

Directive Principles of State Policy and Fundamental Duties: Constitutional Imperatives

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Lecture 25: DPSP and Labour Welfare

Greetings to all of you. We are in module 4 where we are discussing the role of the legislature, the executive and the judiciary on the directive principles of state policy. We have taken this topic to establish this view point that how the legislature has enacted a law on a subject matter which closely touches upon the directive principle and how the enactment of laws on such subject has made a very meaningful impact on the very realization of the goal in signed in Part IV of the Constitution that is labour welfare. So, let us look at how the court has interpreted the law enacted by the legislature and in such process how the very significance of the provisions related to labour welfare has been highlighted through that interpretation. So, in this session we shall be talking about labour welfare and the Constitution and then we shall talk about how the laws were being made on the matter of labour welfare and then what is the role of the judiciary in implementing such laws and role of judiciary in reading the directive principles for strengthening the right of the workers. The very issue of labour welfare is historical and it is traced back to the industrialization where industrial revolution started giving a very strong impression that that it is the industry which can reform the way of life and through that a drive is started for earning livelihood by engaging in different works undertaken in various industrial activities. With the new place of earning livelihood a concern was also raised on the issue of exploitation and to have a good bargaining power with the management.

And with this in India we have also experienced the enactment of the law done when the India when India was a colony the imperial government enacted Factories act to regulate the working conditions of factory, working hours in the factory, safety measures in the factory. The government also enacted the law on the matter of registration of trade union. So, when you look at the enactment of the law on this important issue, you observe that the issue of labour welfare has been implemented through the legislative design. And such design became an

integral part of also constitutional philosophy one may say and it is the Constitution also which categorically talked about the issue of labour welfare.

Now, one may read the issue of the scheme of labour welfare both under Part III of the Constitution and Part IV of the Constitution. Part III is a reference in both direct and indirect form where you have Article 14 which has been expanded to include equal pay for equal work as a facet of equality. Article 14 has been applied for ensuring non arbitrariness in a large segment of service conditions. In fact, service jurisprudence has developed with the support of Article 14 where issues of promotion, where issues of termination, where issues of compassionate appointment all these have evolved through the reading of Article 14 of the Constitution. Article 19(1)(c) which is apparently a freedom related to strengthening the democratic functioning by conferring a right to form association, but then this is a very fundamental right also for strengthening collective bargaining of the workers by allowing them to form a trade union.

Article 21 which talks about right to life, the court has given an expanded meaning to include healthy working condition as a facet of right to life, clean environment as a facet of Article 21. Then there are two other important provisions in Part III which is about prohibition of forced labour, prohibition of trafficking in human beings or prohibition of employment of children in factories. Part IV of the Constitution when you look at it you find that more than one provisions are there which are connected with the issue of labour welfare. As we have studied in earlier modules that the directive principles are conglomeration of different values and one such value is welfare goal particularly of vulnerable. Labour class is no doubt one such vulnerable group which badly need the support of the state in order to effectively bargain with the management.

Article 38 talks about securing social order for the promotion of welfare of the people. Now, Article 38 apparently appears to be for everyone, but then it has more significance for the one who does not have equal bargaining power particularly when you look at the industrial relation. Article 39(d) and Article 39(e) is again very significant on labour welfare where it says equal pay for equal for men and women and the health and strength of workers men and women are not abused and that citizens are not forced by economic necessity to enter a vocation unsuited to their age or strength. Now, Article 39(d) and Article 39(e) if you look at it a very significant directive which is directly addressing the concern of the working class. And very powerful provision where it categorically gives a mandate that no discrimination shall be done on the basis of gender if both men and women are employed to carry out the work. In addition, it also

says that economic exploitation should not take place of the worker considering the financial positioning, considering the exploitative concerns of the working class. Article 41 confers a right to work on everyone with a condition where it says that it depends on the economic capacity of the state. Article 42 talks about the responsibility of the state to secure just and human conditions of work and for maternity relief. Article 43 talks about the endeavour to be made by the state for ensuring living wage, decent standard of living. Article 43A which has been added through a constitutional amendment talks about the state to secure the participation of workers in management of industries. So, you very well observe here that there are several provisions which are directly or indirectly related to labour welfare. And you find that these provisions are very well effectuated very well given a very concrete in the form of law by the legislature.

In this reference we shall also look at pre constitutional law just to draw a connect that how those pre constitutional laws are also to be seen in connect with seen in alignment with the directives adopted in the year 1950. For example, these two laws that is Workmen's Compensation Act, 1923 and Trade Unions Act, 1926. These two laws when you look at it, they are important laws to deal with the issues of any injury or loss of life taking place during employment, then there shall be adequate compensation to be awarded to the victim or the family of the victim. By virtue of Article 372 of the Constitution these two laws continue to be in operation. Obviously, in 2020 the government has made an overhauling of labour laws and labour laws were codified under four broad codes where you will find that these laws are also featuring. Post colonial constitutional laws you find that Industrial Disputes Act, 1947 which is now as I said that is restructured as Industrial Relations Code where the provisions of trade union act is also provided. Then you have a Payment of Bonus Act, 1965, then Equal Remuneration Act, 1976 and Unorganised Workers' Social Security Act 2008 has been restructured at Code on Social Security 2020.

Now, when you look at these laws you find a very visible nexus between the directive principles which are there under Article 39(d) under Article 42 or Article 43 or Article 38 of the Constitution. And it has been observed that that the legislature has acted upon these directives and enacted a law be it because of the reason of political will or the then prevalent situation of the Indian economy. Labour market plays a very significant role in the growth of any nation and India is no exception to it. In order to channelize the optimal use of labour force and to ensure that they are not unduly exploited by the industry, by the management, by the employer.

As I said the state has got a very defined role to play, defined role to play to make fair and just rules of the game and such making of the rule is done through the legislative scheme or legislative process. Because when the bargaining power is not equal, it is the state which shall intervene in the form of legal mechanism, in the form of law.

Because the legislature has got a responsibility to protect the vulnerable. And as I said that protection of vulnerable is can be effectively done with a with a laying down of the concrete law. So, no doubt that these laws have contributed in industrial growth by minimizing the industrial conflict and ensuring cooperation between the employer and employee. It is generally stated that political will has also played a very significant role in enactment of law on the issue of labour welfare. Perhaps, because the reason that labour issues were an important issue during the freedom movement. It continued to be a focal point, a central point of political discourse in independent India. Trade unions played a significant role in giving a platform to the voices of weaker section to the voices of working class.

And thus, it was it contributed in creating a sort of environment for the state for enacting the law for the welfare of the people. And this is something which was seen when you look at it from a political premium which could bring immediate benefit to the political parties in contrast with issue of education, nutrition or other welfare provisions which possibly require a long-term planning and investment. Compared to that making a law on labour welfare and through that sending a communication or a strong message to the working class that the government is working for you. These legislative designs are welcomed, but the same time you find that there is a subtle criticism of the same also. What is that criticism? That these laws fail to provide cushioning to a large segment of working class in this country. Basically, laws are generally benefiting working classes of organized sector and considerable number is there in unorganized sector.

In fact, the statistics says 80 to 90 percent of the working class is there in unorganized sector. There are laws also dealing with unorganized sectors, but then the implementation is a challenge there. When the laws are being met, obviously those laws are being challenged in the court of law. It is very notable feature of the judiciary that judiciary has while dealing with the interpretation of that labour laws carefully examined the directives given and use those directives for strengthening the provisions of law or giving necessary relief to the working class. So, judiciary has played an important role advancing the cause of labour and labour welfare. It has been either done when there is a direct challenge of the legality of the action

under individual labour laws or when it has done through public interest litigation where issues are being raised on the implementation of labour laws for example, Bandhua Mukti Morcha or Asiad Workers case where public interest litigation has been invoked to fix the accountability of the employer on implementing the labour laws particularly with regard to the working conditions payment of minimum wage.

So, public interest litigation has also played a role in contributing to the cause of labour welfare through judicial process. For our discussion we can understand the approach of judiciary under two broad headings. One is labour oriented interpretation and other is market-oriented interpretation. This is just to give a kind of approach which the court has been following. This requires an elaborate research and elaborate examination. Here we are just highlighting few case laws to bring this point home that judiciary has been acknowledging the significance of the directives as well as instances are there where judiciary has also looked into the requirement of aligning the laws with the economic policy of the country.

For example, in *Bijay Cotton Mills Ltd. v. State of Ajmer*, (1954) where a matter was raised with regard to the validity of the Minimum Wages Act, the court took support of Article 43 to validate the law on minimum wage. The court was of the opinion that even though Minimum Wages Act, curtail the freedom guaranteed under Article 19(1)(g) to carry on trade such curtailment is justifiable because there is an obligation to pay a wage which shall ensure minimal decent life. On the issue of the very role of the dispute resolution mechanism laid down under the Industrial Disputes Act, 1947 and the very prerequisite of raising a dispute based on whether the activity is industry or not. In *Bangalore Water Supply & Sewerage Board v. A. Rajappa*, (1978), the court has given a very broad meaning where the court has said that worker oriented statute must receive a construction where conceptually the key note thought must be the worker and the community as the Constitution has shown concern for them inter alia in Articles 38, 39 and 43. So, with the support of this directive principle the code has given very expansive meaning to the term industry. And the result of such expansive meaning is that almost every organized activity fell under the definition of industry and the dispute is started becoming a subject matter of dispute to be taken up by the Industrial Tribunal.

On the issue of discriminatory notification on the service condition particularly pensionary benefits under the Central Services (Pension) Rules 1972, Supreme Court was asked to examine such notification in *DS Nakara v. Union of India*, (1983). The court has said that rule must be interpreted in consonance with Articles 38(1), 39(d) & (e), 41 and 43. And with this

reading the court has said that the discriminatory rule is not only of Article 14, but also of these directive principles. Again, in this case of Harbans Lal v. State of Himachal Pradesh, (1989), you find a case is again related to discriminatory wage structure of the carpenters. The court again said that equal pay for equal work has become an important principle under Article 14 read with Article 39(d) and it must be honored and respected. On the issue of contract labour, Standard Vacuum Refining Co. of India v. Workmen, (1955), the court has raised a very important issue that because of the socio-economic aspect wage structure that industrial adjudication postulates that no employer can engage industrial labour unless he pays in what may be regarded as the minimum basic wage.

Then again in the National Textile Workers' Union v. PR Ramakrishnan, (1983), you find the court refers to the provision on participation of workers in the management and court said that that any winding up petition must be taken up must be heard only after hearing the union. Contra to this in BALCO Employees Union v. Union of India, (2002), the court has not given the similar reading and interpretation or the value to Article 43A, when BALCO Employees Union asked about giving them also the platform to present their case in the drive of the privatization of BALCO employees. The court said that it is a matter of economic policy and government is free to design the same. You find that there is a market-oriented approach also, we are just highlighting that how the judiciary has been approaching. It has been seen that with the shift in economic policy after adopting liberalization policy in the year 1991. It appears that on the matter of labour welfare the court is trying to also acknowledge the very policy adoption by the government.

Court is attempting a balance between protecting the workers right as well as accommodating the interest of the employers which is in the context of changing economic landscape of the country. For example, in this case of a State of Uttar Pradesh v. Jai Bir Singh, (2005), the court has flagged the concern on the expansive definition adopted by the court in Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978). Court has said that we need to revisit because such expansive interpretation is leading to more litigation. The Court says, "It is experienced by all dealing in industrial law that overemphasis on the rights of the workers and undue curtailment of the rights of the employers to organize their business, through employment and non-employment, has given rise to a large number of industrial and labour claims..... An overexpansive interpretation of the definition of 'industry' might be a deterrent to private enterprise in India where public employment opportunities are scarce".

Something similar has been observed also in the case of *State of Karnataka v. Umadevi* (3), (2006), where a case related to regularization of service of temporary employees. The court rejected such regularization and observed that the court must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affair by the state or its instrumentalities or lend themselves the instruments to facilitate the bypassing of constitutional and the statutory mandates. These decisions certainly indicates that economic policy of the government has somewhere played the role in arriving at this conclusion. But then there are also cases where the judiciary has reminded itself that it has got a responsibility to look at the issue of labour welfare as highlighted in the director principle. *Harjinder Singh v. Punjab State Warehousing Corporation*, (2010) is a case which is again on contract labour, the court has said: *“there has been a visible shift in the courts’ approach in dealing with cases involving the interpretation of social welfare legislations. The attractive mantras of globalisation and liberalisation are fast becoming the raison d’être of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganised workers”*. Justice AK Ganguly reminded the judiciary’s duty is to uphold the “constitutional focus on social justice without being in any way misled by the glitz and glare of globalization”. So, court you can very well see in *Harjinder Singh* case, Court itself is concerned, it is flagging that we should not really get into so much aligning with economic policy in the government that the issue of labour welfare takes a back seat. It is a responsible judiciary to come forward and support the vulnerable. And that is why it is been suggested that that the approach of the court must be compatible with constitutional philosophy of which the directives constitute an integral part and justice due to the workmen and should not be denied by entertaining the spaces and untenable grounds put forward by the employer public or private which are bound to enforce directives.

So, court has a responsibility to enforce the directives when there is a law made. That is what you find that the court has off let also express the concern that issue of labour welfare is not getting due attention. For example, *In re: Problems & Misers of Migrant Labourers*, (2022), the case related to pandemic time, the court has taken suo moto cognizance of the problems and miseries of migrant workers who have been stranded in different parts. And in this case, the court has given a slew of directions to the management to the employer that necessary should be done so that their sufferings can be mitigated. Same is the case where in *Shripal v. Nagar Nigam, Ghaziabad* (2025), the court has said that though in *Umadevi* Case the court has said that regularization is not to be done because such a regularization of temporary workers

amounts to bypassing constitutional statutory pathway statutory norms, the court has said that that by invoking Umadevi judgment one should not see that such a long engagement as a worker in an organization is not getting the due what that individual or set of individuals are entitled for. In the recent judgment in Ajay Malik v. State of Uttarakhand, (2025), the court has directed the Ministry of Labour and Employment in tandem with the Ministry of Social Justice and Empowerment, the Ministry of Women and Child Development, and the Ministry of Law and Justice, to jointly constitute a Committee comprising subject experts to consider the desirability of recommending a legal framework for the benefit, protection and regulation of the rights of domestic workers. So, you look at it even the court is flagging the issue which are unattended through legislative processes that that is something which has got a responsibility of the governments and the court in this case has asked all the related departments related ministries to come together to come up with the guidelines for protecting safeguarding the interest of domestic workers.

So, what is seen here is that the directive principles provide encompassing provisions with regard to social justice, fair wages and workers participation management. It very powerfully provides for labour welfare. And, it has been also seen that legislative design has implemented these directives and one can very well say that legislation is a very impactful means of effectuating the directives. As it has been provided in Article 38 where it has been stated that a state has got a duty to make laws and judiciary has also done its responsibility by enforcing the directives through meaningful interpretation of the laws made.

These are the references of this session.

Thank you.