

LAW AND SOCIAL CHANGE SEMINAR

TOPIC: CONCEPT OF WELFARE STATE UNDER INDIAN CONSTITUTION

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1. Introduction

Times ago, the role of state was confined to certain limit, i.e. to maintain law and order in society. But by and large this concept has been changes, and the role and function of the state in perspective of legislation crossed the borderline fixed earlier. And thus the field of legislation has been extended to a greater extent. The reason behind the change of concept from police state to welfare state was to boost the public morale and provide them more and more facilities.

When the state was functioning as a police state, it had no responsibility to take care of its citizens in their different life style. It was not bothered to think upon those matters, which was not coming under the guise of protection and safeguard. But after a considerable period it was felt that the activity of the state should not be confined to a point of maintaining the order only. Rather, it should go ahead to cover various fields of human activity. And therefore state was bound to spread its wings to facilitate a better arrangement to the public at large.¹

Before 1947, the Judges, the lawyers, and the law administrators, did not looked around while making new laws. The place of social change was very low as the law was conceived either in analytical function emanating from the British Parliament, or the law had no relationship with the life of the people. The role of the judges was not to discover the major premises or felt need of the people, but to interpret the law in its logical manner irrespective of the consideration of the social justice. The law had no roots in the Indian soil and its language too was foreign. In Short law before 1947 in India was an instrument of political coercion imposed by alien rulers upon the Indian people without considerations of socio-economic justice.

After 1947 there was a change in the perspective of law itself. India became free and it drafted and adopted a new constitution so as to establish justice- Social, economic

¹ Dr. J.N.PANDEY The Constitutional Law of India (Central Law Agency Allahabad 45th Ed. 2008) at 385

and political. To get these set objectives in results our planners initiated the system of economic planning in India with a view 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 institutions of national life. Accordingly state evolved new social and economic policies to achieve the above ends. In this connection the concept of law was totally changed into functional approach. Now the barren approach of law disappeared and it was emphasized that law should function as a dynamic machine touching the interests of the society and the common man as well.²

According to these 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”.³

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.

² <http://www.lawteacher.net/indian-law/essays/india-is-a-welfare-state.php> visited on 17th May 2014

³ Dr. J.N.PANDEY The Constitutional Law of India (Central Law Agency Allahabad 45th Ed. 2008) at 385

2. Nature of Directive Principles

Art 36 to 51 contain the Directive Principles of state policy. The idea to have such principles in the constitution has been borrowed from the Irish Constitution.

There was a time, Known as the laissez faire era, when the state was mainly concerned with the maintenance of law and order and defence of the country against external aggression. Such a restrictive concept of the state no longer remains valid.

The Makers of the Constitution had realized that in a poor country like India, political democracy would be useless without economic democracy. Accordingly, they incorporated a few provisions in the constitution with a view to achieve amelioration of the socio-economic condition of the masses.

Today we are living in an era of welfare state which seeks to promote the prosperity and well being of the people. The Directive Principles, Strengthen and promote this concept by seeking to lay down some socio-economic goals which the various government in India have to strive to achieve.

In a number of Pronouncements, The Supreme Court has insisted that these Directive Principles seek to introduce the concept of welfare state in the country. Thus in **Paschim Banda**⁴ the Court observed that “The Constitution envisages the establishment of a welfare state at the federal level as well as the state level. In a welfare state the primary duty of the Government is to secure the welfare of the people.”

Originally, The Directive Principles were more akin to morals, rather than to legal precepts, as they did not have much value from a legal point of view. The Main idea underlying these principles was that they would serve an educational purpose, and might

⁴ Paschim Banga Khet Mazdoor Samity V State of West Bengal , (1996) 4 SCC 37

serve as restraint on those who come in power. These persons would have to pay some respect to those principles while exercising power, and could be held accountable for ignoring them before the electorate if not before a court of law. In the Constituent Assembly Dr. **Ambedkar** has said that a party, which failed to implement these principles, would stand to lose in the next elections. Thus the accountability to enforce these principles was left to the political process.⁵

Art 37 Says that the Directive Principles “shall not be enforceable by any court, But the Principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in Making laws.”

3. Welfare of the People

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.

⁵ Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1364

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.⁶

In the recent judgment, **Air India Statutory Corporation V United Labour Union**⁷ the Supreme Court has explained the concept of Social justice “Social justice is a dynamic devise to mitigate the sufferings of the 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.

In the instant case **The Contract labour (Regulation and Abolition) Act 1970**, abolished the system of employing contract labour by an undertaking on work of perennial nature. The Act is however, silent on the question as to what is to be done with the contract labourers already employed before the abolition of the system, Invoking the concept of social justice the Supreme Court has ruled in that the concern establishment has to absorb these labourers as regular employees. The Court had stated that on abolition of contract system from any establishment, the logical and legitimate consequence thereof is that the abolished contract labourers are to be absorbed as regular employees by the concern establishment even though the law is silent on this point. The Court has insisted that the constitution mandates the state to accord justice to all members of the society in all facets of human activity.

⁶ Dr. J.N.PANDEY The Constitutional Law of India (Central Law Agency Allahabad 45th Ed. 2008) at 386

⁷ AIR 1997 SC645

4. Adequate means of livelihood

The Supreme Court has observed in **Olga Tellis V Bombay Municipal Corporation**⁸ “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 court⁹ “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”.

The Supreme Court has ruled that **The Contract Labour (Regulation and Abolition) Act, 1970**, ought to be read and interpreted in the perspective of Art 39(a) so that social and economic justice may be achieved and the constitutional directive be given a full play.¹⁰

In Madhu Kishwar V State of Bihar¹¹ 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.

⁸ AIR 1986 SC 180

⁹ Ibid

¹⁰ Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1374

¹¹ AIR 1996 SC 1870

5. 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 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 large.¹²

In **V Parthasarathi V Sate of Tamilnadu**¹³ 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**¹⁴ 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.

¹² Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1376

¹³ AIR 1974 mad 7

¹⁴ AIR 1952 SC 252

6. 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.¹⁵

In **Randhir Singh V Union of India**¹⁶

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 **Surender Singh V Engineer-in-Chief, CPWD**¹⁷

The Supreme Court has held that the daily wage employees are also entitled for the same wages as other permanent employees in the department employed to do the identical work.

In **State of Haryana V Rajpal Sharma**¹⁸

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.

¹⁵ Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1378

¹⁶ AIR 1982 SC 879

¹⁷ AIR 1986 SC 534

¹⁸ AIR 1997 SC 449

7. 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.¹⁹

In M.C. Mehta V State of Tamil Nadu²⁰

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.

The Supreme Court issued certain reformative directions regarding welfare of children to the Government and observed that although this job is big one but not as to prove either unwieldy or burdensome. The Financial implication on the Government will be cumbersome so as to prove damper because the money after all will be used to build up a better India. The Verdict of the Supreme Court has given a new hope to the children of the country and a beginning has been made to honour the mandate contained in Articles 39(e) and (f), 41, 45, 47 of the Constitution.

In Sheela Barse V Union of India²¹

The 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.

¹⁹ Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1379

²⁰ AIR 1997 SC 699

²¹ AIR 1986 SC 1773

Besides Arts 39(e) and (f), The Constitution also incorporates few more provisions to promote the welfare of the children.

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 Unnikrishnan²² 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 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”.²³

Art 15(3) enables the state to make special provisions for children.

Art 23 prohibits traffic in human beings.

Art 24 prohibits employments of children below the age of 14 in any hazardous employment.

²² Unnikrishnan. J. P V State of AP, AIR 1993 SC 2178

²³ Dr. J.N.PANDEY The Constitutional Law of India (Central Law Agency Allahabad 45th Ed. 2008) at 391

8. **Right to live with human dignity**

The Right to live is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes “the right to live with human dignity” and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human being.

In *Bandhua Mukti Morcha V Union of India*²⁴

The Supreme Court read with Article 21 and 23 with such Directive Principles as Arts 41 and 42 to secure the release of bonded labour and frees them from exploitation.

The Court observed, “This right to live with human dignity enshrined in Article 21 derives its life breadth from the Directive principles of State Policy and particularly Articles 41 and 42.

It is not only the question of release of bonded labour but also of their proper rehabilitation after release. The Supreme Court has insisted upon effective rehabilitation of the freed bonded labour families.

The Court Stated “Art 42 of the constitution makes it the obligation of the state to make provision for securing just and human condition of work and for maternity relief”.

In *Peoples Union for Democratic Rights v Union of India*²⁵

The Supreme Court held that non-payment of minimum wages to the workers employed in various Asiad projects in Delhi was a denial to them of their right to live with basic human dignity and violative of the Art 21 of the Constitution.

²⁴ AIR 1984 SC802

²⁵ AIR 1982SC 1473

9. Welfare of the worker

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

Art 43 requires the state to try to secure by suitable legislation or economic organization or in any other way, to all workers agricultural, industrial or otherwise, a living wage, conditions of work enduring a descent 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 cooperation basis in rural areas.

Art 43 refers to living wage and not minimum wage. The Concept of living wage includes in addition to the bare necessities of life, such as food, clothing, shelter, provisions for education for children, and insurance etc.²⁶

In **D.S. Nakara v Union of India**²⁷

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.

Art 43A requires the states to take steps, by suitable legislation or in any other way to secure the participation of workers in the managements of undertakings, establishments or other organizations engaged in any industry.

²⁶ Dr. J.N.PANDEY The Constitutional Law of India (Central Law Agency Allahabad 45th Ed. 2008) at 390

²⁷ AIR 1930 SC 130

10. Welfare of the community

Uniform Civil Code: Art 44 requires the state to secure for the citizens a uniform civil code throughout the territory of India.

In **Sarla Mudgal v. Union of India**²⁸

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.

The Above direction was given by the court while dealing with case where the question for consideration was whether a Hindu husband married under Hindu law, after conversion to Muslim, without dissolving the first marriage, can solemnize a second marriage. The Court has held that such a marriage will be illegal and the husband can be prosecuted for bigamy under section 494 of the Indian Penal Code.

In **Mohd Ahmed Khan v Shah Bano Begum**²⁹

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.”

²⁸ (1995) 3 SCC 635

²⁹ AIR 1985 SC 945

The Court appreciates the difficulties involved in bringing the persons of different faiths and persuasions on a common platform, but nevertheless, the court has said, “a beginning has to be made if the constitution is to have any meaning”. “It is the state which is charged with the duty of securing a uniform civil code for the citizens of the country, and unquestionably, it has the legislative competence to do so”.

In Danial Latif & Another v. Union of India³⁰

The Constitutional Bench of the Supreme Court upheld the validity of the Muslim women (Protection of Rights on Divorce) Act 1986 and held that a Muslim Divorced women has right to maintenance even after iddat period under the 1986 Act. The Court said that a Muslim Husband is liable to make reasonable and fair provision of the future of the Divorced wife which clearly extends beyond the iddat period in terms of section 391(a) of the Act. Also a divorced women who has not remarried and who is not able to maintain herself after iddat period can proceed as provided under section 4 of the Act against her relations who are liable to maintain her in proportion to the properties which they may inherit on her death according to Muslim Law from such divorced women including her children and parents. If the relatives are found unable to pay her maintenance the Magistrate may direct the state wakf Board established under the wakf Act to pay such maintenance.

The above decisions of the court would make the job of introducing the common civil code much easier.

³⁰ J T 2001 (8) SC 218

11. Welfare Provisions for the SC/ST & OBC

Scheduled Castes

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.

The Scheduled Castes are not racial, Linguistic or religious minority. They are part and parcel of Hindu Society. They are the depressed sections of Hindus who have suffered for long under social handicaps and thus need special protection and help for the amelioration of their social economic and political conditions.

The framers of the Constitution were determined to eradicate the scourge of untouchability. With this in view Art 17 abolishes untouchability and Art 25(2)(b) provides for opening of Hindu temples to the Harijans. To promote their educational and economic interests Arts 15(4), and 16 provide for reservation of seats for them in educational institutions and in Government services.³¹

Scheduled Tribes

The Scheduled Tribes are those backward sections of the Indian population who still observe their tribal ways, their own peculiar customs, and cultural norms, The Tribal people have remained backward because of the fact that they live in inaccessible forests and hilly regions and have thus been cut off from the main currents of national life. They constitute nearly 7.5 percent of the country's total population. The Constitution enjoins to provide facilities and opportunities for development of tribal economic and educational standards.

³¹ Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1399

It has been thought that it may be harmful to the tribal people if they are brought in indiscriminate contact with the outside world. Thus the legislature have been empowered to impose restrictions on the Fundamental rights guaranteed by Arts 19(1)(d), (e), (f) in the interests of Scheduled tribes, in order that movement of people from developed areas to tribal areas may be restricted so that the tribal people are not exploited by outsiders. Laws have therefore been enacted prohibiting the entry of non-tribal into the tribal areas without permits. Reservation of seats can also be made for them in educational institutes and government services under Arts 15(4), 16(4), and 41, 46, 335.³²

Article 15(4): Special Provisions may be made for the advancement of any socially and educationally backward class and for the scheduled Castes and the Scheduled Tribes.

Article 16(4): permits the state to make any provision for the reservation of appointments or posts in favour of any backward class, which in the opinion of state, is not adequately represented in the services under it.

Article 46: obligates the state to promote with special care the educational and economic interest of the weaker sections of the people, and in particular, of the schedule caste and the schedule Tribe, and to protect them from social injustice and all forms of exploitations.

Article 335: States that the claims of the members of the scheduled castes and the scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration in the making of appointments to the services and posts in connection with the affairs of the union and of a state.

³² Id at 1400

Other Backward Classes (OBC)

Besides the Scheduled Castes and the Schedules Tribes, there are other backward classes. The Constitution extends some protection to the other backward classes, who have been neglected for long. The other backward classes are to be found amongst all religious groups- Hindus, Muslims, Christians etc.

It is necessary to state here the expression ‘weaker Sections’ of the people used in Art 46 is somewhat different from the expression ‘backward class’ of citizens used in Art 16(4), which is only a part of the weaker Sections.

The Expression ‘weaker sections’ connotes all sections of society who are rendered weaker due to various causes. Art 46 is aimed at promoting their educational and economic interests and protecting them from social injustice and exploitation. Thus, the expression ‘backward class’ in Art 16 does not comprise all weaker sections of the people but only those, which are socially and therefore educationally and economically backward.³³

The Other Backward classes have not been specified in the Constitution for, at the time of Constitution making, not much information was available about them. The Constitution in its various provisions does not even use a single uniform expression, but uses various expressions, to characterize backward classes. In Art 15(4) and 340, the expression used is ‘Socially and Educationally Backward classes’. In Art 16(4) the expression used is ‘backward’. In Art 46, the term used is ‘weaker sections of the people’

³³ Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1408

In Valsamma Paul v Cochin University³⁴

The Question for consideration is “Whether a lady marrying a SC/ST or OBC or one transplanted by adoption or any other voluntary act, ipso facto, becomes entitled to claim reservation under Art 15(4) or 16(4), as the case may be?”

The Court has answered the question in negative. The Court has argued that SC, ST and OBC have suffered social disabilities for long and so they have become socially, culturally and educationally backward. The Object of reservation is to remove these handicaps had to bring them in the mainstream of national life. A Person belonging to forward class has an advantageous start in life; when he or she is transplanted in the backward class by adoption or marriage or conversion, he cannot claim the benefit of reservation either by Arts 15(4) or 16(4) as the case may be.

In Indra Sawhey v Union of India³⁵

The Supreme Court has observed, “Caste only cannot be the basis for reservation. Reservation can be for a backward class of citizen of a particular caste. Therefore from that, the creamy layer is to be excluded”.

In A.B.S.K. Singh (Rly) v Union of India³⁶

It has been held that the state can separately categorize Schedule Castes and Schedule tribes for the purpose of adequate representation in the services as Articles 46 specifies. This would not necessarily violate Art 14 and 16.

³⁴ AIR 1996 SC 1011

³⁵ (2001) 1 SCC 168

³⁶ AIR 1981 SC 298

12. Free Legal Aid

Article 39A directs the state to ensure that the operation of the legal system promote justice, on the basis of equal opportunities and shall in particular provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. This article was added to the constitution pursuant to the new policy of the Government to give legal aid to economically backward classes of people.

Legal aid and speedy trial have now been held to be fundamental rights under article 21 of the constitution available to all prisoners and enforceable by the courts. The State is under a duty to provide lawyer to a poor person and it must pay to the lawyer his fee as fixed by the court.³⁷

In Centre of Legal Research v State of Kerala³⁸

It has been held that in order to achieve the objective in Art 39A, the state must encourage and support the participation of voluntary organizations or social action groups in operating the legal aid programme.

³⁷ Dr. J.N.PANDEY The Constitutional Law of India (Central Law Agency Allahabad 45th Ed. 2008) at 391

³⁸ AIR 1979SC 1322

13. Raising Standard of living and improvement of Health

Art 47 imposes duty upon state to raise the level of nutrition and the standard of living of its people and the improvement of public health. In particular, the state should bring about prohibition of the consumption except for the medicinal purposes of intoxicating drinks and of drugs, which are injurious to health.³⁹

In Paschim Banga Khet Mazdoor Samity v. State of West Bengal⁴⁰

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.

14. Protection of ecology and Environment Pollution

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 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.⁴¹

³⁹ Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1390

⁴⁰ (1996) 4 SCC 37

In M.C. Mehta v. Union of India⁴²

The Court said “Articles 39(e), 47,48A by themselves and collectively cast a duty on the state to secure the health of the people improve public health and protect and improve the environment.”

In M.C. Mehta v Union of India⁴³

When the level of air pollution in Delhi increased to such an extent as to endanger the public health and the state Government did nothing in spite of the existence adequate law, the Supreme Court issued directions for changing Public transport from diesel to CNG.

In M.C. Mehta v Union of India⁴⁴

The 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 India⁴⁵

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.

⁴¹ Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1392

⁴² JT 2002(3) SC 527

⁴³ (2002) 4 SCC 356

⁴⁴ AIR 1997 SC 734

⁴⁵ (2001) 8 SCC 765

15. Welfare of women

Women as a class neither belong to a minority groups nor they are regarded as forming a backward class. India has traditionally been a male dominated society and therefore presently women suffer from many social and economic disabilities and handicaps. The Constitution does not contain many provisions specifically favoring women as such. There is Art 15(3), which says that the state is not prevented from making any special provision for women. Then there are Arts 14, 15(2), which outlaw any kind of gender discrimination against women. Art 21 is also there which can be used to spell out some safeguards for women.⁴⁶

Recognizing that women in India need to be liberated from unjust social, political and economic suppression, the Supreme Court has declared in **Bodhisattwa**⁴⁷, that rape is a heinous crime against women and amounts to violation of fundamental rights guaranteed to women under Article 21. The Court has gone further and recognized the right of a rape victim to claim compensation from the offender for violation of his constitutional right to live with human dignity, which is guaranteed to her by Art 21.

In **Vishaka v State of Rajasthan**⁴⁸

The Supreme Court has come down heavily on sexual harassment of women at work places and has declared the same to be violation of women's right under Art 21.

⁴⁶ Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1423

⁴⁷ Bodhisattwa Gautam V Subhra Chakraborty AIR 1996 SC 922

⁴⁸ AIR 1997 SC 3011

16. Conclusions & Suggestions

The Directive Principles have played a commendable role in bringing social change. Parliament has made a tremendous effect on human behaviour. Courts have a strong hand to make the legislation workable and fruitful. Accountability should be there to take all the things in proper order. Right to Work should be inserted in Fundamental Rights. To make India united in one series, it is must to make a common civil code. Reservation should be continued till the downtrodden are upgraded.

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