



Freebies in Electoral Democracy and Welfare State

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Abstract

This paper, titled “Freebies in Electoral Democracy and Welfare State” examines the contentious issue of “freebies” in India, exploring their impact and the legal and societal implications. It focuses on three central issues. First, it examines the justiciability of freebies, questioning whether courts can determine the legality of these measures by analysing the “public purpose” doctrine and cases like *S. Subramaniam Balaji v. Tamil Nadu*¹. Second, the paper analyses whether freebies violate Section 123(1) of the Representation of People Act, 1951, which prohibits voter bribery. Arguments regarding freebies’ potential influence on voters and the difficulty in proving corrupt practices are explored. Finally, the paper explores the potential conflict between the FRBM Act, 2003, which aims to curb fiscal deficits, and the Directive Principles of State Policy, which promote citizen welfare. It examines the tension between fiscal responsibility and addressing inequality through welfare schemes, some labelled as “freebies”. The paper considers potential positive impacts of such schemes, like education and women’s empowerment, while emphasizing the need to distinguish genuine welfare from populism

Keywords: Freebies, Welfare, Fiscal Responsibility, Electoral Politics, Justiciability.

I. Introduction

The vibrant democracy of India presents a unique challenge: how to balance the aspirations of its vast population for a better life with the need for responsible economic management. This challenge is brought into sharp focus by the debate surrounding “freebies”, a term often used to describe goods or services provided to citizens at no cost, frequently as part of pre-election promises.² While these measures may aim to uplift the disadvantaged and fulfil the Directive

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¹(2013) 9 SCC 659.

²Laura Schechter and Srinivasan Vasudevan, “Persuading voters to punish corrupt vote-buying candidates: Experimental evidence from a large-scale radio campaign in India,” 160 *Journal of Development Economics* 102976 (2023).



Principles of State Policy, concerns have been raised about their impact on public finances and their potential to distort the level playing field in elections.

This paper aims to explore the complex interplay between electoral politics, social welfare, and fiscal responsibility in India. It seeks to understand whether “freebies”, often used to attract voters, can be reconciled with the principles of responsible governance and genuine welfare promotion. This discussion requires a careful examination of legal provisions, judicial pronouncements, and the potential socio-economic impact of such measures. The paper’s title, “Freebies in Indian Democracy: A Balancing Act Between Welfare and Fiscal Prudence,” encapsulates the core themes of this discussion. “Freebies” refers to goods or services provided to citizens at no cost, often as part of election promises. “Welfare” refers to the well-being of citizens, particularly focusing on social and economic upliftment. “Fiscal Prudence” refers to responsible management of government finances, ensuring sustainability and avoiding excessive deficits.

The discussion centres around three key questions that have sparked intense legal and societal debate. Firstly, can courts intervene to determine the validity of freebies? This question examines the concept of “public purpose” as enshrined in the Indian Constitution and explores the scope of judicial review in this domain, particularly in light of the *S. SubramaniamBalaji v. Tamil Nadu* case.³

Secondly, do freebies violate the Representation of People Act, 1951, specifically Section 123(1), which prohibits bribery of voters? This analysis requires a close examination of the elements of bribery under electoral law and a consideration of whether pre-election promises of freebies could be construed as undue influence on voters. Additionally, the paper explores the practical challenges in proving corrupt practices and the principle of strict interpretation applied to penal provisions.

Lastly, the paper examines whether a conflict exists between the Fiscal Responsibility and Budget Management (FRBM) Act, 2003, which seeks to limit fiscal deficits, and the Directive Principles of State Policy, which mandate the state to promote the welfare of its citizens. This

³*S. SubramaniamBalaji v. State of T.N.*, (2013) 9 SCC 659.



exploration requires navigating the tension between fiscal prudence and the imperative to address social and economic inequalities through welfare schemes, some of which are often labelled as “freebies”. The discussion includes perspectives on the potential positive impacts of certain social welfare measures, such as promoting education, women’s empowerment, and reducing domestic violence, as well as the need for a nuanced understanding of the distinction between genuine welfare schemes and populist measures.

Through a comprehensive examination of these issues, this paper seeks to foster a deeper understanding of the complex interplay between electoral politics, social welfare, and fiscal responsibility in the Indian democratic system. It advocates for a balanced approach that recognises both the importance of responsible economic management and the legitimate aspirations of citizens for a better life.

II. FACTS

Recently, the prime minister mentioned “*Revdi Culture*” in one of his speeches in a public gathering.⁴ He emphasised that freebies were coming in the way of development. Soon after, several petitions were filed in the Supreme Court, both, challenging and in support of the social welfare measures (freebies), which the court has combined in the case of *Ashwini Kumar Upadhyay v. Union of India*.⁵ These petitions relate to two sets of petitions. The first one is about **pre-elections freebies** which may influence voters at the time of elections and the second set of petitions challenges the **grant of benefits by Governments** alleging that such benefits do not relate to any welfare measure or developmental activity but rather are a ploy to capture vote banks.

Essentially, this case relates to promises made by political parties for the distribution of free goods (‘freebies’) as a part of their election manifesto or during election speeches. The main contention of the petitioners is that such pre-election promises cannot be permitted as they are being made by political parties without any assessment of the financial implications on the

⁴“Revdi culture dangerous, must end: PM Modi slams politics of freebies,” *The Indian Express*, 17 July 2022.

⁵*Id.*



State. This goes against the spirit of responsible electioneering and is adversely affecting free and fair elections.⁶ This severely affects the level playing field between the different political parties.

III. JUDGEMENT

In *S. Subramaniam Balaji v. State of Tamil Nadu*⁷, the Court held that the distribution of gifts relates to the implementation of directive principles of state policy. However, *Subramaniam Balaji*⁸ is being re-examined in *Ashwini Kumar Upadhyay v. Union of India*⁹ case.

In *Ashwini Kumar Upadhyay v. Union of India* case, the petitioner, was seeking a ban on political parties' promises of freebies during election campaigns. On the other hand, respondent emphasised that freebies must be differentiated from social welfare schemes before the Court wades into the issue. Further, the court opined that a balance must be struck between the need for social welfare and the consequent burden on the public exchequer. Further, it suggested that an expert committee consisting of representatives of the Election Commission, Reserve Bank of India and other bodies should be formed. However, the Election Commission declined to join any committee in this case submitting that it has no power to supervise what political parties do with their promises after the election is over. Now the court has framed issues in this case and the proceedings are going on.

IV. Examining the Legality and Implications of Freebies in India

Here are the important issues related to the current inquiry in this research paper:

1. Whether the matter of freebies or social welfare measures are justiciable?
2. Whether freebies contradict Representation of people Act, 1951 section 123 (1)¹⁰?
3. Whether there is a conflict between The Fiscal Responsibility and Budget Management (FRBM) Act, 2003 section 4 (1) (a)¹¹ and Directive Principles of State Policy?¹²

⁶*Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1.

⁷*S. Subramaniam Balaji v. State of T.N.*, (2013) 9 SCC 659.

⁸*Id.*

⁹*Supra* note 1.

¹⁰The Representation of people Act, 1951 (Act no. 43 of 1951).



Exploring Justiciability in the Context of Freebies within the Indian Democratic Framework

The question of whether courts hold the power to assess the legality of freebies brings up crucial considerations regarding the justiciability of these issues. Justiciability, in essence, is about whether a court can hear and make a decision on a specific type of case. The sources provided shed light on the complexities of this subject, particularly highlighting the notion of “public purpose” as a central factor in evaluating the legitimacy of government actions, especially social welfare schemes often referred to as “freebies.”

Article 282 of the Indian Constitution grants both the central and state governments the authority to allocate funds for any public purpose, even if that purpose falls outside the legislative purview of Parliament or the State Legislature. This provision emphasises the broad discretionary power given to governments in utilising resources for initiatives they deem to serve a public purpose. However, defining what exactly constitutes a “public purpose” can be a complex task, especially when it comes to assessing social welfare programs that might be seen as freebies.

The sources bring to attention the significant case of *S. SubramaniamBalaji v. Tamil Nadu (2013)*¹³, which offers valuable perspectives on the justiciability of freebies. In this case, the Supreme Court of India determined that the distribution of gifts, such as televisions or kitchen appliances, could be connected to the implementation of the Directive Principles of State Policy (DPSP). The DPSP, enshrined in Part IV of the Indian Constitution, lay out the state’s social and economic goals, aiming to enhance the well-being of its citizens. The Court’s reasoning in *S. SubramaniamBalaji* suggests that actions intended to fulfil the DPSP could potentially fall under the scope of “public purpose.”

Examples of such measures include the provision of free bus passes for women, mid-day meals in schools, and the distribution of colour televisions in villages. Supporters of these initiatives contend that they have led to positive social outcomes, such as increased female workforce participation, reduced child labour, improved school attendance, and women’s empowerment.

¹¹Fiscal Responsible and Budget Management Act (ACT No. 39 OF 2003).

¹² The Constitution of India, Part IV.

¹³*Supra* note7.



Conversely, critics argue that these measures put a strain on public finances and can be employed as a tactic to secure votes rather than genuinely promoting welfare.

The *S. SubramaniamBalaji* case also underscored the principle that the wisdom of economic policies generally lies outside the domain of judicial review. This principle acknowledges the expertise and accountability of the executive and legislative branches in formulating and implementing economic policies. However, this does not preclude judicial scrutiny if a policy is alleged to be unconstitutional or if it infringes upon fundamental rights.

The ongoing case of *Ashwini Kumar Upadhyay v. Union of India (2022)* is revisiting the issues raised in *S. SubramaniamBalaji*, particularly the question of whether promises of freebies made before elections can be considered an undue influence on voters. The Supreme Court has expressed the need to strike a balance between social welfare and fiscal responsibility, suggesting the formation of an expert committee to tackle this multifaceted issue.

In Black's Law Dictionary¹⁴, the term public purpose has been said to have the objective of "promotion of the public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division."

It's worth noting that the idea of 'public purpose' has been interpreted broadly in various other Indian Supreme Court cases. For example, in the case of *Bihar v Kameshwar Prasad*¹⁵, Mahajan, J., stated that the term "public purposes" doesn't have a fixed or exact meaning.

Similarly, in *State of Bombay v. R.M.D. Chamarbaugwala (1957)*¹⁶, the court recognised the promotion of public health and morality as a legitimate public purpose. However, it's crucial to understand that these cases were decided in different contexts and may not directly apply to the issue of freebies. Determining what constitutes 'public purpose' in the context of freebies remains a complex legal question. Please note that this paragraph contains information from outside the provided sources and may require independent verification.

¹⁴Henry Campbell Black and Joseph R. Nolan (eds.), *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence Ancient and Modern*, 6. ed., 12. reprint (West Publ, St. Paul, Minn, 1990).

¹⁵*State of Bihar v Maharajadhiraja Sir Kameshwar Singh*, AIR 1952 SC 252

¹⁶*The State of Bombay v. R. M. D. Chamarbaugwala*, 1957 AIR 699



The sources acknowledge the challenges inherent in determining the justiciability of freebies. While Article 282 grants governments significant leeway in spending for public purposes, the interpretation of “public purpose” remains open to debate. The courts, while acknowledging the importance of social welfare, have also emphasised the need for fiscal prudence and the limitations of judicial intervention in economic policy matters. The evolving jurisprudence on freebies reflects the ongoing struggle to reconcile competing values within India’s democratic system.

Freebies and Potential Violations of the Representation of People Act, 1951

A key point of discussion is whether the distribution of freebies infringes upon Section 123(1) of the Representation of People Act, 1951, which explicitly prohibits bribery during elections. The sources highlight that offering a “gift”, “offer”, or “promise” with the intention of swaying a voter’s decision can be classified as bribery. The crucial factor is proving that the voter was influenced, directly or indirectly, to vote in a specific way.

There is ongoing debate regarding whether promises of freebies made before elections constitute undue influence on voters. One perspective contends that such promises mirror the act of bribing voters, thereby tilting the electoral playing field in favour of certain political parties. Conversely, another viewpoint argues that promises outlined in election manifestos should not automatically be labelled as corrupt practices.

There are several practical hurdles in successfully proving corrupt practices under the Act. A primary challenge is the high standard of proof required – “beyond a reasonable doubt” – which is the standard used in criminal cases. Additionally, the Act’s emphasis on actions carried out by individual candidates or their agents, rather than political parties as entities, poses another significant difficulty. This distinction makes it more challenging to hold political parties accountable for promises made during election campaigns.

Further, Section 123 of the Representation of People Act, 1951, only directly addresses actions by a candidate or their agent, or someone acting with the consent of a candidate or their election agent. The absence of explicit mention of political parties raises questions about the Act’s applicability to pre-election promises made by political parties.



It is also noteworthy to explore the concept of “public purpose” within the framework of social welfare measures, often referred to as “freebies”. The Indian Constitution’s Article 282 empowers both the central and state governments to allocate funds for any public purpose, even if it falls outside their legislative purview. However, the definition of “public purpose” itself is subject to interpretation. While supporters of certain “freebies” argue they contribute to social welfare goals, critics question their impact on the public exchequer and suggest they can be used as a means to secure votes.

Now, let us examine the potential conflict between the Fiscal Responsibility and Budget Management (FRBM) Act, 2003 and the Directive Principles of State Policy (DPSP). The FRBM Act aims to enforce fiscal discipline by establishing targets for limiting fiscal deficits. However, there are exceptions to these targets, including instances of national security, war, natural calamities, or substantial economic decline. Whether the distribution of freebies can be justified under these exceptions and how it aligns with the DPSP, which promotes social welfare, remains a subject of ongoing discussion

Fiscal Prudence V. Social Welfare: Navigating the Tension Between the FRBM Act and the DPSP

Let us now explore the inherent tension between fiscal responsibility, as enshrined in the Fiscal Responsibility and Budget Management (FRBM) Act, 2003, and the pursuit of social welfare objectives, as mandated by the Directive Principles of State Policy (DPSP) enshrined in Part IV of the Indian Constitution. The FRBM Act aims to curb fiscal deficits by setting a target of 3% of the gross domestic product for the central government, and states in India have adopted similar legislation.¹⁷ However, the DPSP directs the state to prioritize the welfare of its citizens, including tackling social and economic disparities.¹⁸ This creates a potential conflict when social welfare programs, sometimes labelled as “freebies”, are perceived as straining public finances.

The sources highlight that certain social welfare initiatives can, in fact, contribute to fulfilling the DPSP’s objectives. Examples include providing free bus transportation for women,

¹⁷Charan Singh et al., “A Review of the FRBM Act” (Social Science Research Network, Rochester, NY, 2017).

¹⁸Ishwara Bhat and ShuvroProsunSarker, “Constitutional Dimensions of Social Security Laws in India,” 1 *NUJS Journal of Regulatory Studies* 82 (2016).



implementing mid-day meal schemes in schools, and distributing colour televisions in villages. Proponents argue that such measures promote women's empowerment and economic stability, encourage education and reduce child labour, and enhance social inclusion and awareness.

However, the debate centres around distinguishing between genuine welfare schemes and populist "freebies" that might primarily serve as tools for garnering votes rather than genuinely addressing societal needs. Critics of certain "freebies" question their long-term impact and sustainability, expressing concerns about their potential to burden the public exchequer without yielding commensurate benefits.

The crux of the issue lies in striking a delicate balance between fiscal prudence, as emphasized by the FRBM Act, and the imperative to address societal inequalities through well-designed welfare programs, as guided by the DPSP. It can be identified that the FRBM Act does incorporate provisions for exceeding the fiscal deficit target in specific circumstances, such as national security threats, war, natural calamities, significant economic decline, structural reforms, or a substantial drop in real output growth. However, whether the distribution of freebies can be accommodated under these exceptions and how it aligns with the overarching goals of the DPSP remains a point of contention.

Further, we should acknowledge the need for nuanced analysis to determine the true nature and impact of social welfare measures and to ascertain whether they genuinely advance the DPSP's objectives or primarily serve political interests. This requires a careful assessment of their long-term economic and social consequences, taking into account factors such as their effectiveness in addressing targeted inequalities, their fiscal sustainability, and their potential to foster genuine societal progress. The sources suggest that a comprehensive evaluation framework is essential to ensure that social welfare programs are both fiscally responsible and genuinely beneficial to the intended beneficiaries.

V. Suggestions and Recommendations for Policymakers on Freebies and Social Welfare

The existing literature offers valuable insights into the complex interplay between social welfare measures, often labelled as "freebies", and their implications for electoral processes and fiscal



responsibility. Based on this analysis, the following suggestions and recommendations are offered for policymakers:

1. Establishing Clear Definitions and Criteria:

Define “Freebies” and “Welfare Schemes”: The sources emphasize the lack of clear definitions distinguishing “freebies” from “genuine welfare schemes”. Policymakers should establish a transparent framework that differentiates between the two based on objective criteria. This framework should consider factors such as:

Purpose and Objective: Is the scheme primarily aimed at alleviating poverty, promoting education, improving healthcare, or addressing other societal needs? Does it have a clear public purpose as defined in Article 282 of the Constitution and interpreted by the courts?

Target Beneficiaries: Does the scheme target vulnerable groups or those in genuine need of assistance? Is it designed to empower marginalized communities or promote social and economic inclusion?

Long-Term Impact: Is the scheme designed for short-term electoral gains or does it aim to achieve sustainable long-term benefits for individuals and society? Does it have the potential to contribute to human capital development and economic growth?

Financial Sustainability: Is the scheme financially viable in the long run? Does it consider the overall fiscal health of the state and its potential impact on other essential public services?

2. Enhancing Transparency and Accountability:

Pre-Election Promises: Policymakers should consider mechanisms for greater transparency and accountability regarding pre-election promises, particularly those involving the distribution of freebies. Potential measures could include:

Mandatory Cost-Benefit Analysis: Political parties could be required to provide a detailed cost-benefit analysis of their proposed schemes, outlining the potential financial implications and expected outcomes.

Independent Scrutiny: An independent body, such as the Election Commission or a dedicated expert committee, could be tasked with evaluating the feasibility and potential impact of pre-election promises.



Implementation and Monitoring: A robust monitoring and evaluation framework should be in place to track the implementation and impact of welfare schemes. This framework should involve independent audits and regular reporting mechanisms to ensure that funds are utilized effectively and beneficiaries are reached as intended.

3. Strengthening Fiscal Responsibility:

Balancing Welfare with Fiscal Prudence: Policymakers need to strike a balance between fulfilling social welfare objectives and maintaining fiscal discipline. This requires a holistic approach that considers:

Prioritization of Schemes: Prioritize welfare schemes that demonstrate a clear public purpose, target genuine needs, and offer sustainable benefits.

Efficient Resource Allocation: Implement measures to optimize resource allocation and minimize leakages in welfare programs. This could involve adopting technology-driven solutions for targeted delivery and direct benefit transfers.

Exploring Alternative Funding Mechanisms: Consider innovative financing options for social welfare initiatives, such as public-private partnerships or social impact bonds, to reduce the burden on the public exchequer.

Strengthening the FRBM Framework: Explore ways to strengthen the FRBM framework to ensure greater fiscal responsibility while allowing for necessary exceptions in extraordinary circumstances. This could involve developing clear guidelines for invoking the exceptions and ensuring transparent accountability for any deviations from fiscal targets.

4. Promoting Public Awareness and Debate:

Informed Decision-Making: Foster public awareness and informed debate on the complex issues surrounding “freebies” and social welfare. This could involve:

Public Consultations: Conducting public consultations and engaging with civil society organizations to gather diverse perspectives and ensure that welfare schemes are designed to meet the needs of the people they intend to serve.

Educational Campaigns: Launching public awareness campaigns to educate citizens about the differences between “freebies” and “genuine welfare schemes”, the importance of fiscal responsibility, and the need for sustainable social development.



By implementing these recommendations, policymakers can navigate the challenging terrain of social welfare policies, ensuring they serve their intended purpose of promoting societal well-being while safeguarding the economic stability of the nation.

VI. Conclusion

The challenge for policymakers lies in balancing the competing demands of fiscal responsibility and social welfare. While the FRBM Act emphasizes fiscal prudence, the DPSP mandates the state to address social and economic inequalities. This tension is further complicated by the blurry line between genuine welfare schemes and populist “freebies.”

The key takeaway from the sources is the need for a nuanced and comprehensive approach. Clear definitions and criteria are essential to distinguish between legitimate welfare programs and unsustainable giveaways. Transparency and accountability in pre-election promises and program implementation are crucial to ensure responsible governance.

Ultimately, policymakers must prioritize schemes that are financially sustainable and demonstrably contribute to the welfare of citizens, fostering genuine social progress without jeopardizing the nation’s economic well-being.

Suggested Readings:

1. *S. Subramaniam Balajiv. Tamil Nadu (2013) 9 SCC 659.*
2. Arguments in subjudice matter *Ashwini Kumar Upadhyay v. Union of India (2022) SCC OnLine SC 1213.*
3. The Representation of people Act, 1951 (Act no. 43 of 1951).
4. Fiscal Responsible and Budget Management (FRBM) Act, 2003 (ACT No. 39 OF 2003), S. 4 (1) (a).
5. Suresh Mani Tripathi, “*Fundamental Rights and Directive Principles in India*” (Anchor Academic Publishing, 21 January 2016).