

CONSTITUTIONAL GOAL OF THE WELFARE STATE WITH SPECIAL EMPHASIS ON HUMAN RESOURCES

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It gives me a great pleasure to be with you all, this evening to deliver the 26th Naval Tata Memorial Lecture. At the outset, I must express my deep appreciation for the efforts taken by National Institute of Personnel Management, Mumbai which is a Premier National Institute in Personnel Management, for organizing a lecture series to keep alive memory of Shri Naval Tata.

Apart from being a great Industrialist, Shri Tata was closely associated with International Labour Organizations. He had the unique distinction of being elected every three years as a member of ILO's Governing Body continuously for nearly four decades since 1951. His involvement with various public institutions devoted to social, educational and welfare activities, is well known.

Taking into consideration his untiring services to the Society and the

Nation, the President of India honoured him with a “ PADMABHUSHAN” in 1969.

It is indeed a great privilege for me to speak today on the eve of 114th Birth Anniversary of Shri Naval Tata.

Taking into consideration the deep involvement of Shri Naval Tata with the labour issues and his commitment to labour welfare, I have chosen today's topic “***Constitutional Goal of the Welfare State with Special Emphasis on Human Resources***”.

As all of us know that, welfare State strives to remove inequalities in social as well as economic spheres. The concept of welfare state is opposed to laissez-faire. Laissez-faire permits supremacy of the powerful and survival of the fittest. As all of us know that, in our country, vast stretches of land were owned by Jamindars and industries were concentrated in the hands of few individuals. Per contra, in view of availability of labour in plenty, agricultural labourers and industrial labourers were living below the poverty line. They were finding it difficult even to earn wages for their livelihood. The situation therefore permitted exploitation of the labour class

and adopting of hire and fire policy.

It has to be taken into consideration that, framing of the Indian Constitution was not preceded only by movement to get freedom but also by revolutions for social and economic equalities. The Constituent Assembly consisted of the people belonging to various ideologies. There were Communist who wanted Russia and China Model to be followed in India. There were Socialist, who wanted Constitution of the Country to be on Socialistic Model. There were Capitalist, who wanted the Constitution on the Capitalist Model. It was therefore an herculean task for the framers of the Constitution to frame the Constitution which was acceptable to one and all.

The concept of welfare State is embodied by the framers of the Constitution in the Preamble of the Constitution itself. The Preamble resolves to constitute India into a SOVEREIGN, SOCIALIST SECULAR DEMOCRATIC REPUBLIC. It also resolves to secure to all its 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.

It could thus be seen that the Constitution of India stands on four strong pillars of JUSTICE, LIBERTY, EQUALITY AND FRATERNITY.

In order to strive towards the goal of welfare State, the Constitution of India has provided fundamental rights in Part-III of the Constitution as well as Directive Principles of State Policy in Part-IV of the Constitution. The framers of the Constitution were aware that, the goal of welfare State cannot be achieved only with fundamental rights. They were aware that fundamental rights were not enough for achieving the goal of social and economic justice and therefore, we find the Directive Principles of State Policy.

As the topic is vast, I am restricting myself to the Directive Principles which are related to the welfare of the human resources. All of us know that, directive principles are not enforceable in the court of law. However, Article 37 has made them fundamental in governance of the country and a duty is cast upon the legislature as well as executive, to give effect to the directive principles while making laws and while discharging its executive

functions.

Article 38 requires the State to 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. Clause (2) of Article 38 requires the State in particular to strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst the individuals but also amongst the groups of people residing in different areas or engaged in different vocations.

Article 39 requires the State in particular to direct its policy towards securing various aims incorporated therein. Clause (a) thereof provides for securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Clause (b) provides for securing that the ownership and control of the material resources of community are so distributed as best to sub-serve the common good. Clause (c) provides for securing that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Clause (d) provides for securing that there is equal pay for equal work for

both men and women. Clause (e) provides that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Clause (f), which has been incorporated in the Constitution by the Constitution (Forty-second Amendment) Act, 1976, provides for securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 41 provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 42 provides that the State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 43 provides that the State shall endeavour to secure, by

suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Article 43-A, which is again brought by the Constitution (Forty-second Amendment) Act, 1976 provides that the State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

The Indian Parliament as well as various Legislatures have legislated many laws in order to achieve aforesaid goals of social and economic justice. Some of them are as under :-

Important Labour Legislations in India:-

Labour Legislation	Type of intervention
Workmens' Compensation Act, 1923	To provide for compensation, if workman is injured in the course of the employment.
The Trade Unions Act, 1926	To enable workers of a number of small units to form unions, who can bargain wages and other

	conditions of work.
The Payment of Wages Act, 1936	To regulate the manner of payment of wages and their realisation in case of non-payment.
The Industrial Disputes Act, 1947	To enable unions to raise industrial disputes on wages and the conciliation machinery to intervene.
The Minimum Wages Act, 1948	To provide minimum compensation for work. Workers in scheduled employment to be paid minimum wages.
Factories Act, 1948	To regulate health, safety and proper working conditions for workers in factories
Employees' State Insurance Act, 1948	To provide health and social security insurance.
The Maternity Benefit Act, 1961	To provide maternity benefits to female employees.
The Contract Labours (Regulation and Abolition) Act, 1970	The contractor is required to pay wages and in case of failure on the part of the contractor to pay wages either in part or in full, the Principal Employer is liable to pay the same.
The Equal Remunerations Act, 1976	Assure equal wage to women for same or similar work.

The Indian higher judiciary and in particular the Supreme Court of India as well as various High Courts have also played a pivotal role in the journey of the Constitution towards achieving social and economic equalities. As already discussed hereinabove, the directive principles are for striving to achieve economic and social justice, whereas fundamental rights are for protecting very basic human rights. In the initial stage, when conflict arose between fundamental rights and the directive principles, the initial view of the Supreme Court, as could be seen from the judgments of the

Constitution Bench of Hon'ble seven judges of the Supreme Court in the case of *State of Madras v. Champakaran Dorairajan*¹, was that “*The chapter of Fundamental Rights is sacrosanct and not liable to be abridged by any Legislative or Executive Act or order, except to the extent provided in the appropriate article in Part-III.*” It further held that, “*The directive principles of State policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights*”. This judgment and various other judgments of the Hon'ble Supreme Court gave rise to various constitutional amendments.

The view with regard to supremacy of the fundamental rights over the directive principles, was again reiterated by the Constitution Bench of 11 Hon'ble Judges of the Supreme Court in the case of *I.C. Golaknath v. State of Punjab*² by a thin majority of 6 to 5. This again led to various constitutional amendments, which came to be considered in the celebrated case of *Kesavananda Bharati v. State of Kerala*.³ Though the issue in the case of *Kesavananda Bharati* was basically with regard to amending powers of the Constitution and it is popularly known for “the basic structure

1 1951 SCR 525 : AIR 1951 SC 226.

2 1967 (2) SCR 762 : AIR 1967 SC 1643.

3 (1973) 4 SCC 225: AIR 1973 SC 1461.

doctrine”, this judgment has played a vital role in recognizing the importance of Directive Principles of State Policy. Though Hon'ble 13 judges have differed with regard to the scope of amending powers of the Constitution, there is almost an unanimity with regard to the equal importance to be given to the fundamental rights and the Directive Principles of State Policy. The Hon'ble Supreme Court held that there is no conflict amongst the fundamental rights and Directive principles of State Policy. It recognized that, they are supplementary to each other and they, together, are conscience of the Constitution.

It will be relevant to refer to the views expressed by the Hon'ble Judges of the Supreme Court in the said case.

Justices J.M. Shelat and A.N. Grover observed that “*Parts-III and IV which embody the Fundamental Rights and Directive Principles of State Policy have been described as the conscience of the Constitution. The Directive Principles of State Policy set forth the humanitarian socialist precepts that were the aims of the Indian social revolution. The Fundamental Rights and the Directive Principles were designed by the members of the Assembly to be the chief instruments in bringing about the*

*great reforms of the social revolution. They have helped to bring the Indian society closer to the Constitution's goal of social, economic and political justice for all”.*⁴

S.N. Hegde and A.K. Mukherjee, JJ., observed that “*The Directive Principles embodies in Part-IV of the Constitution or at any rate most of them are as important as the rights of individuals. The fundamental Rights and the Directive Principles constitute the 'conscience' of our Constitution. The purpose of the Fundamental Rights is to create an egalitarian society, to free all citizens from coercion or restriction by society and to make liberty available for all. The purpose of the Directive Principles is to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution*”.

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A.N. Ray, J., observed that “*The Directive Principles are also fundamental. They can be effective if they are to prevail over Fundamental Rights of a few in order to sub-serve the common good and not to allow economic system to result to the common detriment. Parts-III and IV of the Constitution touch each other and modify, they are not parallel to each other*”.

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⁴ *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225: AIR 1973 SC 1461.

⁵ *Ibid.*

⁶ *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225: AIR 1973 SC 1461.

P. Jaganmohan Reddy, J., observed that *“What is implicit in the Constitution is that there is a duty on the Courts to interpret the Constitution and the laws, to further the Directive Principles which under Article 37 are fundamental in the governance of the country”*.⁷

H.R. Khanna, J., observed that *“The Directive Principles embody a commitment which was imposed by the Constitution makers on the State to bring about economic and social regeneration of the teeming millions who are steeped in poverty, ignorance and social backwardness. They incorporate a pledge to the coming generations of what the State would strive to usher in”. “There should be no reluctance to abridge or regulate the fundamental rights to property if it was felt necessary to do so for changing the economic structure and attaining the objective contained in the Directive Principles”*.⁸

K.K. Mathew, J., observed that *“Therefore, the moral rights embodied in Part-IV of the Constitution are equally an essential feature of it, the only difference being that the moral rights embodied in Part-IV are not specifically enforceable as against the State by a citizen in a Court of law in case the State fails to implement its duty but, nevertheless, they are*

⁷ Ibid.

⁸ Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225, p. 534.

*fundamental in the governance”.*⁹

Y.V. Chandrachud, J., observed that “*Our decision of this vexed question must depend upon the postulate of our Constitution which aims at bringing about a synthesis between ‘Fundamental Rights’ and the ‘Directive Principles of State Policy’, by giving to the former a pride of place and to the latter a place of permanence. Together, not individually, they form the core of the Constitution. Together, not individually, they constitute its true conscience*”.¹⁰

It could thus be seen that *Kesavanand Bharati* recognizes the importance of Directive Principles in achieving the constitutional goal of social, economic and political justice for the citizens of India.

I now propose to consider some of the judgments of the Hon'ble Supreme Court of India, with regard to the labour welfare legislations which came up for consideration before it.

As early as in 1955, the issue with regard to provisions of Minimum Wages Act, came up for consideration before the Constitution Bench of the

⁹ *Ibid.*

¹⁰ *Id.*

Supreme Court in the case of *Bijay Cotton Mills Ltd and others vs. State of Ajmer*¹¹. An argument was sought to be advanced before the Supreme Court that, the Minimum Wages Act puts unreasonable restrictions upon rights of the employer in the sense that, he is prevented from carrying on a trade or business, unless he is prepared to pay the minimum wages. It was also sought to be urged that, the provisions relating to fixation of minimum wages is unreasonable and arbitrary and the whole thing has been left to the unfettered discretion of the “appropriate Government”. The Hon'ble Supreme Court while rejecting the said argument, observed thus :-

“(4) It can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency, is conducive to the general interest of the public. This is one of the Directive Principles of State Policy embodied in Article 43 of our Constitution. It is well known that in 1928 there was a Minimum Wages Fixing Machinery Convention held at Geneva and the resolutions passed in that convention were embodied in the International

11 AIR 1955 SC 33

Labour Code. The Minimum Wages Act is said to have been passed with a view to give effect to these resolutions. Vide - “South India Estate Labour Relations Organisation v. State of Madras”, AIR 1955 Mad 45 at p.47 : 1954-1 Mad LJ 518 (A).

If the labourers are to be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restraints should be imposed upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable. On the other hand, the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers, on account of their poverty and helplessness, are willing to work on lesser wages.”

It could thus be seen that, this was one of the earliest judgments of the Hon'ble Supreme Court wherein, the law which was enacted to secure minimum wages for labourers to protect them from exploitation on account of their poverty and helplessness, was upheld.

Again in the year 1970, in the case of ***Chandra Bhawan Boarding and Lodging, Bangalore vs. State of Mysore and another***¹², the power under Section 5 of the Minimum Wages Act, came to be challenged on the ground that the power was arbitrary and unguided. It was also sought to be urged that, the provisions amounted to violation of the right to freedom of trade. The Constitution Bench, after considering the mandate of Article 43 of the Constitution, that the State should endeavour to secure by suitable legislation or economic organisation or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, held that the fixing of minimum wages is just and first step in that direction and observed thus :-

“13.....Freedom of trade does not mean freedom to exploit. The provisions of the Constitution are not erected as the barriers to progress. They

¹² AIR 1970 SC 2042

provide a plan for orderly progress towards the social order contemplated by the preamble to the Constitution. They do not permit any kind of slavery, social, economic or political. It is a fallacy to think that under our Constitution there are only rights and no duties. While rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in the governance of the country. We see no conflict on the whole between the provisions contained in Part III and Part IV. They are complementary and supplementary to each other. The provisions of Part IV enable the legislatures and the Government to impose various duties on the citizens. The provisions therein are deliberately made elastic because the duties to be imposed on the citizens depend on the extent to which the directive principles are implemented. The mandate of the Constitution is to build a welfare society in which justice social, economic and political shall inform all institutions of our national life. The hopes and aspirations aroused by

the Constitution will be belied if the minimum needs of the lowest of our citizens are not met.”

The Division Bench of Bombay High Court of which I was a member, in the case of *Vibha Synthetics Pvt. Ltd and others vs. State of Maharashtra and others*¹³ had an occasion to consider the validity of Notification issued under the Minimum Wages Act, notifying the minimum wages for different types of industries. An argument was advanced that, while fixing the minimum wages, procedural requirements, as provided under the said Act, which were required to be followed were not followed and as such, Notification was vitiated. Rejecting the said contention of the Petitioners, the Division Bench observed thus :-

“47., the learned counsel appearing on behalf of the petitioners also urged before us to take into consideration the change in economic situation. According to him, due to globalisation, the competition has increased and if the employees are required to be paid higher wages, survival of the industries itself would be at stake.

We do agree with the proposition advanced by

¹³ 2005(4) Mh.L.J. 1111

the learned Counsel but then there is another side to the coin also. We will also have to take into consideration that due to liberalization of economy and opening of the doors of the country to the foreign investments and consequent globalisation, the condition of the Indian economy in the past decade has steadily improved. We cannot be oblivious to the fact that in the past decade, India's per capita income has reached at highest level in the country's history. We also cannot ignore that there is steady annual growth in the GDP. We also cannot ignore that the salary structures in the last decade have also steadily increased and at present are one of the best ones. We ask ourselves as to whether, when the economic health of the country has demonstrably improved, the workers from the unorganized sectors, who come from the lowest strata of the society should be denied even bare minimum wages necessary for survival. We ask the question to ourselves as to whether an

amount of Rs 90/- to Rs 100/- per day would be sufficient enough for minimal food requirement of a family consisting of four persons,.....

In the case of ***Standard Vacuum Refining Co. of India v. Workmen***¹⁴ the question of minimum wages again came for consideration. Again, relying on the provisions of Article 43, the Bench of the Hon'ble Supreme Court, speaking through Justice P.B. Gajendragadkar, observed that “*It is because of this socio-economic aspect of the wage structure that industrial adjudication postulates that no employer can engage industrial labour unless he pays it what may be regarded as the minimum basic wage. If he cannot pay such a wage, he has no right to engage labour, and no justification for carrying on his industry. It is the duty of the society and the welfare State to assure to every workman engaged in industrial operations the payment of what in the context of the times appears to be the basic minimum wage. This position is now universally recognised*”.¹⁵ And after observing this, the Supreme Court holds that, while determining minimum wages, the following factors will have to be taken into consideration and they are;

¹⁴ AIR 1961 SC 895 : (1961) 3 SCR 536.

¹⁵ *Standard Vacuum Refining Co. of India v. Workmen* AIR 1961 SC 895, para 9.

- (1) 3 units for one cover, then food required on the basis of net intake of calories as recommended by Mr. Aykrod,
- (2) Clothing requirement of 10 yards P.H., i.e., 72 yards for family,
- (3) rent commensurate to minimum area provided under Government Industrial Housing Scheme, fuel, lighting and
- (4) other miscellaneous items should constitute 20% of the total minimum wages.

This has been further expanded in the case of **Workmen v. Reptakos Brett. Co. Ltd.**¹⁶ The Supreme Court holds that “*Keeping in view socio-economic aspect the following norms should also be added to the Minimum Wages, i.e., the Children’s education, medical requirement, recreation, provision for old age, marriage etc. and this should constitute 25% of minimum wages*”.¹⁷

The father of the Nation, as of all us know, was of the view that what is due to the labour is not what capital considers as due but what labour itself would so consider. He was of the view that employers and employed are equal partners. He had advised employers to willingly regard workers as real owners of the concerns. This opinion of the great father of the Nation is

16 (1992) 1 SCC 290 : AIR 1992 SC 504.

¹⁷ *Workmen v. Reptakos Brett. Co. Ltd.* AIR 1992 SC 504.

echoed in Article 43-A of the Constitution of India.

The Constitution Bench of the Hon'ble Supreme Court in the case of ***National Textile Workers' Union and others vs. P.R. Ramakrishnan and others***¹⁸, was considering the question as to whether the workers are entitled to appear at the hearing of the Petition for winding up of the Company. Their Lordships while upholding that, the workers have right of participation, observed thus :-

“4.....The adoption of the socialistic pattern of society as the ultimate goal of the country's economic and social policies hastened the emergence of this new concept of the corporation. The socio-economic objectives set out in Part IV of the Constitution have since guided and shaped this new corporate philosophy. We shall presently refer to some of the Directive Principles of State Policy set out in Part IV which clearly show the direction in which the corporate sector is intended to move and the role which it is intended to play in the social and

18 (1983) 1 SCC 228

economic life of the nation. But, one thing is certain that the old nineteenth century view which regarded a company merely as a legal device adopted by shareholders for carrying on trade or business as proprietors has been discarded and a company is now looked upon as a socio-economic institution wielding economic power and influencing the life of the people.”

Their Lordships, in the said case, has further observed thus :

“6.Then follows Article 43-A which is intended to herald industrial democracy and in the words of Krishna Iyer, J. mark “the end of industrial bonded labour”. That Article says that the State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. The constitutional mandate is therefore clear and undoubted that the

management of the enterprise should not be left entirely in the hands of the suppliers of capital but the workers should also be entitled to participate in it, because in a socialist pattern of society, the enterprise which is centre of economic power should be controlled not only by capital but also by labour. It is therefore idle to contend 32 years after coming into force of the Constitution and particularly after the introduction of Article 43-A in the Constitution that the workers should have no voice in the determination of the question whether the enterprise should continue to run or be shut down under an order of the court.....”

Their Lordships of the Hon'ble Supreme Court in the case of ***D.S. Nakara and others vs. Union of India***¹⁹, after holding that the pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and it is a social welfare measure rendering socio-economic justice, observed thus :

“36. Having set out clearly the society which

19(1983) 1 SCC 305

we propose to set up, the direction in which the State action must move, the welfare State which we propose to build up, the constitutional goal of setting up a socialist State and the assurance in the Directive Principles of State Policy especially of security in old age and least to those who have rendered useful service during their active years, it is indisputable, nor was it questioned, that pension as a retirement benefit is in consonance with and in furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security of cradle to grave is assured at least when it is mostly needed and least available, namely, in the fall of life.”

The Supreme Court in the celebrated case of *M.C. Mehta vs. Union*

of India²⁰, had directed various polluting industries in the City of Delhi to be shifted out of Delhi taking into consideration that their continuance in Delhi would be most hazardous. However, while doing so, the Hon'ble Supreme Court protected the rights of workers in those 168 industries which were directed to be shifted. They were granted continuity of the employment in new town and place where the industries were shifted. The terms and conditions of their employment were protected. The period between closure of the industry and its re-start after relocating, was directed to be treated as an active employment and the workers were directed to be paid their full wages with continuity of service. The Supreme Court further directed to pay shifting bonus to all those workmen who were willing to shift with the industry.

In the case of *M/s J.K. Cotton Spinning and Weaving Mills Co. Ltd. vs. The Labour Appellate Tribunal of India, IIIrd Branch, Lucknow and others*²¹, it was sought to be urged before the Hon'ble Supreme Court that Malis engaged to look after the gardens attached to the Bungalows allotted to Officers and Director of the Company, could not be considered to be employed in the industry. However, the Hon'ble Supreme Court, applying the principle of pragmatic interpretation, rejected the said contention and

20 AIR 1996 SC 2231

21 AIR 1964 SC 737

held that, Malis who look after the gardens must be held to be engaged in operations which are incidentally connected with main industry carried on by the employer. While holding so, Their Lordships of the Supreme Court observed thus:

“(19).....Indeed, the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial disputes. The concept of social justice is not narrow, or one-sided, or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic ideal of socio economic equality and its aim is to assist the removal of social economic disparities and inequalities; nevertheless in dealing with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic approach. It therefore endeavours to

resolve the competing claims of employers and employees by finding a solution which is just and fair to both parties with the object of establishing harmony between capital and labour and good relationship. The ultimate object of industrial adjudication is to help the growth and progress of national economy and it is with that ultimate object in view that industrial disputes are settled by industrial adjudication on principles of fair-play and justice.....”

In the case of ***Regional Provident Fund Commissioner vs. Hooghly Mills Company Limited and others***²², the Hon'ble Supreme Court was considering the question as to whether in case of default by the employer in making its contribution of payment to the provident fund, whether the provisions of Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, would be applicable or not. While holding that, the said provisions would be applicable, their Lordships of the Supreme Court observed that the said Act is beneficial, social legislation to ensure health and other benefits of the employees and the employer under

22 (2012) 2 SCC 489

the Act is under a statutory obligation to make deposit. The Supreme Court in the said judgment, observed thus :

“26. It is no doubt true that the said Act effectuates the economic message of the Constitution as articulated in the directive principles of State policy. Under the directive principles the State has the obligation for securing just and humane conditions of work which includes a living wage and decent standard of life. The said Act obviously seeks to promote those goals. Therefore, the interpretation of the said Act must not only be liberal but it must be informed by the values of the directive principles. Therefore, an awareness of the social perspective of the Act must guide the interpretative process of the legislative device.”

In the case of *Employees Provident Fund Commissioner vs. Official Liquidator of Esskay Pharmaceuticals Limited*²³, the question that fell for

²³(2011) 10 SCC 727

consideration before the Hon'ble Supreme Court was : whether priority given to the dues payable by an employer under Section 11 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is subject to Section 529-A of the Companies Act, 1956 in terms of which the workmen's dues and debts due to secured creditors, are required to be paid in priority to all other debts? Holding that the amount due from employer under EPF Act will have priority, their Lordships observed thus:-

“22. The EPF Act is a social welfare legislation intended to protect the interest of a weaker section of the society i.e the workers employed in factories and other establishments, who have made significant contribution in economic growth of the country. The workers and other employees provide services of different kinds and ensure continuous production of goods, which are made available to the society at large. Therefore, a legislation made for their benefit must receive a liberal and purposive interpretation keeping in view the directive principles of State policy contained in Articles 38 and 43 of the Constitution.”

In the case of *Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) and another*²⁴, their Lordships of the Hon'ble Supreme Court were faced with the question as to whether the female Muster Roll workers engaged by Municipal Corporation of Delhi were entitled to the grant of maternity leave. While holding in favour of the said women working on Muster Roll, Hon'ble Supreme Court observed thus :-

“13. The provisions of the Act which have been set out above would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other Articles, specially Article 42. A woman employee at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain period prior to and after delivery.....”

It will not be out of place to mention that, recently, the Indian Parliament

24 2000-I-LLJ 32

has passed Maternity Benefit (Amendment) Act, 2017 vide which, period of paid maternity leave, that a woman employee is entitled to, has been increased to 26 weeks. Not only that, the woman who adopts a child below the age of three months or a commissioning mother who (means a biological mother who uses her egg to create an embryo implanted in any other woman) gets a child by surrogacy have also been made entitled to the maternity benefit for a period of 12 weeks.

While at one hand, Supreme Court has considered various enactments concerning protection and welfare of labourers, the Supreme Court has also taken cognizance of the issues pertaining to bonded labour.

In the case of *Bandhua Mukti Morcha vs. Union of India and others*²⁵, the Court considered the issue of bonded labourers, working in stone quarries in Faridabad District near the city of Delhi in the State of Haryana. The said labourers were largely from the State of Maharashtra, Madhya Pradesh, Uttar Pradesh and Rajasthan, who were working in these stone quarries under “inhuman and intolerable conditions”. The Supreme Court acting on a letter of organization which was working for preventing exploitation of such workers, therefore, issued various directions to the

25 AIR 1984 SC 802

Government of Haryana and the Government of India to identify such bonded labourers, free them from such bonded labour and take steps of rehabilitation of such freed bonded labourers. The said Governments were also directed to take all necessary steps for the purpose of ensuring that minimum wages are paid to the employees employed in the stone quarries. The directions were also issued to organize periodic camps for the purpose of educating the workmen in their rights and benefits conferred upon them by social welfare and labour laws. Directions were also issued for ensuring that, workers get clean drinking water and that their health is protected.

In the case of *Mukesh Advani vs. State of M.P.*²⁶, the Supreme Court took cognizance of a letter addressed by the Petitioner, depicting horrible plight of the bonded workers working in stone quarries at Raisen in Madhya Pradesh and treated it as suo moto writ petition. The Court had directed the learned District Judge to inspect and submit his report with regard to the existence of bonded labour. From the report, it came to the notice of the Hon'ble Supreme Court that most of the labourers were given a particular advance amount. The interest charged and the manner of repayment in installments was arranged in such a manner, that repayment could never neutralize the advance given by the employer. The Supreme Court found

26 (1985) 3 SCC 162

that this was, in effect, nothing else but a bonded labour. Again, similar directions for preventing exploitation of such bonded labourers and for ensuring that minimum wages were paid to them, were issued by the Hon'ble Supreme Court.

In the case of *P. Sivaswamy vs. State of Andhra Pradesh*²⁷, the Hon'ble Supreme Court ensured that adequate steps are taken for rehabilitation of the workers who were freed from bonded labour. While doing so, the Hon'ble Supreme Court observed thus :

“9.....Article 42 of the Constitution makes it the obligation of the State to make provision for securing just and human conditions of work. There are several other Articles in part IV of the Constitution which indicate that it is the State's obligation to create social atmosphere befitting human dignity for citizens to live in.....”

In the case of *Bandhua Mukti Morcha vs. Union of India and Others*²⁸, the Hon'ble Supreme Court issued various directions to stop

27 AIR 1988 SC 1863

28 (1997) 10 SCC 549

employment of children below 14 years and directed compulsory education to all the children either by industries themselves or in coordination with the State Government. It also issued directions to provide for periodic health check up and to provide nutritious food to such of the children who were working in industries.

In the case of *Randhir Singh vs. Union of India and others*²⁹, while considering the claim of drivers in Delhi Police Force for equal pay as was paid to the drivers in service of the Delhi Administration in Central Government, their Lordships observed thus :

“8. It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. Article 39 (d) of the Constitution proclaims “equal pay for equal work for both men and women” as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for every one and as

29 AIR 1982 SC 879

between the sexes. Directive Principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation.....”

In the said case, their Lordships further observed thus:-

“8.....Construing Articles 14 and 16 in the light of the Preamble and Art. 39(d), we are of the view that the principle 'Equal pay for Equal work' is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer.”

Recently, the Hon'ble Supreme Court had an occasion to consider the plight of workers working in unorganized sector of construction activities. In the case of *National Campaign Committee for Central*

Legislation on Construction Labour (NCC-CL) vs. Union of India and Others³⁰, Their Lordships found, that though Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 enacted for collection of Cess from construction activities which could be utilized for addressing issues of education, health, social security, old age and disability pension and other benefits that are necessary for living a life of dignity for workers working in unorganized sector of construction activities, the State had shown apathy to exploitation of said construction workers. The Hon'ble Supreme Court in the said case has observed thus :

“8. Clearly, the BOCW Act is a welfare legislation intended and enacted for the benefit of the unorganised sector of building and construction workers. It has a strong flavour of social justice and is a serious attempt by Parliament to ensure that building and construction workers are not exploited because of their poverty and their children do not suffer their fate in terms of education, healthy living and whatever it takes to live a life of dignity. It is in

30 (2018) 5 SCC 607

this background and context that the BOCW Act was enacted by Parliament.”

The Hon'ble Supreme Court further observed that, though the provisions of law were absolutely clear, they were not being implemented in accordance with the intention of the Parliament and therefore they issued various directions so as to ensure proper implementation of the legal provisions, which would prevent the exploitation of labour in unorganized sector and ensure that benefits under the Enactment reach the workers for whom the same is enacted.

It could thus be seen that in furtherance with the constitutional mandate of achieving welfare State as enshrined in the Preamble and Directive Principles, Indian Parliament as well as State Legislatures have enacted various enactments. Laws have been enacted so as to ensure prevention of exploitation of working classes. They have been enacted for ensuring that workers are paid minimum wages, so that they can live a humane life. Various enactments providing social security measures have been enacted. The higher judiciary of the country has played a vital role in furthering the constitutional goal of welfare State. The three Hon'ble Judges of the Supreme Court i.e. Justices K.K. Mathew, M.H. Beg and P.

Jagamohan Reddy in the case of *Kesavananda Bharati*, have held that it is the duty of the courts to apply Directive Principles in discharging its judicial functions. It has not only upheld various labour welfare legislations but also suo moto issued various directions, so as to prevent exploitation and for ensuring that workers live humane life. However, that does not mean that to pay employees, employers should be robbed.

It will be relevant to refer to the words of Dr. B.R. Ambedkar, while speaking in Constituent Assembly on November 25, 1949 and I quote :-

“The third thing we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be

divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them.”³¹

It could thus be seen that, a proper balance between liberty and equality is required to be maintained. While ensuring that the employer has a freedom to use his entrepreneurship skills for achieving progress in his business activities, it is also required to be ensured that, working class is not exploited and legitimate rights of such class are taken care of. As a matter of fact, Article 14 aims at creating equality. The equal treatment as postulated by Article 14 does not mean equal treatment to unequals. If it is so interpreted, it would only perpetuate inequalities. A special treatment to disadvantaged sections of the Society to minimise inequalities, is what is contemplated by equality clause of Article 14. Compensatory discrimination and protective discrimination are the facets of Article 14. This is where fraternity would play its role. The State through its executive, legislature and judiciary will have to ensure that

31 Dr. B.R. Ambedkar, Constitutional Assembly Debates.

proper harmony between liberty and equality is maintained. It is only this proper and just balance which would ensure that, industries function in peace and harmony and in turn this will help the the Nation progress.

I conclude by paying my homage to Shri Naval Tata on his 114th Birth Anniversary. Let's pledge that, we make every attempt possible to strive towards achieving ultimate goal of egalitarian Society.

Let's aim of India, which strives to achieve -

सर्वे भवन्तु सुखिनः
सर्वे सन्तु निरामयाः ।
सर्वे भद्राणि पश्यन्तु
मा कश्चिद्दुःखभागभवेत् ।

Sarve Bhavantu Sukhinah

Sarve Santu Niramayaah |

Sarve Bhadraanni Pashyantu

Maa Kashchid-Duhkha-Bhaag-Bhavet |

May All become Happy,

May All be Free from Illness.

May All See what is Auspicious,

May no one Suffer.
