

State's Munificence as a Constitutional Mandate or Merely a Doctrine of Populism? - A Legal Analysis in the Context of the Indian Subcontinent

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**“The difficulty is not so much in developing new ideas as in escaping from old ones” - John Maynard Keynes

Abstract

This paper is an attempt to trace the evolution of the State's moral duty towards its poor, a scope that does end there. This paper explores the populist measures in the context of the modern democracy. The focus is largely on the Indian subcontinent, yet there is a purported effort to embody a larger approach. To say that freebie culture or virtual handout schemes are an invention of the modern era is a fallacious conclusion. The practice of the State doling out goodies has its roots in ancient religious texts that duty-bound the monarch towards his subjects. The study aims to establish that the evolution of State's munificence into populism and then on into a 'freebie' culture is having an adverse and effect on the socio-economic structure of the country, besides creating a serious and controversial platform in democracy. In the present scenario, every political party in India enjoys freedom to offer anything-under-the-sun to the voters in their electoral manifestos without any restriction whatsoever. The Apex Court's observation that, “nothing under section 123 of the Representation of the People's Act 1951 bans political parties from promising voters freebies in their manifestos”¹ has further cemented this practice. The debate however is how much of it is in popular interest?

This topic has always been trending before elections. The questions raised are pertinent to the health of the economy. Can the state not eschew on voter appeasement and pay more attention to inclusive development instead? Doesn't the distribution of freebie shake the roots of fair and

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¹Subramaniam Balaji v. State of Tamil Nadu, (2013) 9 SCC 659.

free elections? Is it not obvious that such immutable entitlement programs create a serious dent on the revenue of the nation? This study stresses on the need for a separate legislation to address the issue in the coming elections.

Keywords: Constitutional principles, Populism, Freebie culture

Introduction: A Specter has Long been Haunting our Country, A Specter of State Munificence

A study of State munificence in India will clearly show that this is not a recent phenomenon or an innovation of the modern age. It has a long historical presence. The State's munificence has its ancient roots in the form of royal patronage that was provided to scholars of languages, nyaiyavati² and artists of various other disciplines. During the Tamizh Sangam Age (600 AD - 300 AD), it has been recorded that various academies of poets and scholars were patronized by kings and the local chieftains. Kautilya's Arthashastra³ that written around 150 AD states categorically that the 'king shall allot land in forests to ascetics for soma plantations and for Vedic learning'.

The timeless Sangam Tamil period literature, 'Tirukkural' (திருக்குறள்) written by Thiruvalluvar states in Couplet #322:

“பகுத்துண்டு பல்லுயிர் ஓம்புதல் நூலோர்
தொகுத்தவற்றுள் எல்லாம் தலை”

- The chief of all (virtues) is the partaking of food that has been shared with others and the preservation of the manifold life of other creatures.

Couplet #385 says:

“இயற்றலும் ஈட்டலுங் காத்தலும் காத்த
வகுத்தலும் வல்ல தரசு”

- A king is he who treasures gains, stores up, defends and distributes it.

Ancient history, medieval history and modern history carry numerous instances of welfare measures that will easily qualify as State's munificence. Hence, to look upon the concept as something that is Western and/or a result of modern political sensibilities is widely misplaced. Religious texts “traditionally offer support to this by emphasizing and sometimes overemphasizing the concern for the poor and oppressed and for those who cannot look after themselves”.⁴

²A Sanskrit word that translates to 'Judge.'

³See, generally, KAUTILYA, ARTHASHASTRA, (Penguin Classics: 2000).

⁴HENRY STEINER AND PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS 242 (OUP: 2008).

Evolution of State Munificence into Populism

The Cambridge Dictionary defines 'Populism' as 'political ideas and activities that are intended to get the support of ordinary people by giving them what they want.' What populist politics proposes to do is to secure access to spheres of privilege for the ordinary people, but without necessarily changing the system which generates differentiation in the first place.⁵

Populism is one of that terms that is widely but loosely used and perhaps understood very little. And that is the reason why political and economic scholars have often been led to question its value altogether in a political analysis. What is more confusing is that the term is applied to the Farmer's Movement in the United States and to the late-19th Century Movement that opposed the Bolsheviks in Russia, and again around the same time to a regime of Peron in Argentina that involved only a form of Corporatism. Populist leaders over the centuries have come in various shades, but they all hide their shortcoming in a carefully crafted image of *vox populi*.

Populism is also pejoratively thought to be synonymous with political parties that try to please their loyal voters without recourse to rational consideration in the form of benefits if they vote them back to power.

Populism therefore cannot be called an established political philosophy like other –isms. For instance, like socialism, liberalism or even fascism. But when associated with particular programmatic texts, it can quite reasonably be seen in the light of other contrasted political philosophies or movements. Populism, per se is a vague term that has been used for a diverse variety of phenomenon.

The Evolution of the Second Generation Rights and the Journey so far

The development of modern states paved way for the formulation of rights that came to be classified as the socio-economic rights of the citizens. These rights have since come to be known as the Second Generation Rights. The tag 'First Generation Rights' stand firmly attached to human rights alone. The Slave Uprisings of Spartacus, The Magna Carta, the Protestant Reformation of the 16th century, the Bourgeois Revolutions in the 18th century, the Labor Movement of the 19th century, and the Socialist Revolution of the 20th

⁵John Harris, *Populism, Tamil Style, is it Really a Success?*, DESTIN Working Paper Series, No 01-15, London School of Economics and Political Science, (November 2001).

century and similar conflicts and achievements show relentless endeavor of humans to regain their self-stateness.

Incidentally, this was also the period when the First Generation Rights deeply connected with the civil and political rights of each and every individual and emerged categorically under the Universal Declaration of Human Rights (1948) which culminated in its adoption by the United Nations General Assembly in the year 1948.

The Second Generation Rights have since penetrated into various International Conventions, Constitutions of different nations and their local legislation in the course of time. As a luminescent example, the Bavarian and Prussian State in the 18th Century viewed themselves as an 'agent of social happiness', that was responsible for caring for the needy and for the provision of work for those who lacked the means and opportunities to support themselves.

Similarly, the French Constitution of 1793 included the obligation on the State to provide public assistance for the needy.⁶ It was in the 19th century that Bismarck introduced among other things his social legislation that covered income-related insurance in cases of unemployment, accident, and illness, as well as pension and compensation schemes and a residual category of welfare. It is not surprising that the Weimar Constitution in 1919 recognized the importance of these rights, including Labor Rights.

The Mexican Constitution of 1917 also included social rights in the text as did the Soviet Constitution of 1936. The Irish Constitution of 1937 was not left too far behind. It also recognized these rights albeit in a weak form, being contained in the Directive Principles of State Policy only. They were unfortunately designed to guide the government in its choice of policy making and give the judiciary a helping hand in its interpretation of all other rights.

The Aftermath of the Second World War

Post 1945, a number of countries began adopting and/or amending their Constitutions to include social and economic rights. As far as India is concerned, the socio-economic rights found place in the Constitution through the Directive Principles of State Policy, which we all know is inspired in spirit and in letter from the Irish Constitution, which in turn has derived it from the Spanish Constitution. The historical roots for this could be found in the Constitution of India Bill (1895), the Commonwealth of India Bill (1925)

⁶D. M. Davis, SOCIO-ECONOMIC RIGHTS 1011 (OUP: 2012), <https://www.corteidh.or.cr/tablas/r28784.pdf>. (last accessed on 13/03/2021)

and the Karachi Resolution (1931). The Karachi Resolution, 1931 proclaimed that in order to end the exploitation of masses, political freedom must include the real economic freedom of the starving millions. It is significant to note that the Indian Constitution of India embraced the principles under Directive Principles of State Policy along with the Preamble that provides for securing to all its citizens social, economic and political justice at the same time while all other countries globally were deliberating only on the socio-economic rights.

Case Study 1 - The Mid-Day Meals Schemes in Schools

In India, the mid-day meals scheme was started for the disadvantaged children for the first time in the Madras Municipal Corporation. In 1954, UNICEF and the Government of India signed an agreement for the provision of free meals for the needy.⁷ But the concept was not a novel one. It turns out that providing of midday meals in schools has its origin in Germany, France, and other European countries, with the earliest trace found in the 1900's in England.

In the United States of America, free school lunch was offered only from the beginning of the 20th Century and only as a supplementary feeding program. In the European countries free meals in schools were offered on the basis of two determining factors, ie, the distance of home from the school and the financial situation of the parents or guardians.

In the late 1960s, the United States Agency for International Development (USAID) carried out a detailed study on the nutritional status of people in Tamil Nadu. The study appeared to indicate that the level of calorie supply per capita in Tamil Nadu was lower than those in all other major states in the country. This was the major study that led in later years to a World Bank-aided project.

1.1 A Table Chalking Out Populist Schemes By Some State Governments in the Union of India

⁷S. NARAYAN, THE DRAVIDIAN YEARS, POLITICS AND WELFARE IN TAMIL NADU 85 (OUP: 2018).

S. no.	Name of the State	Populist Measure	Remarks, if any
1.	Tamil Nadu	Free laptop and tablet PCs for the students passing out of 10 th , and+2,	All India Anna Dravida Munnetra Kazhagam headed by Late Chief Minister Jayalalithaa is considered to be the pioneer of populist measures. The scheme gets lapped up by other states of Gujarat, Uttar Pradesh, Rajasthan and Odisha
2.	Andhra Pradesh (consolidated) and Odisha	Free mobiles for farmers, Free umbrellas, Free blankets, Free bicycles, Free helmets,	Andhra Pradesh is known to announce populist schemes at the drop of a hat.
3.	Punjab	Continues with its Atta- daal scheme.	Atta and daal at subsidised rates and free for Below Poverty Line families
4.	West Bengal	Subsidized rice	
5.	Karnataka	Rs. 1/kg rice for poor Rs 4/ liter milk for poor Waiver of all loans taken by SC/ST/BC/minorities Free shoes for students	

Case Study 2 - Subsidized Rice Scheme

N. T. Rama Rao, the Telugu *matinée* idol and former Chief Minister of Andhra Pradesh (consolidated) is believed to have started the Rs. 2/kg rice in the early 1980s. Without too much speculation, his Telugu Desam Party strode to unprecedented power. With that success in mind, the cheap rice scheme began to find a permanent place in the election manifesto of most political parties in every state.

The UPA (United Progressive Alliance) at the Center with Dr. Manmohan Singh at the helm started the rural job scheme that guaranteed at least 100 days of work/year for members from the poor families. They also started food security schemes that prompted them to come back to a second term.

Case Study 3 - Aam Aadmi Party Landslide Victories in the Delhi Elections, 2020

The current Chief Minister of Delhi, Arvind Kejriwal, promised and delivered on his promise to distribute free electricity up to 200 units and half-subsidized it from 200 up to 400 units; free 20,000 liters of water every month; free health check-up facilities at Mohalla clinics; free bus and metro rides for women and a big leap in the improvement of the infrastructure in the Delhi Government Schools. He won a landslide victory in the Delhi General Elections, 2020 too.

There arises a need to look at manifestos. A manifesto is usually a document that contains promises made by the political parties which they will perform if they be elected to power. In spite of sounding like a legal undertaking or a promise to perform its duties to the electorate, the manifesto casts no obligation whatsoever for the discharge of promises so made.

A manifesto, political or non-political has played a great role in shaping the history, the political culture as well as in arousing the political consciousness of citizens in any given political system. Some exam plers are:

- *The Common Sense* by Thomas Paine(1776),
- *Reflections of the Revolution in France* by Edmund Burke(1790),
- *A Vindication of the Rights of Woman* by Mary Wollstone Craft(1791),
- *The Communist Manifesto* by Karl Marx and Frederick Engels(1848),
- *What is to be done* by Vladimir Lenin (1901)and
- *Little Red Book* by Chairman Mao(1965).

On the one hand while political manifesto form the basic political document of any government, surprisingly, they have no binding character. It may contain an exhaustive list of the promises made by the political party which it will honour or perform if elected to power. But no solemn obligation is cast upon the promisor to discharge the obligations mentioned in the manifesto. In the British political system, manifestos have a quasi-constitutional authority under the Salisbury Doctrine.

The Practice of Bringing out Manifestos by the Political Parties in India

India saw its first election in the year 1951-52. However, the practice of publishing a detailed electoral manifesto started only a couple of decades ago. The trend in the recent years has been that national as well as state parties are publishing their manifestos for each and every general election. The manifestos generally contain, in addition to the basic ideology of the party, major policies namely economic policy, foreign policy, plans, programs and miscellaneous issues that the party intends to tackle if they come in to power. These may include, but are not restricted, to measures such as ensuring comprehensive social security to those at special risk, making quality education affordable to everyone, waiving of agricultural loans, pension scheme for aged and helpless farmers, provisions for safe drinking water facility and primary health care, medical cover for specified categories of people such as widows, old age pensioners, farmers, abolishing of child labor etc.

In addition, there is a new trend started by some parties recently in which they directly promise such items which in common parlance are termed as “Freebies”. The Supreme Court of India, in its judgment had issued directions to the Election Commission of India to frame guidelines for the election manifesto proposed to be released by a political party and to include such guidelines in the Model Code of Conduct for the guidance of political parties and candidates. Consequent to it the Election Commission of India wrote a letter dated 02.08.2013 (437/6/Manifesto/2013) to all the recognized political parties in India for consultation to frame guidelines on election manifesto and to include the same in the Model Code of Conduct.

In the background note on election manifesto, the Election Commission of India has referred to various international practices, few are as follows:

- In the United States of America, the nature of political party platforms is policy based, generally covering economic policy, foreign policy, healthcare, governance-reform, environmental issues, immigration, etc. These do not offer specific benefits, but outline plans and policies that would benefit large groups of population.
- In many West European countries, manifestos tend to mention more concrete policy choices and its budgetary implications. Sometimes, parties add financial paragraphs to their manifestos, which may be submitted to a Court of Audit (if it exists), which calculates how realistic each manifesto is.
- In Bhutan, political parties are required to submit a copy of their election manifesto to the Election Commission, before the primary round of the

National Assembly elections. Manifestos are issued to the public only with the approval of the Election Commission. The contents are largely based on policies and development plans and programmes that a party will implement, if elected. The Election Commission thoroughly vets the election manifestos, and filters out issues with the potential to undermine the security and stability of the nation. Further, manifestos cannot contain anything that seeks electoral gains by campaigning on the ground of religion, ethnicity, region, prerogatives of the King and the State, national identity etc.

- In Mexico, to be eligible to nominate candidates for a Federal election, a party must submit an electoral platform for registration and validation by the Federal Electoral Institute (IFE). The platform essentially contains principles/proposals which the party would uphold on three broad issues: politics, economics and social. IFE verifies that the electoral platform is in line with the basic documents of the party. Certification of registration and validation of the platform is essential for nomination of candidates.

Legal Provisions / Guidelines regarding Manifestos

- In Bhutan and Mexico, Electoral Authorities have the power to vet manifestos and get certain types of content removed.
- In the United Kingdom, the Electoral authority issues guidelines for campaign materials (which would apply to manifestos also)
- In the United States of America, it is the Party Committee which governs internally and develops the platform of a party for a particular election, as per the Charter and By-Laws of the party.
- Most other democracies do not seem to have any legal provisions/guidelines specifically for manifestos, although in some countries (e.g. like the United Kingdom, the Netherlands) legal provisions applicable to offensive campaign material would seem to apply to the content of manifestos as well.

The Regulatory Mechanisms

- Regulatory mechanisms operate in Bhutan and Mexico, as mentioned above.
- In the United Kingdom, the electoral authority issues guidelines for campaign materials (which would apply to manifestos also), but has no other role.
- In major democracies such as the United States, Sweden, Canada, the Netherlands and Austria, electoral Authorities have no role in relation to manifestos.

In the present scenario, political parties in India enjoy unbridled freedom to offer anything in their political/electoral manifesto without any restriction whatsoever. The Supreme Court of India has time and again observed that “Nothing under section 123 of the Representation of the People’s Act bans political parties from promising voters freebies in their manifestos. But the debate is how much of it is in popular interest?”

As is customary, the party never does not blink an eye in announcing ambitious handout schemes, often unabashedly making unrealistic voter appeasement policies. The Supreme Court of India judgment along with the reading of the Planning Commission recommends that the State must exercise prudence and caution while doling out schemes to woo the voters without putting undue strain on the economy.

Freebie – Origin and its Usage

The term ‘freebie’ is not an economic term and is defined in the Webster’s Dictionary as ‘something that is given without charge’. The Oxford Dictionary similarly defines freebie as something provided or given free of charge. These promises may be aimed at a targeted groups of electorate like BPL (Below Poverty Line) families, the weaker sections of the society, to women, and the handicapped etc., as well as the electorate as a whole. Psychologically speaking, when people are faced with a choice between two products, one of which is free, they naturally overreact to the free product, as people value free things too much.⁸

As the thin dividing line between the welfare state and populism began to wane, the concept of freebies started to evolve in the form of benevolent State largesse often aimed at persuading the electorate to vote for policies that provided for freebies. Prof. Lekha Chakraborty opines that the term freebies sound like some kind of private spending and ‘clientism’, trying to sell it to a certain set of people and believes it to be of elitist construct.⁹ Development Economist Reetika Khera, however, warns that one should never confuse Socio-Economic Rights (for instance, the right to food through canteens, mid-day meals, public distribution system, etc.) with freebies (mixers, gold chains and television sets).¹⁰

⁸Kristina Shampner and Dan Ariely, *Zero as a Special Price: The True Value of Free Products*, 26 (6) *MARKETING SCIENCE* 742 (2007), <https://web.mit.edu/ariely/www/MIT/Papers/zero.pdf> (last accessed on 13/03/2021)

⁹Prof. Lekha Chakraborty, *What Distinguishes Welfare Measures from Freebies? - A Conversation*, *THE HINDU*, 21st February, 2020.

¹⁰Vidya Venkat, *Have Freebies and Bribes Depoliticized Voters?*, *THE HINDU*, 23rd May, 2016.

The State subsidies, which provide financial or commodity support, provided by the government form another dimension of a freebie. The Economic Survey of the Government of India tabled in the Parliament in the year 2016 states that India's rich feed off subsidies that are worth well over one lakh crore rupees a year that are originally meant only for the poor. The former Governor of the Reserve Bank of India, Dr. C. Rangarajan cautions against distributing freebies without focus and a targeted approach.

The Criticism that is Leveled against Populist Measures that are used Indiscriminately

1. Freebie culture can create a massive burden on the exchequer.
2. The biggest challenge is to match the expenditure with the revenue that the state receives and generates.
3. Critics of the system often warn that beneficiaries of the freebie will eventually get used to getting money/articles easily.
4. It has been seen from experience that populist schemes are in actuality only short term measures that have often lead to harrowing increase of rural demand and resulted in spiraling inflation.
5. Freebies such as rice and reimbursements of loans are well within the provisions of governance. But the freebies like colour TV, mixer, grinder, bicycle etc. are unrelated to governance practices and must be held violation of the EC's Code of Conduct.

Legal Basis for State's Munificence

According to Austin, the Constitution of India was, at its core, a 'social document'.¹¹ He noted that the Constituent Assembly sought to design a Constitution that would bring about social revolution in India.¹² The Constitution of India, Part IV, Directive Principles of State Policy, under Article 38 to 51 strive's for Socio-Economic Rights to every citizen of India. A Government, be it Union or the States, derives its power under these provisions to unveil a populist measure or a freebie-like system. Even subsidies that are granted by the government draw their initial strength from these Articles. Several welfare measures schemes have been sponsored and are being formulated by the Union of India when implementing the Directive Principles of State Policy. Though they may essentially fall within

¹¹AUSTIN GRANVILLE, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION 50 (OUP: 1999).

¹²Id.

the legislative competence of the States, the said schemes are implemented through grants out of the Consolidated Fund of India only and by resorting to Article 282 of the Constitution of India.

The History of the State's Munificence in India

In India, the first major legal challenge to State munificence came against the Members of Parliament Local Area Development Scheme (MPLAD). The then Prime Minister announced the scheme on 23rd Dec 1993. The scheme was formulated for enabling the Members of Parliament to identify small work of capital nature based on the locally-felt needs of their constituencies. The objective, as seen and understood from the 'Guidelines of the Scheme', was to enable the Members of Parliament to recommend works of developmental nature with an emphasis on the creation of a durable community assets based on the locally-felt needs to be taken up in their constituencies. The Guidelines categorically prescribes that right from inception of the scheme, durable assets of national priority like drinking water, primary education, public health, sanitation and roads were being created.

The said scheme was launched with an initial allocation of Rs.5 Lakhs per Member of Parliament, and it was subsequently enhanced to upto Rs. 2 Crores. The scheme consequently stood transferred to the Ministry of Statistics and Program Implementation. It was the constitutional validity of the scheme that was challenged before the Supreme Court. A Constitutional Bench of the Supreme Court, while upholding the scheme, inter alia, interpreted the expression 'public purpose' under Article 282 to be construed widely. It further held that the scheme is in furtherance of Directive Principles of State Policy. The Supreme Court also noted that even under the Government of India Act, 1935, a similar provision was contained in Section 150(2) under the heading Miscellaneous Financial Provision.

The Constitution-makers have clarified the expression 'purpose' by making it a 'public purpose' thereby clearly circumscribing the general object for which Article 282 may be resorted to, i.e, for a 'public purpose'. It was pointed out before the Supreme Court that similar provisions are also found in the Constitutions of other countries such as the USA and Australia.

The Supreme Court further held that it can strike down a law or scheme only on the basis of its being ultra vires or unconstitutionality but not on the basis of its viability. When a regime of accountability is available within the scheme, it is not proper for the court to strike it down, unless it violates any constitutional principle.

Another Major Legal Challenge to Populist Schemes by way of Freebies

This occurred when the State of Tamil Nadu offered to provide marriage assistance, distribution of milch animals and goats, solar-powered greenhouse scheme, laptops to students, free rice scheme and free distribution of electric fans, mixers and grinders to women. The above said freebie schemes were announced as part of public welfare measures in fulfillment of election promises made by the winning political party in its election manifesto upon coming to power.

This freebie schemes were challenged on various grounds:

- That the expenditure to be incurred by State government for such implementation of electoral promises out of State exchequer is unauthorized, impermissible and ultra vires the constitutional mandates.
- It was further alleged that promises in election manifesto of political party amounts to electoral bribe/inducement or influencing the voter to vote in a particular manner, and it is a corrupt practice within the meaning of Section 123 of the Representation of People Act, 1951.

The Supreme Court upheld the freebie schemes by interpreting the Preamble, Articles 14, 32, 73, 162, 226, 266 (3), 282, 324 along with Section 123 of the Representation of People Act, 1951. The Supreme Court once again held that the scheme is to enforce the Directive Principles of State Policy and the manner of its implementation of policy decision of the State and Courts cannot interfere. The Supreme Court also held that judicial review of such policy decisions is impermissible unless the action of the government is in itself unconstitutional.

The Supreme Court further made interesting observations while interpreting Article 14 of the Constitution of India and observed that the concept of livelihood is a changing one and what was considered to be a luxury once has become a necessity in the present day. It is no longer confined to bare physical survival in terms of food, clothing and shelter but also now necessarily includes basic medicines, preliminary education, transport, etc.

While testing whether the distribution of State largesse in the form of freebies is a violation of Article 14 by treatment of unequals as equals, the Supreme Court held that this principle applies only where the law or the State action imposes some burden on the citizen either financial or otherwise. Besides, while implementing the Directive Principles of State Policy, it is for the government concerned to take into account its financial resources and the need of the people.

Missed Opportunity and Anti Populist Arguments

The reasoning in all these cases makes one wonder whether the Court has missed an opportunity to test the scope of public purpose within the meaning of Article 282. Can 'public purpose' be an indeterminable doctrine in the hands of the State to bring within its ambit any ambitious or fallacious measure as a welfare scheme? Can an indeterminable doctrine by which a classification among unequals is created at the whims and fancies of a State be held not to be a violation of equality guaranteed under Article 14 of the Constitution of India? Montesquieu states that the real wants of the people ought never to give way to the imaginary wants of the State.¹³

The moot question, then, is, when there is no standard objective test for classifying a welfare measure as a socio-economic empowerment to satisfy the meaning of public purpose is the court justified in interpreting the scope of the word in its widest amplitude through capacious reading. And, Maslow's Hierarchy of Needs of a Human demonstrates that the needs vary and increase. Today the Indian electorate is offered with freebies comprising a wide range of consumer goods and services ranging from colour TVs to mobile phones to mixers-grinders, laptops, and even cattles such as buffaloes, cows, and goats.

Merely because a welfare scheme has found a place in the Election Manifesto of a political party or is sought to be implemented after the election victory by the party winning, does it effectively become a tool of socio-economic change warranting a heavy fiscal support from the State's exchequer?

To put things in perspective, the arguments in favour are:

- i. It is the state's prerogative to use the allotted funds to it in a way that it deems fit. They must be given a free hand instead of curtailing their freedom to spend on their own people.
- ii. Populist schemes have immense social benefits associated with them. They pump in the required impetus in to the economy. For example, distributing laptops gives a sharp impetus to computer hardware and software industries.
- iii. Preventing States and the Center from spending requisite amounts of money on its people have no legal standing as the government has a right to look after the social welfare measures of the repressed classes in the state.

¹³Baron De Montesquieu, *THE SPIRIT OF THE LAWS*, XIII, Thomas Nugent (trans.), (Hafner Publishing House: 1949), <https://www.bard.edu/library/arendt/pdfs/Montesquieu-Spirit.pdf> (last accessed on 13/03/2021)

Some Anti Populist argument need to be mentioned here:

- I. It burdens the economy in unforeseen ways and it also leads to immeasurable amount of fiscal deficit.
- II. It discriminates amongst its people.
- III. Most populist programs have turned out to become unproductive from the first quarter itself. This is unfortunately evident in the fact that there is absolutely no sort of social audit that is carried out to assess the efficacy of such programs.
- IV. The middle and the upper class of people feel let down and often question these schemes. It is argued that indiscriminate populist measures only lead to bad precedents. A case in point is the free rides given to women in city buses and metros. It has forced some of them to come to a conclusion that women who can go out to work can also spend a few tens of rupees for the ticket. Does the scheme suggest that women are not equal to men?
- V. The government should concentrate on the long term projects.
- VI. Finally, a word of caution from the Supreme Court that states that a promise of freebies in election manifesto as a strategy to pull votes is a practice that shakes the roots of a free and fair election. There is no level playing field left. The Hon'ble Justices P Sathasivam and Ranjan Gogoi collectively held "Although the law is obvious that the promises in the election manifesto cannot be construed as "corrupt practice" under Section 123 of the Representation of the Peoples Act, 1951, the reality cannot be ruled out" that "distribution of freebie influence all people. It shakes the root of free and fair elections to a large degree."¹⁴

Concluding Remarks

In arguing the case for and against State Munificence in the form of freebies given to the public as a corollary to their victory at the elections, it is important to note that we do not lose sight of the fact that the doctrine of judicial review is what constricts the power of courts from examining a policy decision of the State.

- In the absence of any legislative framework, the courts are not in a favorable position to test the indeterminable doctrine of public purpose other than through the judicially-evolved propositions.
- Without a conceptual framework, the courts could not use judicial sleight of hand to determine the vexing question of whether a particular welfare measure is propelled by constitutional mandate or by doctrine of populism.

¹⁴Subramaniam Balaji v. State of Tamil Nadu, SC (2013) 9 SCC 659.

- The State cannot act in furtherance of eccentric principles of social philanthropy.¹⁵
- The focus should inadvertently be on building infrastructure that is aimed at development of the people of the state, in contrast to the discriminatory approach in announcing populist schemes and entitlement programs that benefit only a narrow class of people.
- Questions are often raised if the short term measures in the form of populist schemes are discriminatory in nature.

The party election manifestos could be directly brought under the scrutiny of the Election Commission that has a robust framework of determining if the populist measures adopted by the party is in excess of the need of the times. The Election Commission can intervene when an elected government announces or distributes such things after the announcement of the elections. It could be made obligatory for the political parties to inform the Election Commission where the money for the implementation of the scheme will be mobilized. Will taxes be raised? If there is going to be any reduction that will be made in the presently ongoing programs of the government?

Any welfare policy should have a meaningful nexus and relevance with the object it proposes to achieve at the prevailing times. The primary test has to be whether a class of persons is completely deprived or working of the socio- economic system makes it improbable for them to obtain a particular benefit. It also needs to be examined whether a particular scheme is going to make a qualitative difference in the lives of that class of persons by providing upward social mobility. If every welfare measure is to be welcomed as a tool of empowerment through subjective assessment of the State then such distributive justice itself offends Article 14 of the Constitution of India since it carves out an unreal class of persons at the cost of another class of persons. It is discriminatory and illegal. It is suggested that the legislature should bring out a law, viz.; Social Resources Expropriation (Responsibility and Management) Act to balance the demands of a welfare state and to secure meaningful populism that is devoid of freebie culture. The object of such a legislation should be to instill legal responsibility over the State in expropriating its social resources towards welfare schemes besides providing a framework for fiscal management, review mechanism of policy, and its implementation.

¹⁵Roberts v. Hopwoods, 1925 AC 578.