



THE RELATIVE NEXUS OF THE CONCEPT OF PRIVATIZATION AND THE RIGHT TO WORK

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INTRODUCTION

Since 17th century, human thinking has been veering round to the theory that man has certain essential, basic, natural and inalienable rights or freedoms and it is the function of the State, in order that human liberty may be preserved, human personality developed, and an effective social and democratic life promoted, to recognize these rights and freedoms and allow them a free play.

In the economic context, the right to work implies the right to life. Especially for the working class, to work and earn is one of the most important facets of sustaining their livelihoods. However, in India, the right to work does not constitute a fundamental right. Articles 12-35 of the Constitution pertain to Fundamental Rights of the people. Most of the Fundamental Rights are claimed against the State and its instrumentalities and not against private bodies.

THE WELFARE STATE

The term 'the welfare state' is so much in vogue in present-day India. The idea of a welfare state is deeply embedded in the Indian Constitution in the part dealing with the Directive Principles of State Policy. Article 98 of the Constitution of India says: "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". Article 39 speaks of (a) adequate means of livelihood; (b) distribution of natural resources so as best to sub-serve the common good; (c) opposition to the concentration of wealth; (d) equal pay for equal work for both men and women; (e) conservation of health and strength of workers-especially of women and children; and (f) the non-exploitation of children. Article 41 speaks of the State securing the right to work to education, and to public assistance in cases of unemployment, old age, sickness, and disablement.

The articles following feelingly refer to provision for just and humane conditions of work and for maternity relief; a living wage for workers; provision for free and compulsory education until the children are fourteen years old; promotion of the educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker section; and the duty of State to raise the level of nutrition and the standard of living and the duty to improve public health. These are to be implemented by the government in the interest of welfare of the population. Courts cannot entertain cases for their non-implementations as per Article 37 of the Constitution.

The Right to work is not strictly mentioned and envisaged in our Constitution. It is impliedly mentioned in PART IV which embodies the various Directive Principles of State Policy. The Universal Declaration of Human Rights in its Article 23(1) provides that “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.” In the international context, India has ratified the International Covenant on Economic, Social and Cultural Rights, which also provided for the right to work in Article 6. However, the Indian Constitution recognises the right to work as a constitutional right and not a fundamental right. Therefore, the purview of Article 12 cannot be brought under the right to work although the interpretations of Article 12 and fundamental rights have a huge nexus with welfare state.

Certain welfare legislations like the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2005 aims to provide employment opportunities in the rural areas. This has been a government initiative and when privatisation strives in, the very purpose of the Act fails. Privatisation must have served the benefits of employment in certain enterprises, but fails to do so in case of government-implemented schemes. Therefore, the mandate of a proper welfare state is always at stake when the new economic policy thrives in.

The origin and development of the Welfare State Ideal: -

While every State today would like to call itself a welfare state almost up to the end of the nineteenth century most states contented themselves with being “police” state. Their primary business was merely to provide law and order. The promotion of welfare was left to individuals and groups of individuals. Among political thinkers in our day, Laski more than anyone else was the first to turn the attention of the world from the police state idea to the welfare state idea. The welfare state ideal took strong root in England. Its development, however, was different from the development in Germany. In England Trade Unions, ably supported by Fabian and other types of socialists, played an important part in developing the ideal.

THE IMPACT:-

One of the genuine fears of labour is that privatization is bound to result in unemployment. Most of the privatisation experiments around the globe are testimony the fact that this indeed does happen. The Government of India has been repeatedly harping on the tune that as a result of privatisation there has only been a 'marginal' retrenchment of labour. However, the fact of the matter is that there is a strong pressure from the corporate sector to 'reform' labour laws to enable it to hire and fire workers as it wishes and indications are that the government is falling in line. This means that the future employment scenario for labour is a cause of

worry.¹The fear of retrenchment and consequent unemployment is all the more as there is no safety net scheme for labour worth the name. How many workers will be able to get VRS (voluntary retirement scheme) and on what conditions is only a matter of speculation. In any case, VRS is not any solution of unemployment. A retrenched, unemployed worker is a frustrated man. Moreover, as argued by Joseph Stieglitz, there are large social costs of unemployment manifested in its worst forms, by urban violence, increased crimes, and social and political unrest.² But even in the absence of these problems, there are huge costs of unemployment. They include widespread anxiety even among workers who have managed to keep their jobs, a broader sense of alienation, additional financial burdens on family members who manage to remain employed, and the withdrawal of children from school to help support the family. These kinds of social costs endure long past the immediate loss of a job. Moving people from low-productivity of jobs in State enterprises to unemployment does not increase a country's income, and it certainly does not increase the welfare of the workers. The above dangers are all the more serious in those cases where a PSU is sold to a foreign company as the latter will be more interested in maximising the 'stock market value for its, shareholders rather than worrying about the, interest of local labour.

Employment:-

The impact of privatization on employment is most likely to be negative. Retrenchments may start before divestiture and continue thereafter. For an individual privatised enterprise, labour economies, like any other kind of economies, are worth pursuing. But their impact, namely, an addition to the volume of unemployment is what the economy as a whole has to sustain. Payments for redundancies alone do not meet the situation.³ There are many social and political implications of retrenchments due to privatization. One of the major fears about the privatization policy is the potential loss of present and future employment. Especially wage employment is a category in which most of the workers have to seek work almost every day. They are most vulnerable among the working people devoid of any kind of social security cover. The casual and contract labourers earn a living under precarious and vulnerable conditions. It is in view of these conditions that the notion of social security needs to be redefined in the light of the New Economic Policy. If people take rights seriously and consider them to be fundamental for the development of fair society, then they should be serious about their enforcement and realisation otherwise the whole effort is nothing but a vain effort.

Social benefits:-

By placing the operations on a commercial footing, privatization tends to minimize, if not eliminate, the flow of the social benefits. As a result, some groups or regions which were recipients of such benefits will suffer deprivation. If the divestiture proceeds are utilized to improve the living conditions of the lower-income brackets, there can be an ultimate good from the distributional angle. Provision of water, rural electrification, free hospitals and primary education centres are examples of such expenditure.

¹ Government of India, Economic Survey, 2002-03 (Delhi, 2003), p. 150

² Joseph Stieglitz, Globalization and Its Discontents (The Penguin Press, 2002), p. 57.

³ M. Albrow, The Global Age, 1996, p. 88, see http://www.globalizacija.com/doc_en/e0013glo.html

Job Security:-

The worst impact of privatization of public sector is on the **working class** who ultimately loses the job security. The **Rangarajan Committee** had recommended for the protection of workers' interests. But this is not being done. While disinvesting individual public sectors the Central Government has never the "no retrenchment clause" to ensure the protection of the working class. Instead, the Central Government has proposed to liberalise the labour laws by amending the Industrial Disputes Act, 1947 to favour the employer. Accordingly, once the proposed amendment receives the nod of Parliament an employer who has put up to 1000 workers.⁴The only saving clause is workers' compensation in the eventuality of a closure or retrenchment is sought to be made stiffer to prevent the abuse of the provision. Further, instead of 15 days wages for every completed year of service, 45 days wages as separation compensation have been proposed.⁵However, what is important is that when a public sector is privatised, one cannot expect the security of the workers, which would be illogical, as the employer always seeks his growth.

The other sects who have been affected by the privatization are the people who belong to the vulnerable sections of the society especially the Scheduled Castes and the Scheduled Tribes. The SCs and the STs who were so far dependent upon the reservation in employment in the Government sector because most of them lived in sub-human social existence, poverty, economic exploitation etc. Hence by virtue of Articles 16(4) and 16(4-A)⁶, SCs and STs are provided with employment opportunities in Central as well as State Government and other Governments aided institutions. These provisions are not applicable in private sectors and enterprises.

Discarding 'Constitutional Philosophy':-

With the introduction of New Economic Policy commonly known as the Liberalization Policy in the country around 1991, the realisation of constitutional goals underlying under Part IV of the Constitution are in deep crisis. The most worrying factor is that, the judiciary, which was reluctant in this sphere, is also increasingly getting influenced by changes taking place due to New Economic Policy and Globalization.

The Preamble of the Indian Constitution gives much emphasis on social justice and a welfare state. The idea of Privatization has withered away the concept of welfare state and given rise to neo-liberal state. However, the **Preamble** must not be discarded in the light of the New Economic Policy.

The Supreme Court in *Delhi Science Forum v. Union of India*⁷, and in *Tata Press Ltd v. Mahanagar Telephone Nigam Ltd*⁸, has given the legitimacy to privatization policy of the Government. In fact, the ideology of liberalisation has become a synonym for privatisation of not only the economy as a whole but also the public sectors resulting in inviting the private investor including foreign investor to buy the public sectors without safeguarding the interest of the workers. This is against the ethos of a welfare state.

⁴ Sections 25K and 25M, Industrial Disputes Act, 1947

⁵ *The Hindu*, 23rd February, 2002

⁶ The Seventy-seventh Amendment Act, 1995 and the Eighty-fifth Amendment Act, 2001 of the Constitution.

⁷ (1996) 2 SCC 405

⁸ (1995) 4 SCALE 595

CONCLUSION

Privatisation under the New Economic Policy is somewhat Anti-Labour and does not favour well the vulnerable sections of the society. But it is the pro-capital ignoring the interests of the majority of the population in India. Yet, the Government is also not attracting the private investors to invest in India with all enthusiasm. Especially the concept of social justice is fast eroding due to privatization of public sectors in India. If the Central Government feels that privatization is inevitable then it has to look for providing alternatives to the labour class and to the people belonging to weaker sections of the society. Otherwise, the very purpose of our Constitutional objectives would be defeated.

