

International Multidisciplinary Research Journal

Golden Research Thoughts

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RNI MAHMUL/2011/38595

ISSN No.2231-5063

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DIRECTIVE PRINCIPLES OF STATE POLICY AND JUDICIAL ACTIVISM

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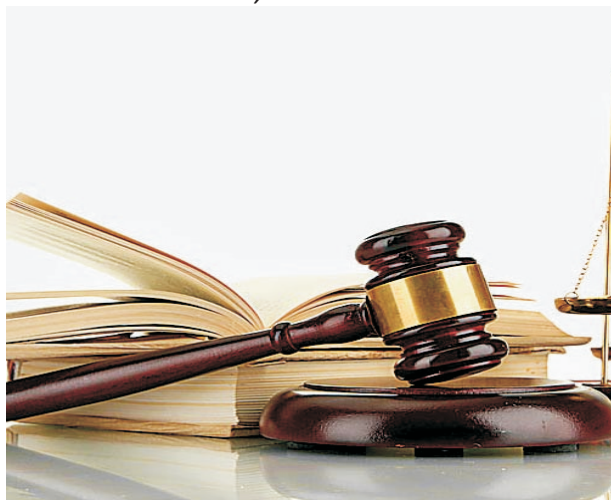
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ABSTRACT

The Directive principles of state policy set forth the humanitarian socialist precepts that- were and are, the aims of the Indian social revolution(1) At present, part IV of the Indian Constitution contains 19 articles in spread over, from Article 36 to 51. In fact, prior to the 42nd constitution amendment of 1976 there were only 16 Articles in this part. Article 39-A, 43-A and 48-A have been added by the said amendment. All these principles direct the state to act like a welfare state and to render social, economic and political justice to the citizens & India. It is the constitutional duty of the state to follow these directives both in the administration as well as in the making of laws. They embody the aims and objectives of the state under the republication constitution i.e. to perform the functions of a welfare state and not to act like a mere 'Police state' and to secure the ideal of socio-economic justice. They constitute a very comprehensive political, social and economic programme for a modern democratic state.

KEYWORDS : Article 21, 39 To 47, 48 (a), 51 (g), Equal Pay For Equal Work, Freed Legal Aid, Health Care, Right to Child Education, Pollution Free Environment.



have been the subject matter of judicial activism.

INTRODUCTION :

The Supreme Court by its judicial activism has left enormous impact on certain directive principles of State policy. Judicial activism has charged the status of certain Directive principles of State policy and elevated them to the status of certain fundamental rights. For the sake of clarity and convenience, the judicial decisions have been discussed under separate sub headings to show the changing status of the directive principles of state policy which

EQUAL PAY FOR EQUAL WORK -

Article 39(d) of the constitution provides that the state shall, direct its policy towards securing, that there is equal pay for equal work both men and women.

The doctrine of equal for equal work was implemented by the Supreme Court in *Randhir Singh Vs Union of India*(2) as a fundamental right coming under article 14 and 16 of the constitution of India. The court held that "Construing the article 14 and 16 in the light of preamble and Article 39(d), the

principles of equal pay for equal work 'is' for the same work or a work of a similar nature and for the prevention and discrimination on grounds of sex, deducible from those Article and may be properly applied to cases of unequal scales if the pay is based on no classification or irrational classification. The court followed this principle in number of cases decided subsequently.(3)

The doctrine of equal pay for equal work is equally applicable to persons employed on a daily wage basis. They are also entitled it to the same wages as other permanent employees in the department employed to do the identical work. (4)

In Supreme Court employees welfare association Vs Union of India(5) Justice Dutt Summoned up the judicial development and its consequences as under -

"Although the doctrine of "equal pay for equal work" does not come within article 14 as an abstract doctrine, but if any classification is made relating to the pay scales and such classification is unreasonable and/or if unequal pay is based an no classification then Article 14 will at once be attracted and such classification should be set at naught and equal pay may be directed to be given for equal work where unequal pay his brought about a discrimination within the meaning of Article 14, it will be a case of "equal pay for equal work" as envisaged by Article 14"

In a case, it has been held that the principles of "equal pay for equal work" is not enforceable as an abstract doctrine under Article 39(d), but is enforceable when violation of article 14 is demonstrated.(6)

Thus Article 39(d) is now held as implicit in Article 14 and hence has become justiciable and enforceable. Further the Supreme Court in Taboba Bhau Savagave Vs Vasantrao Dhindi Raj Despande(7) by observing that directive principles should not be read too readily into legislation unless they are expressly into legislation unless they are expressly covered by legislation or are implied.

But, in practice the principle of equal pay for equal work is not followed by engaging the workers on "Casual Worker" basis or on contractual basis. In such cases the worker does the same work as done by permanent employees but is paid lesser than the permanent employee for the same work. Thus, the principle stands defeated. In Umadevi case (2006) the Supreme Court has directed to give priority of the worker (casual / contractual) has completed 10 years of service. The span of 180 days has been increased to 10 years for regularization in giving of priority of payment for the same work. It needs revision in context to 10 long years for giving parity of payment in the same work.

RIGHT OF CHILDREN

The directive principles of state policy, in article 39(e) directs the state to direct its policy towards securing the health and welfare of workers, men and women, and that the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocation unsuited to their age or strength. Thus the state is under an obligation to ensure that the tender age of children is not abused and further that they are not forced to take up avocations unsuited to their age or strength due to economic necessity or compulsions. In the light of these directive principles, the judiciary has declared that it is fundamental right of every child to a full development.(8)

3-Right to free legal aid -

This Directive has been mentioned in Article 39-A of the constitution. But in M.H. Hoskot Vs state of Maharashtra.(9) The Supreme Court has conferred status of fundamental right to this Directive principles of State policy by expanding the right to life and personal liberty contained in article 21

The Supreme Court of India, has treated the right to free legal aid as an inherent right of the persons under article 21 in a number of subsequent decision referred by it.(10)

Free legal availability both at trial and appellate stage(11) Rajoo alias Ramakant Vs State of Madhya Pradesh,(12) the appellant in a gang rape case convicted by the trial court preferred an appeal to the high court but there he remained unrepresented. The High court did not inquire the appellant whether he needed legal assistance and upheld this conviction. The case records were remitted back to the High Court for a fresh hearing as the High Court had not provided the appellant an opportunity of obtaining legal assistance. This is the obligation of the court to inquire the accused or convict whether he or she requires legal representation at State expenses. Neither the constitution nor the legal services Authorities Act makes any distinction between a trial and an appeal for the purpose of providing free legal aid to an accused or a person in custody.

Right to Health care:-

Right to Health is not a guaranteed fundamental right under the constitution but it is only Directive principles of state policy contained in Article 39(e) of the constitution. This Article mandates the state to secure the health of the workers. Men and women and article 47 which imposes a duty on the state to raise the level of the nutrition and standard of living and to improve public health. Article 47 also provides that such an object can be achieved by imposing prohibition of the consumption of intoxicating drinks and of drugs which are injurious to health.

The Supreme Court in Permanand Katara Vs Union of India(12) has declared right to health and medical assistance is fundamental right within the meaning of Article 21.

In Consumer Education and Research Centre Vs Union of India(13) (The Asbestosis) case, the Supreme Court has held that the right to health & Medical care is a fundamental right under Article 21 of the constitution as it is essential for making the life of the workman meaningful and purposeful with dignity of a human being. The Court relied up on the mandate of the directive contained in Article 39(e) and 47 to elevate the 'right to health' to the status of a fundamental right. The court held that the state has constitutional duty to take all such action which will promote health, strength and vigour of the workmen during the period of employment and leisure and health, and also after retirement. Justice Rama Swamy emphatically declared -

" _____ It must be held that the right to health and medical care is a fundamental right under Article 21 read with Article 39(e), 41 and 43 of the constitution make the life of the workman meaningful and purposeful with dignity of person(14) In Kirloskar Brothers Ltd Vs Employees State Insurance Corporation. The Supreme Court, following the Consumer Education & Research Centre, case has held that 'right to health' is a fundamental right of the workmen. The court also held that this right is not only available against the state and its instrumentalities but even private industries to ensure to the workmen to provide facilities and opportunities for health and vigour of the workman assured in the provision of Part IV of the Constitution which are integral part of right to equality, under article 14 and right to invigorated life under Article 21 which are fundamental rights to the workman. (15)

In Milkman Colony Vikas Samiti Vs State of Rajasthan. (16) The Supreme Court has held that health hazard and nuisance caused by stray cattle in the city can be looked at under Article 21. The Supreme Court sustained the High Court order for relocation of milk dairies out- side city limits.

Right to Education: -

Article 41 of the constitution provides that the state should, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance. It is noteworthy to mention in the context that the implementation of this principle is subject to economic capacity of the state. Similarly prior to 86th constitutional amendment under

Article 45 of the constitution, the state was under an obligation to provide, within a period of 10 years from the commencement of the constitution, free and compulsory education for all children until they complete the age of 14 years.

In *Mohini Jain Vs State of Karnataka* (17) (Capitation fee case), a division Bench of the Supreme Court declared that the right to education is concomitant to the fundamental right enshrined in part III of the constitution. While speaking for the Bench, Justice Kuldeep Singh, who held that capitation fee takes away the right to education held that - "The right to education flows directly from right to life." The right to life under article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education" and that "The fundamental rights guaranteed under part III of the constitution of India including the right to freedom of speech and expression and other rights under article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individual dignity."(18) It is significant to note that the Supreme Court in *Mohini Jain* has nowhere said that the right to education is qualified in terms of the age or the level of education.

However, in *Unni Krishnan Vs A.P.*, (19) a constitution Bench of the S.C. Drawing the parameters of the right to education from article 41 and 45 has held that every citizen of this country has a right to free education until he completes the age of 14 years. Thus the SC in the instant case has emphasized that the right to primary education is a fundamental right implicit under Article 21 of the constitution. The constitution now stands amended in this context and new article 21(A) has been added for the purpose.

In *V Krishna Charyulu vs Venkateshwara Hindu College of Engineering*.(20) a Division Bench of the SC, while deciding claim for equal pay for equal work for the employees working in private education institutions held that - "The state has obligation to provide facilities and opportunities to the people to avail of the right to education.

Now, to make right of education reality the constitution's Article 21 stands amended and new article 21(A) has been added to ensure free education to children up to the age of 14 years. The practice of mid day meals to children has also been started throughout the country to ensure the presence of children in the schools and to safeguard their health as well.

In *TMA Pai foundation Vs State of Karnataka*.(21) an 11 Judge constitution Bench of the SC has overruled the *Unni Krishnan* decision partly. The court held that scheme relating to admission and the fixing of fee were not correct and, to that extent, they are overruled.

Right to Pollution free Environment

Gauging the deadly impact of industrialization and rapid growth in population on the forests and the wild life of the country, the parliament has inserted article 48-A in part IV of the constitution.(22) This directive provides that the state shall endeavour to protect and improve the environment and to safeguard the forests and the wild life of the country.

Through Public interest litigation the court has recognized right to pollution free environment as a fundamental right. Making this right a reality the S.C. has ordered to close mining operations in *Mussorie* and *Dehradun* and awarded remuneration to the petitioner (advocate)(23), and issued various directions.(24) and also provides remedial relief of compensation(25)

In *Vellore citizens welfare forum Vs Union of India*(26) The SC has recognized that in the matter of environmental protection, "the Precautionary principle" and the Polluter pays principle" are part of the environmental law of the country. The three judges Bench speaking through Justice Kuldeep Singh J. Suggested to Madras High Court Chief Justice to constitute a 'Green Bench' to deal with the environmental matters(26)

In *MC Mehta Vs Union of India*(27) The SC dealt with a public Interest Litigation relating to the degradation of 'Tajmahal' due to pollution. The SC court has issued a number of directions to bound around 300 Industries located and operating in Agra to change over within fixed time and to begin the use of natural gas from and coal. In fact the SC Division Bench resorted to the judicial legislation in this case, in ordering to polluting industries to shift from Agra to elsewhere. The court also indulged in judicial policy making on the ground that right to live in a pollution free environment is a fundamental right under article 21, where the state is not alive to the problems of general public.

In *Research Foundation for Science Vs Union of India*.(28) The S.C. Setup a committee to examine the hazards of ship breaking of ships containing hazardous materials. Accepting the report of the committee, the SC has issued directions to effectuate the remedial measures of the report until a comprehensive code is enacted by the concerned authority.

In *T.N. Godaverman Thirumulkpad Vs Union of India*.(29) The need to balance preservation of ecology with developmental concern in respect of forest land has been considered.

Right to adequate means of livelihood

Relying on Mandate contained in Article 39(a) 41 and 43 in *Olga Tellis Vs Bombay Municipal Corporation*.(30) (Pavement Dwellers Case) the SC has held that the right to life under article 21 includes the right to adequate means of livelihood. Chief Justice Chandrachud Said "Deprive a person of his right to livelihood and you shall have to deprive him of his life" He further expressed:-

"No person can live without the means of living, that is the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life"

The Court further said "_____ In view of fact that Article 39(a) and 41 require that state to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer pendentary to exclude in the right to livelihood from the content of the right to life."

State of HP Vs Umed Ram Sharma Case(31) the SC held that right to life embraces quality of life and for residents of hilly areas access to road is access to life itself.

Justice Sawant speaking for the constitutional Bench in *Delhi Transport Corporations case*(32) held -

The right to life includes to livelihood. The right to livelihood, therefore, cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them, nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the time of undefined premises and uncertain applications. This will be mockery of them" Right to food, clothing and decent Environment -

In a significant judgment *PUCL Vs Union of India*(33) The Supreme Court held that the people starving due to inability to purchase food grains have right to get food under Article 21. The food grains should not be allowed to rot. Court further said that food grains be provided to all those who are aged infirm disabled, destitute, women, destitute men pregnant and lactating women and destitute children.

In *Keshen Vs State of Orissa*.(34) *Bandhua Mukti Morcha Vs Union of India*.(35) and *Shantistar Builder Vs Narayan Khimalal Totame*.(36) The court held that right to food clothing and decent

environment are fundamental right within the meaning of Article 21 of the constitution.

In declaring that the court, seems to be relied upon directive principle contained in article 47 of the constitution which cast upon the State a primary duty of raising the level of nutrition and standard of living of its people.

CONCLUSION:-

Finally I want to say, that Judicial activism in the domain of directive principles of state policy revolves around the relationship between the directive Principles set out in Chapter IV of the constitution and fundamental rights set out in Chapter III of the constitution. In the beginning, the court view was to give primacy to fundamental rights over directive principles of state policy. It was the case of Kesvanand Bharti Vs. State of Kerala, where in the Apex Court has held that directive principles of state policy and fundamental rights are supplementary and complementary to each other. The directive principles prescribe the goal to be realized and the fundamental rights lay down the means by which that goals are to be achieved and consequently court resolved the issue between them. Besides it, the apex court in State of Gujrat Vs. Mirzapur kureshi Kassab Jamat, held that directive principles are relevant in considering the reasonability of restriction imposed on fundamental rights.

Thus, the effect of the supplementary theory is that apex court has raised certain directive principles of state policy upto the status of fundamental rights. These are equal pay for equal work, right of children to education, right to free legal aid, right to health care, right to pollution free environment, right to adequate means of livelihood and right to food clothing and decent environment.

NOTES & REFERENCES :-

- 1.(1982) I SCC 618 A.I.R. 1982 SC 879
- 2.Jaipal Vs State of Hariyana A.I.R. 1988 SC 1504
- 3.Surindersingh Vs Engineer - Inchief, C-P.W.D. A.I.R. 1986 SC 534
- 4.(1989) 4 SCC 187
- 5.Supreme Court Employees welfare Association Vs Union of India (1989)
- 6.(2001) 8 SCC 501
- 7.Shantistar Builder Vs Narayan Khimalal
- 8.A.I.R. 1990 SC 630 A.I.R. 1978 SC 1548
- 9.In Kadra Pahadra Vs State of Bihar AIR 1981 SC 639
- 10.A.I.R. 2012 SC 3034
- 11.A.I.R. 1989 SC 2039
- 12.A.I.R. 1995 SC 922 (1995) 3 SCC 42
- 13.(1995) 3 SCC 42
- 14.(1996) 2 SCC 682
- 15.(2007) 2 SCC 413
- 16.A.I.R. 1992 SC 1858
- 17.A.I.R. 1992 SC 1658 Page 1869
- 18.(1993) 1 SCC 645
- 19.A.I.R. 1998 SC 295
- 20.A.I.R. 2003 SC 355
- 21.Inserted by constitution (42 Amendment Act 1976)
- 22.Rural litigation and Entitlement Kendra Vs State of U.P. A.I.R. 1985 SC 652
- 23.A.I.R. 1987 SC 359 A.I.R. 1988 SC 2187 A.I.R. 1989 SC 594

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- 24. M.C. Mehta Vs Union of India A.I.R. 1987 SC 1086
- 25. A.I.R. 1996 SC 1715
- 26. A.I.R. 1997 SC 7390
- 27. (2007) 8 SCC 583
- 28. (2008) 2 SCC 390
- 29. A.I.R. 1986 SC 180
- 30. A.I.R. 1986 SC 847
- 31. A.I.R. 1991 SC 101
- 32. (2000) (5) SCALE 30
- 33. A.I.R. 1989 SC 677
- 34. A.I.R. 1984 SC 802
- 35. A.I.R. 1990 SC 630



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