

INDIA'S ROLE AS A WELFARE STATE IN LIGHT OF NOVEL CORONA VIRUS PANDEMIC

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ABSTRACT

The Novel Corona Virus has helped put some things into perspectives, such as the role of the Union and State Government, existing Legislations and the extent of their implementations. They have, in many instances put our faith in them to the test. What is the concept of Welfare-ism that India seems to embody and is the Government bound by it? How far does it live up to what is laid down in the Constitution and the Statutes? The concept of a Welfare State finds its place in the Directive Principles of State Policy and the Preamble of the Constitution. There is an acknowledgement worldwide that because of the pandemic, lives will be different, even difficult than usual but that only presses the Government to implement Directive Principles, rather than be excused because it is a part in the Constitution that is often overlooked or taken for granted due to its non-enforceability. But this concept of Directive Principles and Welfare has been broadened under the light of Article 21 through judgments, thereby giving scope to those Constitutional provisions to be taken seriously. Drawing from the latin maxim 'Salus Populi est suprema lex' Welfare provisions are very important tools which can be utilised by the Government to keep people content by promoting ethical guidelines. 'Ethical' because there was a time when dictators, such as Hitler, Mussolini, in the name of 'Welfare State' adopted means which were not the least ethical. History tells us that these ethics and morality have to be guarded when extending the role of a Welfare State else there would be a no line of demarcation between tyranny and welfare.

Keywords: Welfare State, Directive Principles of State Policies, Migrant workers, Socio-economic equality, Government policy.

HYPOTHESIS.

The Constitution and valuable precedents laid down by the Apex Court provides scope for remedies after the gross violation of rights of migrants caused due to the State imposed

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lockdown and the mismanaged schemes taken by various Governments, and the role of Directive Principles play a part in furtherance of justice.

INTRODUCTION.

On 22nd March, 2020, as the number of coronavirus infected people in the country crossed 324, millions of Indians observed a Janta Curfew on Sunday as per Prime Minister Narendra Modi's speech. This was to show solidarity and gratitude towards Covid frontline personnel and possibly an experiment to check the discipline of the citizens. Following that, the Central government on 24th March, 2020 invoked the provisions of the Disaster Management Act, 2005 to impose a three-week uniform lockdown in the country. This, while done to prevent the spread of the virus, took the country by a storm as it came fairly unannounced and by the time the migrant workers came to know about it, they found themselves stranded in the host States. All transport services – road, rail and air - were to remain suspended during the lockdown.

From the onset of the lockdown, there was no doubt that the central and state governments would have to act quickly to ensure that at the very least two things food and cash reached the most vulnerable. It was also certain that the ranks of the vulnerable would rapidly start to swell as wages and work were withdrawn, and their savings, if any, would prove insufficient. Without the basic requirement that the overwhelmingly large informal economy provided, more and more Indians would have to depend on the state for relief and support to get through this uncertain time.

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.¹¹⁵⁸

The principal objective of the First Five Year Plan for the period April 1951 to March 1956 was the creation for the people of India higher living standards.¹¹⁵⁹ This is how the country started off with its governance, that is, by raising the living standards of people. That is

¹¹⁵⁸ (Mar. 12, 2020, 10:04 AM) http://en.wikipedia.org/wiki/Welfare_state

¹¹⁵⁹ The First Five Year Plan (Govt. of India 1952), pg 70

something which was a priority then and even now. But these standards were blurred the moment when the migrant worker crisis came to light. Their situation was something that the pandemic brought everybody's attention to.

To be noted is the fact that the article does is not in support of complete enforcement of the Directive Principles, which was seen to be done during The Constitutional (42nd Amendment) Act, 1976, but simply puts an effort to acknowledge their role in delivering justice specially in unforeseen circumstances.

DIRECTIVE PRINCIPLE OF STATE POLICY AND WELFARE STATE.

The Directive Principles of State Policy, in short DPSP, are guidelines or directives to the Central and State Governments and Legislatures of India, to be kept in mind while framing laws and policies. The directive principles lay down certain economic & social policies to be pursued by the various governments in India.¹¹⁶⁰

The principles have been inspired by the Directive Principles given in the Constitution of Ireland and also by the principles of Gandhism¹¹⁶¹ (in particular Sarvodaya, welfare for all which is one of the basic principles of Gandhian thought.)

It is by enacting 'directive principles of state policy' in part IV of the constitution that we endeavoured to create a welfare state.¹¹⁶² That is to say, DPSPs can be interpreted as provisions ensuring the role of the country as a Welfare State. Article 38 says,

State to secure a social order for the promotion of welfare of the people- (1)

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 institutions of the national life. (2)

The State shall, ...endeavour to *eliminate inequalities in status, facilities and opportunities*, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

In fact, Directive Principles cannot be taken lightly just because they are non-justiciable, they help in expanding the scope and content of Fundamental Rights which in turn are justiciable. One such example being Article 21 which talks about Right to life and personal liberty and

¹¹⁶⁰ Paras Diwan, Administrative Law, 124 (Allahabad Law Agency, 2004)

¹¹⁶¹ Id

¹¹⁶² Id

this includes the right to live with human dignity, right to health and social justice, right to shelter, right to education, which are few among others.

B.N Rao, the Constitutional Adviser, following the Irish Constitution made a distinction between classes of rights (a) Fundamental Principles of State Policy for welfare which were guaranteed only so far as state action was practicable and (b) Fundamental Rights of citizens which were enforceable by legal action. The non-justiciability was criticised by Alladi Krishnaswami Ayyar, K.M. Munshi, B.R. Ambedkar and K.T. Shah. But in the end these experts recognised that it was not practicable to categorise constitutional declarations of social and economic policies as justiciable rights.¹¹⁶³

JUSTICIABILITY OF DIRECTIVE PRINCIPLES AND PREAMBLE.

Article 37 states that application of the principles contained in this Part cannot be enforceable by any Court, but the principles 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.' The reason behind the legal non-enforceability of these principles is that they impose positive obligations on the State. The most crucial restraint being that of financial resources. The Constitution therefore takes a pragmatic view refrained from giving teeth to these principles. A Court will not issue an order or a writ of Mandamus to the Government to fulfil the Directive Principles.

The theme that 'Fundamental Rights is the means to achieve the goals that have been laid down in Directive Principles' and that 'Fundamental Rights must be construed in the light of the Directive Principles' have been advocated many a times, as said by Jeevan Reddy J. in Unnikrishnan v. State of Andhra Pradesh, 1993 AIR 2178. Directive Principles have been used to broaden and to give depth to some Fundamental Rights and to imply some more rights therefrom for the people over and above what are expressly mentioned in Fundamental Rights.

The biggest beneficiary of it is Article 21, by reading Article 21 with Directive Principles, the Supreme Court has derived therefrom a bundle of rights, to name a few- right to live with human dignity, right to shelter, right to education, etc. This broad expansion of Article 21 with the view of implementing Directive Principles could be made possible only after the Maneka Gandhi v. Union of India, 1978 AIR 597 case. This development in the Indian

¹¹⁶³ B. Shiva Rao, Framing of India's Constitutions A Study 321-322 (1968)

Constitutional jurisprudence was made possible by interpretation of the words 'life' and 'liberty'. Bhagwati J. observed, 'The expression "personal liberty" in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man.' The judiciary took upon itself the task of infusing into the constitutional provisions the spirit of social justice. This it did in a series of cases of which Maneka Gandhi's case was a landmark. Post Maneka Gandhi, it has been established that 'procedure established by law' is interpreted by the American 'due process of law.' One of the approaches of due process of law is 'substantive due process' that is, the substantive provisions of law should be reasonable, fair and not arbitrary. Once the Court took a broader view of the scope and content of Article 21, there was no going back and right to life and personal liberty was interpreted to include a bundle of other incidental and integral rights, many of them in the nature of Economic, Social and Cultural rights.

Now, to the justiciability of the Preamble. The Preamble is a part of the Constitution but is not enforceable by Courts. This means that Courts cannot pass orders against the government of India to enforce the ideas in the Preamble, nevertheless, they can refer to the Preamble in order to elucidate other provisions of the constitution. It, after all, tells us what we sought to be or already are. The Supreme Court of India originally stated in the Re: Berubari Union, AIR 1960 SC 845 presidential reference that the 'preamble is not an integral part of the Indian constitution, and therefore it is not enforceable in a Court of law'. However, the same Court Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461 over-ruled earlier decisions and established that the preamble may be used to interpret ambiguous areas of the constitution where differing interpretations present themselves.¹¹⁶⁴

IMPORTANCE OF WELFARE STATE CONCEPT.

As B.R. Ambedkar explained to the Constituent Assembly on November 19, 1948, something which truly highlights the value of DPSP in the Constitution,

We do not want merely to lay down a mechanism to enable people to come and capture power. The Constitution also wishes to lay down an ideal before those who would be forming the Government. In my judgment, the directive

¹¹⁶⁴ Sylvine, Analysis Of The Amenability Of The Preamble, iPLEaders (May 23, 2020, 10:11PM) <https://blog.ipleaders.in/analysis-amenability-preamble/#:~:text=The%20Preamble%20of%20our%20constitution%20is%20part%20of%20the%20Constitution,the%20ideas%20in%20the%20Preamble.>

principles have a great value, for they lay down that our ideal is economic democracy. In the Constitution, without any direction as to what our economic ideals as to what our social order ought to be we deliberately included the Directive Principles in our Constitution.¹¹⁶⁵

It is 'For the people...' that the Constitution is framed as given in the Preamble, and those very words give weightage to the formation of Welfare State, what ought to be there 'For the people' is their welfare.

The framers of the Constitution took great care in observing future disputes to be settled by laying down the Directive Principles. In a country of almost 133 crore population, it is impractical to even think that all are observing the same socio-economic equalities at least to begin with. There are people below poverty line who need help to raise standards of living, there are labour workers inflicted with unequal pay or unfair practice, the State cannot in anyway overlook these issues. To achieve the objectives of the Preamble, the State must strive to implement the Directive Principles by attaining the role of a Welfare State.

DPSP AND COVID-19.

A. SOCIAL ORDER BASED ON SOCIAL JUSTICE

Article 38(1) directs the State to strive to promote welfare of the people by way of social order which includes social, economic and political justice. In Consumer Education and Research Centre v. Union of India, 1995 AIR 922 the Supreme Court widened the theme of '*social justice*' envisioned in the Preamble to the Constitution and Article 38. Social Justice is the arch of the Constitution, which ensures life to be meaningful and liveable with human dignity. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, Dalits, Tribals and the deprived sections of the society and to elevate them to the level of equality to live a life with dignity of persons.¹¹⁶⁶ This dignity comes under question when the lockdown was announced with no due regard to the inter-state migrants. This same dignity was again questioned when group of migrants on reaching their Host State, in Barielly were made to sit on the road and hosed down with disinfectants.¹¹⁶⁷ While social justice is consonant with egalitarian ideas, which calls for abolition of inequalities of wealth and opportunity, race,

¹¹⁶⁵ Constituent Assembly of India Debates Vol. 8, 494-495.

¹¹⁶⁶ M.P Jain, Indian Constitutional Law, 1476 (8th ed, 2019)

¹¹⁶⁷ Coronavirus: Anger as migrants sprayed with disinfectant in India, (May 28, 2020, 03:45 PM) <https://www.bbc.com/news/world-asia-india-52093220>

caste, religion, distinction and title,¹¹⁶⁸ it should include these areas where a person of a certain income group is treated in such a way whereas scenes like these are never seen in Airports. This itself shows how unfair, tending to derogatory actions particular group of citizens face in this country. Where foreign expatriates were transported by aircrafts to their respective countries. Why wasn't some transportation made available at that point of time, sooner when it was more needed? Social justice fails when such discrepancies exist.

Sub-section (2) says that 'the State shall... endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.' This again raises the same questions. 'Rescue flights' that had been arranged by Air India since the beginning of April.¹¹⁶⁹

B. SOCIAL SERVICES AND PUBLIC ASSISTANCE.

Article 41 talks about the right to work, to education and to public assistance in certain case, 'The State shall, within the limits of its economic capacity and development, make effective provision for securing...public assistance in cases of *unemployment*, old age, sickness and disablement, and in other cases of *undeserved want*.' In Radhakrishna Mills v. SIT, AIR 1954 Mad 686, the Court held that Article 41 does not however obligate the State to render compensation to workers whose continuous employment suffers as a result of some Governmental action, example, short supply of raw materials. In this case, a nation-wide lockdown has caused many, in majority the migrants to be out of employment, many of whom are daily wagers. But keeping in mind the advances taken by the Government as public assistance in the form of free food to migrant workers, underprivileged and packages for loans for business, restaurants etc. worth crores by the Finance Minister, Nirmala Sitharaman they seem to uphold the provisions by positive implementation.

C. RIGHT TO HEALTH AND RAISING STANDARDS OF LIVING.

¹¹⁶⁸ Chapter 1-Introduction of Social Justice, (May 28, 2020, 4:03PM), https://shodhganga.inflibnet.ac.in/bitstream/10603/27358/5/05_chapter-1.pdf

¹¹⁶⁹ Akanksha Maker, The Maharajah to the rescue: Air India operates special flights (May 23, 2020, 10:11 AM) <https://www.businesstraveller.com/business-travel/2020/04/07/the-maharajah-to-the-rescue-air-india-operates-special-flights/>

Article 47 which talks about duty of the State to raise the level of nutrition and the standard of living and to improve public health says that ‘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...’ The Government utilises its resources to provide with best facilities, as it has to be kept in mind that, as held in State of Punjab v. Ram Lubhaya Bagga, (1998) 4 SCC 117, that no State of any country can have unlimited resources to spend on any of its projects, was said by the Court in the judgment.

The right being provided in DPSP is non-enforceable but if it is read in Consumer Education and Research Centre v. Union of India, AIR 1996 SC 922, it was held that right to health and social justice has been held to be a Fundamental Right of the workers. Therefore, any migrant workers’ whose such right is violated can bring their case to Court. It further says that it is the obligation of the employer to protect the health and vigour of his employee workers. In the present scenario, the employers can in no way be held liable for the condition of the migrant workers but the Government can be as the right has been interpreted with Article 21.

The sudden announcement of the lockdown without any prior consideration for people in the unorganised sector of work left many such people fighting for their life and livelihood. Earlier, the Government of India has announced that the Ayushman Bharat beneficiaries will receive free COVID-19 testing kits. The National Health Authority will be issuing e-cards to the eligible migrants identified under the scheme. But had proper management of the situation been taken by the union and State, they could’ve prevented the panic amongst them and also prevented further spread of the virus by exposing it to other en route to their home. What creates more problems is the lax of implementation of the Interstate Migrant Workers Act, 1979, which provides for mandatory registration of interstate migrant workers at Home state and Host state. Had they been registered as per the law, they would not have taken the long way and be registered at such a sensitive time now before the Police or District officials. By the time registration is done of that many workers and the kits are eventually supplied to them, many have chances of fleeing back to homes or succumbing on their way. Moreover, the Act also provides for displacement and journey allowances to be paid by primary employers and if not them, then the State. Section 23(1) of the said Act says that registers and other records are to be maintained. Section 15 of the Act talks about Journey allowance, etc to be paid wages during the period of such journeys as if they were on duty by the contractor or the principal employer. But the fact remains that even if they were paid their

journey allowance, the sudden lockdown caused limited or no transportation, which then brings the onus to the State for timely arrangements.

D. RIGHT TO SHELTER

As seen in Shanti Star Builders v. Narayan K. Totame, (1990) 1 SCC 520, the Supreme Court has gone as far as to say, 'The right to life . . . would take within its sweep the right to food . . . and a reasonable accommodation to live in.' In the case of Chameli Singh v. State of Uttar Pradesh, (1996) 2 SCC 549, the Supreme Court held 'Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society.' However, keeping the current scenario in minds, guaranteeing civic amenities like roads, education seems unnecessary but the rest need to be kept in mind. In both the above given cases, right to shelter was read as a part of Article 21, a Fundamental Right which is compelling towards the Government bring justiciable. All migrant workers ought to be provided with right to shelter, however temporary, as under Article 21.

DECENTRALISATION.

'The lockdown and its humanitarian consequences have begun to fundamentally challenge the mind-set and modalities of India's welfare architecture'¹¹⁷⁰ The biggest flaw is the feedback mechanism adopted to the Covid problems. As if the number of migrant labourers and workers of unorganised sectors are not colossal enough, the problems of them being unregistered, unbanked and unreachable creeps in.

In this country, the States themselves are best aware of the situations in their jurisdiction and therefore, with the right tools will be the best equipped to lead the nation towards a flat curve. If we furthered zoom into these States, their district administrations, municipalities, panchayats will be more aware of the situation going on and how exactly to tackle it. More and more microscopic administrative bodies are required to fill the void, even NGOs play an important role.

Best approach is immediate approach, which is accessible through these decentralised administrative bodies instead of the Centre requiring tedious, lengthy process of registration

¹¹⁷⁰Mekhala Krishnamurthy et al., Flaws of India's welfare system are visible in our fight against Covid-19, The Print, (June 1, 2020, 03:54PM), <https://theprint.in/opinion/flaws-of-indias-welfare-system-are-visible-in-our-fight-against-covid-19/416723/>

for distribution of packages. The main goal of the implementation of anything, may it policies, programmes, in this case welfare schemes, should be synchronous and not anachronous to the problems being faced.

‘The problem is that in the absence of strong, decentralised and responsive administrative capacity, these very processes of identification and verification exclude many intended beneficiaries at any given time.’¹¹⁷¹ Here comes the problem of corruption.

CONCLUSION.

The Covid Scenario has evidently made us realise the importance of Welfare provisions. They help us by making us aware of our rights, even though some may not be enforceable, they still leave hope for it to be interpreted under other provisions under the Constitution of India or any other Legislation. That way, they’ll be provided with remedy under those provisions, while increasing the value of Directive Principles. What had to be faced by the citizens of the nation, specially the stranded migrants had been difficult. Neither the Directive Principles, nor the Preamble are enforceable or justiciable in Courts but if much of what has been faced by them is included within the scope of Article 21, as mentioned earlier, then there is still a ray of hope for their justice. If not recognised right away, then someday they will be footprints in the sand of time for a time which calls for more rights according to the demands of the society. Society is after all, ever evolving and so is Law with it.

On the greener side, the pandemic has shone light on a new aspect. The situation has called for welfare actions that are also beyond the ones enshrined under Directive principles, thereby broadening its area, such as the act of bringing Indian expatriates from Wuhan to India and even the delivery of foreign expatriates to their respective countries. Which also makes one wonder if Welfare-ism is only limited to the ones living in the country, or Indian expatriates or even foreign expatriates who are non-citizens of India. Also, so many people have contributed in many ways in the Welfare of their people, they have organised food and sanitation for the needy, spreading awareness against the Virus.

When India names itself as a Welfare State, it is only expected for its people to share the concept and promote Welfare amongst themselves and the pandemic situation has shone light in it clearly. This is because as it says ‘Welfare State’ the people themselves form a State, a nation, they too are responsible for what takes place, good or bad. For example how on 17th

¹¹⁷¹ Id.

March, West Bengal reported its first case after a student who had returned from the UK tested positive and the various religious congregations of various sects happening across India for a considerable period of time during the lockdown. Such irresponsible actions dampen the value and spirit of Welfarism.

Welfare State, is previously seen to be a convenient and vague term. This vagueness has caused many to create their own definition of Welfarism. It was seen as the tyranny of some officials under the Administrative wing for example the Vaniyambadi Municipality Commissioner of Tamil Nadu who under the name of prevention against Covid was recorded damaging vegetables and livelihoods of the vendors. And how police officials in West Bengal spread terror during the initial time of Phase 1 lockdown threatening to shoot civilians 'under order' even those who were on their way to get essential goods. These are just a few examples of the unethical actions taken by people under the garb of 'Welfare' and 'prevention of spread of the disease' and they are far from what effective administration should be. Such actions were never taken in mind by the framers of the Constitutions.

To be say at last, these contemporary times have shown that Welfare State ought not to be whatever that is considered by the Government or the Legislature but seems to be a situation of collective good, given it can be sustained by the Government and responsibly applied by its people through reasonable and wholesome policies. Hypothetically speaking, if any similar situation were to happen where the country or a part is in lockdown then the Government should learn from now to apply decent policies keeping in mind the Constitution as a whole.