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Directive Principles, Welfare, Social Security VIS-À-VIS Fundamental Rights: Judicial Approaches

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Abstract

The nature, significance, role and objective underlying the Directive Principles have not been rightly appreciated by courts initially. There has been conflict of opinions about the status and position of Directive Principles vis-à-vis Fundamental Rights in the Constitution. Soon after the commencement of the Constitution, the approach of the judiciary was to give an undue emphasis on the unenforceability of Directive Principles without taking them as fundamental in the governance and ignoring the constitutional duty imposed on the state to implement them. The non-justiciable 'and non-enforceable' character of these principles as discussed and concluded by the Constituent Assembly might be the reason behind this approach of judiciary. Thus it strengthened the belief that Directive Principles carry mere pious aspirations of little legal force and had to conform to and run subsidiary to Fundamental Rights.

Keywords: Social security, justiciable 'and non-enforceable, harmonious interpretation

Introduction

It was in *State of Madras v. Chempakam Dorairajan*, the Supreme Court held that Directive Principles had to conform to and run as subsidiary to the chapter on Fundamental Rights on the reason that the latter are enforceable in the courts, while the former are not. Later the Supreme Court placed reliance on the Directive Principles for validating a number of legislations by propounding a theory of harmonious construction of both directive principles and fundamental rights. For instance, the very same judge who held the view in *Chempakam Dorairajan* adopted a significant approach in *Mohd. Hanif Qureshi v. State of Bihar*,^[2] when he observed: -A harmonious interpretation must be placed up on the Constitution, and so interpreted it means that the state should certainly implement the directive principles, but it must do so in such a way as not to take away or abridge fundamental rights.

Again in *Re Kerala Education Bill*, S.R. Das, C.J., observed that the Directive Principles had to conform to and run as subsidiary to the chapter on fundamental rights. Nevertheless, in determining the scope and ambit of the Fundamental Rights relied on by or on behalf of any person or body of persons, the court might not entirely ignore these Directive Principles of State Policy but should adopt harmonious construction and should attempt to give effect to both as much as possible. It reveals the fact that though the Supreme Court initially tried to give predominance to Fundamental Rights over Directive Principle in case of conflict between the two Later, the Court adopted an approach of harmonious construction to give

effect to both Directive Principles as well as Fundamental Rights. In *Sajjan Singh v. State of Rajasthan*, it was observed that even if Fundamental Rights could be taken as unchangeable, the needs of the viable dynamism would still be satisfied by properly interpreting the Fundamental Rights in the light of values and ideologies contained in Directive Principles of State Policy. But in the same year in *Golaknath v. State of Punjab*, it was held that the Directive Principle and Fundamental Rights enshrined in the Constitution formed an integrated scheme and was elastic enough to respond to the changing needs of the society 'and the scheme was made so elastic that all Directive Principles could reasonably be enforced without taking away or abridging the fundamental rights'. Thus the Supreme Court reached a stage of realizing an integrated scheme of the two parts of the Constitution. Again in another following case the court held that it did not see any conflict on the whole between the two provisions and found that they are complementary to each other. It was held in this case that the provisions of Constitution were not erected as the barriers to progress. They provided a plan for orderly progress towards the social order contemplated in the Preamble of the Constitution. The Constitution was amended in 1972 to establish preeminence of some of the directive principles over some of the fundamental rights i.e., Article 31-C was inserted by the 25th Amendment Act. The validity of this amendment was challenged in *Kesavananda Bharati v. State of Kerala*^[3]. While recognizing the significance of directive principles in the Constitution, the Supreme Court by majority upheld the validity of the 25th Amendment. Mathew,

J., went to the extent of observing that in building a just social order, the fundamental rights could be subordinated to Directive Principles because only if men existed then there could be fundamental rights. It was also held that the two parts constitute the conscience of the Constitution and there is no antithesis between fundamental rights and directive principles as one supplements the other. More over both parts have to be balanced and harmonized. Similarly in *Mumbai Karigar Sabha v. Abdulbhai* it was held that, where two statutory choices are available, the construction in conformity with the social philosophy of the Directive Principles has to be preferred. The Judicial role was further explained by the Supreme Court in *Uttar Pradesh Electricity Board v. Hari Shanker* ^[4] where the Court expressed the view that even though the courts could not direct making of legislations implementing the directives, judiciary was bound to evolve and adopt principles of interpretation which would further the goals set out in Directive Principle in the state policy. In *Kasturilal v. State of Jammu & Kashmir* ^[5], the Supreme Court found that the yardstick for determining reasonableness and public purpose is to be found in the law for implementing directive principles. The Court emphasized that an executive action or a law enacted for giving effect to directive principles in furtherance of constitutional goal of social and economic justice, would be *prim facie* reasonable and in public interest. The 42nd Amendment in 1976 further changed the content of Article 31 C for giving predominance to all directive principles over any of the fundamental rights conferred by Articles 14 (equality) 19 (freedom) and (property rights). The majority of the Court in *Minerva Mills Ltd. v. Union of India* held the amendment unconstitutional on the reason that Indian Constitution is founded on the bedrock of the balance between Part III and IV. To give absolute priority to one over the other is to disturb the harmony of the Constitution. This harmony and balance between Fundamental Right and Directive Principles is an essential feature of the basic structure of the Constitution and anything that destroys the balance between the two parts will *ipso facto* destroy an essential element of the basic structure of our Constitution'. In *Minerva Mills*, Bhagwati J., took a different approach. According to him, the directive principles enjoyed a very high place in the constitutional scheme and it was only in the framework of the socio-economic structure envisaged in the directive principles that the fundamental rights were intended to operate, for it was only then they could become meaningful and significant for the millions of poor and deprived people who did not have even the bare necessities of life and who were living below poverty line. Therefore, the goals set out in Part IV had to be achieved without the abrogation of the means provided for by Part III. Justice Bhagwati while upholding the amendment emphasized the State should take positive action for creating socio-economic conditions in which there will be an egalitarian social order with social and economic justice to all and his is the philosophy of distributive justice embodied in the directive principles. 'The 42nd Amendment in 1976 further changed the content of Article 31 C for giving predominance to all directive principles over any of the fundamental rights conferred by Articles 14 (equality) 19 (freedom) and (property rights). The majority of the Court in *Minerva Mills Ltd. v. Union of India* ^[6] held the amendment unconstitutional on the reason that Indian Constitution is founded on the bedrock of the balance between Part III and IV. To give absolute priority to one over the other is to disturb the harmony of the Constitution. This harmony and balance between Fundamental Right and

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Statement of the Problem

The era of the liberalization, privatization and globalization of the Indian economy in the last one and half decades have presented unparalleled challenges to the policy maker in government, industry and service sector to compete in the global market, with competitive edge necessitating the industry to improve its productivity and quality of products. This objective cannot be achieved unless and until the workers are highly satisfied with the working environment and welfare facilities which have an important impact on industrial relation. It has become important to find what improvement or progresses are made to enhance their working capacity in an organized sector. The issue is whether the social securities laws are effective enough to strengthen the dragnet of social protection of the workers and in turn improve their efficiency and productivity in the organized sector. These legislative instruments were made to meet the existing social need and problem but the state could not foresee the course of social progress in a dynamic society, which has made these apparently progressive laws regressive. The unification of administrative responsibility in respect of the existing social security legislation is both necessary and desirable. The ESI Act and Workman Compensation Act do not extend to whole working class. The workers have to put in long working hours without any safety and security. There are no comprehensive social security laws and policies or no such things as one umbrella coverage for all workers and they need to be more efficient to cover entire working class. The government has adopted the non-interference policies toward the demand of the workers. Hence this study is undertaken to know the Social Security laws and Policy Relating to Labour in Organized Sector in India and to suggest suitable measures to further enhance and improve them.

Scope of Study

The Scope of the study is to examine conditions of different sections of workers operating sector and more particularly in an Unorganized Sector, who require Social Security, viz., security to agricultural workers, rural artisans, unorganized workers, domestic servants, children, women agricultural workers and old persons including destitute and physically handicapped etc. These sections at present covered by the social security laws are industrial workers that too only to a limited extent. The majority of people in the society who

require social security are ignored both in the organized and unorganized sectors. One of the objectives of the study is to show how the uncovered sectors in India can be brought into the fold of Social Security Laws keeping in view the position of Indian economy and administrative machinery. The studies made earlier in this area have not suggested the method and manner of implementation and extension of social security laws.

Significance of the Study

The Researcher has selected this topic with a view to examine the reasons as to why all these sections of the society who require social protection in India are not covered by Social Security Laws of the country. particularly, the agricultural workers, rural artisans, domestic servants, children, women and old people etc., and to suggest methods for making improvements in the existing social security laws in India in the light of the social security laws of other countries including liberal democracies, socialist countries and communist states. In the era of globalization of Industries, the Labor system has undergone vast changes. The present study will be useful to explore the problems being raised in the work places by the employees and also helps to understand the role of various institutions and Labor Laws in solving the problems of Workmen. The results of the study may be useful in bringing awareness among Employers and Employees about the problems that arose at work place and help them in preventing or solving the problems smoothly.

Conclusion

This work mainly concentrates on impact of globalization on social security of Indian labour, viz, how it affects the rights of labour as envisaged in the Constitution of India and under other laws enacted for ensuring protection and welfare. This analysis includes the efficacy of present legislative frame work and the way forward for securing right of workmen to social security in the changed economic scenario., an attempt has been made to understand the concept of social security, objectives, initiatives, benefits towards the development of unorganized workers. It was argued that `India had a long tradition of social security and social assistance system directed particularly towards the more vulnerable sections of society. These informal arrangements of social security measures underwent steady and inevitable erosion. It was argued that even after independence, the State was concerned more with the problems of industrial and organized work force and neglected the rural and unorganized labour force on social security matters to a greater extent, till recent past. The social security initiatives of the Centre, State and NGOs indicated that the needs are much more than the supports provided and the efforts must be targeted and vast enough to cover the growing unorganized workers. In sum, the study calls for a Comprehensive, Universal and Integrated Social Security System for unorganized workers in India.

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