

CLASS- LL.M. IInd SEMESTER

SUBJECT- LAW AND SOCIAL TRANSFORMATION

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TOPIC- ROLE OF LAW, THE INDIVIDUALS AND THE WELFARE STATE

A welfare state is a concept of government where the state plays a key role in the protection and promotion of the economic and social well-being of its citizens. It is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those unable to avail themselves of the minimal provisions for a good life. The general term may cover a variety of forms of economic and social organization. It provides for physical, material, and social needs rather than the people providing for their own. The purpose of the welfare state is to create economic equality or to assure equitable standards of living for all.

The welfare state provides education, housing, sustenance, healthcare, pensions, unemployment insurance, sick leave or time off due to injury, supplemental income in some cases, and equal wages through price and wage controls. It also provides for public transportation, childcare, social amenities such as public parks and libraries, as well as many other goods and services. Some of these items are paid for via government insurance programs while others are paid for by taxes.

According to the directive principles of the state is required to secure for citizens, men, women, young, equal pay for equal work, protection against abuse and exploitation of workers, the right to adequate means of livelihood, economic necessity, the protection of health, effective provision for securing to work, to education, employment, old age, insurance, protection of economic interests of schedule castes, the scheduled tribes and to bring about prohibition of intoxicating drinks, to secure uniform civil code etc

The Directive Principles are very significant in view of the fact that they lay the cornerstone of a welfare state. **Dr. Ambedkar** also observed “The aim of constitution is to establish a state which shall be the democracy not only in political field where legislative authority is based on adult

franchise and the executive in Parliamentary that also promote a welfare state where social and economic democracy prevails”. As the Directive Principles of state policy are a part of the constitution and they form the social, economic and political ideals of the nation, therefore, it is the sacred duty of the courts to protect them from the whims of different political parties, some of whom like to ignore, mend or even end any provision. The Directive Principles impart a sort of continuity in our national policies.

The phrase “*Salus populi est suprema lex*” means that the happiness of the people is the supreme law. A welfare state has to serve the larger public interest. It denotes a concept of government in which the state plays a key role in the protection and promotion of the economic and social wellbeing of its citizens.

According to Kant- “Welfare state is a state that provides for its citizens a wide range of social services.”

DIRECTIVE PRINCIPLES OF STATE POLICY (PART IV)

Welfare of individuals-

Article 38(1) provides that the state shall strive “to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institution of the national life”. This directive only reaffirms what has already been said in the Preamble according to which the function of the Republic is to secure to all its citizens social, economic and political justice. The Constitution (44th Amendment) Act 1978 inserted a new directive principles in Article 38 of the Constitution which provides that the state shall in particular, strive to minimize inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different area or engaged in different vocations.

The new clause aims at equality in all spheres of life. It would enable the state to have a national policy on wages and eliminate inequalities in various spheres of life. In the recent judgment, **Air India Statutory Corporation v. United Labour Union**¹ the Supreme Court has explained the concept of Social justice “Social justice is a dynamic devise to mitigate the sufferings of the

¹ AIR 1997 SC645

poor, weak, dalits, tribals and deprived sections of the society and so elevate them to the level of equality to live a life with dignity of person. The aim of social justice is to attain a substantial degree of social, economic and political equality, which is the legitimate expectation of the constitutional goals.

ADEQUATE MEANS OF LIVELIHOOD:

The Supreme Court has observed in **Olga Tellis v. Bombay Municipal Corporation**² “If there is an obligation upon the state to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life.” The Supreme Court has however put a rider on the right to livelihood. The State may not be compelled by affirmative action, “to provide the adequate means of livelihood or work to the citizens”. But the state is under the negative obligation not to deprive a person of this right without just and fair procedure. Thus according to the court “But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Art 21”

In **Madhu Kishwar v. State of Bihar**³ with a view to protect the economic interest of tribal women depending on agriculture for their livelihood, the Supreme Court has ruled that on the death of the last male holder in an agricultural tribal family, the dependent female members have the constitutional remedy of continuing to hold the land so long as they remain dependent on it to earn their livelihood. The Court has come to this conclusion on the basis of Art 39(a), which obligates the state to secure all men and women equally, the right to an adequate means of livelihood.

Distributive Economic system-

Art 39(b) & (c) relate to distribution of ownership and control of material resources of the community. An Act falling under Clauses (b) and (c) of Art 39 must have operation in the

² AIR 1986 SC 180

³ AIR 1996 SC 1870

economic system and the concentration of wealth. Taking over of management by the Government of a sick textile mills has been characterized as being in furtherance of Art 39(b) & (c).

The expression “Material resources of the community” is not confined to natural resources; it is not confined to resources owned by the public. It means and includes all resources, natural and manmade, public and private owned. Therefore “all things which are capable of producing wealth for the community would be material resources. The Word “distribution” in Art 39(b) of the Constitution does not merely means that the property of one should be taken over and distributed to others. This is only one mode of distribution but not the only mode. Nationalization is also a distributive process as it prevents concentration of wealth in the hands of few and thus benefits the society at large⁴.

In **V Parthasarathi V Sate of Tamilnadu**⁵ when the State takes over the bus transport from private hands, the beneficial effects resulting there from will be passed on to the community at large and this fulfils the objectives of Art 39(b) & (c).

In **State of Bihar v Kameshwar Prasad**⁶ The Supreme Court had relied on Article 39 in deciding that a certain Zamindari Abolition Act, has been passed for a public purpose within the meaning of Article 31.

Equal Pay for Equal Work –

According to Article 39(d), the state has to ensure that there is equal pay for equal work for both men and women. Parliament has enacted The Equal Remuneration Act 1976 to implement Art 39(d). The Act provides for payment of equal remuneration to men and women workers for the same work, or work of similar nature and for the prevention of discrimination on ground of sex. The Act also ensures that there will be no discrimination against recruitment of women and provide for the setting up of advisory committees to promote employment opportunities for women.

⁴ Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1376

⁵ AIR 1974 mad 7

⁶ AIR 1952 SC 252

In **Randhir Singh V Union of India**⁷ The Supreme Court has held that the Principle of “Equal pay for Equal work though not a fundamental right” is certainly a constitutional goal and therefore capable of enforcement through constitutional remedies under Art 32 of the Constitution. The Doctrine of equal pay for equal work is equally applicable to persons employed on a daily wage basis.

In **State of Haryana V Rajpal Sharma**⁸ It has been held that the teachers employed in privately managed aided schools in State of Haryana are entitled to the same salary and dearness allowance as is paid to teachers in Government schools.

Welfare of the Children-

Art 39(e) prohibits the tender age of children from being abused. Art 39(f) ensures that the children grow in a healthy manner and are protected from exploitation. These Constitutional provisions indicate that the Constitution makers were very anxious to protect and safeguard the interest and welfare of the children.

In **M.C. Mehta v. State of Tamil Nadu**⁹ The Supreme Court has held that children below the age of 12 years cannot be employed in any hazardous industry or mines or other works. Mr. M.C.Mehta had brought a public interest litigation before the Supreme Court and had told the Court about the plight of children engaged in Shivakashi Crackers Factories as to how the Constitutional rights of these children was being grossly violated and had requested the Court to issue appropriate directions to the Governments to take steps to abolish child labour.

In **Sheela Barse v. Union of India**¹⁰The Supreme Court has directed release of all children below the age of 16 years from jails. Instead, the Supreme Court has exhorted the states to setup necessary remand homes and juvenile courts. A Child is a national asset and therefore it is the duty of the state to look after the child with a view to ensuring full development of its personality.

⁷ AIR 1982 SC 879

⁸ AIR 1997 SC 449

⁹ AIR 1997 SC 699

¹⁰ AIR 1986 SC 1773

Article 40 talks about The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

ARTICLE 41: The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

ARTICLE 42: The State shall make provision for securing just and humane conditions of work and for maternity relief.

ARTICLE 43: The State shall endeavor to secure, by suitable legislation or economic organisation or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

ARTICLE 43A: The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisation engaged in any industry.

The Directive Principles contained in Art 42 & Art 43 shows that the constitution makers felt a deep concern for the welfare of the worker.

In *D.S. Nakara v Union of India*¹¹ The Constitution Bench of the Supreme Court has held that pension is not only compensation for loyal service rendered in the past, but also by the broad significance it is a social welfare measure rendering socio-economic justice by providing economic security in the fall of life when physical and mental prowess is ebbing corresponding to the aging process and therefore one is required to fall back upon savings.

¹¹ AIR 1983 SC 130

ARTICLE 44: The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

In **Sarla Mudgal v. Union of India**¹² The Supreme Court has directed the Prime Minister to take a fresh look at Art 44 of the Constitution which enjoins the state to secure a uniform civil code which accordingly to the court is imperative for both protection of the oppressed and promotion of national unity and Integrity. The Court Directed the Union Government through the secretary to Ministry of law and justice, to file an affidavit by August 1995 indicating the steps taken and efforts made by the Government, towards securing a uniform civil code for the citizens of India.

In **Mohd Ahmed Khan v Shah Bano Begum**¹³ The Supreme Court has ruled that a Muslim husband is liable to pay maintenance to the divorced wife beyond the iddat period. The Court has regretted that Art 44 has remained a dead letter, as there is no evidence of any official activity for framing a common civil code for the country. The Court has emphasized: “A Common Civil Code will help the cause of national Integration by removing disparate loyalties to laws which have conflicting ideologies.”

Free and compulsory education for children:

Art 45 provides compulsory and free education for children up to the age of 14 years. The Object is to abolish illiteracy from the country.

In **Unnikrishnan**²² The Supreme Court has implied the right to education from the right to life and personal liberty guaranteed by Art 21. As the Fundamental Rights and Directive principles are complementary to each other, the contents and parameters of this right are to be deduced in the lights of Arts 41, 45, 46. Therefore the right to education in the context of these Directive Principles means (a) every child has a right to free education upto the age of 14 years. (b) Thereafter, his right to education is circumscribed by the limits of the economic capacity of the state and its development.

The Constitution (86th Amendment) Act, 2002 has substituted a new article for Art 45 which provides that “the state shall endeavor to provide early childhood care and education for all children until they complete the age of six years”. This has been necessitated as a result of

¹² (1995) 3 SCC 635

¹³ AIR 1985 SC 945

making the right to education of children upto 14 years of age a fundamental right. The Marginal heading of the new Article will be entitled as “provision for early childhood care and education to children below the age of six year”.

Article 46- The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

The Constitution treats the Scheduled Castes in India with special favour and affords them with some valuable safeguards. Arts 14,15 & 16 of the Constitution confers several benefits of social and economic advancement and empowerment and social equality of status and dignity of person, by providing reservations in government services and in educational institutions for the Scheduled castes and Scheduled tribes.

Article 47- The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health.

Article 48- The State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

Paschim Banga Khet Mazdoor Samity v. State of West Bengal¹⁴ The Supreme Court has observed “In a Welfare state the Primary Duty of the Government is to secure the welfare of the people, providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare state, The Government discharges this obligation by running hospitals and health centers which provide medical care to the person seeking to avail of those facilities.

Art 48A obligates the state to endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. There is at present a growing consciousness and awareness that suitable measures be adopted to protect the environment, forests and wildlife. To

¹⁴ (1996) 4 SCC 37

enable effective steps being taken for the purpose, wildlife and forests have now been placed in the concurrent list so that the Central Government may play a meaningful role in the increasingly significant area.

The Supreme has clarified that whenever a problem of ecology is brought before the court, it is bound to keep in minds that Art 48A and Art 51A (g) and cannot leave the matter entirely to the Government

In **M.C. Mehta v Union of India**¹⁵The Supreme Court has issued several directions in order to protect Taj Mahal from deterioration on account of environment pollution.

In **Murli S Deora v Union of India**¹⁶ The Court held that the Smoking in Public places is indirect deprivation of life without any process of law therefore non-smokers cannot be compelled to become helpless victims of pollution caused by cigarette smoke. Smoking therefore is prohibited in following public places. Auditorium, Hospital buildings, Health Institutions, educational Institutions, Libraries, Court buildings, public offices and Public conveyances including railways throughout India.

Article 49- It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

ARTICLE 50: The State shall take steps to separate the judiciary from the executive in the public services of the State.

ARTICLE 51: The State shall endeavour to –

- (a) promote international peace and security;
- (b) maintain just and honourable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organised people with one another; and

¹⁵ AIR 1997 SC 734

¹⁶ (2001) 8 SCC 765

(d) encourage settlement of international disputes by arbitration

Law play very important for the development of the human personalities. The governments must keep these principles in mind while framing laws and policies. It is true that these provisions of the Constitution of India are non- justiceable, which means that these are not enforceable by any court of law.

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