

# WELFARE STATE UNDER CONSTITUTION : A STUDY A ARTICLES SUBMITTED TO LAW COLLEGE DEHRADUN, UTTARANCHAL UNIVERSITY

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## WELFARE STATE UNER INDIAN CONSTITUTION: A STUDY

### ABSTRACT

Resources are limited. Needs are unlimited. In such a scenario where the resources are not enough even to fulfill peoples' needs, let alone greed, India, with its ever increasing population and ever increasing wants, needs to ensure a perfect and suitable mechanism for distribution of its resources so that all the strata and sections of the society, get their fair share of it. This fundamental theory of economics is the basis on which the entire and the basic foundation of administrative law has been built upon. The important question which

arises in such a situation is who is to distribute such resources? On what basis, are such limited resources distributed? Is it the purchasing or buying capacity that decides their share in such resources or does such distribution take place equally among all the citizens irrespective of their purchasing power.

**Keywords:** Social welfare, India, State, Administrative Law

## INTRODUCTION

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.<sup>1</sup>

There are two main interpretations of the idea of a welfare state:

- A model in which the state assumes primary responsibility for the welfare of its citizens. This responsibility in theory ought to be comprehensive, because all aspects of welfare are considered and universally applied to citizens as a "right".
- Welfare state can also mean the creation of a "social safety net" of minimum standards of varying forms of welfare.<sup>2</sup>

In the strictest sense, a welfare state is a government that provides for the welfare, or the well-being, of its citizens completely. Such a government is involved in citizens lives at every level. It provides for physical, material, and social needs rather than the people providing for their own. The purpose of the welfare state is to create economic equality or to assure equitable standards of living for all.<sup>3</sup>

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

## TWO FORMS OF THE WELFARE STATE

There are two ways of organizing a welfare state:

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1 Available at [http://en.wikipedia.org/wiki/Welfare\\_state](http://en.wikipedia.org/wiki/Welfare_state) visited on September 10, 2010.

2 See Mark M0 Heald, "The Concept of the 'Welfare State\*' in S.P, Aiyar, ed,,. Perspectives on the Welfare State (Bombay, 1960), p. 132.

3 D.L. Hobman, The Welfare State (London, 2001), p., 10

According to the first model the state is primarily concerned with directing the resources to “the people most in need”. This requires a tight bureaucratic control over the people concerned, with a maximum of interference in their lives to establish who are "in need" and minimize cheating. The unintended result is that there is a sharp divide between the receivers and the producers of social welfare, between "us" and "them", the producers tending to dismiss the whole idea of social welfare because they will not receive anything of it. This model is dominant in the US.<sup>4</sup>

According to the second model the state distributes welfare with as little bureaucratic interference as possible, to all people who fulfill easily established criteria (e.g. having children, receiving medical treatment, etc). This requires high taxing, of which almost everything is channeled back to the taxpayers with minimum expenses for bureaucratic personnel. The intended – and also largely achieved – result is that there will be a broad support for the system since most people will receive at least something. This model was constructed by the Scandinavian ministers Karl Kristian Steincke and Gustav Möller in the 30s and is dominant in Scandinavia.

### **DIRECTIVE PRINCIPLE OF STATE POLICY AND WELFARE STATE**

The Directive Principles of State Policy is guidelines to the central and state governments of India, to be kept in mind while framing laws and policies. They are enumerated in part iv of the constitution of India. i.e. directive principles of state policy. They are the instruments of instructions in the governance of the country. The directive principles lay down certain economic & social policies to be pursued by the various governments in India. They are classified as social & economic charter, social security charter& community welfare charter.

These provisions, contained in Part IV of the Constitution of India, are not enforceable by any court, but the principles laid down therein are considered fundamental in the governance of the country, making it the duty of the State to apply these principles in making laws to establish a just society in the country. The principles have been inspired by the Directive Principles given in the Constitution of Ireland and also by the principles of Gandhism; and relate to social justice, economic welfare, foreign policy, and legal and administrative matters.<sup>5</sup>

### **ECONOMIC AND SOCIAL RIGHT**

The constituent assembly finding it difficult to place certain economic and social rights in the list of fundamental rights placed them in the category of directive principles. In this way the following rights found a place among the directive principles<sup>6</sup>:

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

5 Paras Diwan, Administrative Law,(Faridabad: Allahabad Law Agency) 2004 p 124.

6 N. Pandey, *Constitutional Law of India*, (Allahabad: Central Law Agency) 2008 p 390.

- i. Right to adequate means of livelihood: article 39(a);
- ii. Right against economic exploitation: article 39(b);
- iii. Right of both sexes to equal pay for equal work: article 39 (d);
- iv. Right to work;
- v. Right to leisure and rest: article 43;
- vi. Right to public assistance in case of unemployment, old age or sickness: article 42;
- vii. Right to education: article 41;
- viii. Right to just and humane conditions of work: article 42;
- ix. Right to maternity relief: article 42; and

### THE MANEKA GANDHI CASE AND THEREAFTER

Simultaneously, 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 v. Union of India* was a landmark. The case involved the refusal by the government to grant a passport to the petitioner, which thus restrained her liberty to travel. In answering the question whether this denial could be sustained without a predecisional hearing, the court proceeded to explain the scope and content of the right to life and liberty. In a departure from the earlier view, the court asserted the doctrine of substantive due process as integral to the chapter on fundamental rights and emanating from a collective understanding of the scheme underlying articles 14 (the right to equality), 19 (the freedoms) and 21 (the right to life). The power the court has to strike down legislation was thus broadened to include critical examination of the substantive due process element in statutes.<sup>7</sup>

Once the court took a broader view of the scope and content of the fundamental right to life and liberty, there was no looking back. Article 21 was interpreted to include a bundle of other incidental and integral rights, many of them in the nature of ESC rights.

In *Francis Coralie Mullin* the court declared<sup>8</sup>:

“The right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. The magnitude and components of this right would depend upon the extent of economic development of the country, but it must, in any view of the matter, include the bare necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self.”

<sup>7</sup> Vinay Kumar Malhotra, *Welfare State and Supreme Court in India*, (Delhi: Deep and Deep Publications) p 269.

<sup>8</sup> P.M. Bakshi, *The Constitution of India*, (Delhi: Universal Law Publication) 2009.

## HISTORICAL BACKGROUND

### Ancient medieval period

From the recent excavations the scholars have come to the conclusion that Government in Mohejo - Daro and Harappa was systematic. In the Indus valley civilization roads and drainage were planned, and there was a municipal Government which looked after the needs and made systematic arrangements for the cities. Moreover, the entire area covered by the Indus civilization contained one type of houses, a common system of weights and measures, and a common script. People enjoyed their life. And all these shows that there existed welfare administration and good governance.<sup>9</sup>

### Vedic Period

The Indus valley civilization was followed by the Vedic period and there was monarchical Government. The office of the king was hereditary, but the kings were not despotic and they had to take an oath at the time of coronation to work in the interest of the people. "The main duty of the king was to defend the people and for this purpose he made adequate arrangements".<sup>10</sup>

### Epic period

Ramayana and Mahabharata are very old epics of our country. In the Ramayana period the form of government was monarchical. Administration was sufficiently developed. In consequence the people were prosperous and happy. The main purpose of the state was to fulfil its duties, to encourage morality, to increase prosperity and happiness of the people and to safeguard their interests. The king looked after the welfare of the people.

### Budha period

During the period of Budha numerous republics existed. However, it is important that along with these republics there existed four big kingdoms of 'Magadha' 'Avanti', 'Vasta' and 'Kaushal'. In the republics the real power belonged to Sabhas which included the common people as well as the elite. The king was the head of the republic and was elected for a fixed period and was accountable for his action to the council or 'Sabha'.

## LITERATURE REVIEW

**Granville Austin**,<sup>11</sup> *The Indian Constitution: Cornerstone of a nation* (1966 & 1999) - The book has blended each and every concept of Indian Constitution. It finds the origin of the Fundamental Rights and

<sup>9</sup> Paras Diwan, *Administrative Law*, (Faridabad: Allahabad Law Agency) 2004  
<sup>10</sup> N. Jaypalan, "Indian Administration", Volume - I, Atlantic, New Delhi 2001, P.6.)

<sup>11</sup> Granville Austin, RIP". *Law and other things*. Vikram Raghavan. 7 July 2014.

Directive Principles of State Policy in the freedom movement. It emphasizes the concept of socio-economic justice that has been translated into Part III and Part IV of the Constitution and equally stress that the Fundamental Rights and Directive Principles are like two wheels of a chariot, one no less important than the other. They are like a twin formula for achieving the social revolution. The book enlightens the importance of DPSP as these principles aim at bringing about a non-violent social revolution. The Directive Principles were incorporated in our Constitution with the hope and expectation that someday the tree of true liberty would bloom in India.

In **Madhu Kishwar V State of Bihar**<sup>12</sup> 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.

**Tara Chand**, *History of the Freedom Movement in India* (2005)<sup>13</sup> – The book covers all the Constitutional development during the freedom movement and witness.

In **Bandhua Mukti Morcha v. Union of India**, (1984) 3 SCC 16114, a PIL by an NGO highlighted the deplorable condition of bonded laborers in a quarry in Haryana, not very far from the Supreme Court. A host of protective and welfare-oriented labor legislation, including the Bonded Labour (Abolition) Act and the Minimum Wages Act, were being observed in the breach. In giving extensive directions to the state government to enable it to discharge its constitutional obligation towards the bonded laborers, the court said:<sup>15</sup>

The right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.

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12 AIR 1996 SC 1870

13 Tara Chand. *History of the Freedom Movement in India*, Volume Two. New Delhi, Publications Division, 1967. Pp. 629

14 AIR 1984 SC 802

15 *Central Inland Water Transport Corporation v. Brojo Nath Ganguly*, (1986) 3 SCC 227



These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State Policy contained in clauses (e) and (f) of Article 39, Articles 41 and 42 are not enforceable in a court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity, but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation, for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State.

## LEGISLATION APPROACH

The preamble<sup>16</sup> to the Constitution summarises the aims and objectives of the Constitution. It is a legitimate aid in the interpretation of the constitution. It put socialism in the Constitution as its guiding principle and Master Slogan. The Constitution of India, undoubtedly, is goal-oriented, policy-oriented, and welfare state-oriented and permeates all laws of the land and its Preamble sets the human tone and temper of the Constitution which envisages, among other things, justice, equality and dignity of individuals. The Constitution of course is that light-house for all the navigators and its interpretation must conform to its aims and objects. Law no doubt is for the man, for the society for advance towards those fundamental goals in vocatively expressed in the Preamble by the “we the people of India”, and the Preamble contains “ideals and aspirations of the people of India” Law of course, is not static, backward looking or a tradition bound.<sup>17</sup> The preamble of the Constitution of India speaks of justice, social economic and political and of equality of status and opportunity The duty of legal aid is to find out the area of disturbance and to plug out the cause by forefront of the advocating legal literacy as well as legal aid.

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16 FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949.

17 Chitkar M.G and Mehatha P.L: Lok Adalat and the poor, p104

## WHETHER INDIA A WELFARE STATE OR NOT

Yes India is a Welfare State.. It is in its Constitutional itself has as Directive Principle and India has tried to achieve it.. But these Welfare policies are not adequately monitored and implemented. Rather it has given an effective corruption and partials. All the Government Hospitals were inadequately serviced duty to crisis of management due to policies in the Legislation. Schools run by government institutions are incompetent and in surplus. Slum dwellers signify the mass level migration and show the inadequacies in the Villages or respective states.

While official figures give credence to the claim that “economic growth necessarily leads to poverty reduction”, a careful look at them tells a different story about the impact of structural adjustment and liberalization. After a decade of liberalization, the promise of ‘Economic growth with justice’ seems eternally postponed.

An official government economic survey boasts a 6%-7% annual growth rate since the introduction of economic reforms in 1991/1992. A 2000 poverty survey shows poverty down from 36.19% in 1993/1994 to 26.10% in 1999/2000. There is increasing inequality between rich and poor and urban and rural people. Dalits<sup>2</sup> and tribal are increasingly marginalized. Poverty in terms of total numbers has not decreased, employment opportunities have decreased, and more people are being pushed into the informal sector without any legislative protection or safety nets. Human rights violations against the tribal and Dalit communities have increased. The balance sheet after ten years raises serious questions about the ability of the present economic system to deliver distributive

Justice and promote equitable social change. Poverty and inequality the percentage of people living in poverty has declined over the last two decades (Table 1), but because of population growth, the total number of poor people has remained more or less constant. Almost 265 million Indians live below poverty line. The rural-urban poverty lines, which almost intercepted in 1987/1988, sharply widened during the decade of economic reform. Interregional disparities are alarming. According to National Sample Survey Organization (NSSO) figures, the poverty figure for Orissa is 47.15%, Bihar 42.6%, Madhya Pradesh 37.43%, Sikkim 36.55%, and Tripura 34.44%. Poverty alleviation programs have not reached the poor.<sup>18</sup>

## JUDICIAL APPROACH

In **Randhir Singh V Union of India**<sup>19</sup>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

<sup>18</sup>Available at <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan002355.pdf> visited on September 13, 2010

<sup>19</sup> AIR 1982 SC 879



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**<sup>20</sup>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**<sup>21</sup>It has been held that the teachers employed in privately managed aided schools in State of Haryana are entitled to the same salary and dearness allowance as is paid to teachers in Government schools.

**Welfare of the Children**Art 39(e) prohibits the tender age of children from being abused. Art 39(f) ensures that the children grow in a healthy manner and are protected from exploitation. These Constitutional provisions indicate that the Constitution makers were very anxious to protect and safeguard the interest and welfare of the children.<sup>22</sup>

In **M.C. Mehta V State of Tamil Nadu**<sup>23</sup>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 reformatory 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 India**.<sup>24</sup> 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.

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<sup>20</sup> AIR 1986 SC 534

<sup>21</sup> AIR 1997 SC 449

<sup>22</sup> Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1379

<sup>23</sup> AIR 1997 SC 699

<sup>24</sup> AIR 1986 SC 1773

## CONCLUSION

The welfare state is such a convenient and elastic phrase that it is tailored to fit various developments in the social and economic fields. To some, the definition of the state assumes a welfare state. To others the concept is related to the extension of administrative activity of the state. Some highlight its close link with the organization and reform of local government. In the sphere of policies and legislation, it comes handy to the political reformers to push their pet schemes and proposals and denounce those of the opponents. To political parties and organs of fostering public reforms to push their pet schemes and proposals and denounce those of the opponents. To political parties and organs of fostering public opinion, it provides a cover for strategy and tactics to carry out several activities to attract the largest sections of voters. Its vastness, as also its vagueness, no doubt, is phenomenal. It is claimed to be an operative ideal for all sorts of ideological platitudes. It has no fixation of outline or a conceptual precision. In its ambiguity lie its uses.<sup>25</sup>

Because the word “welfare” defied accurate characterization, the type of changes in society that the term envisages is inexact; its connotation is subject to conflicting interpretations. Any state can be called a welfare state just as any ruler can claim to represent, what Rousseau called, “the general will”. It is difficult to establish a criterion or criteria appropriate to the concept of welfare state. Its connection with the concepts of “social justice” or “egalitarianism” is both complex and tenuous. On account of the ephemeral and obscure nature of the concept, the welfare state has become everybody’s cup. Each party finds words in justification of the welfare state. For conservatives, state provision comes to assume the character of a “Brummagem bulwark protecting property from the inroads of socialism”; for liberals, the welfare state has warded off the fear of communism and nihilism which stalked the land; and for Laborites, the discomfiture of the title “socialists” is allayed by the adoption of a respectable name.

## Bibliography

- Sankhdher, M.M. Yogakshema the Indian model of welfare state. (Delhi: Deep and Deep publications pvt. Ltd.) 2003.*
- Sankhdher, M.M. the welfare state. (Delhi: Deep and Deep publications pvt. Ltd.) 2003.*
- Bakshi, P.M. The Constitution of India. (Delhi: Universal Law Publishing Co.) 2009.*
- Pandey, J.N. Constitutional Law of India. (Allahabad: Central Law Agency) 2008.*
- Harlow and Rawlings. Law and Administration. (Cambridge University Press) 2009.*
- Malhotra Kumar Vinay. Welfare State and Supreme Court in India. (Delhi: Deep and Deep Publications)*
- Daily Rated Casual Labour Employed under P & T Department v. Union of India, (1988) 1 SCC 122*
- Central Inland Water Transport Corporation v. Brojo Nath Ganguly, (1986) 3 SCC 227.*

<sup>25</sup> N. Pandey, *Constitutional Law of India*, (Allahabad: Central Law Agency) 2008