is uncertain whether we would some day achieve this goal. We do not seem to be any closer to this goal from where we were in the early days of franchise. In fact it would not be incorrect to say that we have taken a few steps to reverse during the past few decades.

This statement find support in the appointment of a select committee to consider the present election law of the country. A motion has been moved in Parliament for the appointment of a select committee to examine the present election law with a view to making recommendations for the necessary amendments. The governmental sources have condemned the actions of an opposition candidate at the recent Mahara by-election. They have sought the appointment of a select committee to thoroughly examine this question. It is needless to say that the Mahara

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

by-election which the government party won by a majority of 45 votes, could be safely labelled the most controversial by-election during recent times. Its results and the actions of the chief opposition candidate has necessitated the appointment of a Parliamentary select committee. The opposition too has filed 2 election petitions challenging the election of the government party. All this support the position that under the present law there is ample opportunity for interested parties to exercise their powers to affect a Parliamentary election. The legislature of the country has accepted this position in no uncertain terms and has approved the appointment of a select committee to go into this matter which is a matter of national importance.

It is not up to us to express any opinion about the appointment of a select committee at this stage. Nor would it be appropriate to predict the outcome of the select committee. It is best to wait and see what salutary impact it could have on the law governing the holding of election in our country. It would however in our opinion be of use to give some thought to the matters referred to earlier as the guide lines which would form the foundation which would ensure the effective functioning of the election law of this country.

Some Suggestions to Curb Personation.

Impersonation has increased to a surprising degree during the past few years. At least the number of allegations made in this connection has received a stunning proportion during the past few years. Candidates have even gone to the extent of alleging mass impersonation. Under the present law, it should be noted that there is no provision which empowers a presiding officer at a polling station to refuse a ballot paper to a person whose identity is challenged by the polling agent of an opposing candidate. All that the presiding officer could do is to request such person to make a declaration certifying that he is the person in whose name he has applied for a ballot paper. Where such a declaration is signed, the presiding officer cannot refuse to issue a ballot paper.

This in a way is not an unfair provision, as it is the duty of the state to assure that each persons right to exercise his franchise is secure. However the question arises as to why, a presiding officer cannot be empowered to question a person and decide as to whether he is the person whose name appears on the Electoral list This though appear to be a reasonable method, it should be admitted that such a power would certainly be

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

a very wide one. If such powers are granted there should then be the necessary safeguards to prevent its abuse. If a presiding officer makes an incorrect decision it would be a very serious matter. This becomes dangerous as the presiding officer who could be a person who is a total stranger to the areas is required to take a decision on questioning a person who claims to be the person whose name appears on the electoral list.

During the recent by-elections and the referendum the allegation was made that the polling agents of certain candidates and political parties were not allowed to be present at the time of the poll. Some stated that threats were made to cause harm to certain polling agents and therefore they could not be present at the time of the poll. Another allegation was that election agents of certain candidates were arrested during the crucial time when their presence was necessary at the polling station and thereby facilitating the impersonation campaign on behalf of the opposite candidate.

If the allegations made in this connection are well founded it is regrettable that the provisions of the Elections Act directed towards countering personation have been proved to be ineffective where the co-operation of the law officers is not available. The Election Act provide for the appointment of election agents by candidates and the Referendum Act provides for the appointment of polling agents of political parties. The main reason for the appointment of polling agents is to make sure that candidates are given an opportunity to counter any campaign that may have been organised by a candidate. For this purpose, usually candidates select persons who are from the area, and persons to whom generally the people of the area are known. In my view this provision has not been able to effectively tackle the problem which it was intended to meet. It would be useless to appoint polling agents under the circumstances that are believed to be prevailing. Provision could be made for the appointment of polling agents, who could be mere observers. They should be present at the station to represent the candidate and to act for the candidate whenever it becomes necessary to do so. In my opinion a government officer who is an independent person should be appointed to each polling station to perform the functions of the polling agent. For this purpose a person such as the Grama Sevaka is a government officer who takes an active part in the preparation of the electoral lists. He is a person who is expected to meet the persons in his area, and he is supposed to know each person in his area. Moreover where a person is detected in the act of personation a declaration is

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

obtained from the Grama Sevaka from the area certifying that he knows the person whose name appears on the electoral list and that the person who has made an application for a ballot paper in that name, is not such person. In these circumstances there cannot be any difficulty in appointing a person such as the Grama Sevaka of the area to be present during the poll. The Grama Sevaka would be a person who could authoritatively speak to the identity of each person in his area. Provision could be made to make the presence of the Grama Sevaka essential for the commencement of the poll. This could beat the actions of undemocratic persons directed towards keeping away polling agents to achieve the successful completion of their impersonation campaigns.

For this particular purpose, persons could be appointed by the Commissioner of Elections who would be in charge of the preparation of electors lists during each election. Such persons could function as polling agents in each polling station. This would amount to the appointment of independent polling agents who would also be officers of the government. This should to a appreciable degree counter the mass personation movements.

It is also known that certain political parties face the difficulty of appointing polling agents for all the polling stations. The recently elected M.P. for Mulkirigala in an interview with the 'Diwaina' paper had stated, that an allegation had been levelled against them by the defeated candidate to the effect that in a certain polling station where the defeated political party had no polling agent, there had been impersonation. The M.P. while denying this allegation had stated that the failure to appoint polling agents to all the polling stations only showed that the party organisation in the electorate was weak. What is important here is that political parties do genuinely face the difficulty of appointing agents to all the polling stations of the electorate. In such circumstances it would only be natural that one could suspect impersonation. Would not therefore the appointment of independent polling agents such as the Grama Sevaka of the area be a solution to this problem? The question of the absence of a polling agent would not arise as the presence of the independent polling agent could be made part of his official duty just as the presence of the polling agent or the polling clerk is essential.

In conclusion I do earnestly suggest that serious consideration be paid to the question of doing away with the system of polling agents appointed by candidates, whose main function was to object to likely

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

OHA
PL

impersonators. It is not suggested to completely do away with polling agents appointed by candidates. They too could function as observers as stated earlier.

Identity Cards for Electors

Under the present law of Sri Lanka every adult person is required to obtain a national identity card. Any provision in the Election Act empowering the presiding officer at a polling station to request the production of the national identity card before the issue of a ballot paper, under the present circumstances would be most welcome. This would not be an unreasonable provision as the law already provides that all adult persons should obtain a national identity card. This cannot incur an extra expenditure as even otherwise the Government provides all persons with identity cards.

Mr. Lakshman Jayakody the M. P. for Attanagalla in giving notice to move a motion in Parliament calling for the appointment of a select committee to review the present laws governing Parliamentary Elections has made special mention of the failure of the provisions of the Parliamentary Elections Act to combat impersonation successfully. He too has suggested the introduction of provision to enable the presiding officer to demand the production of the national identity card of a voter who makes an application for a ballot paper.

The Referendum

Chapter 13 of the Constitution has introduced the referendum to our constitutional system. This being the first time this provision has been introduced in our country a careful study of it is necessary. It is not our desire to discuss the various implications of the referendum or to express an opinion as to the desirability of its introduction. It would only be sufficient for our purposes to consider how effectively a referendum could be held under the present law, with some emphasis on the referendum which has already being held in this country.

The referendum is held to give an opportunity to the people of the country to approve or disapprove certain legislation introduced by the Legislature. This is an occasion when the people exericise their legislative powers directly. A referendum was described as further step towards expanding the democratic rights of the people as they are given a direct hand in exercising the legislative powers on certain instances.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

In the light of all these matters a referendum would be of tremendous importance specially when it is used for the purpose for which it was used in this country in December, 1982. The first ever referendum was held in this country to obtain the approval of the people to a bill passed by Parliament extending its term of office by six more years. The propriety of such a course of action does not warrant comment, however the way in which a referendum which was held to decide such an important issue is worthy of consideration.

KOHA JPL

Where a referendum is held by a governing party to extend its term of parliament by way of a referendum specially by a party which has 5/6th majority in parliament, it is obvious that the opposition parties would have to face the disadvantage of the governmental forces being used to the maximum against them. The referendum of 1982, clearly showed that there could be a tendency towards the violation of election laws under such situations. Though the Referendum Act specifically prohibits the exposition of symbols, it is hardly necessary to say that this regulation was violated to such a degree that one would have for a moment felt as to whether there was any provision prohibiting the exposition of symbols during a referendum. The exposition of symbols was one so daringly and the law officers appeared to be hopelessly helpless in countering this exposition and bringing the offenders to book.

Immediately after the referendum which the Government won handsomely it would be remembered that all the opposition parties made a joint statement condemning the actions of the law officers during the election. They also alleged mass impersonation during the referendum. What more could they have done after the conclusion of the referendum? Under the Referendum Act individual persons could be dealt with for the commission of corrupt or illegal acts. But the absence of any provision to contest the referendum, or to challenge the referendum becomes vital where a referendum is used for the purpose for which it was used in 1982.

Dr. N. M. Perera, referring to the introduction of the referendum to our constitutional system attempted to discuss its desirability in the light of the political maturity of our people, in the following words :

"How much more cautious have we to be in resorting to the referendum in a politically not so advanced country like Sri Lanka? We can apply the flattering action to our soul and pretend how politically mature we are because our people have with uncanny instinct

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

thrown out since 1956 with clock work regularity every government that was in office and replaced it by another at the general election. But this very violent swing from one to the other is a sign of doubtful maturity"[1].

If the changing of governments could be considered a sign of political immaturity, one would tend to think as to whether the constitutional system of referendum has been successfully used to meet this situation. When the above words were written those who agreed with it would not have possibly thought that the very referendum which Dr. N. M. Perera refers to would be ever used to extend the life time of the existing Parliament which has made the re-election of a party in power for another term of office for the first time after 1952.

The Proportional Representation System and its Future

Though the people of Sri Lanka were due to experience a general election under the proportional representation system in the year 1983, it is most unfortunate that this dream has been postponed by a further 6 years by the approval received from the people to an Act passed by the very Parliament which introduced it. Though it was the view of the present government that the earlier system was undemocratic as the number in Parliament was never proportionate to the number of votes polled by a party where elections were held under the previous system, it is surprising why it chose to extend the life of a Parliament, where the number in Parliament from each political party is strikingly improportionate to the number of votes polled by each party. The only argument that was put forward to explain this position was that certain undemocratic persons who were labelled the Naxalites would have entered Parliament if an election was held under the Proportional Representation System. It was stated that the main idea of extending the life of Parliament and freezing the present proportion of members each party was to prevent the Naxalites entering Parliament.

It must be said with all due respect that this argument would be highly irreconciliable with the principles of democracy. Even if a section is well known to be highly undemocratic elements would not they have a right to enter the legislature of the country if they could democratically obtain the required number of votes in order to enter Parliament.? If on the other hand it is clear that a party which the governing party

---

1 Perera N. M. Critical Analysis of the New Constitution of Sri Lanka 1978 p· 75

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

fears as an anti democratic party would capture power if a general election is held, is it a democratic measure to do away with elections? In the circumstances it is hardly necessary to state that the argument of those who introduced the proportional representation system to explain the reason for the postponement of an election under the system is far from satisfactory.

There has also been a sort of a deviation from the proportional representation system by the fifth amendment to the Constitution. The earlier provision was for the Secretary of a political party to inform the Commissioner of Elections of the name of the nominee of his party to fill a vacancy to a seat in Parliament which was held by a member of such political party before it fell vacant. The fifth amendment to the Constitution which amended Article 161 of the Constitution provided that such notice should be sent to the Commissioner of Elections within 30 days of the Secretary of the political party being required to do so. In simple words under the present provision where the vacancy of a Parliamentary seat has been brought to the notice of the Secretary of the political party to which such seat belonged, it would be the duty of the party Secretary to inform the name of the party nominee within 30 days of the receipt of that notice. Where no such person has been nominated the Commissioner of Elections is required to inform of this situation to the notice of the President who in turn would direct the Commissioner of Elections to hold a by-election in respect of such electorate.

This could be described an amendment which was long overdue. Under the earlier provision if a political party decided to direct all the members of Parliament belonging to such party to resign their seats in protest of some issue, there was no provision to fill such vacant seats. The need for this provision was much felt when the Attanagalle seat in Parliament fell vacant due to Mrs. Bandaranaike losing her civic rights. On that occasion the Sri Lanka Freedom party due to some internal problem failed to fill the vacancy for a considerable period of time. The people of Attanagalle were unrepresented in Parliament unduly due to this situation. However, in the absence of any provision to meet this situation the Government could not take any action.

It could now be seen that such a situation could successfully be countered by the provision introduced by the 5th amendment. Therefore, it would be justified to call this provision a provision long overdue.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

It is equally necessary to state that the 5th amendment which should have been introduced immediately after the Attanagalle crisis, was introduced long afterwards and for a purpose which is far from the need it caters to. The 5th amendment was introduced for the Government to hold by-elections in 18 seats where they had not faired well at the Presidential Election and the Referendum of 1982. As a result of this provision the Government could hold by-elections and the provision was intended to give an option to a political party to have a by-election or to nominate a Member of Parliament. It is very unlikely that any party would opt to face a by-election where it could easily nominate a member. The present Government too would not have sought to hold by-elections if they did not have such a handsome majority in Parliament. It is clear that the Government decided to hold by-elections in a position where even a defeat at all the eighteen by-elections would not have affected the power enjoyed by the government in Parliament in any way.

This provision therefore could said to have been introduced with a specific purpose in mind. It appears to be an occasion where the proportional representation system has been abandoned even by a slight degree. However, it is highly unlikely that any party would use this provision in future, for the purpose for which it was introduced.

The position is now clear that Sri Lanka cannot hope to experience a general election held under the proportional representation system until at least 1989. Though it may seem premature to discuss the various problems which may arise at an election conducted on a proportional representation basis, before the effect of the system is tested at a general election, it would undoubtedly be of some use to address one's mind to the problems which have since arisen and those which are very likely to arise as a result of the introduction of this system.

One of the main problems which may arise would relate to vitiating an election of member of Parliament on the ground of illegal or corrupt practices. When considering this issue it would be helpful for us to note that under the new system an election is fought as a team. The popularity or the efficiency of a candidate would ultimately be beneficial to the team of candidates of the political party or the independent group as the case may be. In fact one reason for the introduction of this system was described as a method for discouraging individual persons without a backing from a political party from standing for elections.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The question that one has to carefully consider is as to whether the collectiveness with which an election was fought would be taken into account when deciding the question of unseating a member who would be elected under the proportional representation system.

Section 91 of the Parliamentary Elections Act provides :

"The election of a candidate as a member is avoided by his conviction for any corrupt or illegal practice".

The above provision deals with a situation where an individual member is found guilty of a corrupt or illegal practice. The basis on which the election of the member is avoided is that he had been found guilty of a corrupt or illegal practice committed during the election. At this stage it is important that we be careful enough, not to lose sight of the fact that the candidate whose election is to be avoided has been a member of a team which may well have reaped the benefits of the actions of the candidate whose election has been avoided. On such an occasion it is absolutely clear, that the member who was proved to have committed a corrupt or illegal practice would have done so for the benefit of his political party or the independent group, of which he was a member. Therefore, it would not be possible to isolate the action of a particular member from the group to which he belongs if there is evidence of a sufficient influence or pressure exerted on the results of the election by the the illegal or corrupt practices of the member who was found guilty. In such a situation the group which had obtained the benefits of the illegal practices of a member would be unaffected while the particular member who was proved to have committed the prohibited practice would lose his seat in Parliament.

The Parliamentary Elections Act No. 1 of 1981 also makes provision for the avoidance of an election of a whole electoral district. Similar provision was not found in the previous Ceylon (Parliamentary Elections) Order-in-Council of 1946, as the question of avoiding the election of a whole electoral district did not arise under that law.

Section 92 (1) of the Parliamentary Elections Act No. 1 of 1981, provides as follows :

"The election in respect of any electoral district shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the election Judge, namely :

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

(*a*) that by reason of general bribery, general treating or general intimidation or other misconduct or other circumstances whether similar to those enumerated before or not a section of electors was prevented from voting for the recognised political party or independent group which it preferred and thereby materially affected the results of the election.

(*b*) non-compliance with the provisions of this Act relating to elections, if it appears that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance materially affected the result of the election.

Under the above mentioned section of the Parliamentary Elections Act, it would be seen that the election of a whole electoral district could sought to be avoided on the basis that there could not have been a free exercise of the franchise by the electors due to the special circumstances proved. In England, an election is avoided under these circumstances on the basis of a common law principle that an election should be free. Therefore it is clear that an election of members to a whole electoral district is avoided under Section 92 of the Parliamentary Elections Act, not because a political party or a team of candidates of an independent group has been engaged in corrupt practices but because corrupt practices have been so extensive that in the opinion of the election Judge there could not have been a free election. Under this section therefore the election of the whole electoral district would be made void and members elected to such electoral district would lose their seats in Parliament irrespective of the political party to which they belong.

A comparison of Sections 92 and 91 of the Parliamentary Elections Act No. 1 of 1981 would show that the Act does not provide for the avoidance of an election of all members of a particular political party. Though the votes polled by the group is considered as a whole when deciding the number of seats that should be allocated to a group in an electoral district, this aspect is not considered when deciding the avoidance of an election due to the malpractices committed by a member.

Under the provisions of the Parliamentary Elections Act the conduct of an individual candidate would be considered seperately when it comes to the question of declaring the election void, though many others could have been elected as a result of his or her undue efforts. The election of all the members of a particular party or an independent group could

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

be declared void under the present law only by filing separate election petitions and establishing that they have been guilty of a corrupt or illegal practice or by making them respondents in an election petition and by establishing that one or more of them committed the prohibited practice with the consent and knowledge of the others.

Section 92 on the other hand would provide for the avoidance of the election of all members of an electoral district irrespective of the party to which they belong or the part they may have played in the commission of the corrupt or illegal practice. This would in fact amount to penalising innocent members who may have been elected from a different political party for the corrupt and illegal practices so extensively practised by members of an opposing political party.

Overlapping of Provisions

The question also arose during the by-election held in January, 1981 for the Kalawana seat in Parliament of the overlapping of the provisions of the Constitution of the Democratic Socialist Republic of Sri Lanka with the provisions of the Ceylon (Parliamentary Elections) Order-in-Council. The Member of Parliament for the Kalawana electorate who was elected at the election of 1977, absented himself from Parliament without excuse and thus vacated his seat in Parliament while an election petition challenging his election at the 1977 General Election was pending. Subsequently he was appointed a Member of Parliament for the same seat under the provisions of the Constitution. The position was thereafter taken up that the Member of Parliament for the Kalawana Constituency was no longer an elected member and as he was appointed under the Constitution that he would not lose his seat as the result of the Election Petition (which was upheld by the Supreme Court) that his election at the 1977 General Election was void. The Commissioner of Elections had however called for nominations for the Kalawana seat which fell vacant as a result of the decision of the Election Petition.

A situation arose as a result of this position where a by-election was being conducted for the Kalawana seat while it was being represented by an appointed member in Parliament. As a move to solve this crisis a Bill was contemplated to provide for 2 members for the Kalawana seat, one elected at the by-election and the other appointed under the provisions of the Constitution.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

The Bill was however challenged before the Supreme Court and it was held that the Bill should not only be passed by a two thirds majority in Parliament, but that it should receive the approval of the people at a referendum.

It was pointed out on that occasion that making provision for two members in order to accommodate the member to be elected at the by-election would amount to a devaluation of votes cast by the members of the other electorates if the by-election is won by a candidate of the party to which the sitting member belongs, as there would be two votes cast by the members of the Kalawana electorate as against one vote cast by the members of the other electorates at the voting in Parliament. It was also stated that if the by-election was won by a candidate of an opposition party, the effect of the vote cast on behalf of the electors of the Kalawana electorate would be nullified as a vote would be cast for the opposite sides by the two members of the electorate. The crisis however, did not reach its peak as the problem was solved by the resignation of Mr. Pilapitiya, the sitting member giving way to the elected member.

The above mentioned incident could be considered a significant episode of the election of members to Parliament in this country. Such a situation arose as neither the Constitution nor the Parliamentary Elections Act contemplated such a situation.

Could there be a recurrence of this problem if a Member of Parliament elected under the proportional representation system resigns his seat in Parliament while an election petition is pending against him for the commission of a corrupt or illegal practice? Under Section 64 (1) of the Parliamentary Elections Act No. 1 of 1981 the Commissioner of Elections could proceed to direct the Returning Officer of the electoral district which returned such member to declare the person whose name appears first in the list of candidates in order to fill a vacancy where a vancacy arises as a result of a member resigning a seat while an election petition is pending against such member. If however, notwithstanding the resignation of the sitting member against whom the election petition was pending, the election petition proceeds, and the election of such member is declared void on the ground that he has been guilty of a corrupt or illegal practice then would not this problem re-arise.?

Section 64 (1) of the Parliamentary Elections Act No. 1 of 1981, which provides for the filling of vacancies reads as follows :

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

"Where the seat of a member of Parliament becomes vacant as provided in Article 66 of the Constitution (other than paragraph 'g' of that Article) or by virtue of the provisions of paragraph 13 (*a*) of Article 99 of the Constitution, the Secretary General of Parliament shall inform the Commissioner who shall direct the Returning Officer of the electoral district which returned such member to fill the vacancy as provided for under paragraph 13 (*b*) of Article 99 of the Constitution within one month of such direction."

It is important to note that the Commissioner of Elections is required to direct the Returning Officer to declare the next person whose name appears in the list of candidates elected, where seats fall vacant other than in the manner provided under paragraph (9) of Article 66 of the Constitution.

Article 66 of the Constitution of the Democratic Socialist Republic of Sri Lanka provides as follows :

The seat of a member shall become vacant,

(*a*) upon his death

(*b*) if, by writing under his hand addressed to the Secretary General of Parliament, he resigns his seat;

(*c*) upon his assuming the office of President consequent to his election to such office, either by the People or by Parliament;

(*d*) if he becomes subject to any disqualification specified in Article 89 or 91;

(*e*) if he becomes a member of the Public Service or an employee of a public corporation or, being a member of the Public Service or an employee of a public corporation, does not cease to be a member of such Service or an employee of such corporation before he sits in Parliament;

(*f*) if, without the leave of Parliament first obtained, he absents himself from the sittings of Parliament during a continuous period of three months;

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

(*g*) if his election as a Member is declared void under the law in force for the time being;

(*h*) upon the dissolution of Parliament or,

(*i*) upon a resolution for his expulsion being passed in terms of Article 81.

Article 66 of the Constitution read with Section 64 of the Parliamentary Elections Act would show that the filling of vacancies on all other occasions save when a member's election has been declared void by a court of law under the existing law has to be done by the Returning Officer of the electoral district on the directions of the Commissioner of Elections. Where however, the election is held to be void the law implies the holding of a fresh election. Therefore, if an election is held to be void by an election Judge where the member whose election was held to be void has already resigned his seat in Parliament by the time the decision of the election petition is declared, there could be an appointed member representing the same electorate. Under such circumstances one could safely expect the recurrence of a problem similar to the one experienced during the Kalawana by-election.

Persons on Whom Civic Disabilities are Imposed — Their Participation in Elections.

Persons upon whom civic disabilities are imposed have been debarred from taking part in election campaigns. The introduction of this provision has been viewed with interest as recently civic disabilities have been imposed on many persons, including a former Prime Minister upon the recommendation of a Special Commission of Inquiry.

Section 67 of the Parliamentary Elections Act No. 1 of 1981, provides as follows :

(1) "No person shall canvass for, or act as an agent of, or speak on behalf of a candidate, or in any way participate in an election, if such person is a person on whom civic disability has been imposed by a resolution passed by Parliament in terms of Article 81 of the Constitution, and the period of such civic disability specified in such resolution has not expired.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

(2) Every person who contravenes the provisions of sub section (1) shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding 6 months or to both such fine and imprisonment."

Sub-section (1) of Section 67 provides that a person on whom civic disabilities have been imposed by a resolution of Parliament should not in any way participate in an election. There is a similar provision in the Presidential Election Act. However, a striking feature is that the Referendum Act does not prohibit a person on whom civic disabilities have been imposed from taking part in propaganda work in connection with a referendum. The reason for this absence is not possible to understand. By the prohibition of persons on whom civic disabilities have been imposed from taking part in political activities as it intended to keep such person away from political activities. Why then was provision introduced to prohibit such persons from canvassing a candidate at an election? Was it aimed at preventing such persons from taking an active part in politics or was it introduced to prevent others from benefiting from the popularity of a person on whom civic disabilities have been imposed? If it is the former it would be extremely difficult to understand why such persons are permitted to campaign at a referendum. In fact at the referendum of 1982, Mrs. Sirima Bandaranaike spearheaded the campaign of the opposition. This would only show that the intention of the legislature in introducing the above provision of the Parliamentary Elections Act and the corresponding provision of the Presidential Elections Act, has been to prevent persons on whom civic disabilities are imposed from campaigning at General Elections and Presidential Elections. It has not been the intention of the legislature to prohibit such persons form taking part in any other political activity.

Sub-section (1) of Section 67 of the Parliamentary Elections Act provides that a person on whom civic disabilities have been imposed by a resolution of Parliament should not in any way participate in an election. This term no doubt could have a broad scope which could include all sorts of activities of an election. Where an election is held under the proportional representation system and where a person on whom civic disabilities have been imposed takes part in political activities in support of a political party in an electoral district the question arises as to whether the election of all the members elected from that

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

political party to the electoral district could be declared void. On the other hand if a person on whom civic disabilities have been imposed engages in political activity in favour of one particular candidate could an election Judge declare, the election of such member void under Section 92 (2) (*b*) or (*c*) ?

Section 92 (2) (*b*) & (*c*) of the Parliamentary Elections Act No. 1 of 1981 provide as follows :

(*b*) that the candidate personally engaged a person as a canvasser or agent or to speak on his behalf knowing that such person had within seven years previous to such engagement been found guilty of a corrupt practice under the law relating to the election of the President or law relating to the referenda or under the Ceylon (Parliamentary Elections) Order-in-Council, 1946 or under this Act, by a court of competent jurisdiction or by a report of an election Judge.

(*c*) that the candidate personally engaged a person as a canvasser or agent or to speak on his behalf knowing that such person had been a person on whom civic disability had been imposed by a resolution passed by Parliament in terms of Article 81 of the Constitution, and the period of such civic disability specified in such resolution had not expired.

The very basis of the proportional representation system is to consider the total number of votes obtained by a group of candidates belonging to a political party or an independent group. The votes obtained by an individual would be of no value under this sytstem as the ultimate result would be considered on the number of votes polled by the party as a whole. Therefore canvassing for an individual candidate as the Act contemplates does not seem logical under the proportional representation system. Apparently this provision is aimed at penalising a candidate who uses a person on whom civic disabilities have been imposed as a canvasser. If the basis for the declaring of the election of such a candidate void, in that he has unduly reaped the benefit of the support of a person on whom civic disabilities have been imposed, then how could the other members elected on the same votes from the same party continue as members.? This argument is possible as canvassing under the proportional representation system is done only for a party or for a group of candidates and no longer for an individual candidate. On the other hand

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

KOHA
JPL

if the basis of this provision is only to discourage or prevent any candidate from personally using a person on whom civic disabilities have been imposed for his election campaign irrespective of the impact such a person could have on the results of the election, then the purpose of this provision would be clear. Where an election is held under the proportional representation system in my opinion provision should be made to challenge the election of all the members of a political party to a electoral district at an election. The absence of such provision as stated earlier could be made use of by candidates to use one member to commit the corrupt practices and later save themselves from liability though their election would have been the direct result of the actions of the candidate who engaged in illegal and corrupt practices.

The proportional representation system could be described as a significant step taken towards the development of the election law of this country during the past few decades. It is unfortunate that no General Election was held under this system in 1983 as expected. We have however experienced an election of members for the District Development Councils held under this system. However quite unfortunately the main opposition party which was described the only non Marxist democratic alternative to the ruling United National Party (All other parties were considered Marxist Parties) did not take part in this election. Therefore the people were unable to judge how effective this system has been in this country.

As stated by Dr. N. M. Perera in his work on the Constitution of Sri Lanka, a certain amount of political maturity would be necessary for the functioning of this system of this country. Whether the concept of a democratic alternative will effectively emerge under this system is hard to predict. No doubt this system as introduced in Sri Lanka would show its shortcomings as time passes. It of course is a new experience which could only be tested by the effectiveness of an election held under it. Therefore, it certainly would take time for the world to decide whether the introduction of the Proportional Representation system in Sri Lanka has been a success or the reverse of it.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

STATUTES

Corrupt Practices Prevention Act 1853 (England)

Police Ordinance No. 16 of 1865.

Ballot Act 1882 (England)

Corrupt and Illegal Practices Prevention Act, 1883 (England)
Civil Procedure Code No. 2 of 1885.

Penal Code No. 2 of 1893.

Evidence Ordinance No. 14 of 1895.

Corrupt and Illegal Practices Prevention Act 1895. (England)

Criminal Procedure Code 1898.

Interpretation Ordinance 1901.

Ceylon (Legislative Council) Order-in-Council 1910

Ceylon (Legislative Council) Order-in-Councl 1923.

Report of the Special Commission on the Constitution of Ceylon 1928.

Ceylon Constitution (Register of Electors) Order-in-Council 1930.

Ceylon (State Council Election) Order-in-Council 1931.

Ceylon (State Council Elections) Amendment Order-in-Council 1934.

Ceylon (State Council Elections) Amendment Order-in-Council 1935.

Ceylon (State Council Elections) Further Amendment Order-in-Council 1935.

Public Bodies (Prevention of Corruption) Ordinance 1943.

Ceylon (State Council Elections) Electoral Districts Order-in-Council 1945.

Ceylon (Electoral Registers Special Provisions) Order-in-Council 1946.

Ceylon (Constitution) Order-in-Council 1946.

Ceylon (Parliamentary Elecions) Order-in-Council 1946.

Local Authorities Election Ordinance 1946.

Ceylon (Independence) Order-in-Council 1947.

Ceylon Independence Act 1947.

Ceylon Parliamentary Elecions (Amendment Act. No. 48 of 1949.)

Electoral Registers Act 1949 (England)

Representation of People Act 1949 (England)

Ceylon Parliamentary Elections (Amendment) Act No. 38 of 1950.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Ceylon Parliamentary Elections (Amendment) Act No. 7 of 1952.

Ceylon Parliamentary Elections (Amendment) Act No. 19 of 1953.

Ceylon Parliamentary Elections (Amendment) Act No. 26 of 1953.

Bribery Act No. 11 of 1954.

Ceylon Parliamentary Elections (Amendment) Act No. 36 of 1954.

Ceylon Parliamentary Elections (Amendment) Act No. 16 of 1956.

Ceylon Parliamentary Elections (Amendment) Act No. 11 of 1959.

Ceylon Parliamentary Elecions (Amendment) Act No. 26 of 1959.

Ceylon Parliamentary Elections (Amendment) Act No. 4 of 1959.

Registers of Parliamentary Elections (Special Provisions) Act No. 1 of 1960.

Parliamentary Elecions (Special Provisions) Act No. 11 of 1961.

Civil Courts (Special Provisions) Act No. 43 of 1961.

Ceylon Parliamentary Elections (Amendment) Act No. 72 of 1961.

Ceylon Parliamentary Elections (Amendment) Act No. 8 of 1964.

Ceylon Parliamentary Elections (Amendment) Act No. 10 of 1964.

Imposition of Civil Disabilities (Special Provisions) Act No. 14 of 1965.

Ceylon Parliamentary Elections (Amendment) Act No. 9 of 1970.

Holidays Act No. 29 of 1971.

Court of Appeal Act. No. 44 of 1971.

The Constitution of Sri Lanka 1972.

The Administraton of Justice Law 1973.

Language of the Courts (Special Provisions) Law No. 14 of 1973.

Administration of Justice Law No. 44 of 1973.

Judicature Act No. 2 of 1978.

Special Presidential Commissions of Inquiry (Special Provisions) Act No. 4 of 1978.

Local Authorities Elections (Amendment) Law No. 35 of 1978.

Local Authorities (Imposition of Civic Disabilities) (No. 1) Law, No. 38 of 1978.

Local Authorities (Imposition of Civic Disabilities) (No. 2) Law No. 39 of 1978.

Special Presidential Commission of Inquiry Law No. 7 of 1978.

The Constitution of the Democratic Socialist Republic of Sri Lanka 1978 and its amendments 1 — 8.

Local Authorities (Special Provisions) Act No. 12 of 1979.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Development Councils Act No. 35 of 1980.

Referendum Act No. 7 of 1981.

Development Councils Elections Act No. 20 of 1981.

Presidential Elections (Special Provisions) Act No. 2 of 1981.

Parliamentary Elections Act No. 1 of 1981.

Election Petition Rules 1981.

Election Commissioner's Report on the Presidential Election of 1982.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

TABLE OF CASES

Abraham Singho v. Gunawardena (1953) 54 NLR 546 169

Ahamed v. Aliyar Lebbe (1969) 73 NLR 73 56, 64, 68, 180

Allah Dad Khan v. Mohamed Azam Khan (1938) Indian Election Cases, H. S. Doabia, Vol. II, p. 314 97

Aron v. Senanayake (1936) 38 NLR 133 162

Attorney-General v. Dharmasena (1948) 49 NLR 95 67, 67

Bannerjue v. Mukharjie and others (1937) Indian Election Cases, H. S. Doabia, Vol. II, p 15 134

Barnstaple (1874) 2 O'M. & H. 105 190

Barrow-in-Furness (1886) 4 O'M. & H. 17 39

Belfast (1886) 4 O'M & H. 105 62

Bellary Mohammadan (Rural) Constituency (1948) Indian Election Cases, H. S. Doabia, Vol. I. p. 169 136, 137

Berwick-upon-Tweed (1923) 7 O'M. & H. 20 140

Bradford (1869) 1 O'M. & H. 36 120

Brecon (1871) 2 07M. & H. 43 77, 86

Carrickfergus (1869) 1 O'M. & H. 264 86

Chelvanayakam v. Natesan (1954) 56 NLR 271 171

Cooper v. Slade (1858) 6 HLC 746 119, 118

Costa v. Jayawardena (1943) 44 NLR 341 160

Daniel Appuhamy v. Illangaratne (1964) 66 NLR 97 180

De Silva v. Senanayake (1972) 73 NLR 265 180

Devonport (1886) 2 Times LR 345 168

Dias v. Amarasuriya (1931) 33 NLR 169 73

Don Alexander v. Leo Fernando (1948) 49 NLR 202 155

Don Phillip v. Illangaratne (1949) 51 NLR 561 135

Down (1880) 3 O'M. & H. 120 103, 102

Drogheda (1869) 1 O'M. & H. 258 87, 95, 98

Duraiappah v. Martyn (1971) 74 NLR 481 169, 174

East Cork (1911) 6 O'M. & H. 335 84

East Dorset (1910) 6 O'M & H. 30 144

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

East Kerry (1910) 6 O'M & H. 85 99

Ellis v. National Union of Conservative and Constitutional Association (1900) N. 44 Solicitors Journal 750 128

Fernando v. Cooray (1930) 32 NLR 121 83

Gloucester (1873) 2 O'M. & H. 52 102, 54, 61, 102

Great Yarmouth (1906) 5 O'M. & H. 198 77, 84, 140, 184

Haggerston (1896) 5 O'M & H. 69 81, 81

Harwich (1880) 3 O'M. & H. 61 119, 190

Hemadasa v. Sirisena (1966) 69 NLR 201 92, 104

Herath v. Seneviratne (1967) 70 NLR 145 165

Hereford (1869) 1 O'M. & H. 196 187

Hexham (1892) 4 O'M. & H. 143 54, 79 87

Himchal Pradesh Case (1950), Indian Election Cases H. S. Doabia, Vol. II, p 394 83

Hoshiarpur West (Mohammadan) Constituency (1939), Indian Election Cases, H. S. Doabia, Vol. I p. 267 101

Illangaratne v. G. E. de Silva (1948) 49 NLR 169 80, 106, 132

Jayasena v. Illangaratne (1969) 73 NLR 35 179, 185, 188

Kalawana Election Petition 1977, SC Nos. 1/80 and 2/80 209

Kaleel v. Themis (1956) 58 NLR 396 174

Kingston-upon-Hull (1911) 60'M & H. 389 118

Kobbekaduwa v. Jayawardena & others 1982 SC 3 of 1982 133

Kuruppu v. Hettiarachchi (1948) 49 NLR 201 174

Lateef v. Sarawanamuttu (1932) 34 NLR 369 154

Lichfield (1869) 1 O'M & H. 24 85, 100, 143

Longford (1870) 2 O'M. & H. 7 100

Mahara Election Petition 1983 Election Petition No. 7 of 1983 158

Major Ganada Singh v. Rai (1938) H.S. Doabia, Indian Election Cases Vol. II p 94 123

Mathis Hamy v. Gunatilake (1947) 48 NLR 373 59

Mohamed Mihular v. Nalliah (1944) 45 NLR 151 160

Monmouth (1901) 5 O'M & H. 171 129

Montgomery (1892) Day's Election Cases 151 126

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Munasinghe v. Corea (1953) 56 NLR 265 173

Muzaffanagar 2 Hammond's Indian Election Petition p 200 64

Muttetuwegama v. Pilapitiya 1981 Kalawana Election Petition 192

Nimara Mohammadan (Rural) Constituency (1947) Indian Election Case, H. S. Doabia, Vol. I p 227 96

North Durham (1874) 2 O'M & H. 153 97

North Kendrapara General Constituency (1947) Indian Election Cases, H. S. Doabia, Vol. II p 411 96

North Louth (1911) 6 O'M. & H. 154 150

North Meath (1892-1893) Day's Election Case 144 96

North Norfolk (1869) 1 O'M & H. 240 95

Norwich (1869) 4 O'M. & H. 90 79, 189, 186

Nottingham (1911) 6 O'M. & H. 292 123

Oxford (Borrough) (1924) 7 O'M. & H. 49 138

Peiris v. David Perera (1969) 72 NLR 232 163, 175

Peiris v. Samaraweera (1967) 71 NLR 250 176

Pelpola v. Gunawardena (1948) 50 NLR 132 107, 164

Penryn (1869) 1 O'M. & H. 127 124

Perera v. Jayewardene (1948) 49 NLR 241 54, 161, 192

Perera v. Samarasinghe (1966) 71 CLW 57 125

Piyadasa v. Hewavitharana (1936) 40 NLR 421 162

Ponnambalam v. Kunasingham (1953) 55 NLR 418 164

Pontefract (1893) Day's Election Cases 126 146

Premasinghe v. Bandara (1966) 69 NLR 155 193

Rajapakse v. Kathirgamanathan (1965) 68 NLR 41 158

Ramalingam v. Kumarasamy (1953) 55 NLR 145 179

Rambukwella v. Silva (1924) 26 NLR 231 50, 156

Rex v. Fox (1877) 16 Cox cc. 166 60

Rochester (1892) 4 O'M & H. 157 140

Romiel v. Sananayake (1966) 68 NLR 255 165

Rupasinghe v. Karunasena (1965) 69 CIW 49 161

Sadia-Ud-Din v. Murtaza (1937) Indian Election Cases, H. S. Doabia, Vol. I p 107 125

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Saravanamuttu v. de Mel (1948) 49 NLR 529 155

Saravanamuttu v. de Silva (1941) 42 NLR 294 162

Senanayake v. de Silva (1972) 75 NLR 409 166

Senanayake v. Navaratne (1954) 56 NLR 1 180

Sheokaran Singh v. Sahib Ram (1938) Indian Election Cases, H. S. Doabia, Vol. I p 297 130

Shrewsbury (1870) 2 O'M. & H. 36 186

Somadasa v. Saddasena (1967) 69 NLR 469 151

St. George's (1896) 1 O'M. & H. 89 77, 81, 87

Stafford (1869) 1 O'M. & H. 230 95, 95, 121, 191

Stepney (1886) 4 O'M. & H. 44 52, 53, 54, 65, 102

Stroud (1874) 2 O'M. & H. 108 119, 121

South Meath (1892) 4 O'M. & H. 142 94

Subasinghe v. Jayalath (1956) 69 NLR 121 97, 179

Sunderland (1895) 5 O'M. & H. 62 128, 129

Tamworth (1869) 1 O'M. & H. 85 78, 111

Thilakawardena v. Obeysekara (1931) 33 NLR 126 143, 160, 161, 161

Thambiayah v. Kulasingham (1948) 50 NLR 25 175, 177

Tarnolis Appuhamy v. Wilmot Perera (1948) 49 NLR 361 81, 95, 121

Vinayagamoorthy v. Ponnambalam (1936) 40 NLR 178 160

Wadigamangawa v. Goonawardena (1980) Anamaduwa Election Petition EP No. 6 of 1977

Walsall (1892) Day's Election Cases 73 149

Wallingford (1869) 1 O'M. & H. 57 78, 82

Wimalasara Banda v. Yalegama (1966) 69 NLR 361 131, 132, 133

Warrington, 1 O'M. &. H 44 154

Wimalasuriya v. Wadigamangawa (1980) Anamaduwa Election Petition (unreported) 156

Wijewardena v. Senanayake (1971) 74 NLR 97 158

William v. Premachandra (1947) 49 NLR 56 169

Windsor (1869) 1 O'M. & H. 3 187

Yasapala v. Moonasinghe (1966) 70 CLW 48 171

Yaughal (1869) 1 O'M. & H. 291 87

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

ABBREVIATIONS

B.	....	Baron
C. J.	....	Chief Justice
C. L. W.	....	Ceylon Law Weekly
D. C.	....	District Court
J.	....	Justice
N. L. R.	....	New Law Reports (Ceylon)
O'M. & H.	....	O'Malley & Hardcastle — Election Cases, 1869 — 1929.
P. pp.	....	Page, Pages
P. C.	....	Privy Council
S. C.	....	Supreme Court
S. P. J.	....	Senior Puisne Judge
Times L. R.	....	Times Law Reports
Vol.	....	Volume

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

BIBLIOGRAPHY

Abeynaike, H. B. W. and Amaratunga, H. P.
Parliament of Ceylon (1965)

Abeynaike, H. B. W. and Amaratunga, H. P.
Parliament of Ceylon (1970)

Abeynaike, H. B. W.
Parliament of Ceylon (1977)

Balasingham, K.
Corpus Juris — A Digest of Common Law, Case Law and Statute Law of Ceylon 1947 — 1954.

Butler, David E.
The Electoral system in Britain since 1938, (1963).

Campbell, Peter
French Electoral System and Elections 1789 — 1957, (1958).

Chand, P. N.
Law and Practice of Election and Election Petitions.

Cooray, J. A. L.
Consitutional and Administrative Law of Sri Lanka — 1973.

Cooray, L. J. M.
An Introduction to the Legal System of Ceylon — 1972.

Cooray, M. J. A.
The Judicial Role Under the Constitution of Ceylon/Sri Lanka. An Historical and comparative study — 1979

Day's Election Cases —

De Smith, S. A.
The New Commonwealth and its Constitution.

De Smith, S. A.
Constitutional and Administrative Law

Doabia, H. S.
The Indian Election Cases, 1935 — 1950 (1951).

Doabia, H. S.
The Law of Elections and Election Petitions (1951)

Dowling, N. T. and Gunther, G.
Cases and Materials on Constitutional Law

Encyclopaedia of Social Sciences —

Fernando, Sylvan E. J.

The Law of Parliamentary Elections in Ceylon (1947)

Fraser, Hugh
The Law of Parliamentary Elections and Election Petitions 3rd Edition 1922.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Halsbury's Laws of England —

Hammond's Indian Election Petitions.

HOOD PHILLIPS, O.
Constitutional and Administrative Law (1962)

JENNINGS, SIR IVOR
Cabinet Government

JENNINGS, W. I. and THAMBIAH, H. W.
Dominion of Ceylon, Development of its Laws and Constitution (1952)

Khanna's Indian Election Cases.

LAKEMAN, ENID
How Democracies Vote — 4th Edition 1974.

LITTLE, IAN M. D.
A Critique of Welfare Economics (1957)

MACKENZIES, W. J. M.
Free Elections (1958)

METZGER, B.
An Index to Periodical Articles on the Laws of Ceylon (1972)

METZGER, B.
A Student's Research Guide to the Laws of Ceylon (1971)

MILL, J. S.
On Liberty and Consideration on Representative Government (1946)

NADESAN, S.
Some Comments on the Constituent Assembly and the Draft Basic Resolutions (1971).

NAMASIVAYAM, S.
Legislatures of Ceylon, 1928 — 1948 (1951).

NEWLAND, ROBERT A.
Only Half a Democracy (1975)

NEWLAND, ROBERT A. and FRANKS BRITTON.
How to Conduct an Election by the Single Transferable Vote (1976).

New Standard Encyclopaedia.

O'MALLEY and HARDCASTLE.
Election Cases 1869 — 1929

Parliaments of the World — Interparliamentary Union (1976) —

PARKER
Conduct of Parliamentary Elections (1970)

PERERA, N. M.
Critical Analysis of the New Constitution of the Sri Lanka Government (1978)

PEIRIS, G. L.
Offences Under the Penal Code of Ceylon (1973).

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Rae, D. W.
The Political Consequences of Election Laws (1967)

Rogally, Joe
Parliament for the People (Handbook oJ electoral reform — 1976).

Roberts - Wray, K. O.
Commonwealth and Colonial Law

Ross, James S. F.
Elections and Electors (1955)

Rogers on Elections — 20th Edition 1928.

Seervai, H. M.
Constitutiona lLaw of India

Senmour, Charles
How the World Vote (1918)

Schofield, A. Norman
Parliamentary Elections (1959)

Smith, T. E.
Elections in Developing Countries (1960).

Wade, E. C. S. and Phillips, G. G.
Constitutional Law.

Weerakoon, R.
Law of Parliamentary Elections (1970).

Wheare, K. C.
Constitutional Structure of the Commonwealth.

Weeratunga, E. P.
A Complete Digest of Case Law on the Ceylon Penal Code (1820 — 1955) (1955)

Wilson, A. Jayaratnam.
The Gaulist System in Asia; The Constitution of Sri Lanka (1978).

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

INDEX

Abatement of election petition 170
Adult Suffrage, universal 08
Agency 184
Agents 180
    Canvassers as, ... 185
    Employees as, ... 187
    Newspapers as, ... 188
    Political parties as, ... 185
    Traitorous 191
Amalgamation of petition 167
Amendment of the petition 163
Awarding the seat to a defeated candidate 175

Ballot papers, offences relating to, ... 45
Bribery 110

    Drought relief 123
    General 110
    Giving employment 124
    Intention in 117
    Money given for charity 120
    Number of instances required in 124
    Position in Sri Lanka 113
    Punishment for 126

Canvassers 185
Ceylon Independence Order in Council 10
Colebrooke Commission 02
Constitution of 1833 02
Constitution of 1910 04
Constitution of 1920 .. .. 4, 5
Constitution of 1923 .. .. 6, 7
Constitution of 1972 10
Constitution of 1978 10
Corrupt motive in treating 76
Communal representation 24
Comparision of different proportional representation systems .. 22
Constituent assembly 10
Corrupt practices 40
Cumulative voting 24

Death 170
    of petitioner 170
    of respondent 170
Degree of proof necessary (in treating) 106
Delimitation Commission 28
Determination and report of election judge 173

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

KOHA JPL

Different representation systems 19
Distinction between corrupt practices and illegal practices .. 138
Donoughmore constitution 07
Drought relief 123

Election offences 38
Election literature 149
Election expenses return 151
Election petitions 154
Election petition appeals 177
Elections; Grounds for avoiding 154
Excuse for corrupt or illegal practices 151
Expediting the election petition trials 182

False statements 127
Ingredients of 127
Necessity of Publication 134
Punishment for 137
Regarding withdrawal 136
Standard of proof required in 135

General personation 62
General bribery 110

Has not the elections of Sri Lanka sufficiently indicated the wish of the majority? 17
High incidence of election petitions in Sri Lanka 181

Illegal practices 138
Distinction between corrupt practices and 138
Election expenses return 151
Illegal expenditure .. .. .. 142—146
Transporting feeble persons 146
various kinds of, ... 139

Money given for charity 120
Multi member constituencies 25

Newspapers as agent 187
Notice of the petition 159

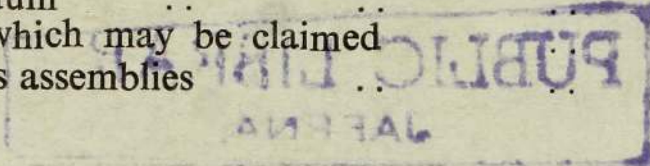
Objection to the petition 162
Offences committed by the voters 45
Overlapping of provisions 158, 129

Personation 48, 199
Mental element in, ... 52
Stage when it is complete 55

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

General 62
Punishment for 65
Restrictive measures for 67
As an offence in Sri Lanka 75
Petitions, election 154
Proportional representation 14
Different systems of 19
Proof of Agency 192

Recount of votes 174
Referendum 207
Relief, which may be claimed 174
Religious assemblies 104



Scrutiny 172
Some suggestions to curb personation 199
Soulbury constitution 10
Special features of an election inquiry 170
Stage when personation is complete 55
Statement of fact or opinion? 128

Treating 41, 75
Amount of 82
Corrupt motive in, ... 76
Form of 78
Time of 85
The general 87
The punishment for 88
Time limit for presentation of petition 156
Traitorous agent 191

Undue influence 42
Degree of proof necessary in 106
Form of 94
Intention in 97
Punishment for 107

Vicarious liability 189

Withdrawal of an election petition 167

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

PUBLIC LIBRARY
JAFFNA.

80134

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org

ABOUT THE AUTHOR . . . .

HENRY JAYATISSA DE COSTA LL.B. (Ceylon), LL.M. (Lond.), Ph.D. (Sri Lanka) is the first practising lawyer who has obtained a Ph.D. in Law from a University of this country. This book is a revised version of his thesis entitled 'Some Aspects of the Law Relating to Parliamentary Elections in Sri Lanka', which was prepared under the supervision of Mr. S. Nadesan, Q.C.

After obtaining his LL.B. (Cey.) in 1970 he studied at the School of Oriental and African Studies and the London School of Economics and Political Science and obtained the LL.M. Degree of the University of London in the field of Comparative Constitutional Law under the supervision of Professor James S. Read and Dr. T. K. K. Iyer. He had also followed courses in Family Law conducted by Professor D. J. M. Derrett and courses in Civil Litigation conducted by Professors I. H. Jacob, Q.C. and Michael Zander. He had also followed courses in Criminology, Sentencing and Treatment of offenders at King's College, London. During that period he functioned as a legal executive and as an overseas Solicitor at Messers. Suriya & Co., the well-known firm of Solicitors in London.

Back in Sri Lanka after obtaining his LL.M. in 1976 he found time to lecture at the Sri Lanka Law College, Law Faculty of the University of Colombo and at Bandaranaike Centre for International Studies. He has served as an examiner in law for the examinations conducted by the Council of legal Education, University of Colombo and the Institute of Bankers of Sri Lanka. Dr. de Costa is the author of a large number of law books published in Sinhalese. Some of those books are 'Roman Law', 'Legal History and 'Legal System of Sri Lanka', 'Criminal Law', 'Jurisprudence' and 'Elements of Criminal Law'.

Dr. de Costa started practising his profession in the courts of Horana and was made a member of the Agricultural Tribunal of Kalutara District in 1976 and a Justice of Peace and an Unofficial Magistrate in 1977. He has served as the President of Horana Lawyers Association and a member of the Law Committee of the Bar Association of Sri Lanka. Dr. de Costa is an old boy of St. Aloysius' College, Ratnapura, Dharmapala Vidyalaya, Pannipitiya and Aquinas University College.

Digitized by Noolaham Foundation.
noolaham.org | aavanaham.org