

The Politics of Welfare and Rights Judicial Review of Populist Governance in India

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ABSTRACT: This essay discusses judicial review of welfare-oriented populist governance in India, with the constitutional dilemmas between electoral populism, financial accountability and welfare as a right. It examines the manner in which Indian courts interact with welfare schemes widely decried as freebies and at the same time identify the constitutional requirement of social justice as enshrined in the Directive Principles of State Policy. The paper discusses the changing role of the judiciary as a controller of economic populism, and determines whether judicial intervention in the welfare policy enhances constitutional responsibility or threatens to invade democratic and fiscal realms, historically the preserve of elected governments. The paper aspires to consider the validity of substantive equality and constitutional citizenship in placing welfare schemes within the wider framework of redistribution or electorate manipulation through these schemes. It is also an analysis of the consequences of judicial review on fiscal federalism and political responsibility based on a principled and balanced judicial practice that holds constitutional welfare promises consistent with democratic choice and economic viability.

Keywords: welfare populism; judicial review; directive principles of state policy; fiscal responsibility; substantive equality.

I. INTRODUCTION

The growing popularity of welfare-based populist style of governance in India has spawned much constitutional discussion about the proper trade-off between social justice, financial prudence, and democratic accountability. State-funded welfare schemes and pre-election pledges of material payoffs have become more common in recent years in electoral politics, which in popular language is discussed as freebies. Although these measures are justified as needed to deal with poverty, inequality and historical disadvantage, they are also attacked as the means of eroding fiscal discipline and distorting democratic choiceⁱ. The tension between these two aspects of the Indian judiciary is that the judiciary is in a dilemma of changing constitutional law and determining whether the judiciary should intervene on issues of economic policy that have a deep interconnection with the electoral duties. The judicial review in the present case involves some underlying questions about the constitutional vision of a welfare state, the normative authority of the Directive Principles of State Policy and the limits of judicial competence in terms of assessing whether policy is rational. The Indian constitutional jurisprudence has been long aware of the welfare as being an inherent part of substantive equality and dignity, but it has also been alert to judicial encroachment on the sphere of policy-making. This widening judicial review of welfare populism is indicative of a wider change in the direction of economic constitutionalism, in which courts have increasingly begun to evaluate the constitutionality of fiscal decisions and distributive policies embraced by governments. This trend brings about thorny issues on the separation of powers, fiscal federalism, and political accountability especially on a multi-tier form of governance where the state is the primary responsibility in delivering welfare. It is

against this background that this research paper critically analyzes the manner in which Indian courts strike the thin line between constitutionally required good and populist boasting, and whether judicial action is a prerequisite in curbing fiscal recklessness or whether it involves destruction of democratic independence. The paper aims at examining how the judiciary role in influencing the politics of welfare in modern India are changing by locating the context of welfare governance within the discourse of rights and constitutional morality.

II. NEED OF THE STUDY

The increasing judicial questioning of the welfare-oriented policies in India requires a methodological academic investigation into the constitutional, political and economic aspects of the welfare populism. With the proliferation of the use of welfare programs as an electoral tool by governments, the courts are now faced with the dilemma of determining which welfare schemes are based on sound constitutional principles and the ones that are financial quick fixes to purchasing political votes. It has far-reaching consequences to constitutional government especially in the context of the Directive Principles of State Policy, substantive equality, and separation of powers. Although the gathered judicial commentary on the notion of freebies and fiscal prudence is growing, the normative foundation and boundaries of judicial activation of the economic policy remains uncertain in the academic literatureⁱⁱ. The research is thus necessary to determine whether judicial review in the area promotes constitutional accountability or suggests on the democratic decision-making and federal fiscal independence. Through a critical analysis of judicial involvement in welfare populism, the study plays a role in understanding better the changing role of the judiciary in the provision of social justice goals and economic sustainability within the constitutional system in India.

III. PURPOSE OF THE STUDY

The rationale behind this study is to come up with a critical review of the role of the Indian judiciary in checking the populist governance which is of a welfare nature in the constitutional setting. It aims to examine the perception and application of constitutional principles by courts especially the Directive Principles of State Policy and the fundamental rights in determining welfare schemes that are generally challenged on the grounds of fiscal prudence and electoral manipulation. The research question will be to determine whether judicial interventions into welfare and economic policy are based on constitutional necessity or an extension of the judicial power into policy areas that should be left to elected governments. Moreover, it will examine how far the welfare schemes facilitate the achievement of substantive equality and social justice rather than the instrument of political populism. The paper aims to make a contribution to the constitutional theory and the area of scholarship in the field of public law by engaging the normative justifications and institutional constraints of judicial review within the context of finding a balanced solution in addressing welfare commitments, democratic accountability, and economic sustainability in Indiaⁱⁱⁱ.

1. DIRECTIVE PRINCIPLES OF STATE POLICY (DPSPS) AND WELFARE GOVERNANCE

The moral conscience and the socio-economic conscience of the Indian Constitutional text are the Directive Principles of State Policy (DPSPs), which demonstrate its desire to form a welfare state based on social justice and distributive equality^{iv}.

- Evolution and Constitutional Status

The DPSPs were highly deliberate in being non-justiciable as they are enshrined in Part IV of the Constitution, giving it room to flex in governance, acknowledging the economic and administrative limitations of a new independent state. Although not binding as per Article 37, the DPSPs are explicitly stated to form the basis of the governance of the country, and they have therefore been given great normative capacity in the course of influencing legislative and executive action.

- Judicial Interpretation of Key Articles

With time, the Indian courts have increasingly brought out the substantive connotation to Articles 38, 39, 41, 43 and 47 that collectively stipulate the duty of the State in fostering social order, fair allocation of resources, right to work and assistance, living wages and public health. Judicial interpretation has not viewed

these provisions as abstract ideals but rather as concrete constitutional objectives guiding the welfare governance especially on matters related to poverty alleviation, labour welfare, food security, education and health care.

- Normative Guides versus Enforceable Obligations

Even though DPSPs are formally non-justiciable, they have become highly authoritative normative guides that can be used to shape the interpretation of laws and policies. The DPSPs have always been used in courts to determine the constitutionality of the welfare legislation and to rationalize the intervention of the state to alleviate socio-economic disparities. This is the best way of maintaining the democratic flexibility, and is necessary to keep the welfare governance in line with the constitutional objectives even though it may not be directly enforced.

- Harmonisation with Fundamental Rights

One of the best undertakings of the constitutional jurisprudence is to harmonise the DPSPs with the Fundamental Rights particularly Articles 14 and 21. It is through this interpretive synthesis that the socio-economic wellbeing has been brought into the right to life discourse in such a manner that the courts can interpret the meaning of dignity, livelihood, health and education into the right to life. This harmonisation enables the welfare adjudication courts to uphold the welfare measures as constitutionally legitimate despite the courts reviewing them with regard of arbitrariness, exclusion, and disproportionality. Thus, DPSPs are used when the judiciary engages in administrative governance of welfare and morally. According to this dynamic constitutional connection, the significance of DPSPs can be emphasized in justifying the welfare policy and presenting an ideologically rational template of judicial review in the context of the populist rule.

2. JUDICIAL ENGAGEMENT WITH WELFARE POPULISM

Judicial engagement with welfare populism in India reflects a gradual yet significant shift in constitutional adjudication, as courts increasingly confront the intersection of social welfare, electoral politics, and fiscal governance.

- Evolving Approach to Welfare Schemes and Subsidies

Historically, the judiciary was very hesitant in considering the welfare schemes as they were considered to be a policy matter that was solely within the mandate of the executive and the legislative branch. But as the rights-based jurisprudential approach has grown, and worries over fiscal sustainability continue to rise, the judiciary has become more tolerant of the welfare measures as constitutionally worthwhile, whilst being mindful of any economic and administrative impacts. Subsidies and welfare programmes are no longer reviewed on the basis of their good intentions but also evaluated on the basis of its consistency with the constitutional ideas of equality, non-arbitrariness and rational classification.

- Scrutiny of Electoral Promises and State-Sponsored Benefits

The judicial review has especially been keen on matters of pre-election pledges and state-subsidized perks where in some instances courts have been requested to decide whether such actions are justifiable welfare or unacceptable inducements. Although courts have tended to avoid striking down welfare promises per se, there has been an increasing discussion of the problem of distorting the democratic choice and the loss of fiscal restraint, making welfare populism more of a constitutional than a pure political matter.

3. STANDARDS OF REVIEW IN WELFARE LITIGATION

Courts in welfare litigation have utilized the standards of review as flexible that may either be in favor of deference to reasonability or increased scrutiny in cases that involve exclusion, discrimination or infringement on dignity. The doctrine of proportionality has become a significant instrument of analysis, and the courts can assess whether welfare actions are aimed at achieving the legitimate goals, using the appropriate means, and striking the necessary balance between the social good and the economic expenses. This does not entirely replace the role of judicial judgment by policy expertise.

- Limits of Judicial Competence

In spite of this extended jurisdiction, the boundaries of the judicial competence in determining economic rationality and fiscal policy have been repeatedly recognized. Judicial statements underline the idea that courts have no institutional ability in making complicated economic trade-offs or budgetary allocations as

these are political decisions. In its turn, judicial involvement with welfare populism is defined by the ongoing conflict between constitutional scrutiny and institutional restraint that calls forward the existence of principled norms that would uphold the democratic state of affairs and ensure the constitutional welfare promises.viii

4. FREEBIES VS CONSTITUTIONAL WELFARE: JUDICIAL DEBATES

The constitutional issue of the judiciary on the question of freebies and constitutional welfare represents a wider constitutional issue on the prudence of the fiscal policy and the social justice requirement of a welfare state in India.

- Fiscal Prudence versus Social Justice

There has been a growing recognition by courts that although areas of welfare spending are necessary to achieve the egalitarian vision of the Constitution, an unchecked populist spending spurt could be a threat to economic and even intergenerational stability. The jurisprudence in this regard is an endeavor to balance between the duty of the State to enhance social welfare and the need to be fiscally disciplined, especially where we have a federal system where states are the main providers of welfareix.

- Distinguishing Legitimate Welfare from Populist Inducements

The key issue, in this discussion, is to draw the line between constitutionally legitimate welfare policies and populist baits that mainly aim at gaining electoral benefit. Courts have opposed naive characterisations of the welfare benefits as gifts, but have focused on the motive, fabrication and effect of the welfare benefits. The welfare schemes that will deal with the structural deprivation, improve access to basic needs, and promote substantive equality are more easily considered as constitutionally defensible, and schemes that do not have this rational nexus with the purpose of the social welfare are under a more scrutinizing examination.

- Proportionality and Reasonableness

Proportionality and reasonableness have become the influential judicial concepts in the evaluation of welfare policies. Courts use proportionality analysis to determine whether welfare actions meet legitimate constitutional ends, use means which are necessary and appropriate, and create a reasonable balance between social benefits and financial expenditures. The review of reasonableness also helps courts to determine whether welfare policies are arbitrary, discriminatory, or exclusionary, but not to deem that a judge should replace his or her economic preferences with that of policymakersx.

5. COURTS AS REGULATORS OF ECONOMIC POPULISM

The growing judicial involvement in welfare populism makes the courts as important regulators of economic governance in that there is the rise of economic constitutionalism in Indian public law.

- Judicial Review as Economic Constitutionalism

The application of constitutional principles such as equality, reasonableness, non-arbitrariness and accountability to economic and fiscal decisions is economic constitutionalism. The judicial review has been gradually used by the Indian courts to extend beyond the conventional civil and political rights in order to consider the constitutional implication of the economic policies, including welfare schemes and subsidies. This comes as a coining of economic choices as not merely taking the guise of policy discretion but an act that must be subject to constitutional standards particularly in instances where the policy at issue is one that affects distributive justice, common resources, and financial sustainability in the long runxi.

- Enforcing Fiscal Discipline and Accountability

In recent times there has been greater expression by the courts of issues regarding fiscal discipline, debts of the state, and utilization of state resources in a responsible manner, particularly when there is a massive welfare obligation at stake. Although judicial actions do not normally dictate the fiscal policy effect, they aim at fostering transparency, rational motivations and observing constitutional values to public expenditure. By this watchdog role, the courts are the protectors of intergenerational equity/institutional responsibility and help build the policy that welfare governance should be within sustainable economic boundaries.

- Institutional Interaction in Economic Policy

Courts also alter the relationships between the courts, the executive and legislature through judicial control over economic populism. Traditionally, the economic policy has been considered to be under the responsibility of elected structures, which is the result of democratic authority and knowledge in policy.

However, the judicial review ensures a constitutional discipline of executive populism and legislative waste particularly in matters where the appeal of the policies is economically connected and bound to expose the constitutionally binding liability or federal fiscal restraint. It is never hierarchical as it has always been dialogic with the courts establishing the constitutional matters and the substantive policy making is left to the political institutions.

- Institutional Capacity and Democratic Legitimacy

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IV. LITERATURE REVIEW

The research of the judicial review and democratic government in India has been significantly influenced by the epochal work of Upendra Baxi *The Avenging Judiciary* (2010), which examines critically the growing influence of courts in post-Emergency India. Baxi thinks of judicial activism as a reaction to failures in governance, and as a possible challenge to the accountability of democracy. He points out that his analysis shows that courts in their efforts to safeguard rights and promote constitutional morality can also crowd out political operations and take the functions that are more appropriately handled by elected institutions. This strain offers a valuable point of departure to interpret the judicial involvement into the welfare populism, in which courts are becoming more and more critical with policy decisions, which have distributive and financially burdensome implications.

Kanchan Chandra (2014) in *Democratic Dynasties* discusses the political context in which welfare populism functions through the discussion of electoral strategies, political mobilisation, and voter behaviour in India. Though not directly aimed at welfare jurisprudence, the analysis by Chandra is very fundamental as it provides insight into the role played by the welfare schemes as a weapon of political rivalry and legitimacy. Her work places welfare promises in the larger issue of electoral politics, which aids in understanding why welfare populism takes the center stage in democratic choices and why judicial involvement in this area is dangerous to intermingling with the fundamental democratic activities.

The *Oxford Handbook of the Indian Constitution* by Choudhry, Madan, and Khosla (2016) covers constitutional interpretation and institutional role of courts in detail, and so is the case with administrative law by Paul Craig (2012). All these texts shed some light on the theories of judicial review, separation of powers and reasonableness in making decisions by the populace. They offer a theoretical structure to examine the way the courts defend their intervention in the policies issues in the context of highlighting the necessity of institutional restraint. Such literature is also very pertinent in the determination of judicial standards of review that are applied to welfare schemes and fiscal decisions.

Reddy, Y. V. (2013). focus on the normative and comparative sides of the rights adjudication. Deva in her work also provides a reflection on the experience of socio-economic rights adjudication in India, showing the development of rights discussion by the courts to welfare entitlements. Dhavan criticizes judicial methods on a socio-legal level, warning against activism based on nothing but expediency. The welfare as a component of dignity and equality is reinforced by Dworkin theory of rights being moral claims and the idea of keeping off court incursion into engine room of decision making in economic and political matters is given a caution by Gargarella comparative constitutional analysis^{xiii}.

V. FISCAL RESPONSIBILITY, FEDERALISM, AND WELFARE POLITICS

There are serious consequences of welfare populism in India in terms of fiscal responsibility and working of fiscal federalism especially as it is central to states in designing and implementing welfare schemes.

- Impact on State Finances and Debt Sustainability

Large welfare bills, particularly when motivated by electoral gain, cause a high burden on the state budget, and in many cases, result in the increase of the debt owed to the people, the shortfall of revenue, and the financial fragility over the long-term. The states that have low revenue generating ability will either have to resort to borrowing or reallocation of development expenditure to support welfare schemes and therefore there is a question of debt sustainability and intergenerational equity. Although welfare expenditure is lawful and desirable in the social context, uncontrolled populism threatens to wipe out the financial ability of the states to fulfill the future governance requirements.

- FRBM Framework

The Fiscal Responsibility and Budget Management (FRBM) framework came in an attempt to institutionalize fiscal discipline by laying down targets towards the deficit, debt and public finance transparency. In spite of being mostly legislative and executive mechanism, the FRBM framework contains the constitutional principles of accountability and prudence in fiscal management. Welfare populism usually runs into the boundaries of this structure, where states are struggling to be flexible in achieving deficit targets to manage the welfare commitments. This strain brings out the issue of balancing welfare goals with fiscal limitations in the law.

- Centre–State Tensions in Welfare Financing

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- Judicial Interventions and Fiscal Federalism

CJA interventions in this field have attempted to reconcile constitutional commitments of welfare with fiscal caution and more often transparency, rational policy justification and collaborative federalism. Although the courts do not tend to interfere directly in the budgetary allocations, the judicial remarks about fiscal sustainability and responsible governance are used to contribute to the wider debate on welfare populism. But judicial interference is dangerous because it could lead to centralisation of the fiscal power and the weakening of state autonomy thus taking over the balance of the federal system. The interplay between welfare politics, fiscal responsibility, and federalism therefore justifies the fact that judicial restraint is necessary, and should not override state discretion, but that enhances constitutional accountability and sustainable welfare governance.

VI. WELFARE, RIGHTS DISCOURSE, AND SUBSTANTIVE EQUALITY

The rights discourse and constitutional promise of substantive equality are closely connected to welfare governance in India which turns welfare schemes into a mechanism of constitutional justice and offloads them of their act of benevolence by the state.

- Welfare as Vehicles of Substantive Equality

Substantive equality is based on the reality that unlike formal equality, which only ensures equal treatment under the law, structural disadvantage and historical exclusion requires differential treatment. The welfare programs that are focused on food security, health care, education, housing, and social security serve as the necessary tools that the State can reduce socio-economic inequality and permit an individual to engage in the civic life in a meaningful way. In this meaning, welfare is not an option policy but a constitutional plan on how equality will be secured in the lived experience.

- Rights-Based Welfare versus Discretionary Benevolence

This constitutional transformation of the discretionary welfare to rights-based entitlements is a point of significant change in Indian public law. The rights-based welfare systems focus on entitlement, responsibility, and the non-exclusion; which restrict the arbitrariness that has been earlier linked to discretionary assistance offered by the state. It transforms the legal position of welfare beneficiaries into

rights-holders and not benefactors to charity, and therefore makes welfare governance in line with constitutional values of dignity and autonomy.

- **Judicial Expansion of Socio-Economic Rights**

Judicial ruling has been central in promoting this rights-based practice by understanding socio-economic claims on rights in the context of key fundamental rights, especially those of life and personal freedom. Pursuant to the purposive and expansive interpretation, the courts have realised the access to basic needs like livelihood, health, education and shelter as part of the constitutional dignity. Such judicial extension has made welfare constitutional, meaning that welfare schemes are reviewed not only according to their policy efficiency but also the effect they have on basic rights and human dignity.

- **Populism, Dignity, and Constitutional Citizenship**

Nevertheless, when welfare and populism converge normative tensions are brought forth. Welfare plans based largely on electoral baits are dangerous since they threaten to diminish constitutional citizenship by transforming people into vote-carrying recipients as opposed to rights-carrying citizens. By prioritizing visibility over sustainability, populist welfare, when deprived of the concept of dignity and accountability can degrade the speculative capacity of constitutional welfare. The judicial intervention in this area therefore aims at protecting the dignity of citizens by enhancing the welfare as a right and constitutional right. The discussion on welfare, rights, and substantive equality eventually brings out the role of the judiciary in ensuring the maintenance of the constitutional promise of inclusive citizenship that has to endure the political nature of populist rule^{xvi}.

VII. POLITICAL ACCOUNTABILITY AND DEMOCRATIC CHOICE

The normative basis of the constitutional democracy in India is political accountability and the democratic choice, which casts serious doubts as to whether the judiciary can play a vital role in evaluating the welfare oriented populist rule^{xvii}.

- **Electoral Accountability and Voter Autonomy**

In representative democracy, schemes and welfare guarantees form a major part of the electoral competition, as voters can evaluate the competing schemes of governance. The autonomy of the voter assumes the ability of the citizen to make wise decisions according to the preferences of policies such as welfare commitments. In this respect, the welfare-oriented electoral promises do not necessarily contradict democracy; they are the social facts and distributive interests of an unequal society. The scepticism by the judiciary on welfare populism should thus be properly balanced to not give presumptions of paternalism towards the vulnerability or irrationality of the voter.

- **Judicial Intervention and Democratic Decision-Making**

Judicial intervention into welfare populism brings about a constitutional check to the political exercise of power especially where welfare provisions pose threats to fiscal viability or constitutional principles like equality and non-arbitrariness. Nevertheless, undue court review jeopardizes democratic decision-making by restricting the policy area that elected governments can exercise. The lack of electoral accountability to the courts, and their involvement in politically relevant distributions of welfare can transfer accountability of distributive results out of the hands of the political actors and undermine democratic accountability instead of enhancing it^{xviii}.

- **Courts as Arbiters of Political Morality**

The growing judicial participation in the welfare populism provokes the controversial question whether courts are supposed to be politicians of political morality. Although the courts are endowed with the responsibility of ensuring constitutional morality, mixing constitutional survey with moral evaluation of the strategies that are applied in politics is a temptation that is dangerous to cross into the institutional boundaries. Court decisions describing welfare policy to be manipulative or irresponsible can also unconsciously introduce judicial value determinations on by nature, political issues. This kind of approach will endanger the separation between constitutional adjudication and political government^{xix}.

- **Balancing Guardianship and Popular Sovereignty**

The difficulty, then, consists in reconciling the functions of the judiciary whose duty is to guard the Constitution with the popular sovereignty. The most justifiable form of judicial review is where it concerns

procedural fairness, transparency, rationality, as well as rights protection, in opposition to whether particular welfare policies are desirable. Courts can support the democratic legitimacy and do not threaten the power of the electorate by accepting voter autonomy but making sure that it complies with constitutional provisions. Such a balance is necessary as safeguarding the constitutional guardianship and democratic choice in welfare populism.

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