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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

WHITE BLACK LEGAL: THE LAW JOURNAL

Analysis of the concept of Social Security in India through various Judicial Pronouncements

-CHAITANYA SINGH

“Liberty is the lifeline of every human being. Life without liberty is ‘lasting’ but not ‘living’. Liberty is ... considered one of the most precious and cherished possessions of a human being.”¹

I. INTRODUCTION

Since the end of the First World war, it was increasingly recognised that peace in the world can be established only if it is based on social justice. The most modern Constitutions contain declaration of social and economic principles, which emphasise, among other things, the duty of the State to strive for social security and to provide work, education and proper condition for employment for its citizens.² Social security programmes are often described as the most successful programme of the modern welfare states. But its long-term future is now in doubt.³ International Social Security Association⁴ find that, while globalization is likely to erode the pension income of the older persons, it will enhance their wealth and income from capital, leaving their overall spending power slightly improved. In evolving the Fundamental Rights and the Directive Principles, our founding fathers, in addition to the experience gathered by them from the world, also drew largely on their experience in the past. The Fundamental Rights and Directive principles mainly proceed on the basis of Human Rights. The main forces in the development of modern democratic thought have been the liberal idea of individual rights protecting the individual, and the democratic idea proper, proclaiming equality of rights and popular sovereignty. The gradual extension of the idea of equality from the political to the social and economic field has added the problems of social security and economic planning. The implementation and harmonization of these principles has been and continues to be the main problem of democracy.⁵ Under the Indian Constitution⁶, the right of a worker to a just wage that is sufficient to secure his family's living, or the right to unemployment relief or unemployment insurance, sick benefits, social security and other just amenities, in short, all those moral rights.⁷ Further, State Legislature and Parliament has been empowered to make laws with regard to Social security and social insurance, employment and unemployment.⁸ Social security means social justice for all and there should be certain minimum adequate standard of living for all. There should not only be public health and public safety, there should also be minimum education ensured for all.⁹

In this paper, the author will analyse the concept the Social Security in India through Judicial pronouncements delivered by various Courts of India and the developments made therein.

II. SOCIAL SECURITY: A CONUNDRUM

¹Ashok Kumar v. Union of India, (1991) 3 S.C.C. 498, 502, para. 1 (India).

²Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 479 (India).

³KATHERINE L. MOORE, PRIVATISATION OF SOCIAL SECURITY: MISGUIDED REFORM 71 Tem. L.Rev. 131. (1998).

⁴ISSA Programme held in Sept. 25-27, 2000 at Helsinki, Introduction to the Research Paper on “Social Security in the Global Village” www.issa.org visited on 25th December, 2019.

⁵W. FRIEDMANN, LEGAL THEORY 398 (5th Ed.) (1967).

⁶INDIAN CONST. Part IV.

⁷Golak Nath v. State of Punjab, (1962) 2 S.C.R. 762 (India).

⁸INDIAN CONST. Sch. VII, Entry 23.

⁹Constituent Assembly Debates, Volume 4 (July 30, 1947).

Social Security is a very wide term, it is a bundle of rights. There is no fixed definition of Social Security and it has always remained a conundrum. According to Sir Beverage “Social Security means an attack on want, disease, ignorance, squalor and idleness. Social Security Schemes includes both Social Assistance and Social Insurance. The government provides these protections through its institutions against certain risks through the collective contributions of employees, employers and the state. The term “Social Security” was first officially used in the title of the United States Legislation in The Social Security Act of 1935. According to Madhava Rao P (2002) Social Security comprises the economic security provided by the society generally or by the family, communities, organizations and other social groups, for the social well-being of an individual for his journey from the birth to death. Social Security varies from country to country. Social Security is defined differently by various organisations. According to Investopedia, Social Security is the term used for the Old-Age, Survivors, and Disability Insurance program in the United States, run by the Social Security Administration, which is a federal agency. While best known for retirement benefits, it also provides disability income and survivor benefits. It is independent of a lump sum pension.¹⁰ According to Committee on the Economic, Social and Cultural Rights, the right to social security is the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents.¹¹ According to Article 22 of Universal Declaration of Human Rights, “everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.” The Indian Constitution does not define Social Security but the spirit of Social Security has been inculcated within Part III and Part IV of the Constitution. According to The Code on Social Security, 2019, Social Security is defined as “the measures of protection afforded to employees to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights enshrined and schemes framed under the Code.” But still, the Bill has not come into force yet.

The silences regarding Social Security are addressed by the Courts through various Judicial pronouncements and the Courts have adopted an Activist approach towards the same.

III. DIRECTIVE PRINCIPLES AND SOCIAL SECURITY VIS-À-VIS FUNDAMENTAL RIGHTS: JUDICIAL APPROACHES

The Indian Constitution was conceived and drafted in the mid-twentieth century when the concept of social welfare state was the rule of the day. The Constitution is thus pervaded with the modern outlook regarding the objectives and functions of the state. It embodies a distinct philosophy of government, and explicitly declares that India will be organized as a social welfare state, i.e., a state which renders social services to the people and promotes their general welfare. In the formulations and declarations of the social objectives contained in the Preamble, one can clearly discern the impact of the modern political philosophy, which regards the state as an organ to secure the good

¹⁰JULIA KAGAN, SOCIAL SECURITY (Last accessed: February 13, 2020) (link at [investopedia.com/terms/s/socialsecurity.asp](https://www.investopedia.com/terms/s/socialsecurity.asp)).

¹¹United Nations Human Rights (https://www.ohchr.org/EN/Issues/RightSocialSecurity/Pages/SocialSecurity.aspx).

and welfare of the people.¹²This concept of a welfare state is further strengthened by the Directive Principles of State Policy, which set out the economic, social and political goals of the Indian Constitutional system. These directives confer certain non-justiciable rights on the people, and place the government under an obligation to achieve and maximize social welfare and basic social values like education, employment and health etc. The Constitution is thus an instrument to achieve the goal of economic democracy along with political and social democracy.¹³This aspect was also emphasized by Dr. Ambedkar in his concluding speech in the Constituent Assembly: *“Political democracy cannot last unless there lies at the base of it, social democracy”*.¹⁴The Constitution of India, through the various articles of Fundamental Rights and Directive Principles of State Policy, has provided for ‘social security’ both directly and through implied provisions.¹⁵The Supreme Court has interpreted the expression ‘life’¹⁶, rather liberally and broadly. Over time, the Court has been giving an expansive interpretation to ‘life’. The Court has often quoted the following observation of Field, J., in *Munn v. Illinois*¹⁷, *“by the term ‘life’ as here used something more is meant to- mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg...”*¹⁸. Similarly in *Francis Coralie v. Delhi*¹⁹ Bhagwati, J., has observed, *“we think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings”*. Thus, the inhibition against deprivation of ‘life’ would extend to all those faculties by which life is enjoyed. The essence of social security can be seen in the mature words of the Apex Court. The role of judiciary is to achieve the dream of social Justice in the preamble of the Constitution of India. Because the apex court has explained the Idea of Social Security consist of diverse principles essential for the orderly growth and development of personality of every citizen. *“Social Justice is an integral part of Justice in the generic sense. Justice is the genus of which Social Justice is one of its species. Social Justice is a dynamic device to mitigate the sufferings of the poor, weak, Dalits, tribal, and deprived sections of the society and so elevate them to the level of the equality to live a life with dignity of person.”*²⁰ The aim of Social Security is to attain substantial degree of social, economic and political equality which is the legitimate expectation and constitutional.²¹The main preambular objective of Indian Constitution is to secure to all its citizens justice- social, economic and political. The basis and origin of this concept was the ‘objective resolution’²² moved by Nehru in the Constituent Assembly. The founding father’s vision was to build up the nation on the strong foundation of socio-economic justice which was denied to the millions of people in India. The concept of Social Security is envisaged by the framers of Indian

¹² M.P.Jain, Indian Constitutional Law 16(5th Ed., Nagpur: Wadhwa & Company)(2003).

¹³ *Ibid.*

¹⁴ *Supra note 12.*

¹⁵ *Ibid.*

¹⁶ INDIAN CONST. art 21.

¹⁷ 94 U.S.I 13 (1877).

¹⁸ *Ibid.*

¹⁹ AIR 1981 SC 746, 753.

²⁰ *Air India Statutory Corporation v. United Labour Union*, A.I.R. 1997 S.C 645 (India).

²¹ Dr. Panday Mayuri, *“Social Justice; A Dream or Reality?”*, AIR May 2009 Journal 79.

²² The object resolution states: *“It shall be guaranteed and secured to all the people of India justice—social, economic and political, equality of status of opportunity before the law, freedom of thought, expression, belief, faith, worship, vocations, associations—but all are subject to law and public morality”* Nagabhooshanam, P., *Social Justice and Weaker Sections: Role of Judiciary*, Sitaram Co. (2000), p.4.

Constitution in the Directive Principles of State Policy. The true nature, significance, role and objective underlying the Directive Principles regarding Social Security have not been rightly appreciated by courts initially.²³ But later in the case of *Mohd. Hanif Qureshi v. State of Bihar*²⁴, the Supreme Court observed, "A harmonious interpretation must be placed up on the Constitution, and so interpreted it means that the state should certainly implement the directive principles, but it must do so in such a way as not to take away or abridge fundamental rights."²⁵ In 1973, While recognizing the significance of directive principles in the Constitution, the Supreme Court by majority upheld the validity of the 25th Amendment. Mathew, J., went to the extent of observing that in building a just social order, the fundamental rights could be subordinated to Directive Principles because only if men existed then there could be fundamental rights.²⁶

Further, in the case of *Kasturilal v. State of Jammu & Kashmir*,²⁷ the Supreme Court found that the yardstick for determining reasonableness and public purpose is to be found in the law for implementing directive principles. The Court emphasized that an executive action or a law enacted for giving effect to directive principles in furtherance of constitutional goal of social and economic justice, would be prima facie reasonable and in public interest.

In the case of *Minerva Mills v. Union of India*²⁸, according to Justice Bhagwati, the directive principles enjoyed a very high place in the constitutional scheme and it was only in the framework of the **socio-economic structure envisaged in the directive principles that the fundamental rights were intended to operate, for it was only then they could become meaningful and significant for the millions of poor and deprived people who did not have even the bare necessities of life and who were living below poverty line**. Therefore, the goals set out in Part IV had to be achieved without the abrogation of the means provided for by Part III. Justice Bhagwati while upholding the amendment (Article 31-C) emphasized the State should take positive action for creating socio-economic conditions in which **'there will be an egalitarian social order with social and economic justice to all', and 'this is the philosophy of distributive justice embodied in the directive principles'**. The above analysis shows that the goals set out in directive principles are to be achieved without abrogating the fundamental rights. The courts have used the directive principles not so much to restrict fundamental rights but to expand their scope and content.²⁹ In enforcing and resolving the issues of labours and social security, the judiciary has followed the same approach.

The Supreme Court's decision in *Chandra Bhavan Boarding v. State of Mysore*³⁰ is a befitting example. The question in this case was whether fixing the minimum wages of different classes of employees in residential hotels and eating houses in State of Mysore would be arbitrary and violative of Article 14 of the Constitution. Section 5 (1) of the Minimum Wages Act, 1948 was challenged as unconstitutional on the ground that it conferred arbitrary power i.e., without any guidance to fix minimum rates of wages. It was also challenged that the Act interfered with the fundamental right to carry on any trade or business. While upholding the validity of the Act, the

²³ State of Madras v. Champakam Dorajan, A.I.R. 1951 S.C. 226 (India).

²⁴ A.I.R. 1958 S.C. 731 (India).

²⁵ *Ibid.*

²⁶ Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 479 (India).

²⁷ A.I.R. 1980 S.C. 1992 (India).

²⁸ A.I.R. 1980 S.C. 1789 (India).

²⁹ M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* 1372 (Wadhwa and Co., Nagpur) (2003).

³⁰ A.I.R. 1970 S.C. 2042.

Court explained the objectives of the Act and the significance of the directives contained in Article 43 of the Constitution in the following words:

“Its (the Act’s) object is to prevent sweated labour as well as exploitation of unorganized labour. It proceeds on the basis that it is the duty of the State to see that at least minimum wages are paid to the employees irrespective of the capacity of the industry or unit to pay the same. The mandate of Article 43 of the Constitution is 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. The fixing of minimum wages is just the firststep in that direction”³¹

The workers therefore have a special place in a socialist pattern of society. They are not mere vendors of toil; they are not a marketable commodity to be purchased by the owners of capital. They are producers of wealth as much capital –nay very much more. They supply labour without which capital would be impotent and they are, at least, equal partners with capital in the enterprise’.

In *National Textile Workers Union v. P.R. Ramakrishnan*³², the Supreme Court pointed out the significant position of workers in Indian society and reiterated the profound concern to the workers by the socioeconomic order envisaged in the Preamble and the Directive Principles of the Constitution. Though the Companies Act does not provide any right to the workers to intervene in the winding up proceedings it was decided that such a right of the workers had to be spelt out from the Preamble and Articles 38, 39, 42, 43 and 43A of the Constitution. The directive in Article 43A, i.e., the provision for securing the worker’s participation in management, were accordingly read into fundamental right of the shareholders to carry on or not to carry on their trade or business guaranteed under Article 19(l) (g)³³. The Court speaking through Bhagwati, J., concluded:

“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 a centre of economic power should be controlled not only by economic power but also by capital and labour”.

The decision in *The Workmen v. Reptakose Brett and Co. Ltd Reptakos and Co.*³⁴ by Supreme Court held that the children’s education, medical requirement, minimum recreation, provision for old age, marriage etc., should further constitute 25% of the minimum wage and used as a guide in fixation of minimum wages.

Chief Justice K.G. Balakrishnan aptly highlighted the objectives of the Unorganised Sector Workers’ Social Security Act, 2008 in the following words:

*“Needless to say, the millions of unorganised workers are in dire need of a stable and reliable social security regime. The Unorganised Workers’ Social Security Act contemplates the **delivery of benefits to unorganised workers in instances of sickness, disability, maternity, unemployment, old age and the death of a family’s bread winner.** The Act has defined ‘Unorganised workers’ in a wide and*

³¹*Id* at p.2048.

³² A.I.R. 1983 S.C. 75.

³³*Id.*

³⁴ A.I.R. 1992 S.C. 504.

*liberal manner so as to include those who are casually employed and receive daily or monthly wages as well as 'home-based workers' and even farmers who work on small land-holdings. Hence, the legislative intent is to expand the social safety net as widely as possible"*³⁵

IV. CONCLUSION

In a nut shell, the present social security system in India is suffered mainly by multiplicity of laws, shortage of coverage, lack of policy and scarcity of implementation mechanism.³⁶ Further, all these decisions of the Courts are pointing towards the necessity of a healthy work force in a welfare state. But after the adoption of the globalization and liberalization strategy, it is seen that the Indian Judiciary also is shifting its approach towards the new economic policies of the government. This is evident from the decisions on labour issues especially issues relating to labour rights. The labour jurisprudence in India evolved by the judiciary after 1950s has been a shield of protection to workers from all sorts of exploitation. The contributions of Krishna Iyer, Bhagwati and Chinnappa Reddy, JJ., are significant in this regard. The court was always with the labour in all reasonable circumstances, for protecting the interests of labour. The conditions of labour in India remain the same as they are always exposed to exploitation, except the advantaged group (the organized sector) who enjoys legal protection. But the slogans of development in the era of globalization influenced the Indian judiciary also. It is worthy to analyze how other countries are trying to cope up with the wind of globalisation. Understanding about how the legal system works in other countries will definitely help to reconcile the principle of unlimited market freedoms sought by employers with the demands of workers for the guaranteed basic rights and social protections.



³⁵ http://www.supremecourtfindia.nic.in/speeches/speeches_2009/Unorganised_workers_social_security_Act_2008_-_NALSA_seminar.pdf, accessed on 20th February 2020.

³⁶ P.G. Krishnan, "Law of Social Security: Perspectives", [1989] C.U.L.R., 1.