2. Freebies - Polity

The SC has distinguished welfare schemes from freebies, stating that large-scale distribution of state money to individuals is different from investing in public welfare

Context and Core Issue

A set of petitions before the Supreme Court seeks a judicial declaration that "irrational freebies" offered to lure voters during election time should be treated as a "corrupt practice". The constitutional tension is between

1. Welfare obligations (especially under the Directive Principles of State Policy) and the idea of a welfare state, versus
2. The risk of fiscal imprudence, electoral distortion, and intergenerational debt.

Recent court discourse increasingly attempts to distinguish welfare investments from electoral freebies, emphasising that indiscriminate cash or consumption transfers are not automatically equivalent to welfare capacity-building.

Supreme Court's Broad Observations

Welfare schemes like free healthcare and education can be seen as part of the State's constitutional responsibilities flowing from the DPSPs (and the broader welfare-state vision). At the same time, the Court has flagged that unregulated freebies may

1. Stress State finances and worsen public debt,
2. Crowd out capital expenditure on long-term development,
3. Potentially create political moral hazard (competitive populism).

A further normative concern raised in hearings and commentary is the possibility of dependency effects (reduced labour participation / weaker incentive structures), though this is context-specific and requires evidence-based calibration rather than broad generalisations.

A working policy definition

Freebies are typically understood as non-merit, consumption-oriented transfers that-

1. Provide immediate private benefit,
2. Have weak/uncertain long-term asset creation,
3. Are often timed or framed for electoral appeal (manifesto promise or pre-poll rollout).

Definition matters - If the definition is too broad, it will illegally/illogically capture genuine welfare (food security, health coverage, education support). If too narrow, it will fail to address fiscally reckless populism.

"Revdi" Analogy - The public discourse uses "revdi" metaphorically to describe handouts that resemble distributing free sweets to gain favour. For an answer, treat "revdi" as rhetorical framing, and focus on the constitutional and fiscal differentiator- welfare that builds capability vs giveaways that primarily buy sentiment.

Legal Anchor- Section 123, Representation of the People Act, 1951

Section 123 broadly covers - Section 123 lists "corrupt practices" including bribery, which involves gifts/offers/promises of gratification made to induce voting.

Central legal difficulty in freebies cases - The jurisprudential debate is whether party manifesto promises of freebies can be mapped onto Section 123's logic (gift/promise to induce votes), and who can be held liable—candidate or party.

Key Judgement- S. Subramaniam Balaji v. State *of Tamil Nadu* (2013)

The Court held (in essence) - The Court did not declare manifesto promises of freebies as "corrupt practice" under Section 123 in the way petitioners sought. A key reasoning line (as subsequently debated) is the linkage of "corrupt practice" primarily to candidates under the statutory scheme, not political parties as such.

This case still dominates the debate - Petitioners in later proceedings argue that the Balaji reasoning **unduly narrows** Section 123 by excluding parties, even though parties are the real authors of manifesto commitments.

Election Commission Position and Existing Framework

Manifesto and MCC linkage - The Election Commission has material on election manifestos, and the Model Code of Conduct (MCC) governs campaign conduct and ethical restraints. However, the MCC is not a full-fledged fiscal accountability framework; it cannot substitute

1. statutory standards for budget transparency, or
2. legislative rules on what qualifies as inducement.

Arguments in Favour of Freebies

Social protection and constitutional morality - In a country with deep inequality, targeted transfers can function as social safety nets and help meet welfare-state commitments (nutrition, schooling, health access, basic energy access).

Capability building and empowerment - Some so-called "freebies" are arguably capability investments, e.g.-

1. education-linked support,
2. digital access for students,
3. health insurance, maternal benefits,
4. transport support enabling women's labour participation.

These can generate long-run positive externalities even if they appear "consumption-like" initially.

Counter-cyclicality and demand stabilisation - During downturns, transfers can act as automatic stabilisers by supporting household consumption, preventing distress migration and debt traps.

Governance accountability through deliverables - Voters often judge governments on service delivery. Well-designed subsidies can incentivise administrative performance (e.g., improved last-mile delivery, leak reduction through DBT design).

Arguments Against Freebies

Fiscal stress and intergenerational equity - Persistent unfunded commitments can

1. increase revenue expenditure rigidity,
2. raise borrowing,
3. shift the burden to future taxpayers, creating an intergenerational injustice problem.

Crowding out development - High recurring subsidy bills can crowd out

1. infrastructure,
2. climate resilience,
3. public health systems,
4. school quality improvements (teachers, labs, learning outcomes).

Regressive design risks - Universal giveaways (free power/water without targeting) often benefit

1. better-off households with higher consumption,
2. while the poorest may receive limited net gains.

This turns "welfare" into regressive subsidy.

Electoral distortion and competitive populism - Once one party escalates giveaways, others respond—creating a race to the bottom that undermines program evaluation and long-term planning.

Weak poverty alleviation logic - Many giveaways address symptoms (consumption shortfall) without solving structural drivers

1. jobs,
2. skill formation,
3. productivity,
4. asset creation,
5. market access.

The Current PIL Track (2022 onwards) - In the ongoing "freebies in elections" litigation, the Court has examined

1. whether courts should intervene in what appears partly as a policy domain,
2. and how to draw the line between legitimate welfare and electoral inducement.

Analytical Framework- Freebies vs Welfare

A robust way to differentiate-

Objective test

1. Welfare- expands capabilities (health, learning, productivity).
2. Freebie- immediate consumption with weak long-term capacity link.

Targeting test

1. Welfare- targeted to vulnerability/need; clear eligibility.
2. Freebie- broad/universal without vulnerability logic.

Outcome and asset test

1. Welfare- creates human capital/public assets or measurable outcomes.
2. Freebie- limited measurable outcomes beyond short-term relief.

Fiscal test

1. Welfare- budgeted, transparently costed, and sustainable.
2. Freebie- off-budget risks, unfunded promises, high debt impact.

Governance test

1. Welfare- accompanied by administrative reforms and evaluation.
2. Freebie- primarily announcement-driven without monitoring.

This aligns with the Supreme Court's evolving emphasis on distinguishing "investment in welfare" from "large-scale distribution of state money" framed as freebies.

Way Forward

1) A "Fiscal Disclosure" regime for manifestos - Mandate that parties publish-

1. scheme-wise cost estimates,
2. funding sources,
3. medium-term fiscal impact (3–5 years),
4. assumptions used.

This shifts the debate from morality to measurable fiscal truth.

2) Independent costing and audit architecture - Consider an institutional mechanism (state-level fiscal councils / CAG-linked disclosure templates) to validate costing assumptions. Outcome- reduces "fantasy promises" and improves policy credibility.

3) Targeting and sunset clauses - Make subsidies targeted (income/vulnerability-linked) where feasible. Add sunset clauses and periodic review to prevent permanent fiscal lock-in.

4) Distinguish "merit goods" from "private consumption" - Protect and prioritise spending on

1. health, education, nutrition, sanitation (merit goods),
2. public transport and climate resilience where externalities are high.

Subject pure private-consumption giveaways to higher scrutiny.

5) Strengthen MCC operationalisation (without over-constitutionalising it) - The ECI can refine and enforce disclosure norms for manifestos and announcements during MCC. But durable reform needs legislative backing, since MCC is not a full fiscal law.

6) Build a "Welfare Effectiveness" standard - Shift political competition from "how much free" to "how effective" by using

1. outcome indicators,
2. beneficiary feedback,
3. leakage rates,
4. cost-per-outcome metrics.

7) Voter information and transparency - Public dashboards on subsidy burden, debt, and trade-offs (schools vs giveaways) can create informed electoral choice, improving democratic accountability.

Source- https-//www.thehindu.com/news/national/supreme-court-line-between-splurging-on-freebies-and-investing-state-largesse-for-public-welfare/article70534348.ece