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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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**THE EXCLUSION OF EXTRAVAGANT POLL PROMISES**  
**FROM THE DEFINITION OF 'BRIBERY' UNDER**  
**SECTION 123 (1) (A) OF THE REPRESENTATION OF**  
**THE PEOPLES ACT 1951 [ROPA]**

AUTHORED BY - ARYAMAN DUBEY

**Abstract:**

This research paper argues that a political party's extravagant poll promises should not be considered 'bribery' under Section 123 (1) (A) of the Representation of the Peoples Act 1951. By analyzing relevant laws and case laws, this paper gives compelling reasons and case studies to support the exclusion of such pledges from the definition of bribery.

**Keywords** - Representation of the Peoples Act 1951, Bribery, Electoral promises, Corruption practices

**Introduction:**

Bribery during elections is prohibited under Section 123(1)(A) of the RoPA. However, the inclusion of extravagant poll promises in this definition raises concerns about its applicability and repercussions for political parties. This study examines the legal and practical arguments for omitting excessive poll promises from the definition of bribery.

**Bribery is defined as follows in Section 123 (1) (A) of the RoPA:**

Bribery is defined in Section 123 (1) (A) of the RoPA as the offering, providing, or promising of any gratification by a candidate or any person acting on his behalf with the intent to influence electors. This definition is used to determine whether lavish poll promises constitute bribery.



## **Legislative Framework:**

Section 123(1)(A) of the RoPA defines "bribery" as any present, offer, or promise made by a candidate or his agent, or by any other person with the consent of a candidate or his election agent, to encourage a person to vote or refrain from voting, as a corrupt practice. This clause prohibits the direct exchange of tangible advantages for votes to ensure electoral fairness and transparency. However, the Act fails to address the context of election manifesto promises, which are often broad policy proposals rather than direct swaps for votes.

## **Enforcement on the Ground:**

The Section 123 (1) (A) of RoPA should NOT be read to include extravagant poll promises made by a political party and this should come under the definition of 'Bribery' because the question is can the promise of freebies, like laptops and washing machines, by a political party during election campaigns, can be classified as bribery under this section.

By going through the relevant rules and the literal rule sense the section defines bribery as any gift, offer, or promise by a candidate or his agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing an elector to vote or refrain from voting at an election.

**Note** – extravagant poll promises made by any political party may seem like bribery but it does NOT fit within the definition provided in the act, it specifically mentions gifts, offers, or promises made by a candidate or his agents or with their consent but does NOT mention promises made by a political party.

Now using the internal aids, I would cite the judgment of <sup>i</sup>S. Subramanian Balaji v. State of T.N., (2013, which held that "pre-poll promises made by a political party cannot constitute a corrupt practice under the Representation of the People Act".

"It was held that after examining and considering the parameters laid down in Section 123 of the RP Act, we arrived at a conclusion that the promises in the election manifesto cannot be read into Section 123 for declaring it to be a corrupt practice. Thus, promises in the election manifesto do not constitute



as a corrupt practice under the prevailing law. A reference to a decision of this Court will be timely. In *Ramchandra G. Kapse v. Haribansh Ramakbal Singh* this Court held that: (SCC, Para 21)”

*“21. ... Ex facie contents of a manifesto, by itself, cannot be a corrupt practice committed by a candidate of that party.”*

I quote from the judgment that – “although the law is obvious that the promises in the election manifesto cannot be construed as “corrupt practice” under Section 123 of the RP Act” and this Court has limited power to issue directions to the legislature to legislate on a particular issue. However, the Election Commission, in order to ensure a level playing field between the contesting parties and candidates in elections and also in order to see that the purity of the election process does not get vitiated, as in past been issuing instructions under the Model Code of Conduct. The fountainhead of the powers under which the Commission issues these orders is Article 324 of the Constitution, which mandates the Commission to hold free and fair elections. It is equally imperative to acknowledge that the Election Commission cannot issue such orders if the subject-matter of the order of the Commission is covered by legislative measures”.

In the case of *Ashwini K Upadhyay v Government of National Territory of Delhi*, the Supreme Court observed that “a poll manifesto does not have a statutory backing and hence its enforceability is not within the purview of the courts and therefore, rejected the prayer of the petitioner, in that case, to give a direction to Delhi Government to pass Jan Lokpal Bill and Swaraj Bill, as promised by Aam Admi Party in <sup>ii</sup>“their party manifesto<sup>iii</sup>”.

My interpretation is that the act has not defined the word “freebies” and provides narrow interpretation for bribery and corrupt practices. The RP act only controls the candidate or his agent and not a political party and the promises are made by the political party which is NOT regulated under RP act.

My interpretation and political philosophy is that there must be a difference between welfare “schemes” and “freebies” , such as can we describe the promise of free education as a freebie? , can free drinking water, minimum essential units of power etc. be described as freebies? , or can consumer products and free electronics be described as welfare?”

For example, schemes such as MNREGA, which gave citizens “dignity of living” such an employment, can we coin the term freebies on those needy people of the society who have no access to education to acquire the skills to get a job, mid day meal schemes, through which children get

quality food for their health since they can't afford to buy three square meal, can those children be termed or coined as freebies or people benefitting under welfare schemes.

The law clearly states that promises made in an election manifesto cannot be considered "corrupt practice" under Section 123 of the RP Act.

Even if it could then presently the "Election Commission of India has told the Supreme Court that offering any freebies either before or after the election is a policy decision of the party and that the Commission cannot regulate state policies and decisions which may be taken by the winning party when they form the government".

"That offering/distribution of any freebies either before or after the election is a policy decision of the party concerned and whether such policies are financially viable or its adverse effect on the economic health of the State is a question that has to be considered and decided by the voters of the State. The Election Commission of India cannot regulate state policies and decisions which may be taken by the winning party when they form the government. Such an action, without enabling provisions in the law, would be an overreach of powers," the affidavit states."

I would further introduce more arguments to provide solidification on my stances –

#### **Argument 1: The Nature of Electoral Promises**

Electoral promises are an integral part of the democratic process, allowing political parties to communicate their visions and policies to the electorate. These promises are inherently different from the act of bribery, which involves a direct and tangible exchange of goods or services for votes. Manifesto promises are made to the electorate at large and lack the specificity and personal gain characteristic of bribery. The Supreme Court of India, in the case of *S. Subramaniam Balaji v. The Government of Tamil Nadu & Ors.* (2013), held that promises in the election manifesto cannot be termed as 'corrupt practice' under Section 123 of RoPA. The court recognized the right of the electorate to be informed about the policies of parties, which reflects the essence of the democratic process.

### **Argument 2: The Impracticability of Regulation**

Regulating electoral promises as bribes would present substantial obstacles. First, it would necessitate an evaluation of what constitutes an ‘extravagant’ promise, which is inherently subjective and open to arbitrary interpretation. Second, it is likely to result in excessive litigation, as competing parties may utilize such laws to challenge electoral results, eroding the democratic process’s stability. Third, it would impose an unnecessary duty on the judiciary to assess the feasibility and sincerity of political pledges, which is outside the purview of judicial knowledge and should be left to the electorate’s judgment.

### **Argument 3: The Role of the Electorate’s Discernment**

A key principle of democracy is the electorate’s ability to understand and make informed decisions. Voters are required to assess the credibility and practicality of political parties’ claims and vote appropriately. The electorate’s discernment checks political parties’ promises. Treating poll promises as bribery may be perceived as weakening the electorate’s intelligence and ability to make educated judgments, as well as potentially infantilizing the voter base by implying that they are unable to distinguish between policy proposals and personal benefits.

### **Argument 4: The Chilling Effect on Policy Discourse**

If poll promises were categorized as bribery, it may hinder political discourse. Political parties may become extremely cautious and avoid making any substantial promises for fear of legal consequences. This could result in elections devoid of serious policy debates, with parties avoiding any promises that could be interpreted as ‘extravagant’. Such a climate would be damaging to the democratic process because it is only via the exchange of promises and counter-promises that voters can engage in the political process and keep elected officials responsible.

Keeping in mind that the electoral manifesto lacks statutory backing; its enforceability is outside the purview of the courts. Hence courts cannot intervene since no proper law made on this issue. Hence, after reading through the relevant rules and internal aid, it would be difficult to interpret extravagant poll promises made by a political party as bribery under section 123 (1) (A) of RoPA.

## Case Studies

### 1) The "Freebies" case in Tamil Nadu, India:

In Tamil Nadu, political parties have historically made extravagant promises of freebies such as laptops, televisions, and household appliances to voters in their election manifestos. These promises have often been critiqued for their potential to unduly influence voters and skew the electoral process. However, these promises have not been considered as "bribery" under Section 123(1)(A) of the Representation of the Peoples Act, 1951.<sup>1</sup>

The Supreme Court of India, in a landmark judgment in 2013, upheld the legality of such promises, stating that they do not amount to the "corrupt practice" of bribery under Section 123(1)(A) of the Act. The court held that the promises of freebies, while populist and potentially financially unsustainable, do not amount to bribery as long as they are part of the election manifesto and are not directly distributed to individual voters with the intent to influence their votes.<sup>2</sup>

### 2) The "Free Electricity" promise in the state of Delhi, India:

In the run-up to the Delhi Assembly elections in 2015, the Aam Aadmi Party (AAP) made a significant and controversial promise to provide free electricity to households consuming up to 400 units per month if they were elected to power. This promise was a central feature of their election manifesto and played a crucial role in their electoral campaign.<sup>3</sup>

The promise of free electricity was criticized by opponents and legal experts who argued that such promises could unduly influence voters and should be considered a form of bribery. However, the issue was not deemed as bribery under Section 123(1)(A) of the Representation of the Peoples Act, 1951, as it was part of the election manifesto and not a direct distribution of benefits to individual voters.

By examining these Indian case laws, the Indian judiciary has continuously maintained the line between political promises and corrupt practices, emphasizing the significance of allowing voters to

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<sup>1</sup> <https://www.theweek.in/theweek/cover/2022/08/27/how-freebies-boosted-tamil-nadus-economy.html>

<sup>2</sup> <https://theprint.in/opinion/not-freebies-tamil-nadu-has-given-india-market-friendly-dravidian-welfare-model/1101402/>

<sup>3</sup> <https://economictimes.indiatimes.com/wealth/save/how-to-get-electricity-subsidy-in-delhi-a-step-by-step-guide-on-how-to-apply-for-electricity-subsidy-online-offline/articleshow/95003100.cms>



evaluate electoral promises within a democratic framework. These instances support the premise that excessive poll promises should not be regarded as 'bribery' under Section 123(1)(A) of the Representation of the Peoples Act, 1951, but as legitimate parts of the democratic electoral process.<sup>4</sup>

## Conclusion:

The legal and democratic principles that underpin the Indian electoral system suggest that extravagant poll promises should not be treated as 'bribery' under Section 123(1)(A) of RoPA. The nature of electoral promises, the impracticability of regulation, the role of the electorate's discernment, and the potential chilling effect on policy discourse all support the exclusion of such promises from the legal definition of bribery. While it is essential to maintain the integrity of elections and prevent corrupt practices, the classification of poll promises as bribery is not a tenable solution. Instead, efforts should be focused on enhancing transparency, political education, and accountability mechanisms to ensure that the electorate is well-informed and capable of holding political parties responsible for their promises.

In the end, the strength of a democracy lies in its vibrant political discourse and the ability of the electorate to make informed choices. Any legal interpretation that unduly restricts this discourse or underestimates the electorate's capacity to make these choices runs contrary to the democratic ethos and should be approached with caution. Therefore, while the regulation of actual corrupt practices must remain stringent, extravagant poll promises should remain outside the ambit of 'bribery' as defined under Section 123(1)(A) of the Representation of the Peoples Act, 1951.

I conclude that the extravagant poll promises made by a political party, such as the distribution of laptops or washing machines, do not fall within the definition of bribery under Section 123 (1) (A) of RoPA and Section 123 (1) (A) of RoPA should NOT be read to include extravagant poll promises made by a political party and this should come under the definition of 'Bribery'.

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<sup>i</sup> S. Subramaniam Balaji v. State of T.N., (2013) 9 SCC 659

<sup>ii</sup> V.P. Ammasai vs The Chief Election Commissioner 2019

<sup>iii</sup> Ashwini Kumar Upadhyay vs Union Of India 2018

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<sup>4</sup> <https://energy.economicstimes.indiatimes.com/news/power/free-electricity-scheme-in-delhi-extended-till-april-2024/99254316>