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# CAN THE PREVENTION OF CORRUPTION ACT, 1988 TACKLE ELECTORAL BRIBERY

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## ABSTRACT

Electoral bribery continues to be a common problem affecting democratic processes in India. From cash-for-vote scandals to giving out freebies to sway voters, these inducements undermine voters' freedom to choose and weaken the fairness of elections. Although electoral bribery is considered corrupt under the Representation of the People Act, 1951, the enforcement of this law is weak. The Prevention of Corruption Act, 1988, was mainly created to deal with corruption by government officials and offers a stronger legal framework.

This seminar paper looks into whether the PCA can be used to address electoral bribery, especially in cases involving public officials, misuse of government resources, or gaining electoral advantage through abuse of power. The analysis finds that while the PCA can target some types of electoral bribery, especially when public servants misuse their official position, limitations in legal doctrine, unclear laws, and the way the RPA is structured prevent the PCA from being a complete solution. Changes to laws and clearer judicial guidance are needed to better coordinate these legal rules.

## INTRODUCTION

Bribery in elections is among the oldest complaints of democratic government. In India, where elections are festivals of democracy, the role of money has also grown problematic in the system. Every general and state election cycle, the ECI reports having seized crores of rupees in cash, alcohol, freebies and bribes. Bribery has a ripple effect, it alters voter behaviour, promotes political patronage, increases the cost of election campaigns, pushes candidates to be more openly corrupt and can even turn liberal democracy into a convenient facade.

Various rules are in place to stop such misconduct. The Representation of the People Act, 1951 (RPA)<sup>1</sup>, specifically deals with electoral bribery. The Indian Penal Code (IPC)<sup>2</sup>, especially Sections 171B–171E, makes bribery in elections a crime. The Election

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<sup>1</sup> The Representation of the People Act 1951

<sup>2</sup> Indian Penal Code 1860, s 171B

Commission also issues Model Code of Conduct (MCC) guidelines to try to prevent inducements.

However, the system still faces problems. There is a big gap between what the law says and how it is put into practice. Cases under the RPA for corrupt practices happen rarely and mostly depend on election petitions, which are only filed after results are announced.

Criminal cases under the IPC are very uncommon. The MCC does not have legal power.

This raises an interesting and less explored question: Can the Prevention of Corruption Act, 1988, a law aimed at fighting corruption in public offices, be used to deal with electoral bribery?

## **ELECTORAL BRIBERY IN INDIA**

The practice of electoral bribery occurs when someone offers or provides something of value to sway voters during electoral processes. The practice of electoral bribery appears through various methods which include cash distribution and gift giving and liquor supply and job promises and welfare program manipulation for electoral gain. The Indian Penal Code together with the Representation of the People Act 1951 serve as the main legal frameworks which address electoral bribery.

The RPA defines bribery as a corrupt practice under Section 123(1)<sup>3</sup>. The definition of electoral bribery under this law includes all forms of payment and receipt of benefits which aim to sway voters during elections. The RPA focuses on electoral bribery as a matter of electoral ethics and voting validity instead of treating it as a standalone criminal offense. The law enables candidates and electors to file election petitions for criminal prosecution only after election results become official. The statute functions mainly as a response system because it does not prevent electoral bribery from occurring.

Electoral bribery is one of the fundamental legal and constitutional framework that stand as the guard for the integrity of elections in India. In essence, it is the act of providing, giving, receiving, or soliciting in any way a form of gratification - be it money, gifts, favours, promises of employment, or some other kind of inducement - and intending to influence the

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<sup>3</sup> Representation of the People Act 1951, s 123(1)

voter in the exercise of their electoral rights. The offence in question is primarily dealt with in Section 171B of the Indian Penal Code, setting out the general criminal definition of bribery in the electoral context. Besides, the Representation of the People Act, 1951 further develops the concept, whereby Section 123(1) recognizes bribery as a social “corrupt practice” leading to the annulment of the electoral process. The prohibition against electoral bribery represents one of the fundamental legal and constitutional principles that democracy in India is based on. One of them is the right to vote which lies at the core of Article 326. The right is violated since voter bribing defeats the free expression of electoral choice. Also, it breaches the equality principle under Article 14 by giving richer candidates an unfair advantage and at the same time it changes the democratic process being protected by Article 19(1)(a). To begin with, electoral bribery is on normative grounds disapproved of as it compromises voter autonomy, political equality, and the legitimacy of elected institutions by replacing induction with genuine democratic support. Moreover, the phenomenon is linked to system-wide corruption, as the candidates who “buy” votes are likely to engage in misuse of office for paying off their electoral expenditure. Hence, the main pillars of electoral bribery are law and ethics: quite apart from this being a statutory offence, it is ethically prohibited because it infuses the democratic character of elections and poses a threat to the constitutional obligation of the representative government.

### **THE PREVENTION OF CORRUPTION ACT**

The current electoral bribery practices exceed what the existing laws were designed to handle. The practice of electoral bribery involves sophisticated transactions that go beyond what the current laws were designed to handle. The practice of electoral bribery includes ministers redirecting welfare funds and incumbents using official resources and public employees to support their parties and making state budget announcements for electoral purposes. The combination of administrative corruption with electoral corruption suggests that the Prevention of Corruption Act could apply to these situations.

The PCA enhances India's existing system for fighting corruption that occurs within public offices. The Act establishes a wide definition of "public servant" which includes all ministers and legislators and government officials and people who execute public duties. The law makes it illegal for public servants to receive illegal payments and to use their official

authority for gaining improper benefits. The Act contains four essential sections which include

- Section 7<sup>4</sup> for public servants who receive improper benefits,
- Section 8<sup>5</sup> for bribing public servants,
- Section 9<sup>6</sup> for commercial organizations that bribe public servants and
- Section 13<sup>7</sup> for criminal misconduct through official position abuse.

The 2018 amendment to the Act established a clear definition of "undue advantage" which includes any payment that does not follow legal procedures.

The main purpose of the PCA becomes evident through its organizational framework which focuses on combating public administration corruption. The PCA has the authority to handle electoral bribery when public servants use their official resources to bribe voters. The main issue arises from determining if votes qualify as "undue advantage" advantages and if electoral misconduct amounts to official position abuse.

## **STATUTORY POSSIBILITIES**

The PCA's ability to handle electoral bribery depends on how its defined offenses match the characteristics of electoral bribery.

The law requires that at least one person involved in the corrupt transaction needs to be a public servant. The PCA excludes all candidates who run for office and all party members and private citizens and political figures who do not hold public positions. The practice of electoral bribery in India mostly involves current ministers and elected officials and bureaucrats who follow political orders. The PCA includes these public officials under its definition of public servant. Public officials who use their official power to distribute public resources and make specific allocations and provide benefits for electoral support purposes commit official position abuse.

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<sup>4</sup> Prevention of Corruption Act 1988, s7

<sup>5</sup> Prevention of Corruption Act 1988, s8

<sup>6</sup> Prevention of Corruption Act 1988, s9

<sup>7</sup> Prevention of Corruption Act 1988, s13

The law requires proof that the recipient received an advantage which exceeded what was proper. The statutory language adopted after the 2018 amendment<sup>8</sup> provides extensive coverage. The misuse of official authority to obtain votes qualifies as an undue advantage because these votes stem from improper public service activities. The courts have shown through their precedents about disproportionate assets cases that they accept non-monetary and indirect forms of gratification as valid evidence. The definition of undue advantage includes votes that public officials obtain through their official position abuse.

The law requires proof that the act involved official position abuse or public duty performance or public servant inducement. Public servants who use welfare programs for political campaigns and government resources to sway voters demonstrate clear abuse of their official authority.

The PCA establishes legal grounds to prosecute public servants who use their official power to commit electoral bribery. The judicial system has not established a clear definition of electoral bribery under the PCA but courts have used "undue advantage" and "criminal misconduct" to interpret these terms.

## **JUDICIAL REASONING**

Electoral malpractices such as vote-buying, inducements, and electoral machinery misuse are very common in India's elections. However, surprisingly, the judiciary discourse concerning the role of the Prevention of Corruption Act, 1988 (PCA) in dealing with such electoral bribery is scarcely visible. Courts have mostly perceived the PCA and the electoral corruption to be two different categories, with one entailing corruption in administration and the other electoral integrity regulated by the Representation of the People Act, 1951 (RPA).

Nonetheless, upon a close look at the statutory definitions, constitutional jurisprudence, and the facts of the case concerning electoral malpractice, the line separating these two different groups becomes indistinct. In fact, judicial reasoning on corruption, abuse of public office, and undue advantage forms a theoretical framework that supports the idea of the PCA covering the case of electoral bribery, at least in instances where the misuse of public office leads to a political or electoral gain or public officials engaged in bribery act as intermediaries.

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<sup>8</sup> Prevention of Corruption (Amendment) Act, 2018

The Supreme Court's jurisprudence on corruption has evolved over time and now it is less dependent on the specific transaction of misconduct and more open to the broad concept of corruption as any violation of public office for private or political purposes. An illustrative example may be found in the *State of Karnataka v. J. Jayalithaa*<sup>9</sup> case, when the Court explored the idea of "criminal misconduct" under Section 13(1)(e) of the PCA. Although the issue was that of the possession of disproportionate assets, its significance in law is that the Court took this as an opportunity to formulate a wider theory: public office is a trust, and any exploitation of that office to get benefits that are not publicly available, breaches both statutory and constitutional systems. The Court highlighted the fact that public officials are the managers of both public resources and public power and that the misuse of that power – is it for money or not – goes against the very logic of governance. In this line of reasoning, one can find ample legal precedents to say that if a public servant uses state machinery, public funds, or a bureaucratic route to make electoral bribery easy, then such acts should be treated as "obtaining an undue advantage" or "abusing official position" under Sections 7, 8, 13(1)(a), and 13(1)(d) of the PCA.

Moreover, this doctrinal basis is further supplemented by the case of *Subramanian Swamy v. Manmohan Singh*<sup>10</sup>, where the Supreme Court emphasized the constitutional requirement of corruption cases being dealt with promptly and without any hesitation. Here, the Court not only portrayed corruption as a legal wrong but also as a constitutional sorrow which affects the democratic process of giving account. The demand for "strict scrutiny" in cases involving top political leaders and officials is the Court's way of saying that corruption is closely linked to political power, electoral incentives, and the continuation of political office. Also, the Court's position that corruption inquiries need to be free from political meddling gives normative weight to the PCA's application even in emotionally charged political scenarios such as elections where the bribery is done quietly under the party setup and unofficial network of influence.

While the Supreme Court has not yet clearly or directly stated that bribery in elections is a corrupt practice under the PCA, several High Courts have silently contemplated this idea. In the wake of the "cash-for-vote" probe in Tamil Nadu, the Madras High Court found that money distributed by the party cadres with the involvement or at least the knowledge of public officials cannot be merely classified as electoral irregularities; as per the nature of the

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<sup>9</sup> *State of Karnataka v J Jayalithaa* (2017) 6 SCC 263

<sup>10</sup> *Subramanian Swamy v Manmohan Singh* (2012) 3 SCC 64

conduct, it might be a criminal offence under the PCA. These comments, though made in passing, are legally significant. They mark a judicial readiness to accept that elector bribery, by the public office or public servants, is not only outside the RPA's definition of corrupt practice and that it could in fact lead to the higher level of criminal misconduct.

Likewise, the Andhra Pradesh High Court while dealing with cases related to alleged misuse of ministerial positions during elections held that ministers who instruct bureaucrats to help in illegal electoral inducement may be held liable under the PCA as their actions exemplify the misuse of official machinery for private political gain. The Court conceded that using the political goal of winning elections as a shield does not protect the act from anti-corruption investigation, quite the opposite, especially if the means involved are coercive state power or public resources. These court rulings demonstrate the extent to which courts have come to realize that one cannot separate the bribery of the electorate from corruption of administration, especially in cases where institutional authority has enabled electoral inducement.

Besides that, the recent changes to the PCA highlight the importance of punishing not only the bribe receiver but also the bribe giver. Bribe-giving, in an electoral setting, is typically done by candidates, party workers, or middlemen and seldom by public servants. However, if a public servant is a facilitator, by handing out cash, giving state machinery to help with inducements, or orchestrating benefits selectively for electoral purposes, the legal provisions on bribe-giving will apply. This allows public servants to be charged not only for passive corruption (receiving gratification) but also for active corruption (facilitating or giving gratification), depending on which part of the chain of electoral inducement they occupied.

Interpretations of the PCA by the judiciary have also been less and less strictly textual and more and more purposive. The courts have understood that, as corruption, is an organism which adapts and changes, it is constantly evolving to take advantage of institutional loopholes. Therefore, the judicial interpretation has to be sufficiently broad to cover new forms of corrupt behaviour to the extent that these may include, for example, electoral misconduct. The focus of the constitutional courts on transparency, accountability, and democratic fairness further helps to argue that the PCA should not be artificially limited in cases where electoral bribery intersects with administrative power. The Supreme Court's decision in *CBI v. Ramesh Gelli*<sup>11</sup>, where the Court held that the PCA should be read broadly

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<sup>11</sup> *C Central Bureau of Investigation v Ramesh Gelli* (2016) 3 SCC 788

so as to include individuals who perform public functions even if they are not the government, is an example of the judiciary's move away from a formalistic, towards a functional, approach to corruption. If the PCA covers people who carry out public functions, then public officials who misuse their power to influence elections are definitely included.

The concept of "undue advantage" as developed by the courts is also equally significant. At present, the word is understood in a broad sense and can cover material benefits, political benefits, or even intangible benefits that influence the public duty. Gains in elections made through bribery or inducement may be a case in point. The ultimate result is the undermining of the democratic process through the manipulation of voter behaviour, this is exactly the kind of illegitimate advantage that the PCA aims to ban. Therefore, in terms of the PCA, electoral bribery is not only an RPA offence; it is a corruption offence, if it is committed by public servants or people in the public office.

The hesitation on the part of the judiciary to explicitly unite the PCA with electoral bribery, maybe, was due to the very fact that Indian legal structures were historically separating electoral crimes from administrative corruptions. Courts have recognised for a long time that laws with the same goals may be applied at the same time and that the presence of a special electoral law does not exclude the use of general criminal laws in cases where the conditions of those laws are met. In *Kartar Singh v. State of Punjab*<sup>12</sup>, the Supreme Court acknowledged that overlapping criminal statutes might coexist and that the prosecution might choose to file cases under one or both of the statutes depending on the circumstances. It thus supports the opinion that the PCA might be a means to RPA in the electoral sphere rather than a replacement.

Overall, court reasoning on corruption issues, when taken together, constitutes a strong rationale for applying the PCA to bribery in the electoral domain where there is an abuse of power. The courts reading of "abuse of position," "undue advantage," and "criminal misconduct" is sufficiently extensive to include the case of electoral bribery which is linked to public authority. Local court opinions in cash-for-vote cases combined with the trajectory of corruption jurisprudence, which acknowledges the overlap of these issues, albeit in a more roundabout way, suggest that the judiciary is gradually moving towards recognizing the interconnectedness of electoral corruption and administrative corruption.

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<sup>12</sup> *Kartar Singh v State of Punjab* (1994) 3 SCC 569

India's democratic processes are increasingly vulnerable to the monetisation of elections. In this context, the judiciary's readiness to construe anti-corruption laws in a manner consistent with constitutional principles might have a decisive impact on accountability. The transformation in the courts' approach to these issues is indicative of their growing intolerance to the abuse of the public office for electoral gains, which in turn provides a strong argument for the use of the PCA as a powerful weapon in the fight against electoral bribery.

## CONSTITUTIONAL PRINCIPLES

Indian constitutional setup is very much inclined towards holding spotless, impartial and democratic elections. The constitutionally highlighted elections create not only a normative background but also a doctrinal demand for the interpretation of statutory schemes - including the Prevention of Corruption Act - in a way that they foster electoral integrity. The Supreme Court has time and again recognized the fact that free and fair elections are part of the basic structure of the Constitution. This concept does not limit itself to the electoral procedures only, but it also consists of the necessary social preconditions for real political participation. Any form of election bribery be it money, goods, services, or state patronage, destroys the political preconditions. It manipulates voter freedom, weakens political equality, and decreases people's trust in democratic institutions. Hence, under this constitutional framework, the issue is not that the PCA needs to be extended to cover electoral bribery but that a limited interpretation of the PCA would amount to a breach of the Constitution's pledge of democratically clean processes.

Voting right, even if not formally recognized as a fundamental right, is still based on constitutional guarantees. The Supreme Court in *PUCL v. Union of India*<sup>13</sup> held that the right to vote entails the feature of freedom of expression under Article 19(1)(a)<sup>14</sup> especially when it is associated with the right to know candidates' backgrounds. The Court declared that voter autonomy is a necessary democratic function. Electoral bribery is the most direct one of such attacks since it turns elections from the will of the people into a business transaction, thus destroying voter autonomy. Accordingly, the purport of the electoral process can no longer be dissociated from the constitutional guarantee of freedom of expression. If public officials

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<sup>13</sup> *People's Union for Civil Liberties (PUCL) v Union of India* (2003) 4 SCC 399

<sup>14</sup> Constitution of India, art 19(1)(a)

facilitate electoral bribery, this criminal act goes beyond electoral malpractices and becomes the assault of constitutional rights, thereby triggering the application of wider criminal laws, e.g. the PCA.

Furthermore, Article 21<sup>15</sup> introduces an additional constitutional facet to the discussion. The Supreme Court in several instances has acknowledged that democracy, openness, and the right to be engaged in public affairs are the components of an extensive interpretation of the right to life. When political bribery, more specifically bribery enabled by public officials, disrupts these rights, it is likewise the violation of the constitutional guarantees. The PCA's deployment in such cases brings about the key constitutional principle of accountable governance.

After the protection of fundamental rights, the basic-structure jurisprudence of the Court goes to show that it is a constitutional requirement to ensure that elections are not tainted by corrupt practices. The three cases of *Minerva Mills v. Union of India*<sup>16</sup>, *SR Bommai v. Union of India*<sup>17</sup>, and *Kuldip Nayar v. Union of India*<sup>18</sup>, taken together, are the major landmarks in the Court's understanding that periodic elections are the mainstay of a constitutional democracy. These judgments advocate the view that the Constitution should be read in a way that checks the decline of its democratic functioning. Since voter bribery is at the heart of the democratic system, reading the PCA in a way that favours electoral honesty is in conformity with the constitutional injunction of safeguarding the basic structure.

Perhaps one of the most powerful constitutional citations for this talk is the case of *Abhiram Singh v. C.D. Commachen*<sup>19</sup> in which the Constitution Bench took a wide view of the notion of corrupt practices under the RPA. The court verdict was that any provocation to religion, caste, language, or community, whether done by the candidate, agent, or any other person with the candidate's consent, is a breach of election laws. The decision indicated the court's readiness to use purposeful interpretations of electoral laws in order to protect the election's sanctity. Even though the point of the *Abhiram Singh* case was not directly the electoral bribery, the line of argument shows that the court considers electoral integrity as the most important thing and is willing to extend the statutory definitions if needed to fight corruption.

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<sup>15</sup> Constitution of India, art 21

<sup>16</sup> *Minerva Mills Ltd v Union of India* (1980) 3 SCC 625

<sup>17</sup> *S R Bommai v Union of India* (1994) 3 SCC 1

<sup>18</sup> *Kuldip Nayar v Union of India* (2006) 7 SCC 1

<sup>19</sup> *Abhiram Singh v C D Commachen* (2017) 2 SCC 629

Indian courts have been consistent in applying the principle of purposive interpretation in cases where statutory provisions raise constitutional concerns. The court in *R.K. Garg v. Union of India*<sup>20</sup> declared that anti-corruption and black-money economic laws should be interpreted with a functional view and flexibility. In *Vishaka v. State of Rajasthan*<sup>21</sup>, the court went beyond by imputing constitutional values into statutory provisions to resolve the issue of sexual harassment at the workplace. The Court decisions form a body of law whereby statutory schemes, including those in the penal code, should be interpreted in a manner that supports constitutional ideals. By following this argument, it becomes not only reasonable but necessary from a constitutional point of view to interpret "undue advantage," "gratification," and "abuse of official position" in the areas that deal with bribery in the election of officials in contemporary times.

The Constitution also acknowledges that corruption is at the root of electoral malpractices. The Supreme Court ruling in *Lily Thomas v. Union of India*<sup>22</sup> that disqualification upon conviction for certain offences, including corruption, should be immediate is a clear indication of the judiciary's effort in breaking the link between criminality and electoral politics. It is the Court's firm position that legislators who have been found guilty should not be allowed to continue in office and this is in line with the constitutional mandate to purify the political process. If as a consequence of a corruption conviction, a candidate is disqualified because such a conviction undermines of democratic credibility, then a corruption case committed during elections should be treated with the same or even more rigor, particularly if it is the misuse of the public office that facilitates it.

According to the constitution, public office is a trust. Article 75 is a representation of the feature that the Council of Ministers is collectively responsible to the House of the People, and Articles 256 and 257 bind state authorities to act in harmony with the Constitution. If public officials help electoral bribery, they are breaking the trust. In *Centre for PIL v. Union of India* (the 2G spectrum case), and many other cases, the Court has argued that the use of public power should be for public good.

The focus on accountability in the constitution also helps to justify the PCA's use in the electoral world. In *Common Cause v. Union of India*<sup>23</sup>, the Supreme Court ruled that the

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<sup>20</sup> R K Garg v Union of India (1981) 4 SCC 675

<sup>21</sup> Vishaka v State of Rajasthan (1997) 6 SCC 241

<sup>22</sup> Lily Thomas v Union of India (2013) 7 SCC 653

<sup>23</sup> Common Cause v Union of India (2018) 5 SCC 1

government must not only be transparent but also act with high moral standards, especially when it is using public resources. When electoral bribery, for example, results in the misuse of public funds that are then used for giving away welfare materials, cash transfers, or the use of public vehicles, then such misappropriation becomes not only an electoral offence but also an offence of corruption under the PCA. Proper constitutional governance would require that such resources of the state be stopped from becoming mere tools for political inducement.

Moreover, the *Krishnamoorthy v. Sivakumar*<sup>24</sup> case decided by the Constitution Bench is another major turn. The Court found that corrupt political practices have profound effects that eventually destabilize not only the democratic process but also the whole system. The Court went further to say that lack of political morality is just one of the legal requirements and it is actually a constitutional necessity. By this logic, if wrongdoing in the electoral administration is happening alongside electoral bribery, then courts should be very active in using all the statutory means available to them, including the PCA, to promote democratic values.

Besides that, the constitutionally established principle of federalism also, though indirectly, allows for the wider implementation of anti-corruption measures during elections. The poll process is under the supervision of the Election Commission of India (ECI), which is independent by virtue of Article 324. The Supreme Court, through its various decisions, has been very supportive of the ECI's independence and its role as a guarantor of fair polls. The only problem is, the ECI doesn't have any prosecutorial powers of its own and is, therefore, heavily dependent on the state machinery for the implementation of the law, which is usually under the control of the ruling party. Thereby, the constitutional device for free and fair elections ceases to function properly when the apparatus of the state participates in electoral bribery. The PCA, on the other hand, by virtue of its independent investigation set-up through agencies like the CBI and Lokayuktas, is there to facilitate law enforcement that can circumvent a colluding state apparatus. Therefore, the use of the PCA in such situations turns into a constitutional act aimed at recuperating the integrity of the electoral process.

In this respect, the reading of the PCA as a law that also regulates illegal electoral practices is not a legislation expansion but rather an establishment of the statute's harmony with constitutional values. The PCA is essentially a measure promulgated by the state to prevent inner-public governance corruption. By the same token, elections are an integral part of public administration since they are the ones which establish who shall wield public power

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<sup>24</sup> *Krishnamoorthy v Sivakumar* (2015) 3 SCC 467

and govern the society. When the public officials rig elections through bribery, they are not only corrupting an administrative procedure, but they are undermining the very basis of public office which is the legitimation of power from the people. To that effect, the PCA thus becomes not only a possible manner of intervention but one grounded in the constitution to be used in such cases of misconduct.

Therefore, the Constitution provides a well-founded jurisprudential, normative, and doctrinal framework for understanding the PCA as a law that can supplement electoral law in situations where electoral bribery and administrative corruption are intertwined. A narrow reading that disentangles electoral bribery from the PCA's scope would result in an unharmonious relationship between the statute and the constitutional principles of electoral integrity, democratic accountability, and anti-corruption governance. On the other hand, a purposive reading that recognises PCA's involvement in solving electoral bribery cases is consistent with the constitutional structure, contributes to the democratization process, and consolidates the judiciary's role in safeguarding the democratic process.

### **LIMITATIONS AND RISKS IN APPLYING PCA TO ELECTORAL BRIBERY**

Even though the Prevention of Corruption Act creates an appealing legal route for tackling election-related corruption involving public servants, its ability to serve as a one-stop instrument for combatting electoral bribery is quite limited. The reasons for these constraints are doctrinal, structural, jurisdictional, evidentiary, and institutional in nature. Knowing these restrictions is important in gauging the extent to which the PCA can be used against the problem of vote-buying and inducement in Indian elections that are so deeply rooted.

The most essential limitation comes from the PCA's statutory design. The PCA is very much a device to deal with the misbehavior of public servants and has been so designed in all its aspects. Hence, its definitions, offence categories, and operative provisions refer to an inbuilt relationship between the offender and the State. Instead, electoral bribery by far is a phenomena of the private political arena where the driving forces behind it are usually candidates, party workers, community intermediaries, financiers, and voters themselves. Most of the characters in the story of electoral inducement are those who do not hold any official position in the government and thus fall outside the legal definition of "public servants". Because the PCA punishes corruption in public office, not the use of political influence,

politically private actors cannot as a rule be prosecuted under the PCA unless their behavior is connected to that of public servants in a way that meets the legal requirements.

On the other hand, this boundary of structure sharply cuts the PCA's reach. In many cases, electoral bribery is conducted through the use of nefarious networks within parties, hierarchies for distributing money, local agents, and on-the-ground operatives who assure the candidate's innocence. Public servants, if at all, are only peripherally involved, however, establishing that they acted in their capacity as public servants—and not simply as private supporters or party loyalists—is a tough evidentiary challenge. Generally, courts are careful when it comes to extending criminal charges beyond the explicit legal framework, and hence, in the absence of a clear link between the performance of public duty and corrupt inducement, PCA allegations may not be supported by judicial examination.

There is another limitation which results from the legal doctrine of a specific law taking precedence over a general one. The Representation of the People Act is an elaborate and specialised electoral code. It effectively outlines corrupt practices, electoral offences, procedural mechanisms, and electoral remedies. While being an essential part of the anti-corruption system in India, the PCA is still a general law which deals with bribery in the context of public administration. When there is a conflict or overlap between the two, courts may hold that allegations of electoral bribery should be dealt with primarily under the RPA. Unless the conduct independently fulfils PCA's criteria (e.g. abuse of official position), courts may be reluctant to refer to the PCA simply because the wrong occurred in an election. In the past, courts have been reluctant to mix up different statutory regimes, especially when the legislature has provided a detailed code for a particular area. This judicial stance restricts the PCA's potential to enter the field of election law.

Besides these, there are practical problems which make the PCA less potent in election matters. In many instances, tying the abuse of public office with obtaining an electoral advantage is a Herculean task. Usually, electoral bribes are done in secret, rarely are there any documents that record the transactions, and in most cases they are cash transactions or in-kind inducements distributed through layers of intermediaries.

Political interference poses an additional hurdle. Investigative agencies responsible for enforcing the PCA, such as the state Anti-Corruption Bureaus or the Central Bureau of Investigation, often operate under the administrative control of the political executive. During election periods, when political stakes are high, investigative independence may be

compromised. Governments may selectively initiate PCA proceedings against opposition candidates while protecting their own party members, thereby transforming the PCA into a political instrument rather than a legal safeguard. The judiciary has recognised the dangers of such politicisation in decisions such as *Subramanian Swamy v. Manmohan Singh*<sup>25</sup>, where it underscored the need for non-partisan investigation of corruption. Yet the structural vulnerability remains.

While corruption laws may appear normatively desirable, indiscriminate use of the PCA during elections can destabilise the political system. Political actors may weaponise PCA complaints against rivals, leading to a flood of motivated prosecutions. Over-criminalisation risks delegitimising anti-corruption institutions, overwhelming investigative capacity, and transforming elections into adversarial criminal battlegrounds rather than democratic contests. Courts may then respond by adopting a more restrictive interpretation of the PCA to prevent such misuse, which could inadvertently weaken anti-corruption enforcement overall.

Furthermore, the PCA lacks the procedural mechanisms necessary to address electoral wrongdoing comprehensively. Electoral bribery involves not only criminal liability but also electoral consequences such as voiding elections, disqualifying candidates, ordering re-polls, and regulating campaign finance. These remedies fall exclusively within the domain of the RPA and the Election Commission of India. Even if a candidate or public servant is prosecuted under the PCA, such prosecution does not automatically invalidate an election unless a separate election petition is filed and adjudicated under the RPA. This disjunction creates a fragmented enforcement landscape in which criminal and electoral remedies operate independently, often with inconsistent outcomes.

The PCA also does not address systemic issues such as opaque political financing, party-level patronage networks, or the use of welfare schemes as disguised bribery. Many forms of electoral influence, such as targeted welfare announcements, distribution of government benefits, immediately before elections, or the misuse of incumbency advantages fall outside the PCA's scope even though they undermine electoral equality. Thus, while the PCA may address certain forms of electoral bribery involving public servants, it cannot comprehensively tackle the broader ecosystem of inducement that characterises Indian elections.

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<sup>25</sup> *Subramanian Swamy v Manmohan Singh* (2012) 3 SCC 64.

Taken together, these limitations illustrate that the PCA cannot supplant the RPA as the primary legal mechanism for addressing electoral bribery. At best, the PCA can supplement the electoral framework in cases where electoral bribery intersects with administrative corruption. It remains structurally incapable of addressing the broader phenomena of political bribery, mass-level inducement, and party-driven vote-buying that dominate India's electoral landscape. A more integrated legal approach—one that harmonises the PCA with electoral law while addressing institutional, structural, and doctrinal gaps is therefore essential.

### **WAY FORWARD – A HARMONIZED LEGAL FRAMEWORK**

It is essential to have a harmonized legal framework that can comprehensively take care of the problem of electoral bribery that recognizes the fact that this type of bribery is both an electoral offence and a corruption offence. On one hand, the Prevention of Corruption Act, although it offers a strong tool for prosecuting corruption involving public servants, is not fully capable of dealing with election-related bribery in a comprehensive manner. On the other hand, the Representation of the People Act extends detailed electoral remedies but is heavily constrained in enforcement. A step from these two frameworks to fill the void is statutory reform with coordination of institutions and doctrinal clarity from the judiciary.

One reform option might be the clarification by the legislature that votes gained by the misuse of the public office are the "undue advantage" within the PCA meaning. At present, the law broadly describes an undue advantage but does not explicitly mention the political benefit. By defining electoral benefit as one of the instances of undue advantage, for example, increased votes, campaign funding, or nomination gains, it would become the basis upon which officials who abuse their office for political gain could be prosecuted. The legislation would not just reinforce the PCA but make it consistent with the constitution that political advantage achieved through corrupt ways is anti-democratic governance.

Another possible reform is to broaden the public servant definition in the statute. The line between state actors and political actors in today's elections is very thin. Party officials, political intermediaries, and individuals who are associated with government schemes are often performing functions that are either quasi-public or state-like. Across the line, they have recognized that people who perform public functions can be treated as public officials for corruption purposes. The Indian judiciary moves towards this direction as well, which is

evident in *CBI v. Ramesh Gelli*<sup>26</sup>, where the Court took a functional approach in the public servants definition. Broadening the definitional parameters to also include those who have decisive political control or authority over public resources will not only prevent those political actors who misuse state-like powers for electoral gains from escaping anti-corruption scrutiny but also make it more difficult for them to do so in the first place.

Additional statute tweaking may be represented by a new provision in the PCA that makes it illegal to misuse one's public office for political gain. Such a provision may function separately from the existing bribery offenses and could be a tool to deal with the most significant aspects of the intersection of public power and electoral exploitation that only in a few cases come to light. The provision would cover cases like a person or a group instructing public servants to engage in partisan activities, offering government incentives to a selected group during the elections, or using the official machinery to support a certain candidate. Criminalizing the use of the office for electoral purposes in particular would be the way the PCA harmonized with the RPA while still being a distinct anti-corruption character.

Reforming institutions remains very important as well. Although indigenously empowered through the constitution, the Election Commission of India structurally depends on state and central governments for investigative and enforcement capability. The establishment of a formal coordination mechanism between the ECI and anti-corruption agencies such as State Vigilance Commissions, Lokayuktas, and the CBI, would be efficient in joint investigations where electoral bribery intersects with administrative corruption. Cooperation of this kind might involve information sharing, joint investigative teams, and clearly laid out procedures stipulating the moment when an electoral misconduct investigation by the PCA should be initiated and which actions should then follow. This would be a way to reinforce enforcement without, at the same time, undermining the independence of the Commission.

## **CONCLUSION**

Electoral bribery remains one of the most pervasive and corrosive threats to India's democratic foundations. It distorts political equality, undermines voter autonomy, erodes public trust in institutions, and entrenches patronage networks that perpetuate inequality. The Representation of the People Act, despite its detailed provisions on corrupt practices, suffers

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<sup>26</sup> *CBI v Ramesh Gelli* (2016) 3 SCC 788

from practical enforcement challenges rooted in evidentiary barriers, procedural limitations, and institutional constraints. The Prevention of Corruption Act, by contrast, provides a robust investigative and punitive framework, yet its application is historically confined to administrative corruption involving public servants. The relationship between these statutes becomes particularly relevant in contemporary elections, where the misuse of public office often intersects with political inducement.

As the analysis of judicial reasoning and constitutional principles suggests, the PCA possesses significant but limited potential to address electoral bribery, particularly when such bribery is facilitated by public servants or through public office. The Courts' evolving interpretation of "undue advantage," "gratification," and "abuse of official position," combined with constitutional commitments to democratic integrity, provides a strong doctrinal basis for invoking the PCA in electoral contexts. However, structural constraints inherent in the statute, doctrinal principles governing special and general laws, and practical enforcement challenges limit the PCA's capacity to serve as a comprehensive instrument against electoral bribery.

The PCA cannot, in its current form, replace the RPA as the primary legal mechanism governing electoral offences. What it can do, and what it should do, is supplement the electoral framework by providing a stronger basis for prosecuting those forms of electoral bribery that exploit public office and corrupt administrative power. This requires statutory revision, institutional coordination, and judicial clarity. Legislative amendments clarifying that electoral gain constitutes undue advantage, expanding the definition of public servant, and criminalising misuse of public office for electoral purposes would significantly strengthen the legal architecture. Likewise, improved coordination between the Election Commission and anti-corruption agencies, supported by judicial guidance, would enhance investigative capacity and ensure consistent enforcement.

The PCA in its present state is not capable of taking over from the RPA as the main legal instrument that addresses electoral offences. Its role, however, is to complement the electoral framework by enabling a more robust prosecution of those kinds of electoral bribery that, among other things, exploit public office and corrupt administrative power. Such a scenario entails statutory revision, institutional coordination, and judicial clarity. Legislative amendments making it clear that getting an electoral advantage amounts to an unfair advantage, broadening the definition of a public servant, and making it an offence to use

public office for electoral purposes will go a long way in strengthening the legal framework. Similarly, coordination between the Election Commission and the anti-corruption agencies, enhanced by the support of the judiciary, will result in a greater investigative speed and will also be a guarantee of enforcement that is unbiased and up to the mark.

At the end of the day, the protection of electoral integrity is the main objective of a well-integrated legal plan which should not only cover the administrative but also the political aspects of bribery. A harmonised system that effectively combines the advantages of the PCA and RPA would be the one to make sure that elections are the true reflection of popular will rather than being the result of inducements in return. The maintenance of the democratic principles in India is what is at stake here and they depend on this liaison. The PCA, after being improved and clearly coordinated with electoral law, is capable of playing an important part in this change - not as a replacement for electoral law, but as a strong supplementary tool in the constitutional struggle against corruption.

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