REGULATORY BLIND SPOTS OF ARTICLE 324: FREEBIES AND AI-GENERATED MISINFORMATION AS TWIN TESTS OF THE ELECTION COMMISSION'S INSTITUTIONAL LIMITS - A COMPARATIVE STUDY OF ELECTORAL BRIBERY AND SYNTHETIC MEDIA REGULATION UNDER THE REPRESENTATION OF THE PEOPLE ACT, 1951

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ABSTRACT

This paper examines two legally unsettled challenges to India's electoral regulatory framework: the promise of publicly funded benefits before elections, and the circulation of undisclosed AI-generated or digitally manipulated campaign material. Both engage the Supreme Court of India, and together they expose the limits of relying on the Election Commission of India's powers under Article 324. The Commission holds broad plenary and residual authority to supervise elections. Still, that power is subject to existing legislation and does not ordinarily permit it to create offences or penalties that Parliament has not authorised. Drawing on the pending proceedings in *Ashwini Kumar Upadhyay v. Union of India*, the Commission's directions on AI-generated campaign material, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 as amended in 2026, and the Supreme Court's judgment of 29 April 2026 in the connected hate-speech proceedings, the paper evaluates the relationship between legislative gaps and enforcement failures. The hate-speech ruling supports the proposition that where existing law already covers the conduct, the difficulty lies in weak or uneven enforcement rather than in legislative absence. That proposition cannot be applied mechanically. The Representation of the People Act, 1951 does not determine when an election promise becomes bribery or undue influence, and the amended Rules regulate synthetic content at the platform level without supplying an election-specific regime. The framework is fragmented rather than silent, which strengthens the case for targeted legislative intervention.

Keywords: Election Commission of India; Article 324; corrupt practices; synthetic media; electoral freebies; judicial restraint.

I. INTRODUCTION

Article 324 of the Constitution of India vests the "superintendence, direction and control" of elections in the Election Commission of India ("ECI").[1] This provision confers a broad residuary power, enabling the ECI to issue directions necessary to preserve the integrity of the electoral process where legislation is incomplete or silent.[2] That power, however, is not legislative in character: the ECI cannot create new criminal offences, prescribe criminal penalties without statutory authority, or amend the Representation of the People Act, 1951 ("RPA").[3] The ECI's principal instrument of day-to-day electoral regulation is the Model Code of Conduct ("MCC"). Although the MCC derives practical force from Article 324 and the political commitment of recognised parties to comply with it, it is not, by itself, a statute creating criminal liability.[4] Its operation is supplemented by statutory provisions in the RPA, the Bharatiya Nyaya Sanhita, 2023 ("BNS"), and other election-related laws. Sections 123 and 126 of the RPA address corrupt practices and the prohibition on publicising election matter during the 48-hour silence period, respectively, while Sections 170 and 171 of the BNS now deal with bribery and undue influence or personation at elections.[5]

Two developments in the 2026 election cycle expose the limits of this regulatory design. The first is the practice of political parties promising large-scale, publicly funded benefits—commonly described as "freebies"—in their election manifestos. That issue remains before the Supreme Court in *Ashwini Kumar Upadhyay v. Union of India*, W.P. (C) No. 43 of 2022.[6] The legal difficulty is that existing election law does not clearly identify when a manifesto promise becomes bribery, undue influence, an impermissible electoral inducement or an unconstitutional use of public funds. In *S. Subramaniam Balaji v. Government of Tamil Nadu*, the Supreme Court held that promises contained in election manifestos could not automatically

[1] Constitution of India, art. 324.
[2] *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405; *Anoop Baranwal v. Union of India*, 2023 INSC 161.
[3] *A.C. Jose v. Sivan Pillai*, (1984) 2 SCC 656.
[4] Election Commission of India, Model Code of Conduct for the Guidance of Political Parties and Candidates, available at: Election Commission of India (last visited on 8 August 2026). See also Election Commission of India, Manual of Model Code of Conduct, available at: Election Commission of India (last visited on 8 August 2026).
[5] Representation of the People Act, 1951, ss. 123, 126; Bharatiya Nyaya Sanhita, 2023, ss. 170, 171. See India Code, The Bharatiya Nyaya Sanhita, 2023, available at: India Code (last visited on 8 August 2026).
[6] *Ashwini Kumar Upadhyay v. Union of India*, W.P. (C) No. 43 of 2022, Supreme Court of India. See Supreme Court of India, Office Report in W.P. (C) No. 43 of 2022, available at: Supreme Court of India (last visited on 8 August 2026).

be treated as corrupt practices under Section 123 of the RPA, although it also recognised the need for appropriate guidelines governing manifestos.[7]

The second development is the circulation of undisclosed AI-generated or digitally manipulated campaign material, including deepfakes. The ECI has responded through advisories and directions requiring political parties to disclose and label AI-generated, digitally enhanced or synthetic content.[8] In parallel, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, as amended in 2026, impose additional obligations on intermediaries concerning synthetically generated information.[9] These measures constitute an important regulatory response, but they do not yet amount to a complete, election-specific framework governing the creation, attribution, dissemination and punishment of deceptive AI-generated political content.

The two controversies therefore reveal a common institutional difficulty, although not an identical legal one. The ECI possesses substantial constitutional authority to supervise elections and address regulatory gaps, but its powers do not extend to legislating new offences or imposing penalties unsupported by statute.[10] In the case of freebies, the principal difficulty is the absence of a clear statutory standard governing manifesto promises. In the case of AI-generated content, the problem is better described as fragmentation: the ECI's constitutional directions, the MCC, the RPA, the BNS and the amended IT Rules address different aspects of the problem without creating a unified electoral regime. The resulting question is not whether the ECI is powerless to act, but whether existing constitutional directions and statutory provisions are sufficiently precise, enforceable and technologically adaptable to address these emerging forms of electoral influence.

This paper considers the two controversies together because a recent Supreme Court decision provides a useful basis for examining both. In a separate set of petitions brought by the same petitioner, concerning hate speech and rumour-mongering, the Supreme Court held

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[7] *S. Subramaniam Balaji v. Government of Tamil Nadu*, (2013) 9 SCC 659.

[8] Election Commission of India, Advisory on Responsible Use and Disclosure of Synthetically Generated Information and AI-Generated Content During Elections, dated 16 January 2025, available at: Election Commission of India (last visited on 8 August 2026).

[9] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, as amended in 2026, available at: Ministry of Electronics and Information Technology (last visited on 8 August 2026).

[10] *A.C. Jose v. Sivan Pillai*, (1984) 2 SCC 656; *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405.

on 29 April 2026 that the law did not leave the subject unregulated.[11] The Court found that the main problem was not the absence of legal provisions, but the "inadequate or uneven invocation of the legal processes designed to give effect to the law."[12] It also reiterated that creating new criminal offences and prescribing punishments is primarily the responsibility of the legislature.[13]

This paper asks whether the same reasoning applies to election freebies and AI-generated campaign material. The answer may not be the same in both cases. Existing election and criminal laws can deal with some forms of false, coercive or unlawful campaign communication, but they do not clearly define when a manifesto promise becomes an impermissible electoral inducement. The law also does not provide a complete election-specific system for dealing with undisclosed synthetic campaign material.[14] Part II examines the litigation concerning election freebies. Part III considers the rules and directions governing synthetic election content. Part IV applies the Supreme Court's reasoning to both issues. Part V compares the Indian position with the European Union's Digital Services Act, particularly its treatment of risks to public debate and elections.[15] Part VI sets out specific legislative recommendations.

II. FREEBIES AND ELECTORAL BRIBERY: AN UNSETTLED DOCTRINAL TEST

The debate over election freebies received renewed public attention on 16 July 2022, when Prime Minister Narendra Modi criticised what he called "revdi culture" and described it as dangerous for the country's development.[16] The remarks coincided with a Public Interest Litigation filed by Advocate Ashwini Kumar Upadhyay. The petition argues that promising freebies amounts to bribery under Section 171B of the Indian Penal Code, 1860, and undue influence under Section 171C. Since the Bharatiya Nyaya Sanhita, 2023, has replaced the IPC,

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[11] *Ashwini Kumar Upadhyay v. Union of India*, W.P. (C) No. 943 of 2021 and connected matters, Supreme Court of India, judgment dated 29 April 2026, 2026 INSC 432, available at: Supreme Court of India (last visited on 8 August 2026).
[12] Ibid.
[13] Ibid. See also *A.C. Jose v. Sivan Pillai*, (1984) 2 SCC 656.
[14] Representation of the People Act, 1951, ss. 123, 126; Bharatiya Nyaya Sanhita, 2023, ss. 170–177; *S. Subramaniam Balaji v. Government of Tamil Nadu*, (2013) 9 SCC 659.
[15] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC, arts. 34–35, available at: EUR-Lex (last visited on 8 August 2026).
[16] Narendra Modi, Prime Minister of India, speech at the inauguration of the Bundelkhand Expressway, Jalaun, Uttar Pradesh, 16 July 2022. See The Hindu, "PM Modi Says 'Revri Culture' of Freebies for Votes Is 'Very Dangerous'," 16 July 2022, available at: The Hindu (last visited on 8 August 2026).

the corresponding provisions must now be read with Sections 170 and 171 of the BNS.[17] The petition also contends that using public funds for promises that do not serve a public purpose violates Articles 162, 266(3) and 282 of the Constitution.[18]

The reliefs sought are significant. The petitioner asks the Supreme Court to direct the Election Commission of India to amend the Election Symbols (Reservation and Allotment) Order, 1968, so that political parties are prohibited from promising "irrational freebies" from public funds. The petition also seeks the seizure of election symbols and the deregistration of parties that make or implement such promises.[19] These requests raise a preliminary institutional question: whether the ECI can impose such conditions through its constitutional powers under Article 324, or whether Parliament must first provide a clear statutory basis.

The ECI's response illustrates the limits it has placed on its own authority. In its affidavit filed in 2022, the Commission stated that the financial viability and economic consequences of promises made by political parties were matters for voters to assess. It also argued that regulating State policies or directing the deregistration of political parties without legislative authority would exceed its powers.[20] This position is important because the ECI has exercised its Article 324 powers more actively in other areas, including the issue of notices and directions relating to campaign speech and conduct. In the freebies case, however, it treated manifesto promises primarily as matters of policy and public finance rather than as conduct that it could directly prohibit.

The intervenors presented the competing constitutional concern. The Aam Aadmi Party argued that measures such as free electricity, water and public transport should not automatically be described as freebies, since they may form part of legitimate welfare policy. Other political parties, including the Dravida Munnetra Kazhagam and the All India Mahila

[17] Indian Penal Code, 1860, ss. 171B, 171C; Bharatiya Nyaya Sanhita, 2023, ss. 170, 171. See India Code, The Bharatiya Nyaya Sanhita, 2023, available at: India Code (last visited on 8 August 2026).
[18] Constitution of India, arts. 162, 266(3), 282. Article 282 permits the Union or a State to make grants for a public purpose, while Article 266(3) provides that money from the Consolidated Fund may be appropriated only in accordance with law.
[19] *Ashwini Kumar Upadhyay v. Union of India*, W.P. (C) No. 43 of 2022, Supreme Court of India. See Bar and Bench, "PIL in Supreme Court to Deregister Political Parties Promising Freebies Before Elections," 22 January 2022, available at: Bar and Bench (last visited on 8 August 2026).
[20] Election Commission of India, affidavit in *Ashwini Kumar Upadhyay v. Union of India*, W.P. (C) No. 43 of 2022. See LiveLaw, "Can't De-Register Political Parties for Offering Freebies: Election Commission Tells Supreme Court," 10 April 2022, available at: LiveLaw (last visited on 8 August 2026).

Congress, also opposed the petition.[21] Their position reflects the difficulty of drawing a legal distinction between welfare measures and electoral inducements. Articles 38 and 41 of the Constitution support the State's responsibility to promote social welfare, but those provisions do not resolve whether a particular promise is fiscally responsible, politically legitimate or legally impermissible.

The Supreme Court's earlier decision in *S. Subramaniam Balaji v. Government of Tamil Nadu* provides an important starting point, but not a complete legal test. The Court held that promises in an election manifesto, including the distribution of consumer goods such as colour television sets under a welfare scheme, could not automatically be treated as a corrupt practice under Section 123 of the Representation of the People Act, 1951.[22] At the same time, the Court directed the ECI to frame guidelines on election manifestos in consultation with political parties. Balaji therefore separates manifesto promises from bribery in the particular circumstances before the Court, but it does not provide a clear method for deciding, before an election, whether a specific promise is a welfare measure or an inducement intended to influence voters.

On 3 August 2022, a Bench comprising Chief Justice N.V. Ramana and Justices Krishna Murari and Hima Kohli considered the possibility of constituting an expert committee to examine the issue. The proposed committee was expected to draw on institutions such as the Finance Commission, NITI Aayog, the Law Commission and the Reserve Bank of India, as well as representatives of political parties.[23] On 26 August 2022, the matter was referred to a three-judge Bench.[24] The proceedings did not produce a settled legal test at that stage. The issue has since continued to appear before the Supreme Court, including in proceedings reported in 2026, so it would be inaccurate to describe August 2024 as the last relevant hearing update.[25]

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[21] See generally Hindustan Times, "Amid Freebies Debate, Andhra Defends Welfare Schemes in SC," 20 August 2022, available at: Hindustan Times (last visited on 8 August 2026).
[22] *S. Subramaniam Balaji v. Government of Tamil Nadu*, (2013) 9 SCC 659.
[23] *Ashwini Kumar Upadhyay v. Union of India*, W.P. (C) No. 43 of 2022, order dated 3 August 2022, Supreme Court of India. See Supreme Court of India, Order dated 3 August 2022, available at: Supreme Court of India (last visited on 8 August 2026).
[24] *Ashwini Kumar Upadhyay v. Union of India*, W.P. (C) No. 43 of 2022, order dated 26 August 2022, Supreme Court of India, available at: Supreme Court of India (last visited on 8 August 2026).
[25] See The Indian Express, "'Paramount Importance': Supreme Court on Pleas Challenging Freebie Culture," 5 February 2026, available at: The Indian Express (last visited on 8 August 2026); Verdicto, "The Freebies Case the Supreme Court Keeps Deferring," 17 July 2026, available at: Verdicto (last visited on 8 August 2026).

Four questions remain central to the case. First, can a general manifesto promise amount to bribery or undue influence when it is not directed at an identified elector? Secondly, how should the law distinguish a legitimate welfare measure from an irrational or fiscally damaging promise? Thirdly, who should determine whether public expenditure is inefficient or fails to serve a public purpose? Finally, should that assessment be made by Parliament, the ECI, the courts or the electorate? These questions show why the case cannot be resolved simply by treating every publicly funded promise as either welfare or bribery.

The fiscal concern is nevertheless real. The Reserve Bank of India reported that expenditure on subsidies by State governments grew by 12.9 per cent in 2020–21 and by 11.2 per cent in 2021–22. An RBI bulletin also noted that estimated subsidy or "freebie" expenditure exceeded 2 per cent of Gross State Domestic Product in highly indebted States such as Andhra Pradesh and Punjab.[26] These figures do not establish that the expenditure was unlawful, nor do they prove that every subsidy is an electoral bribe. They do, however, show why the absence of a clear standard for distinguishing sustainable welfare policy from fiscally destabilising electoral inducement is a serious governance problem.

The freebies litigation therefore exposes a genuine gap in the law, but the gap should be described carefully. The existing legal framework contains provisions on bribery, corrupt practices, public expenditure and election supervision. What it lacks is a clear rule explaining when a broad policy promise made to the electorate crosses the line into an unlawful electoral inducement. That issue cannot be resolved by enforcement alone. It requires either a clearer legislative standard or a constitutionally valid regulatory framework that defines the relevant conduct without converting the ECI into a policy-making body.

III. AI GENERATED ELECTION CONTENT: RULES WITHOUT CONSISTENT ENFORCEMENT

Unlike the freebies controversy, the regulation of AI generated election content is not based on a complete absence of subordinate legislation. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, as amended by G.S.R. 120(E) with

[26] Reserve Bank of India, "State Finances: A Study of Budgets," RBI Bulletin, June 2022; Reserve Bank of India, "State Finances: A Study of Budgets," RBI Bulletin, December 2022. See Reserve Bank of India, "State Governments' Expenditure on Subsidies," available at: RBI Bulletin (last visited on 8 August 2026); Hindustan Times, "Amid Freebies Debate, Andhra Defends Welfare Schemes in SC," 20 August 2022, available at: Hindustan Times (last visited on 8 August 2026).

effect from 20 February 2026, introduce the category of "synthetically generated information". Rule 2(1)(wa) covers audio, visual and audio visual material that is artificially or algorithmically created, generated, modified or altered so that it appears real or authentic and is likely to be perceived as indistinguishable from a natural person or a real world event.[27] The definition also excludes routine editing, formatting, accessibility improvements and similar activities that do not materially alter or misrepresent the underlying content.[28]

The amended Rules impose specific duties on intermediaries. Under Rule 3(3), an intermediary that enables the creation, modification, publication or dissemination of synthetic content must take reasonable and appropriate technical measures to prevent unlawful material. The Rule specifically addresses content that falsely portrays a person or event by misrepresenting a person's identity, voice, conduct, action or statement, or by presenting an event as having occurred when it did not.[29] Synthetic content that is not prohibited must be clearly labelled and accompanied, where technically feasible, by permanent metadata or another provenance mechanism. The label or metadata must not be removed or suppressed through the intermediary's services.[30]

The Rules impose additional duties on significant social media intermediaries. Rule 4(1A) requires them to obtain a user declaration stating whether uploaded content is synthetically generated, use reasonable technical measures to verify that declaration, and apply a clear label where the content is confirmed to be synthetic.[31] Rule 3(1)(ca) requires intermediaries that facilitate the creation or dissemination of synthetic content to inform users that unlawful use may attract penalties under the Information Technology Act, the Bharatiya Nyaya Sanhita, the Representation of the People Act and other applicable laws.[32] The Rules therefore create enforceable duties for intermediaries, although they do not themselves turn every unlabeled

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[27] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r. 2(1)(wa), as amended by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026, G.S.R. 120(E), dated 10 February 2026, available at: Ministry of Electronics and Information Technology (last visited on 8 August 2026).

[28] Ibid. The proviso to Rule 2(1)(wa) excludes routine or good faith editing, formatting, accessibility improvements and similar uses that do not materially alter, distort or misrepresent the substance or meaning of the underlying material.

[29] Information Technology Rules, 2021, r. 3(3)(a)(i), as amended in 2026.

[30] Ibid., r. 3(3)(a)(ii), r. 3(3)(b).

[31] Ibid., r. 4(1A). See also Ministry of Electronics and Information Technology, Frequently Asked Questions on the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026, pp. 14–15, available at: Ministry of Electronics and Information Technology (last visited on 8 August 2026).

[32] Information Technology Rules, 2021, r. 3(1)(ca), as amended in 2026.

election video into a criminal offence. Liability still depends on the underlying statute and on proof that the relevant legal requirements have been breached.

The safe harbour position also requires careful treatment. Section 79 of the Information Technology Act, 2000 protects intermediaries from liability in specified circumstances, subject to compliance with the statutory conditions and the applicable due diligence rules. The amended Rules do not provide that every breach automatically results in the loss of safe harbour. They do, however, create additional due diligence obligations and clarify that removing or disabling access to synthetic content in compliance with the Rules does not, by itself, violate the conditions in Section 79(2)(a) or Section 79(2)(b).[33]

The ECI has supplemented this framework through election specific directions. Its advisories require political parties to identify synthetic or digitally altered campaign material with notices such as "AI Generated", "Digitally Enhanced" or "Synthetic Content", and to disclose the entity responsible for the material.[34] The Commission has also required platforms to act promptly when notified of unlawful or misleading campaign content. These directions operate through Article 324, the Model Code of Conduct and the ECI's supervisory control over the electoral process. They should not be described as rules issued under the Information Technology Rules, since the IT Rules are made by the Central Government under the Information Technology Act.

The central problem is therefore not the total absence of legal rules. It is the difficulty of applying those rules consistently and of imposing consequences on the political actors who create or circulate the material. The amended IT Rules primarily regulate intermediaries. The ECI's directions primarily regulate parties and candidates through the electoral process. The RPA and the BNS may apply where the content amounts to bribery, undue influence, a prohibited appeal, a false statement or another recognised offence. There is no single provision that expressly classifies every undisclosed synthetic depiction of a candidate or political event as a corrupt practice under the RPA.

The RPA contains several provisions that may apply to misleading campaign material, but none was drafted specifically for synthetic media. Section 123 identifies corrupt practices,

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[33] Information Technology Rules, 2021, r. 2(1B); Information Technology Act, 2000, s. 79.
[34] Election Commission of India, Advisory on Responsible Use and Disclosure of Synthetically Generated Information and AI Generated Content During Elections, dated 16 January 2025, available at: Election Commission of India (last visited on 8 August 2026).

including bribery, undue influence, appeals on religious, racial, caste or community grounds, and the promotion of enmity between different classes of citizens.[35] Section 123(4) concerns the publication of a false statement of fact in relation to the personal character or conduct of a candidate. Its wording may not cover every false depiction of a candidate's speech, conduct or political position, particularly where the material is not framed as an allegation about the candidate's personal character. Section 126 restricts the display or dissemination of election matter during the forty eight hours before the close of polling, but was drafted before the emergence of borderless and rapidly shared online material. Section 126A deals with the publication of exit poll results and does not address synthetic campaign content.[36]

The evidence therefore supports a more qualified conclusion than the claim that the problem is purely one of enforcement. There is an enforcement problem because existing duties may not be applied promptly or consistently. At the same time, there is a narrower legislative problem because the RPA does not clearly define when undisclosed synthetic content becomes a corrupt practice, what remedy should follow, or which institution should impose it. The appropriate conclusion is that the regulatory framework has statutory elements, but remains divided among intermediary regulation, ECI directions and general election offences. It has legal teeth, but those teeth do not yet form a coherent election specific remedy. Table 1 summarises the contrast between the two regulatory gaps.

Table 1: Comparing the Freebies and AI-Content Regulatory Gaps

Dimension	**Freebies**	**AI-Generated Election Content**
Governing/associated case	*Ashwini Kumar Upadhyay v. Union of India*, W.P.(C) No. 43/2022 (pending)	*Ashwini Kumar Upadhyay v. Union of India* (hate-speech batch), decided 29 April 2026 (doctrine applied by analogy)
ECI's stated position	Declined to regulate (April 2022 affidavit); treats manifesto content as a policy/voter question	Issued binding advisories under IT Rules 2026; active enforcement claimed (11,000+ posts actioned)

[35] Representation of the People Act, 1951, ss. 123(1), 123(2), 123(3) and 123(3A).
[36] Ibid., ss. 123(4), 126 and 126A.

Relevant RPA provision	None specific; petitioner relies on IPC ss. 171B/171C and Arts. 162, 266(3), 282	None specific; ss. 123, 126, 126A predate synthetic media
Nature of the gap	Genuine legislative/doctrinal vacuum: no test exists	Subordinate legislation exists (IT Rules) but RPA is silent; enforcement in practice is near-absent
Applicability of the "no vacuum" doctrine	Does not apply: ss. 171B/171C were not drafted for public, post-election expenditure promises	Partially applies: IT Rules fill the intermediary-level vacuum, but RPA's corrupt-practice list remains unamended

IV. TESTING THE SUPREME COURT'S "NO VACUUM" DOCTRINE

In *Ashwini Kumar Upadhyay v. Union of India*, decided on 29 April 2026, the Supreme Court considered a group of connected petitions concerning hate speech and rumour mongering. The lead petition was filed by the same petitioner who brought the freebies litigation.[37] The petitioners asked the Court, among other things, to direct the Union Government to enact a specific legal definition of hate speech. They relied partly on the Law Commission's 267th Report of 2017.[38]

The Court declined to issue such a direction. It held that courts cannot create new criminal offences or expand existing offences in the absence of legislative action. In reaching that conclusion, the Court relied on decisions including *Asif Hameed v. State of Jammu and Kashmir*, *Supreme Court Advocates-on-Record Association v. Union of India*, *Dr Ashwini Kumar v. Union of India* and *Union of India v. K. Pushpavanam*.[39] The Court also concluded that hate speech was not an area left entirely without legislation. It referred to Sections 153A,

[37] *Ashwini Kumar Upadhyay v. Union of India*, W.P. (C) No. 943 of 2021 and connected matters, Supreme Court of India, judgment dated 29 April 2026, 2026 INSC 432, available at: Supreme Court of India (last visited on 8 August 2026).

[38] Law Commission of India, Hate Speech, Report No. 267, 2017, available at: Law Commission of India (last visited on 8 August 2026).

[39] *Asif Hameed v. State of Jammu and Kashmir*, 1989 Supp (2) SCC 364; *Supreme Court Advocates-on-Record Association v. Union of India*, (1993) 4 SCC 441; *Dr Ashwini Kumar v. Union of India*, (2020) 13 SCC 585; *Union of India v. K. Pushpavanam*, 2023 SCC OnLine SC 1213.

153B, 295A, 298 and 505 of the IPC, their corresponding provisions under the BNS, and Sections 8, 123(3A) and 125 of the RPA.[40]

The Court's central conclusion was that "the problem, therefore, is not one of legislative vacuum but of inadequate or uneven invocation of the legal processes designed to give effect to the law."[41] It also held that the existing criminal procedure provided remedies where the police failed to register or investigate a cognisable offence. Those remedies included approaching a senior police officer under Section 154(3) of the CrPC, applying to a Magistrate under Section 156(3), and filing a private complaint under Section 200. The corresponding provisions now appear in the Bharatiya Nagarik Suraksha Sanhita, 2023.[42] Since the petitioners had not established a proved and continuing institutional failure, the Court declined to issue a continuing mandamus based only on the possibility of future non enforcement.[43]

The Court's reasoning does not apply to the freebies controversy without qualification. The bribery and undue influence provisions relied on by the petitioner concern a different type of conduct. They address the giving or receiving of gratification in connection with a specific electoral act, such as standing for election, withdrawing from an election, voting or refraining from voting.[44] A promise in a manifesto has a different structure. It is a public commitment to undertake expenditure in the future, directed at the electorate as a whole and dependent on the party obtaining governmental power and securing the necessary budgetary approval.

This distinction makes it difficult to treat every manifesto promise as bribery under the existing provisions. A promise of free electricity may be criticised as fiscally irresponsible or politically manipulative, but that does not necessarily establish that gratification was given or promised in return for a particular elector voting or refraining from voting. The difficulty is therefore not simply that the existing bribery provisions are being enforced unevenly. The more fundamental question is whether those provisions were intended to cover this kind of public policy promise at all.

[40] Indian Penal Code, 1860, ss. 153A, 153B, 295A, 298 and 505; Bharatiya Nyaya Sanhita, 2023, corresponding provisions; Representation of the People Act, 1951, ss. 8, 123(3A) and 125.

[41] *Ashwini Kumar Upadhyay v. Union of India*, W.P. (C) No. 943 of 2021 and connected matters, Supreme Court of India, judgment dated 29 April 2026.

[42] Code of Criminal Procedure, 1973, ss. 154(3), 156(3) and 200; Bharatiya Nagarik Suraksha Sanhita, 2023, corresponding provisions.

[43] *Ashwini Kumar Upadhyay v. Union of India*, W.P. (C) No. 943 of 2021 and connected matters, Supreme Court of India, judgment dated 29 April 2026.

[44] Indian Penal Code, 1860, ss. 171B and 171C; Bharatiya Nyaya Sanhita, 2023, ss. 170 and 171.

That is why the freebies issue cannot be resolved by applying the Supreme Court's "no vacuum" reasoning mechanically. In the hate speech case, the Court found that general criminal provisions could apply to the prohibited conduct even though the conduct might appear in different forms. In the freebies case, the alleged wrong is not merely a new method of committing an existing offence. It concerns the legal status of a category of public promises that existing election law does not clearly define. The continuing consideration of the issue by the Supreme Court, including its decision to place the matter before a three judge Bench and its discussion of expert consultation, is consistent with the possibility that the difficulty is substantive rather than merely administrative.[45]

The position concerning AI generated election content is more complicated. At the level of intermediary regulation, the "no vacuum" reasoning has considerable force. The amended IT Rules impose duties relating to the identification, labelling and handling of synthetic content. If platforms fail to apply those duties, the problem may be one of monitoring, investigation and enforcement rather than a total absence of legal authority.[46] The ECI's directions add an election specific layer by requiring political parties to disclose and label digitally altered or synthetic campaign material.[47]

At the level of election corrupt practices, however, the position is less complete. Section 123 of the RPA contains a defined list of corrupt practices. Section 123(4) concerns the publication of a false statement of fact in relation to the personal character or conduct of a candidate. It may apply to some fabricated campaign material, but it does not clearly cover every synthetic representation of a candidate's speech, conduct or official action. A fabricated video showing a public figure making a statement that the person never made may involve impersonation and electoral deception, but it is not necessarily a false allegation about that person's personal character or conduct within the meaning of Section 123(4).[48]

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[45] *Ashwini Kumar Upadhyay v. Union of India*, W.P. (C) No. 43 of 2022, Supreme Court of India; Supreme Court of India, order dated 3 August 2022, available at: Supreme Court of India (last visited on 8 August 2026).

[46] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, rr. 2(1)(wa), 3(3), 3(1)(ca) and 4(1A), as amended by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026, G.S.R. 120(E), dated 10 February 2026, available at: Ministry of Electronics and Information Technology (last visited on 8 August 2026).

[47] Election Commission of India, Advisory on Responsible Use and Disclosure of Synthetically Generated Information and AI Generated Content During Elections, dated 16 January 2025, available at: Election Commission of India (last visited on 8 August 2026).

[48] Representation of the People Act, 1951, s. 123(4). See also *Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte*, (1996) 1 SCC 130, concerning the interpretation of corrupt practices under Section 123 of the RPA.

The result is a two level problem. At the platform level, the law contains specific duties and the principal concern may be inconsistent enforcement. At the level of electoral corrupt practices, the RPA still lacks a clear provision addressing the authorised use of undisclosed synthetic content to misrepresent a candidate, party or public event. The Supreme Court's "no vacuum" doctrine therefore applies strongly to the first level, but only partially to the second. It supports enforcement of existing rules, but it does not remove the need for Parliament to decide whether the RPA should contain a specific electoral offence dealing with deceptive synthetic campaign material.

V. COMPARATIVE PERSPECTIVES

The European Union's Digital Services Act ("DSA") adopts a broader approach to the regulation of online election risks. It does not rely only on the labelling or removal of individual items of content. Articles 34 and 35 require Very Large Online Platforms and Very Large Online Search Engines to identify, assess and mitigate systemic risks that may affect civic discourse and electoral processes.[49] The European Commission's election guidelines, published in April 2024, recommend election specific risk assessments, internal response teams, measures concerning recommender systems, cooperation with public authorities and civil society, incident response procedures, and post election reviews.[50]

The guidelines also address generative content. They recommend that relevant platforms assess and mitigate risks arising from the creation and circulation of such material, including through clear labelling of deepfakes, appropriate platform rules and effective enforcement.[51] These measures are not limited to individual complaints. They require large platforms to examine how their systems may contribute to the spread and amplification of misleading election content. The DSA therefore places greater emphasis on platform design, risk assessment and institutional preparedness than a model based only on the removal of particular

[49] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC, arts. 34–35, available at: EUR-Lex (last visited on 8 August 2026).
[50] European Commission, Commission Guidelines for Providers of Very Large Online Platforms and Very Large Online Search Engines on the Mitigation of Systemic Risks for Electoral Processes, 26 March 2024, available at: European Commission (last visited on 8 August 2026). The final Commission material was published in April 2024 in connection with the European Parliament elections.
[51] Ibid. The guidelines recommend that platforms whose services may be used to create or disseminate generative content assess and mitigate associated risks, including through clear labelling of content such as deepfakes.

posts.

The DSA also provides a more developed enforcement structure. In December 2025, the European Commission imposed a €120 million penalty on X for breaches relating to its paid verification system, advertising repository and access to public data for researchers.[52] The decision did not concern the truth or falsity of one particular election video. It concerned wider failures of transparency and platform governance. This illustrates how the DSA can impose financial consequences for systemic non compliance, although the decision should not be presented as a penalty specifically for synthetic election content.

The contrast with India is therefore important, but it should not be overstated. India's amended IT Rules impose duties on intermediaries to identify, label and manage synthetic content, while the ECI's directions impose additional obligations on political parties during elections.[53] These measures can operate before or shortly after publication, and they are not limited to complaints filed by individual voters. In practice, however, their effectiveness depends on detection, notice, platform response and the willingness of the relevant authorities to pursue violations. The Indian system is therefore better described as a combination of disclosure duties, intermediary due diligence and election supervision, rather than as a wholly complaint driven regime.

The institutional difference is also significant. The DSA places responsibility for systemic risk assessment on designated large platforms and provides for supervision, audits, transparency obligations and financial penalties. India's system distributes responsibility among MeitY, intermediaries, the ECI, political parties, the police and election authorities. That division may make it harder to identify who is responsible when synthetic campaign material is circulated through an official party account and removed only after it has attracted public attention.

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[52] European Commission, "Commission Fines X €120 Million Under the Digital Services Act," 5 December 2025, available at: European Commission (last visited on 8 August 2026). The breaches concerned the design of the paid verification system, the transparency of the advertising repository and access to public data for researchers.

[53] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, rr. 2(1)(wa), 3(3), 3(1)(ca) and 4(1A), as amended by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026, G.S.R. 120(E), dated 10 February 2026, available at: Ministry of Electronics and Information Technology (last visited on 8 August 2026); Election Commission of India, Advisory on Responsible Use and Disclosure of Synthetically Generated Information and AI Generated Content During Elections, dated 16 January 2025, available at: Election Commission of India (last visited on 8 August 2026).

The comparison nevertheless has limits. The DSA applies within the European Union's legal and institutional structure, particularly to platforms designated as Very Large Online Platforms or Very Large Online Search Engines. Its systemic risk obligations are directed primarily at those large services. India's electoral system, platform market and constitutional allocation of powers are different. The DSA should therefore be treated as a possible source of regulatory ideas, not as a model that can simply be transferred into Indian law.

The comparative position on election freebies is less developed. There is no obvious foreign equivalent of the Indian question whether a political party's manifesto promise of publicly funded benefits should be treated as bribery, an electoral inducement or a legitimate welfare proposal. India's Fiscal Responsibility and Budget Management Act, 2003, regulates fiscal management, borrowing and deficit control at the level of government finances. It does not create a pre election review procedure for manifesto promises or determine whether a particular promise serves a public purpose.[54]

This difference points to two separate reform problems. The regulation of synthetic election content can draw on foreign experience concerning systemic risk assessment, transparency, audits and platform accountability. The freebies controversy is less suitable for direct transplantation because it concerns the relationship between electoral competition, public finance, welfare policy and constitutional spending powers. Any Indian solution would need to be developed with reference to Articles 282 and 266(3), the federal distribution of financial authority and the distinction between legitimate welfare schemes and promises intended primarily to influence electoral choice.

VI. RECOMMENDATIONS AND CONCLUSION

The analysis supports three reforms. First, Parliament should consider adding a narrowly defined electoral offence to the Representation of the People Act, 1951 for the authorised dissemination by a candidate, election agent or party functionary of undisclosed synthetic material that falsely depicts a real person making a statement or engaging in conduct. The provision should be drafted carefully so that it does not criminalise satire, ordinary political criticism, harmless editing or clearly disclosed campaign material. Disclosure should not automatically make misleading content lawful, but the absence of disclosure should be treated

[54] Fiscal Responsibility and Budget Management Act, 2003; Constitution of India, arts. 266(3), 282.

as an important element of the proposed offence or as an aggravating circumstance. The new provision should be coordinated with the labelling and provenance duties already imposed on intermediaries by the Information Technology Rules, 2021, as amended in 2026.[55]

Secondly, Parliament or the ECI should introduce a mandatory fiscal disclosure requirement for manifesto promises involving substantial public expenditure. The requirement should include the estimated cost of each promise, the number of proposed beneficiaries, the period of implementation, the proposed source of funding, the effect on existing liabilities and the likely effect on fiscal sustainability. This would give voters meaningful information without requiring an immediate ban on welfare promises. It would also build on the ECI's earlier proposal for standardised manifesto disclosures, which sought information on the cost, coverage, funding and effect of poll promises on fiscal sustainability.[56] The requirement should be treated as a transparency measure and should not authorise the ECI or the courts to decide, without legislative standards, whether a particular welfare policy is economically wise.

Thirdly, Parliament should clarify the legal consequences of non compliance with election specific directions concerning synthetic campaign material. The ECI already issues directions under Article 324 and the Model Code of Conduct, while the IT Rules impose duties on intermediaries. A statutory framework could specify the duties of parties, candidates, election agents, platforms and repeat violators, and could establish reporting, correction, takedown and appeal procedures. It should not assume that every breach automatically removes an intermediary's protection under Section 79 of the Information Technology Act. The consequences should instead be stated clearly in the relevant statute and should distinguish between platforms, political actors and individual users.[57]

The Supreme Court's caution against judicial law making, reaffirmed in the 29 April 2026 hate speech judgment, is consistent with the separation of powers. Decisions such as *Asif*

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[55] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, rr. 2(1)(wa), 3(3), 3(1)(ca) and 4(1A), as amended by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026, G.S.R. 120(E), dated 10 February 2026, available at: Ministry of Electronics and Information Technology (last visited on 8 August 2026).

[56] Election Commission of India, proposed pro forma for disclosure of the financial implications of manifesto promises, 2022. See Hindustan Times, "Election Commission Proposes New Form on Financial Ramification of Poll Promises," 4 October 2022, available at: Hindustan Times (last visited on 8 August 2026). See also Election Commission of India, Model Code of Conduct for the Guidance of Political Parties and Candidates, available at: Election Commission of India (last visited on 8 August 2026).

[57] Information Technology Act, 2000, s. 79; Information Technology Rules, 2021, as amended in 2026; Constitution of India, art. 324.

Hameed v. State of Jammu and Kashmir and *Union of India v. K. Pushpavanam* support the principle that courts cannot create new offences or prescribe new punishments merely because existing law appears inadequate.[58] That principle, however, should not be mistaken for a conclusion that every regulatory problem is only an enforcement problem. It assumes that the relevant conduct is already covered by a sufficiently clear legal rule.

That assumption holds only in part here. The amended IT Rules provide a legal basis for regulating synthetic content at the intermediary level, so failures to label, verify or act on unlawful material may raise questions of enforcement. The RPA, however, does not contain a specific corrupt practice dealing with the authorised use of undisclosed synthetic content to misrepresent a candidate, party or public event. The law on freebies is also unsettled. Existing provisions deal with bribery, undue influence, corrupt practices and public expenditure, but do not clearly determine when a general manifesto promise becomes an unlawful electoral inducement.[59]

The better conclusion is therefore a qualified one. The hate speech judgment supplies a useful distinction between an occupied field that requires better enforcement and a genuine gap that requires legislation. At the intermediary level, synthetic election content falls substantially within an occupied field. At the level of electoral corrupt practices, important gaps remain. The freebies litigation raises a similar problem because the existing law does not provide a clear test for separating legitimate welfare commitments from unlawful electoral inducements.

The pending freebies litigation and the difficulties in enforcing the new rules on synthetic content should therefore be understood as matters for Parliament as well as for the courts and the ECI. The courts can interpret existing provisions and prevent unlawful administrative action. The ECI can supervise elections and issue directions within its constitutional authority. Neither institution can permanently substitute a clear legislative framework for one that Parliament has not enacted.

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[58] *Asif Hameed v. State of Jammu and Kashmir*, 1989 Supp (2) SCC 364; *Union of India v. K. Pushpavanam*, 2023 SCC OnLine SC 1213; *Ashwini Kumar Upadhyay v. Union of India*, W.P. (C) No. 943 of 2021 and connected matters, Supreme Court of India, judgment dated 29 April 2026, 2026 INSC 432, available at: Supreme Court of India (last visited on 8 August 2026).

[59] Representation of the People Act, 1951, ss. 123, 126 and 126A; Bharatiya Nyaya Sanhita, 2023, ss. 170 and 171; *S. Subramaniam Balaji v. Government of Tamil Nadu*, (2013) 9 SCC 659; *Ashwini Kumar Upadhyay v. Union of India*, W.P. (C) No. 43 of 2022.