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CONSTITUTION – PRIVATISATION IN NEW INDUSTRIAL POLICY

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ABSTRACT:

A. Constitutional Philosophy

The Preamble of an Act sets out the main objectives which the legislation is intended to achieve. It is a sort of introduction to the statute and may times very helpful to understand the policy and legislative intent. The Constitution makers gave to the Preamble "the place of pride." In re Berubari Case,[1] the Supreme Court has said that the Preamble to the Constitution is a key to open the mind of the makers, and shows the general purpose for which they made the several provisions in the Constitution.

KEYWORDS

New Industrial Policy ,Constitution – Privatisation , Democratic.

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INTRODUCTION :

The Preamble declares:-

"We the people of India, having solemnly resolved to constitute India into a Sovereign Socialist, Secular, Democratic, Republic and to secure to all citizens:

Justice, Social, Economic and Political; Liberty of Thought, Expression, Belief, Faith and Worship, Equality of Status and of opportunity and to promote among them all; Fraternity assuring the dignity of the individual and the unity and integrity of the nation."[2] It is believed that, Socialism is implicit in the preamble and the directive principle of the constitution. The term "economic justice" in the Preamble denotes nothing but, India's resolve to bring socioeconomic revolution. The Directive Principles of state policy, particularly Art 39 (b) and (c) of the constitution are Charters of social and economic liberties of the people. The term socialism implies a system of government in which the means of production is wholly or partially controlled by the state.

In Excel Wear Vs Union of India,[3] the Supreme Court considered the effect of the word "Socialist" in the "Socialist" might enable the courts to lean more in favour of nationalization and state ownership of an industry. But, so long as private ownership of industries is recognized and governs an over whelming large proportion of our economic structure, the principles of socialism and social justice cannot be pushed to such an extent so as to ignore completely, or to a very large extend the interest of another section of the public, namely the private owners of the undertaking. In D.S. Nakara Vs. Union of India,[4] the Supreme Court has held that, the basic frame work of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave.The Government has not taken into consideration the objects in the Preamble of the Indian Constitution while setting its new industrial policy.

There seems to be a similarity of objectives between constitution and planned development. The Industrial Resolution Policy 1958 emphasized the directive principles and the state is under obligation to regulate and control the industry. Constitution envisages public sector with active support of the state and the prevent the growth of monopoly of industry in private sphere. The New Industrial Policy is in operation since July 1991, makes a big departure from the old policy or policies. The new policy was announced at two stages, rather in two parts. The first part, announced on 24th July 1991, concerned with the large industries including the medium sized industries. The second part, announced on 6th August 1991 dealt with the small industries.[5]

The New Industrial Policy has attempted to remove bureaucratic hurdles to industrial growth. It has done so by declaring that, licensing has been abolished for all industries except 18 industries which include Coal, Petroleum, Sugar, Motor Cars, Cigarettes, Hazardous Chemicals, Pharmaceuticals and some luxury items.[6] More or less across the board de-licensing has considerably reduced the height of barriers to entry in the Indian manufacturing sector.[7] Besides, the policy has removed the limits of assets fixed for MRTP companies and dominant under takings. This is only to allow the private entrepreneurs to make their commercial decisions on their own with no government judgment to bind them.

A major step towards a greater marketisation of the industrial economy, is the abolition of the licensing system for a large number and a large variety of industries. A major feature of the Industrial policy involves a big change in the industrial set-up of the country towards a greater role for the private sector. Besides the existing industries in the private sector, some provisions in the policy amount to an enlargement of the field of operation for the private sector. The contraction in fields for the operation of the public sector, for example, leaves one more space for the private sector to operate. A number of activities which have so far been exclusively in the realm of the public sector have now been thrown open to the private sector.

The Government was quite unprepared for the barrage of criticism it faced from trade unions across the political spectrum that, these days, are not necessarily against reform per se. They want economic growth, and a rise in productivity and employment. If they appear to be rigid, there is largely because reform – advocating economists, who have the ears of the Government, have a two-point agenda, drastic retrenchment (exit policy) and the sale of public sector to the foreign if not the Indian private sector i.e., privatization. The trade unions want redeployment of labour and a strategy to round the public sector.

The New Industrial Policy announced by the Government of India on 24th July 1991 fulfills a long-felt demand of the industry to end the licence . It has done so by declaring in very clear terms that licensing has been abolished for all industries except 18 industries. Besides, this industrial policy proposed to remove the limit of assets fixed for MRTP companies and dominant undertaking. Thus, business houses intending to float new companies or undertake substantial expansion will not be required to seek clearance from the MRTP commission. However, there are several other areas which have come in for sharp criticism.

Firstly, the new industrial policy goes all out to who foreign capital. It has been decided to provide approval for direct foreign investment up to 51% foreign equity in high priority industries. The government has further clarified that, it will permit 100% foreign equity in case the entire output is exported. All this is being done in the belief that, direct foreign investment is crucial to our development. This runs counter to the Nehru vision model in which foreign capital import was permitted only during the transitional phase in our goal of developing a self-reliant and self generating economy. The idea of free flow of foreign capital is being sold with the understanding that it shall provide the much – needed foreign exchange and secondly, that, it shall lead to injecting a heavy dose of investment in the high priority industries.[8] This are does not require modern technology. Then, why the government is adding on additional burdens by permitting foreign equity in trading companies.

Secondly, the industrial policy (1991) notes that, public sector enterprise has shown a very low rate of return on capital invested. The result is that many of the public sector enterprises have become a burden rather than an asset to the Government. The Government should concentrate on improving the performance of the redeemable and surplus generating public sector enterprises. It also intends to strengthen through the instrument of Memorandum of Understanding as well as intends to disinvest public sector equity in favour of financial institutions or even employees. The real question which the Government has evaded is what is the social security mechanism that, the Government intends to create to mitigate the hardship of workers who are likely to be retrenched? The industrial policy statement only intends to refer these cases to the Board for Industrial and Financial Reconstruction (BIFR).

One important aspect of the economy which has been neglected in the NIP is that of generation of employment to match with the increase in the labour force. In the eighties the employment generation in the sector was as slow as 1.55 per cent a year whereas the labour force grew at 2.1 per cent a year. The industrial growth in the eighties has been more capital intensive, energy intensive and import intensive, which indicate the low labour absorption capacity of the industrial growth. No wonder that the NIP makes only a passing reference to the subject of employment by saying that, it is to "…….maintain a sustained growth in production and employment". It appears that, liberalization; privatization, exit policy and closing of sick industries and other measures in N.I.P are contrary to the constitutional values and takes away the safeguards provided to the labour by the constitution and law. What follows is the examination of N.I.P. in relation to constitutional values and Fundamental right and Directive Principles of state policy.

B. CONSTITUTION: PRIVATIZATION:

It is obvious that, the question of poverty is closely linked to our economic system. There has been poverty in earlier economic systems, but its causes and nature were quite" different from poverty in the 20th century among civilized peoples. In the earlier ages, poverty was due, primarily to the fact that there were not goods, wealth and enough food to provide high living standards for the whole population. At the present situation that is created by NIP was introduction of technological advancement which threatens the very existence of our economic order by creating order by creating an every larger volume of unemployment by violating some of the rights of the workers such as right to form associations or unions,[9] freedom of profession, occupation, Trade or business[10] as well as right to life and livelihood.[11] which are fundamental rights in our constitution. The crime rate is also increasing rapidly due to this unemployment problem, as well as increase in population because the income of these groups does not enable them to provide adequate living standards and suitable education for their children.

The traditional labour family is breaking down chiefly because of influence of contribution by the rise of modern industrialism. A major reason for family friction and disintegration is inadequate income and the worries created by a sense of insecurity in jobs due to N.I.P. The breaking down of traditional labour family as well as insecurity in jobs is only due to NIP as well as due to untimely, retirement or termination from the service of industry, a worker will have to suffer at various ways, a law abiding worker after his untimely termination becomes the violator of law resulting in the creation of more law and order problem in the whole country. In otherwise speaking a worker becomes desperate, whereas on the other hand the general public expecting a reasonable situation to be provided by the Government to live in happily without any threat to their personal security as well as their property.

Unfortunately, the NIP of 1991 did not look into that aspect on the possible impact and the security in general, and the workers' family in particular. The existing unemployment in the country itself is enough to keep the unhappy, in secured etc., by infringing some of the fundamental rights. NIP further aggravates the situation causing multiple problems to the society, the workers' family, workers' rights as well as their welfare measures and social security by giving more importance to privatize the industries rather than opting for the public sector undertakings. The worker's fundamental rights which were guaranteed by Article 19 (i) (c) in the Constitution of India had also been infringed. The Article 19 (i) (c) guarantees to all Indian citizens the right to form associations or unions.[12] The recognition of the association by the Government affects the right to form associations or unions and in such condition the power of the Government to recognize the association or union will be controlled by Art 19 (i) (c).

Every workman under an employer has the right guaranteed under Article 19 (i) (c), but this right is also been infringed by the Government's new industrial policy.

The Government even infringes the right guaranteed under Article 19 (i) (g) in the Constitution of India, which speaks about the right to practice any profession or to carry on any occupation, trade or business.[13] Due to the licensing policy, the right to practice any profession nor carry on any occupation, trade or business had been violated and the order was regarded as imposing unreasonable restriction on the right to carry on trade or business because it gave un restricted discretionary power to the licensing authority, in short uncontrolled and arbitrary administrative discretion to restrict the right is regarded as violation of Article 19 (1) (g).

In the case of Bijay cotton Mills Ltd., Vs. State of Ajmer,[14] certain provisions of minimum wages etc., 1948 empowering the Government to fix the minimum rates of wages in an industrial dispute between employer and employee and to make nonpayment of the wages so fixed as a Criminal offence were challenged as violative of Article 19 (i) (g).

Security of living wages to labours which insure not only base physical subsistence, but also the maintenance of health and decency is conducive to public interest. Public sector has played a key role in our development by successfully expanding production, opening up new areas of technology, building up a reserve of technical competence in a number of areas.

There is a lot of development in research and development in the public sector, as well as there is higher rate of expenditure in the field of research and development in the public sectors when compared to the private sectors.

Privatization and the logically corollary steps to remove the road blocks to free economy involve complex social and labour issues. The heart of the dilemma is that, it is difficult for the affected employees to agree to a logic that dictates the necessity to undergo the change process and ever make sacrifices, if needed in the overall interests of the survival of an organization with which they have long been associated. Privatization measures will have far reaching consequences on employment, job security, trade unions, collective bargaining and labour welfare.One of the major fears about privatization concerns the potential loss of present and future employment. The relative decline of employment in private sector and the growth of public service employment in the 70's and 80's have further strengthened the notion that jobs in public sector are more secure than in private sector, and also increase in growth rate of employment in public sectors.

The relation between job loss and privatization is often incidental and not imperative; job loss is more when a firm needed drastic restructuring. Delayed restructuring may lead to greater job loss than non-restructuring per se. Lock of modernization and lack of competition may eventually contribute to job losses. The long term effects of privatization on employment depend on whether the enabling environment exists for them to operate efficiently and even if it exists how efficiently those firms operate. It is easy to provide safeguards in profitable and expanding organizations but difficult in sick and unviable units. While it is extremely important and highly desirable to provide for employment security, the actual practice would be dictated by pragmatism, whatever the inventions are, but not perfects.

Privatization of Japan National Railways affords one of the best example where all but 4,000 jobs lost could be retrieved within a few years due to a well conceived plan of redeployment and restraining which included giving priority in hiring of the affected workers not only in public sector and the privatized railways, but also the firms which have backward and forward linkage with railways and other private sectors.[15]

Trade unions generally oppose and resist privatization on grounds such as the following:

a) the rationale of public sector and public services and the need to preserve than in the larger and long-term well being of the Nation and (b) the concern about security of the employment, employment conditions, union security, collective bargaining and industrial implications. The unions in developing countries irrespective of the colour of their political and union affiliations, nationally and internationally have generally been opposed to privatization. This is partly because of ideologically considerations and largely out of concern for the security of their member's jobs and of the union themselves.[16]

Implementation of Privatization – The problem areas:-

In the India, privatization is not considered as a panacea for the present day ills of the economy. Quite a significant section of our society is opposed to privatization for a variety of reasons. Dr. V.V. Ramanadhan places the issues in a very succinct manner, "In view of the historical background of public enterprise in India, it is inconceivable that, privatization in this country will be accepted by the society as an end in itself, since there is no consensus in favour of market solutions and property rights, nor are these considered a prime movers for much needed social and economic change. The real issues centre on the alleviation of poverty and the upgrading of technology in a highly differentiated society of continental dimensions. This implies that, privatization will have to be viewed essentially as the best possible means of achieving predetermined ends, and ensuring that it does not distort the parameters of such ends."[17]

It would be therefore, desirable to understand the problems faced in the implementation of privatization proposals. In India, there is a good deal of skepticism about the efficacy of privatization itself. The advocates of privatization see in it a panacea for the ills ,prevalent in the society. Public sector is credited with the social welfare function. Thus, a large number of persons working in the public sector enjoy better pay scales, better perks or perquisites more in the form of leave and retirement benefits. Workers have been resisting privatization of public sector. They have also not permitted the use of incentives in favour of efficient workers and the use of disincentives among the recalcitrant's. The chances of success of the schemes of in centralization of privatization.[18]

In a society which suffers from a high degree of unemployment, the emphasis on job security is a natural response among the workers as wells as the workers fundamental right i.e., right to life which is guaranteed under Art 21 of the Indian constitution, 'Right of life' should be taken to mean right to live with human dignity, and has been further extended by the Supreme Court in the case of Bandhua Mukti Morcha Vs. Union of India.[19] The Supreme Court has held that, right to life should be taken to mean right to live with human dignity free from exploitation. The state is bound to assure the observance of the labour legislation enacted for securing the workmen a life of human dignity and inaction on the part of the state in implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21.[20]

In people's union for Democratic Rights Vs. Union of India,[21] the Supreme Court had held that non-enforcement by the state authorities of the provisions of labour laws, eg., Minimum Wages Act, the Employment of children Act, etc., is violative of the workers' right to live with human dignity enshrined in Article 21. In Olga Tellis vs. Bombay Municipal Corporation[22] the Supreme Court has made it clear that the expression "right to life" in Article 21 includes the right to livelihood also and which further includes right to work guaranteed under Article 41. These guaranteed rights have been infringed by the NIP through privatization, Privatization it is feared will be accompanied by retrenchment of workers. In a poor and underdeveloped country like India, in the absence of the provision of unemployment insurance, the burden of retrenchment will be unbearable more so among the workers belonging to the poor and lower middle classes.

Private sector has not been able to build its credentials of good behaviour even in a period of bombing, production. Privatization is advocated on the plea that, it will lead to people's capitalism, conceals the hard reality that only 1% of the population owns some shares in the corporate sector. Thus, privatization is likely to benefit a microscopic minority of the better off section of our society and does not promise any solution either to the problem of poverty or un-employment or equity in ownership.[23]

There is no evidence to show that, simple process of privatization leads to greater competition. Private ownership has been quite compatible with oligopoly or monopoly. Thus, it is not necessary that, privatization will help in reducing prices for the consumer as a result of the expected lowering of costs. Moreover, the objectives of ensuring full employment or removal of poverty or the equity considerations nor protection of labour and their standard of living as well as their employment, job security and their rights guaranteed under Articles 19 (1) (c), 19 (1) (g), Article 21 and Article 4124 cannot be neither fulfilled nor solve the labour problems through privatization. It is submitted that, the privatization of industry is nothing but withdrawal of the state from constitutional obligations dissented in directive principles of state policy. Also, it will have a serious consequence on citizen's rights and public services.

C. EXIT POLICY – AND INDUSTRIAL SICKNESS:

The Narasimha Rao Government has ushered in a series of structural adjustment and reforms in Indian Economy, the devaluation of rupees and making the currency fully convertible, granting of "Exim scrip", liberalization of import policy, freeing domestic investors from all licensing requirements through liberalization of industrial policy, abolition of MRTP restrictions, allowing foreign investment through significant amendment of the FERA, raising of investment on plant and equipment in small scale industries, disinvestment in public sector and the exit policy for the industry.

Among the initiatives stated above by the Government at centre for structural adjustment and reforms in Indian economy, the exit policy for the industry has met stubborn resistance from the organized labour in the country more so from the organized public sector employees. The exit policy in simple terms means freedom for a company to shut down. A factory or office because it is not viable or to reduce the employees in an operation because it can manage better with less people. Industrial exit policy thus, makes easier to retrench labour with some compensation and removes various legal barriers to the closer of loss making enterprises.[25] The economic reforms currently under way have already begun to have an impact on industrial output and investment. The economy continues to be haunted by the specter of diminishing job opportunities high fiscal deficits and massive Government expenditure. The industrial growth rate has been slow as a result of recession in many industries and weak recoveries. The macro scene concerning domestic savings and investment also remained subdued and somewhat uncertain.

The RBI visualizes that, persistent inflationary pressure reflecting fiscal imbalance and monetary growth in a situation of shortages in certain sectors will make the macro economic adjustment a more difficult task in the coming years. In addition to that, a worry some feature in the current situation is the slow pace in overall employment opportunities.[26] In evitable, in such a situation of recession, industrialists will start looking for ways to further out wage cost typically through promotion squeeze, retrenchment and other devices or for the closure of units and making legally easier the retrenchment and closure of industrial unit through exist policy would certainly go against the interest of workers who would have no mechanism for redressal in current situation.

The situation may aggravate due to the measure like credit squeeze leading to sickness and closure of more units, devaluation of rupee making costlier the export of product having high import content, onslaught of foreign technology, etc., due to easing foreign investment. The Indian industry will have to face global competition due to welcoming of foreign investment, it will be difficult for the Indian industry to hold its own against the onslaught of foreign multinational giants whose command over staggering financial resources, enormous marketing strength and formidable research and development back up cannot be matched even by the biggest Indian firms, hence, such firms would have no option to survive except by cutting wage costs through shedding of workers etc.,[27]

The new industrial policy which allows more foreign equity participation and liberal technology and other imports, as the liberalization in 1980's will lead to more capital intensive, labour saving technologies and thus hit employment generation adversely especially in the organized sector. Privatization, liberalization, globalization of the Indian economy when coupled with the un-clearly defined exit policy raise doubts about the resulting retrenchment of labour or the potential for further growth of job opportunities. Factories where share of labour is high, any demand for increases in wages will force the management to think on labour saving lines to cut expenditure and to save itself from the trouble of negotiating with trade unions. The axe fell on the labour class i.e., actual cost of production with little concern of social costs such as unemployment created by new machinery. Which leads to the reduction in the labour unit and also to the alternation in the character of skills required for the job. The above aspects of the new economic policy have created a feeling of unease amongst the labour in economy.

It is therefore, essential to suggest that ,the Government should come out with a clear policy on industrial exit. The real consideration behind an exit policy should be

a)to prevent a unit to become sick,
b)to revamp sick units through restructuring and modernization
c)the protect the workers from the employer's militancy, and
d)to provide for the displacement due to revamping of industry and to increase employment productivity and overall growth in the economy to keep number of unemployment in limits or limit the unemployment problem.

D. INDUSTRIAL SICKNESS AND UNEMPLOYMENT PROBLEM:-

Sick industries are a bane of our economy. The sickness in Indian industry is spreading at an alarming rate. The progressive increase in industrial sickness has been causing considerable concern to the Government, banks, financial institutions, etc., Industrial sickness in India, since to become pronounced in the late sixties, has been spreading at an alarming pace, extending to various industries and different regions of the country. At present an important feature of the Indian economy during the recent years has been wide spread sickness in industrial units. Industrial sickness, a subject matter of so much discussion and debate in current labour literature is not a new phenomenon, either in this country or abroad. Generally 'industrial sickness' means a persistent decline in profits or production or both or the incurring of operational cash losses, thus leading to closure of a large number of units. In other 'sick' industries included loss making companies, companies defaulting on loan repayment or payments to creditors or virtually closed companies. The continuance of this situation is one of the overriding problems confronting our industrial sector. This phenomenon, though not new, has assumed serious proportions in recent years. As a result, there is not only loss of production but also displacement of labour engaged in such units.

Sickness in industry is an organic process. Although there are several reasons including some beyond the control of industries, mismanagement is considered to be a general malady. Poor performance may arise because of poor operations in any of the areas like finance, technical, labour and plant and equipment operations. Any industrial unit, like the human body is susceptible to sickness due to various reasons viz., negligence, ignorance, and inefficiency of its management as also its poor virility to withstand an uncertain competitive and changed environment. The common effects of such sickness are locking up of financial resources, wastages of capital assets, loss of production and decrease in employment. It has became a national problem requiring a comprehensive redress rather than inventing quick fixes to revive sick units.[28]

Changes in Government policies, strategic shortage of raw materials, general increase in price level due to inflation and other cause causing an erosion of profit, labour unrest leading to loss of production on a considerable scale, poor finance due to tightness of credit, chain reaction when corresponding industries go sick and sudden withdrawal of Government subsidies due to political reasons lead to sickness in industries which is beyond their control and can be attributed to environmental factors.[29]

Firstly, there has been considerable restructuring of the economy which has eroded the viability of quite a few industries. This is, in some respect, a reflection of the technological change which has been taking place incessantly.

Secondly, sickness has been brought about by Government policy itself and probably aggravated because of the lack of timely action.

Lastly, sickness has been due to mis-management of the affairs of the companies. The steps for revival should be properly co-ordinated between the bank, financial institutions, Government, labour and management so that, once that decision is taken to revive a unit, work on all fronts must be expedited within the time frame.

The Government, if it is sincere to the working class, should prove its credentials by strengthening the legal framework so as to prevent malafide actions of employees and also the machinery for preventing a unit to become sick, revamping of sick units and providing protection to workers displaced. The changes affect the working class and also retreat of the state from welfare and security measures to the labour.

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