POLITICAL GRAFTS AS A FORM OF ORGANIZED CRIME IN INDIA: A CRITICAL EVALUATION OF LEGAL AND INSTITUTIONAL MECHANISMS

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ABSTRACT

Political graft is one of the major forms of corruption impacting the politics and functioning of the government of India. Political graft refers to corruption in the form of the abuse of public offices for making personal financial gains. This article examines political graft as a form of organized crime since it incorporates all the elements of organized crime, which include group activity, continuity, planning, profit motivation, and protection from political influences.

In this article, political graft in the Indian context has been analyzed with regard to its nature, major forms, such as bribery, procurement fraud, embezzlement, election corruption, and corruption in the use of public property. Apart from the above, analysis of international and domestic legal framework, such as Prevention of Corruption Act, Bharatiya Nyaya Sanhita, Prevention of Money Laundering Act, Lokpal and Lokayuktas Act, and Benami Transactions Act have also been done.

Besides, the role played by various institutions like CBI, CVC, ED, ECI, CAG, and Judiciary in curbing corruption has been discussed. Moreover, the major challenges involved in curbing political corruption have also been identified in this article.

Keywords: Political Graft, Organized Crime, Corruption, Anti-Corruption Laws, Governance, CBI, Lokpal, Money Laundering, Accountability.

1. INTRODUCTION:

Corruption has continued to pose numerous challenges to governance and law in India. Political graft is one among the many types of corruption that occurs in India and entails the exploitation of public office for personal monetary gain. As opposed to petty corruption, which occurs in low levels of authority, political graft occurs in high-level offices involving diversion of massive public resources.

Various scandals involving corrupt practices of politicians in the awarding and management of public resources have demonstrated that political graft is not an exception but is a widespread phenomenon in India. Organized crime has generally involved practices like human trafficking or smuggling. However, corruption has also shown that it can involve some elements of organization such as continuity and networks motivated by profit-making objections.

However, despite the presence of laws and agencies to curb political graft, their effectiveness has been undermined by various factors including political patronage and ineffective enforcement. It is within this context that this article seeks to analyze political graft in India as a kind of organized crime and evaluate the adequacy of legal and institutional measures in combating corruption.

2. CONCEPTUAL FRAMEWORK:

2.1 Political Graft:

Political graft is an aspect of corruption involving the mismanagement of public office to achieve individual gains. This can be defined as a form of corruption whose emphasis lies largely in illegal financial gains accrued through public offices. Unlike corruption in general, where the focus is on the unethical acts, political graft emphasizes financial abuse through offices held.

The forms this takes include bribery, kickbacks, embezzlement, and approval of commissions illegally. In many instances, funds belonging to the government are used not necessarily because of the merit involved, but because of illegal payments made to corrupt leaders.

2.2 Organized Crime:

Section 111 (1) of Bharatiya Nyaya Sanhita, 2023 defines Organised Crime means any continuing unlawful activity carried out by a person or group, as a member of an organised crime syndicate, using violence, threat, intimidation, coercion, or other unlawful means to obtain material or financial benefit.[1]

Section 2 (1) (e) of Maharashtra Control of Organised Crime Act, 1999 defines Organised Crime means any continuing unlawful activity carried out by an individual person or group as a member of an organised crime syndicate or on behalf of such syndicate, using violence, threat of violence, intimidation, coercion, or other unlawful to obtain pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.[2]

2.3 Nexus Between Political Graft and Organized Crime:

There are a number of similarities between political graft and organized crime that make it necessary to treat it under this category. First, political graft is not an isolated event or practice. It normally involves a group of people comprising politicians, officials and individuals from the private sector. Second, it is a sustained exercise rather than an event. Third, political graft is motivated by profit making motives and normally attracts large amounts of money.

Also, political graft has a protective aspect whereby those who indulge in this practice make sure that they are not exposed. Protective element helps to distinguish between political graft and ordinary corrupt practices.

Therefore, political corruption can be seen as an example of organized white-collar crime that operates through the structure of governance. It is important to recognize the connection so that appropriate measures can be formulated.

3. NATURE AND FORMS OF POLITICAL GRAFT IN INDIA:

3.1 Nature of Political Graft in India:

Political graft in India is a systemic process, where the perpetrators are not acting individually but as part of a larger group made up of politicians, bureaucrats, and private parties seeking financial gains. The process is always associated with the workings of government, in the form of contracts, licenses, and resource allocation, among others, and it makes it even more difficult

[1] The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 111 (1).
[2] The Maharashtra Control of Organised Crime Act, 1999 (Maharashtra Act 30 of 1999), s. 2 (1) (e).

to trace it.

Another characteristic of political graft is its continuity in nature; the process does not happen once in the entire course of governance. In addition, the use of political connections and law enforcement ensures that those responsible for political graft do not face any legal consequences.

3.2 Forms of Political Graft in India:

i. **Bribery and Kickbacks:**

Bribery and Kickbacks are the most popular types of political graft. Payments are made to public officers for awarding the contracts. This creates an imbalance, and such activities are driven by personal gains.

ii. **Public Procurement and Contract Scams:**

A major cause of political graft is the manipulation of procurement procedures in public tender. Public project costs are increasing, causing losses in finances and quality of services provided.

iii. **Embezzlement and Diversion of Public Funds:**

Public funds are illegally appropriate to meet personal needs. Such practices are made possible by fraud and misuse of official power. They adversely affect development and people's welfare.

iv. **Policy Manipulations and Crony Capitalism:**

Certain policies may be tailored to favour certain firms, which is done by exploiting official authority. Policy manipulations lead to crony capitalism.

v. **Corruption in the Electoral Process:**

Money plays a big role in elections through votes and campaign financing. The use of illicit money leads to pressures for repayment after a win, thus corrupt politics.

vi. **Licenses and Regulatory Corruptions:**

Bribes are demanded for licensing and regulatory approvals. Companies have to bribe the authorities in order to function. This makes things tough for businesses.

vii. Natural Resources Allocation Scams:

Natural resources such as land, coal, and the spectrum have been allocated improperly. Due to lack of accountability and favouritism, there have been massive losses.

4. POLITICAL GRAFT AS ORGANIZED CRIME:

4.1 Group Activity:

Generally, political graft takes place through the concerted effort of various parties including politicians, civil servants, and private parties. The participation of several parties in criminal acts distinguishes organized crimes.

4.2 Continuity and Systemic Operation:

Political graft is not an event that happens once but continues regularly. It is done systematically in order to achieve the criminal goal. The continuity of the process makes political graft closer to organized crimes.

4.3 Profit Motive:

The primary motive for conducting political corruption is monetary gain. Huge sums of money are looted from the government coffers in order to satisfy private interests. It is another characteristic feature of organized crime.

4.4 Planning and Coordination:

Political graft always involves some degree of planning and coordination. Individuals are assigned responsibilities so that the criminal acts are executed without fail. It demonstrates organized crime characteristics.

4.5 Protection and Immunity:

Parties involved in political grafts are always protected through political power so that they are safe from investigations and prosecution. They can manipulate institutions to escape from legal action. Protection is also an important feature of organized crimes.

4.6 Institutionalization:

Political graft is committed by people working within government organizations. It is well embedded in institutional decision-making procedures.

5. INTERNATIONAL FRAMEWORK:

United Nations Convention against Corruption, 2003 (UNCAC):

The purpose of the convention as mentioned in the convention are[3]:

a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;

b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;

c) To promote integrity, accountability and proper management of public affairs and public property.[4]

India is a signatory to the United Nations Convention against Corruption, which mandates criminalization of bribery, asset recovery, and international cooperation.[5] UNCAC provisions emphasize bribery[6], illicit enrichment[7], and embezzlement[8] as key offences. India has not yet ratified the United Nations Convention against Corruption.[9]

6. LEGAL FRAMEWORK IN INDIA:

6.1 Prevention of Corruption Act, 1988[10]:

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[3] United Nations Convention Against Corruption, Article 1 Chapter 1(General Provisions).
[4] Dhananjay Kashyap, "The United Nations Convention Against Corruption 2003 and Indian Legislations: Under the Guidance of Article 51", in Professor (Dr.) Ranbir Singh, Dr. Jeet Singh Mann (eds), *Corruption in Governance* 194 (Centre for Transparency and Accountability in Governance, 1st Edn 2015).
[5] United Nations Convention Against Corruption, Oct. 31, 2003, 2349 U.N.T.S. 41.
[6] The United Nations Convention Against Corruption, 2003, art. 15.
[7] The United Nations Convention Against Corruption, 2003, art. 20.
[8] The United Nations Convention Against Corruption, 2003, art. 22.
[9] Pallavi Shroff, Nisha Harichandran, *et.al.,* "The Current State of Anti-Corruption Law in India", in Paul H. Cohen, Arthur Marriott QC (eds), *International Corruption* 205 (Thomson Reuters (Legal) Limited, First South Asian Edition 2012).
[10] The Prevention of Corruption Act, 1988 (Act 49 of 1988).

The Prevention of Corruption Act, 1988 ("PCA") is the pre-eminent anti-corruption legislation in India and contains both anti-corruption and bribery provisions. It extends to the whole of India, and it applies also to all citizens of India outside India[11]. The PCA was passed with the intention of making the existing anti-corruption laws more effective by widening their coverage and strengthening the provisions.

Section 7[12] criminalizes the act of a public servant obtaining undue advantage in the discharge of official duties. Section 7A[13] addresses taking undue advantage to influence a public servant through corrupt means. Further, Sections 8 and 9 deal with bribery involving individuals and commercial organizations.

Section 13[14] deals with criminal misconduct by a public servant, including abuse of official position, dishonest misappropriation of property, and obtaining valuable benefits for personal gain. Section 14 and 15 related to punishment for habitual offenders and attempts to commit offences under the Act.

6.2 Bharatiya Nyaya Sanhita, 2023[15]:

The Bharatiya Nyaya Sanhita, 2023 has many provisions relevant for tackling political graft and corruption crimes. Section 61[16] of this Act is related to criminal conspiracy and comes into play when the crime of corruption is committed using collective acts of politicians, government officials, and civilians.

Moreover, Sections 170 to 177 of Chapter IX provide provisions for electoral offences including bribery, undue influence, illegal payments, and failure to maintain election accounts. These sections are critical for dealing with corruption in elections and misuse of money in politics.

The Act also assists in prosecuting criminal offences like cheating, fraudulent behaviour, and abuse of power associated with political graft.

[11] The Prevention of Corruption Act, 1988 (Act 49 of 1988), s. 1.
[12] The Prevention of Corruption Act, 1988 (Act 49 of 1988), s. 7.
[13] The Prevention of Corruption Act, 1988 (Act 49 of 1988), s. 7A.
[14] The Prevention of Corruption Act, 1988 (Act 49 of 1988), s. 13.
[15] The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023).
[16] The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 61.

6.3 Prevention of Money Laundering Act, 2002[17]:

The Prevention of Money Laundering Act, 2002 deals with the financial element of political corruption by focusing on the hiding and utilization of illegal gains from corrupt practices. The purpose of the Act is to curb money laundering and facilitate confiscation of illegally acquired properties.

Section3[18] describes money laundering as the act of concealing, holding, or presenting money that is the product of crime as untainted property. Section 4[19] contains the punishment for the offence, which includes imprisonment and fines.

In addition, Section 5[20] allows the authority to temporarily attach properties suspected of being linked with criminal acts, and Section 8[21] outlines the procedure for adjudication and confiscating those properties.

6.4 Lokpal and Lokayuktas Act, 2013[22]:

Lokpal and Lokayuktas Act, 2013 was introduced in order to conduct investigation into any corruption and malpractices committed by public servants. The Lokpal is set up on the central side and Lokayukta on the state side.

Under Section 14[23], the jurisdiction of Lokpal with respect to public servants is provided. Inquiry and investigation under corruption allegations are covered under Section 20[24], while declaration of assets and liabilities of public servants is covered under Section 44[25].

6.5 Prohibition of Benami Property Transactions Act, 1988[26]:

The Prohibition of Benami Property Transactions Act, 1988 was enacted to prevent people from hiding illegal wealth in the name of others. It is important in controlling political graft

[17] The Prevention of Money Laundering Act, 2002 (Act 15 of 2003).
[18] The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 3.
[19] The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 4.
[20] The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 5.
[21] The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 8.
[22] The Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014).
[23] The Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014), s. 14.
[24] The Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014), s. 20.
[25] The Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014), s. 44.
[26] The Prohibition of Benami Property Transactions Act, 1988 (Act 45 of 1988).

and corruption involving concealed assets.

Section 3[27] prohibits benami transactions, where property is purchased in another person's name for personal benefit. Section 5[28] allows the government to confiscate such properties, and Section 53[29] prescribes punishment for benami transactions.

These provisions help in identifying and recovering assets obtained through corruption and misuse of public office.

7. INSTITUTIONAL MECHANISMS:

7.1 Central Vigilance Commission (CVC):

Central Vigilance Commission is the supreme vigilance authority in India that has been constituted to oversee anti-corruption policies within governmental organizations. The Central Vigilance Commission oversees vigilance administration and investigates any offences carried out under the Prevention of Corruption Act. It also deals with complaints pertaining to corruption and abuse of position by public servants[30].

7.2 Central Bureau of Investigation (CBI):

The Central Bureau of Investigation is the main investigative body handling issues of corruption and economic crimes in India. Its investigations cover issues such as bribery, fraud, misuse of office, and assets that do not match their income. The Central Bureau of Investigation enjoys its investigative authority under the Delhi Special Police Establishment Act[31].

7.3 Lokpal and Lokayuktas:

The Lokpal and Lokayuktas Act, 2013 was passed by the Indian Parliament with the intention of creating independent agencies at the union and state level for investigating corruption among

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[27] The Prohibition of Benami Property Transactions Act, 1988 (Act 45 of 1988), s. 3.
[28] The Prohibition of Benami Property Transactions Act, 1988 (Act 45 of 1988), s. 5.
[29] The Prohibition of Benami Property Transactions Act, 1988 (Act 45 of 1988), s. 53.
[30] Pallavi Shroff, Nisha Harichandran, *et.al.,* "The Current State of Anti-Corruption Law in India", in Paul H. Cohen, Arthur Marriott QC (eds), *International Corruption* 215-216 (Thomson Reuters (Legal) Limited, First South Asian Edition 2012).
[31] Pallavi Shroff, Nisha Harichandran, *et.al.,* "The Current State of Anti-Corruption Law in India", in Paul H. Cohen, Arthur Marriott QC (eds), *International Corruption* 216-217 (Thomson Reuters (Legal) Limited, First South Asian Edition 2012).

public servants. The Lokpal works via an administrative department and also has judicial powers for making investigations into charges of corruption against top-ranking government officials. There were issues of delays and loopholes in the functioning of the agency[32].

7.4 Enforcement Directorate (ED):

The Enforcement Directorate falls under the jurisdiction of the Department of Revenue, Ministry of Finance. It serves as a dedicated financial investigating body. The enforcement agency is responsible for upholding two important acts: the Foreign Exchange Management Act, 1999, and the Prevention of Money Laundering Act, 2002. The Enforcement Directorate takes action against any money laundering by investigating, identifying assets, and punishing the offenders[33].

7.5 Election Commission of India (ECI):

The Election Commission of India (ECI) is an autonomous constitutional body charged with conducting democratic elections. It oversees electoral rolls, registers political parties, monitors election expenditure, and monitors the Model Code of Conduct. The Election Commission of the India thus becomes an important institution for the control of election malpractices such as vote buying and misusing money power.

7.6 Comptroller and Auditor General (CAG):

The Comptroller and Auditor General of India (CAG) is the highest audit institution in the country responsible for auditing revenue and expenditure of the union and state governments. CAG conducts audits of public sector undertakings or misappropriation of funds and financial abuse. Audit reports are presented before legislatures.

7.7 Judiciary:

The judiciary is an indispensable body involved in interpreting anti-corruption laws and enforcing accountability through judicial reviews. The judiciary has the responsibility to oversee the application of constitutional provisions and to carry out investigations in

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[32] Kaunain Rahman, "Overview of corruption and anti-corruption developments in India" *Transparency International Anti-Corruption Helpdesk Answer* 16 (2002).

[33] Kaunain Rahman, "Overview of corruption and anti-corruption developments in India" *Transparency International Anti-Corruption Helpdesk Answer* 17-18 (2002).

corruption-related issues. Although the judiciary is often accused of inefficiency and politicization, it continues to be a critical institution in upholding rule of law[34].

8. CHALLENGES IN CONTROLLING POLITICAL GRAFT:

- **Political Interference:** The investigative agencies come under political pressure when tackling corruption cases in which politicians and bureaucrats of high status are involved. It impacts the impartiality and independence of anti-corruption agencies.

- **Delay in Investigations and Trials:** Usually, the duration of corruption cases is extended owing to the time consumed during investigations and trial proceedings, weak prosecutions, and procedural delays. This demoralizes people's faith in the judiciary.

- **Absence of Independence of Institutions:** The institutions like Lokpal, CBI, and ED are always criticized for being highly centralized and non-autonomous. This leads to corruption in politics through political interference.

- **Opacities in Political Financing:** Opaque and hidden funding mechanisms of elections and political parties encourage corruption practices by facilitating anonymous financing from business interests. This promotes graft in politics.

- **Low Conversion Rate into Convictions:** Most of the corruption cases cannot be proved guilty after conducting intensive investigation because of inadequate proof, witnesses, and misuse of legal procedures.

- **Fear and Reluctance of People to Report Corruption:** People generally do not report corruption cases because of their fears about retaliation and lack of anonymity and protection for witnesses.

9. SUGGESTIONS AND REFORMS:

- **Strengthening Institutional Independence:** Institutional independence could be reinforced by making independent anti-corruption agencies like Lokpal, CBI, CVC, and ED operate without any external interference. Transparency in appointments and

[34] Kaunain Rahman, "Overview of corruption and anti-corruption developments in India" *Transparency International Anti-Corruption Helpdesk Answer* 18 (2002).

provision of fixed tenures will enhance institutional reputation.

- **Electoral Finance Reforms:** Political finance needs to be completely transparent by eliminating anonymous contributions and maintaining strict disclosure of campaign funds. It would help curb the prevalence of corruption in elections.

- **Speedy Investigation and Trial:** Anti-corruption courts with speedy investigations need to be set up to speedily deal with cases of corruption and punish perpetrators.

- **Protection of Whistleblowers:** Those individuals who speak out about corruption need legal protection from victimization, intimidation, and harassment. Witness protection is equally crucial.

- **Use of Technology and Digital Governance:** Technology-based governance, e-government, digital administration, e-tendering, and other measures will limit chances of bribery through discretionary practices of officials.

- **Civic Participation and Public Awareness:** It is important to create awareness among the citizens to actively report corruption.

10. CONCLUSION:

Political graft in India has transformed itself into an organized manner of corruption among politicians, bureaucrats, and businessmen. It poses significant threats to governance and development in society as it hampers the functioning of democratic process. Although there exist many anti-corruption legislations and institutional measures to prevent it, their implementation becomes ineffective due to politicization and delays. In order to curb the phenomenon of political corruption, there needs to be effective legal measures, reforms in institutional mechanisms, political finance reforms, and most importantly the active involvement of citizens in governance.

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